

## **Native Title Act - PBC Regulations 8, 8A, 9**

### **8 Consultation with, and consent of, common law holders**

(1) A prescribed body corporate that holds native title rights and interests in trust for the common law holders, or is an agent prescribed body corporate, must:

(a) for a native title decision other than a decision mentioned in paragraph (b), (c) or (d) — consult with, and obtain the consent of, the common law holders in accordance with this regulation or regulation 8A before making a decision; or

(b) for a decision to enter an indigenous land use agreement under Subdivision B, C or D of Division 3 of Part 2 of the Act or an agreement under Subdivision P of Division 3 of Part 2 of the Act — consult with, and obtain the consent of, the common law holders in accordance with this regulation before making a decision to enter such agreement; or

(c) for a decision to allow a person who is not a common law holder, or a class of persons who are not common law holders, to become members of the prescribed body corporate — consult with, and obtain the consent of, the common law holders in accordance with this regulation before making a decision; or

(d) for a decision to consent to one or more consultation processes in the constitution of the prescribed body corporate — consult with, and obtain the consent of the common law holders in accordance with this regulation before making a decision.

(2) The prescribed body corporate must ensure that the common law holders understand the purpose and nature of a proposed native title decision by:

(a) consulting, and considering the views of, a representative body for the area that the native title rights and interest relate; and

(b) if the prescribed body corporate considers it to be appropriate and practicable — giving notice of those views to the common law holders.

(3) If there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of the common law holders, must be followed in relation to the giving of the consent mentioned in subregulation (1), the consent must be given in accordance with that process.

(4) If subregulation (3) does not apply, the consent must be given by the common law holders in accordance with the process of decision-making agreed to, or adopted, by them for the proposed native title decision, or for decisions of the same kind as that decision.

(5) If the prescribed body corporate holds native title rights and interests in trust for more than one group of common law holders, or is an agent prescribed body corporate for more than one group of common law holders, the body corporate must consult with, and obtain the consent of, only those groups of common law holders whose native title rights or interests would be affected by the proposed native title decision.

(6) An agreement that gives effect to a native title decision of a prescribed body corporate has no effect to the extent that it applies to the decision, if the body corporate does not comply with this regulation.

(7) Subregulation (6) does not apply to an indigenous land use agreement of a kind described in section 24EB or 24EBA of the Act.

### **8A Alternative consultation processes**

(1) This regulation applies to the making of a native title decision mentioned in paragraph 8 (1) (a) if the prescribed body corporate has in its constitution one or more consultation processes to which the common law holders have consented.

(2) The prescribed body corporate must consult with, and obtain the consent of, the common law holders using the relevant consultation process in its constitution before making a native title decision.

## **9 Evidence of consultation and consent**

(1) Common law holders of native title rights and interests are taken to have been consulted on, and to have consented to, a proposed native title decision of a prescribed body corporate if a document, signed in accordance with subregulation (4) or (5), certifies:

(a) if the proposed decision is of the kind mentioned in paragraph 8 (1) (a) — that:

(i) the common law holders have been consulted about, and have consented to, the proposed decision, in accordance with regulation 8 or 8A; or

(ii) the proposed decision is of a kind about which the common law holders have been consulted in accordance with regulation 8 or 8A and the common law holders have decided that decisions of that kind can be made by the body corporate; or

(b) if the proposed decision is of the kind mentioned in paragraph 8 (1) (b), (c) or (d) — that the common law holders have been consulted about, and have consented to, the proposed decision, in accordance with regulation 8.

(2) Subparagraph (1) (a) (ii) applies only if the proposed native title decision is of the kind about which the common law holders have been consulted.

(3) A document under subregulation (1):

(a) must, if subparagraph (1) (a) (ii) applies, include evidence of the consultation with, and consent given by, the common law holders about the native title decision; and

(b) may include conditions or circumstances in which a decision is taken to be covered by the document.

(4) A document mentioned in subregulation (1) is signed in accordance with this subregulation if:

(a) the document is signed by at least 5 members of the prescribed body corporate; and

(b) each of the signatories is a common law holder (an ***affected common law holder***) whose native title rights and interests would be affected by the proposed native title decision.

(5) However, if there are fewer than 5 members of the prescribed body corporate who are affected common law holders, a document mentioned in subregulation (1) is signed in accordance with this subregulation if:

(a) the document is signed by at least 5 members of the body corporate; and

(b) each affected common law holder who is a member of the body corporate signs the document.

(6) Subregulation 8 (2) is taken to have been complied with if:

(a) a document, signed by at least 5 members of the prescribed body corporate, certifies that:

(i) a representative body for the area that includes the land or waters to which the proposed native title decision relates has been consulted about the proposed decision; and

(ii) the views of the body have been considered in accordance with this regulation; and

(b) a document is signed by an authorised member of the representative body and certifies that the body has been consulted about the proposed native title decision by the body corporate.