

FACT SHEET

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Right to Negotiate (RTN) for PBCs*

The RTN process

The RTN process means that the native title holders have:

1. a Future Act Notice sent by the government to the PBC and the relevant NTRB/NTSP (s 29 NTA)
2. four months from the date of the notice to object to an expedited procedure notice
3. six months (or longer if agreed) from the date of the notice to negotiate in good faith.


During these six months, or longer if agreed, the parties must negotiate in good faith with the aim of reaching an agreement about whether the future act should be done or not. The National Native Title Tribunal (**NNTT**) can mediate.

After six months from the date of the notice, an application can be made to the NNTT for a determination that the future act can be done.

In a future act determination, the NNTT can decide that the future act must not be done, or that it can be done with or without conditions. The Commonwealth Minister can overrule the NNTT's determination.

The NNTT can take into account any agreement between the parties, and make a determination by consent. If the parties don't agree, in making its determination, the NNTT must consider the effect of the future act on matters including:

- the enjoyment by the native title holders of their registered native title rights and interests
- the way of life, culture and traditions of the native title holders



Native title holders should think about getting legal advice if they wish to exercise their right to negotiate, or if they wish to object to the government applying the expedited procedure.

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* PBCs are Prescribed Bodies Corporate. Once registered with the NNTT, they are also called Registered Native Title Bodies Corporate (RNTBCs).



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- the development of the social, cultural and economic structures of the native title holders
- any area or site of particular significance to the native title holders
- the wishes of the native title holders in relation to the management, use or control of land or waters in relation to which there are registered native title rights and interests
- the economic or other significance of the future act to Australia, the state or territory, or the region.



When do native title holders have the RTN?

Native title holders (through their PBC) have a right to negotiate for future acts that involve:

- mining (including exploration and extraction of minerals, petroleum and gas), OR
- the compulsory acquisition of native title rights and interests for the benefit of third parties, (but not for the purpose of providing an infrastructure facility like a port or a power station).

They don't have the right to negotiate where the future act involves:

- the creation of a right to mine for the sole purpose of the construction of an infrastructure facility located with mining (native title holders have the

rights to be consulted and have an objection heard – [see Future Act Fact Sheet](#)), OR

- compulsory purchase of native title by the government for government use, OR
- future acts dealt with by ILUAs that exclude the right to negotiate, OR
- some gold, tin or gem mining, OR
- land within a town or city, OR
- acts subject to the expedited procedure (the future act notice must state that the government thinks that the expedited procedure applies) – see page 3.

Expedited procedure

A future act notice may include a statement that the government thinks that the act attracts the expedited procedure. If the expedited procedure does apply, the future act can be done without going through the right to negotiate.

A PBC can object, to the inclusion of a statement that the expedited procedure applies. If you are considering an objection it would be good to get a lawyer involved.

If the PBC objects the NNTT makes a decision about whether the expedited procedure applies. To find that the expedited procedure doesn't apply, the NNTT will need to be convinced that the act will be likely to:

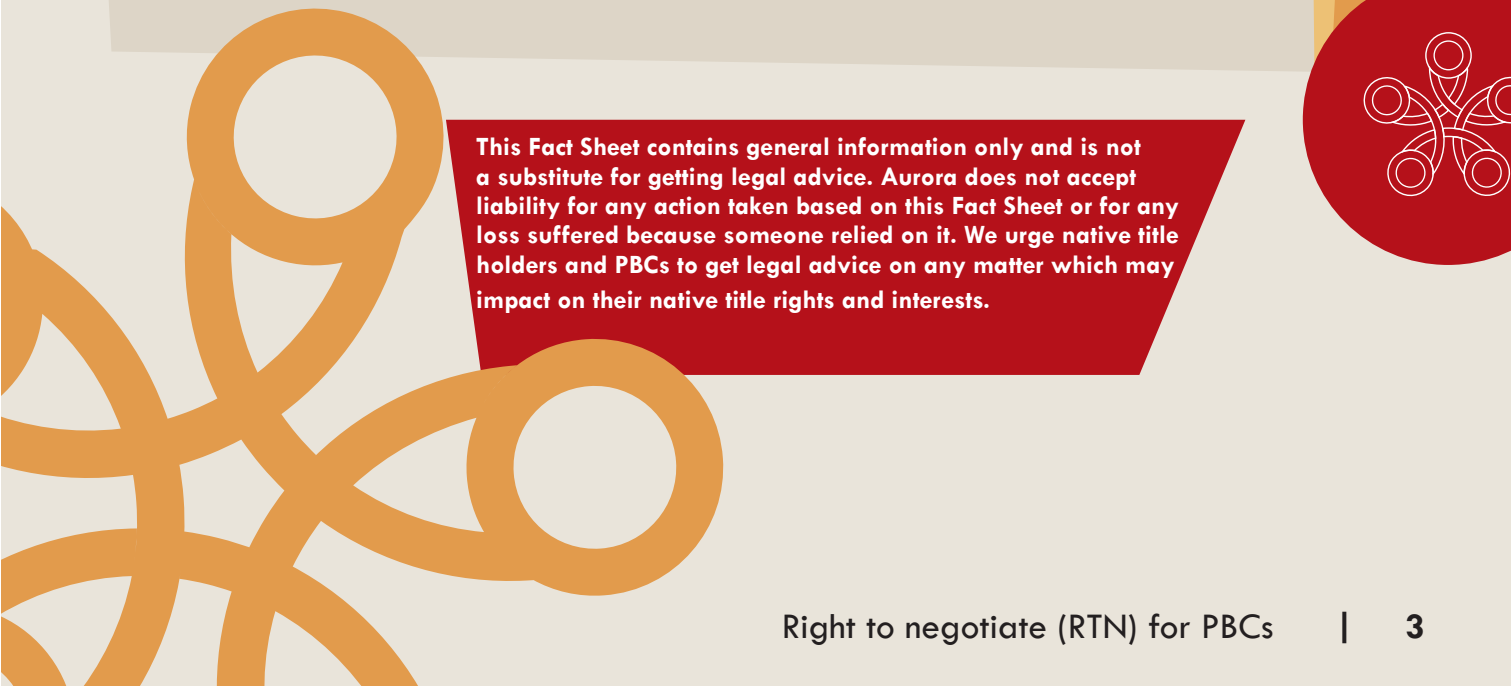
(a) interfere directly with the carrying on of the community or social activities of the native title holders; OR

(b) interfere with areas or sites of particular significance to the native title holders; OR

(c) involve major disturbance or create a right to do something which is likely to involve major disturbance to any land or waters concerned.

In making its decision, the NNTT:

- takes into account constraints already imposed on the native title holders, e.g. pastoralists exercising their legal rights, AND
- assumes that those who propose to do the future act (the 'grantee party') will comply with the relevant laws, regulations and conditions, unless there is evidence that they will not.



This Fact Sheet contains general information only and is not a substitute for getting legal advice. Aurora does not accept liability for any action taken based on this Fact Sheet or for any loss suffered because someone relied on it. We urge native title holders and PBCs to get legal advice on any matter which may impact on their native title rights and interests.