

NATIVE TITLE POLICY PAPER 1

National picture: Constitutions of Prescribed Bodies Corporate

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FINDINGS

1

Distribution of changes

All PBCs have made changes to their constitutions

All PBCs have changed their constitution from the default ORIC rulebook. The average number of changes per PBC constitution was 6.4.

The chart to the right illustrates the average number of changes made to the default rules across the states and territories from the highest in Western Australia (8.05) and the lowest number in the Torres Strait Islands (5.1).

Furthermore, in all regions apart from the Northern Territory and Queensland, **50 per cent** or more of PBCs have requested to make changes to their constitution with ORIC since their constitutions were initially approved.

2

Scope of changes

The scope of changes varied widely between PBCs

The range of changes varied between PBCs in both number and detail. For example, in the categories of rules examined, the Djabugay constitution only made one change from the default rules. The Djabugay constitution did not provide additional detail or sections outside of the rules required under the CATSI Act.¹

In contrast, the Banjima constitution made changes to 13 of the categories of rules examined in this research. The Banjima constitution also added extra details and explanation for its rules and added several additional sections to the constitution including a section on strategic planning.²

3

Regional variation of changes

There are regional variations in the categories of rules most frequently amended



The study included an analysis of change to the constitution by state/region to determine geographical variation in the amendments.³ The most common amendments were for rules concerning directors; most PBCs in Western Australia, New South Wales, Northern Territory and the Torres Strait Islands made changes concerning their PBC directors. For example, both Northern Territory and the Torres Strait Islands PBC constitutions included changes to permit independent directors but not to allow alternate directors.

Dispute resolution rules were the next most commonly amended category within Victorian, Queensland and South Australian PBCs who altered their dispute processes.⁴

Meetings and decision making were also common categories of rules to be adapted from the default rulebook. For meetings, a large number of PBCs in Western Australia, South Australia and Queensland amended quorum requirements. For decision-making, PBCs in the Northern Territory amended the default rule of using majority voting to consensus and Victorian PBCs removed the rule allowing proxy voting.⁵

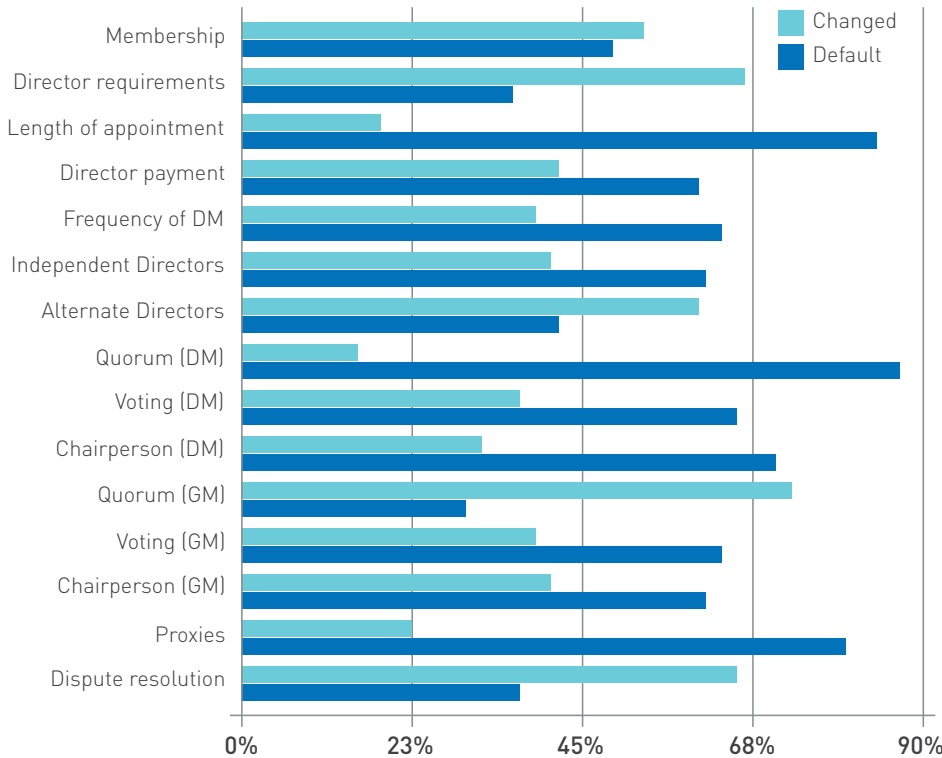
4

Categories of changes

Directors, meetings and dispute resolution were the three categories of rules most frequently altered across Australia

Nationally, in every category of rule examined, at least **15 per cent** of constitutions veered from the default rulebook.

Figure 1: Changes to the default rules - National picture⁶



Overall, the categories where the highest number of PBCs changed rules from the default included:

- altering the quorum requirements for general meetings: **71 per cent** of PBCs
- expanding upon the eligibility requirements for directors: **65 per cent** of PBCs
- changing the default dispute resolution process: **64 per cent** of PBCs

The categories where the least amount of PBCs changed the default rule were:

- the length of office for directors: **18 per cent** of PBCs
- the quorum for directors' meetings: **15 per cent** of PBCs
- proxy voting: **22 per cent** of PBCs

About the PBC constitution snapshot series

The PBC constitution snapshot series has been developed to share findings from the Native Title Research Unit's (NTRU) investigation into the constitutions of Prescribed Bodies Corporate (PBCs).⁷ The findings in this series are based on research conducted within the broader NTRU 2017 PBC Capability Project, which included an examination of the constitutions of the 164 PBCs registered with the Office of the Registrar of Indigenous Corporations (ORIC) at the time. This research involved an assessment of changes to PBC constitutions; whether PBCs included or changed the standard recommended rules offered by ORIC – the default rules.

ORIC has released three different guides and tools that PBCs can use to design their constitutions.⁸

For this research, the 'default rules' were taken to be the most widely recommended processes across the ORIC rulebook guides.

CONTACT

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- 1 Djabugay Native Title Aboriginal Corporation RNTBC, *Consolidated Rulebook*, approved 5 March 2009, Available from: <http://register.oric.gov.au/document.aspx?concernID=104358> [accessed 26 July 2017]
- 2 Banjima Native Title Aboriginal Corporation RNTBC, *Consolidated Rulebook*, approved 11 December 2014, Available from: <http://register.oric.gov.au/document.aspx?concernID=3746520> [accessed 16 March 2017]
- 3 For the purpose of the analysis the Torres Strait Islands have been addressed as a separate region from Queensland.
- 4 This is explored further in the second snapshot.
- 5 Consensus voting is explored further in the second snapshot on decision-making.

- 6 In this chart 'default' refers to PBCs that have adopted the default rule most widely recommended by ORIC and 'changed' refers to PBCs that changed the default rule.
- 7 Constitutions, as defined in the Native Title Act 1993, are referred to as 'rulebooks' by ORIC and some PBCs.
- 8 ORIC, 'The Rulebook Info-kit' 2008, 4th ed. (referred to from here as 'the info-kit')
http://www.oric.gov.au/sites/default/files/documents/06_2013/Rule%20book_info-kit_June_2011.pdf, ORIC, 'A guide to writing good governance rules for prescribed bodies corporate and registered native title bodies corporate' (referred to from here as 'the Guide'), 2008, http://www.oric.gov.au/sites/default/files/documents/06_2013/ORIC-PBCs-guide_May11.pdf
ORIC, 'The Rulebook Condensed' (referred to from here as the 'Condensed Rulebook'), 2016, http://www.oric.gov.au/sites/default/files/documents/05_2016/16_0056_Rule-book-condensed_May2016_lowres.pdf

Image on Page 2

Yirrganydji and Yidinji country, Queensland
Credit: Caden Pearson

Image on Page 3

Guugu Yimithirr country, Queensland.
Credit: Caden Pearson