

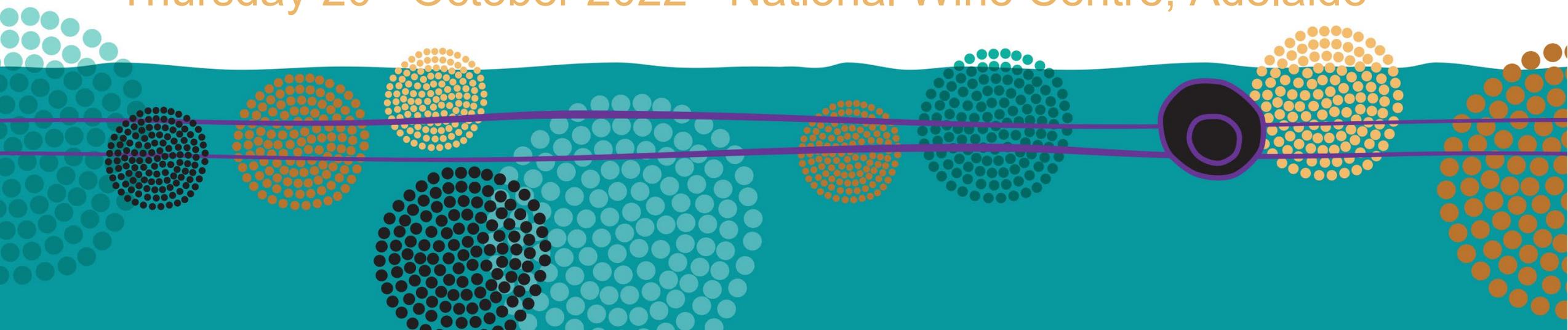
# Aboriginal engagement in the Oil and Gas Sector

Keith Thomas, CEO SA Native Title Services

Oil and Gas Roundtable

Department for Energy and Mining

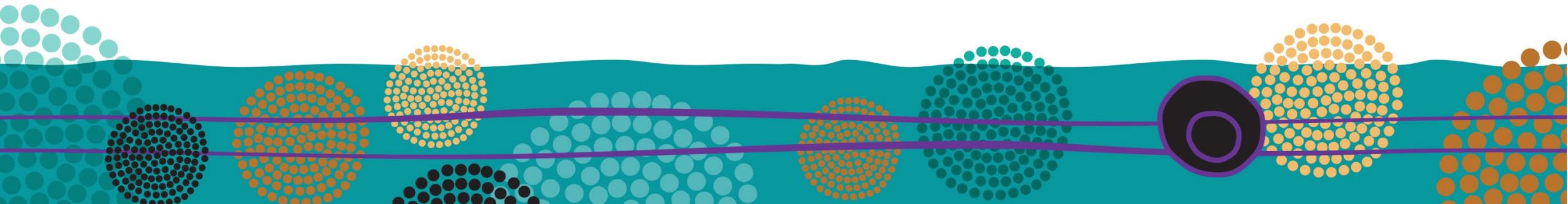
Thursday 20<sup>th</sup> October 2022 - National Wine Centre, Adelaide





## Acknowledgment

*I acknowledge that the land we are meeting on today are the traditional lands of the Kurna people. I pay respect to their elders past and present and acknowledge their continued connection to country and respect the cultural authority they assert over their country.*



# Keith Thomas – CEO of SANTS

**MR KEITH THOMAS - CHIEF EXECUTIVE OFFICER**

BA, MBA, Grad Cert Management

Keith is a descendant of the Goreng Bibullman, more commonly known as the Nyoongar people of southwest region of WA. Keith commenced as CEO in 2011 and has worked in native title since 1998 and has nearly 40 years' experience in working within Aboriginal Affairs. Keith brings strategic leadership to SANTS and embeds in the company a strong commitment to working with Aboriginal people to meet their aspirations and build sustainable Aboriginal Nations.



"NATIVE TITLE REMAINS AN IMPORTANT FOUNDATION  
FOR ABORIGINAL NATIONS TO GAIN RECOGNITION  
AND BRING ABOUT POSITIVE CHANGE"

KEITH THOMAS, SANTS CEO

# South Australian Native Title Services (SANTS)

## SANTS:

- is the Native Title Service Provider for South Australia
- is a company limited by guarantee
- is an Aboriginal organisation
- is a not-for-profit company
- is recognised as a charity



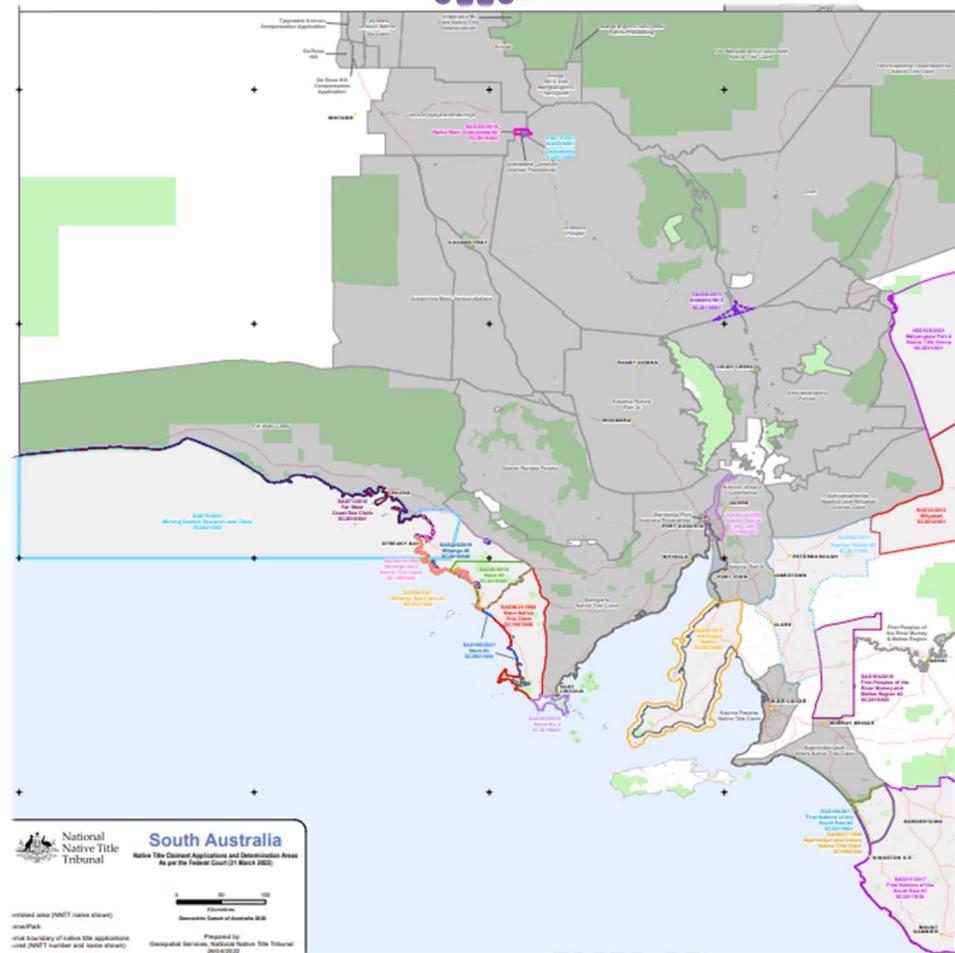
## SANTS is also an active member of:

- National Native Title Council (NNTC)
- South Australian Aboriginal Community Controlled Organisation Network (SAACCON)
- First Nations Heritage Protection Alliance (FNHPA)
- and supports First Nations of South Australia Aboriginal Corporation (FNSAAC)



# SA Native Title Snapshot

- We have 38 determinations over 62% of the state. Of the remaining 38%, more than half is under statutory land rights (APY and MT).
- We have 116 ILUAs with the earliest being registered on 20 December 2000 (Port Vincent ILUA), and the latest registered on 8 June 2022 (Nukunu Area 2 ILUA).
- We have 16 REGISTERED native title claims, and 22 Native Title Claims in total (which includes the 16 registered claims).
- There are currently 20 PBCs established, and SANTS works with 12 of those.



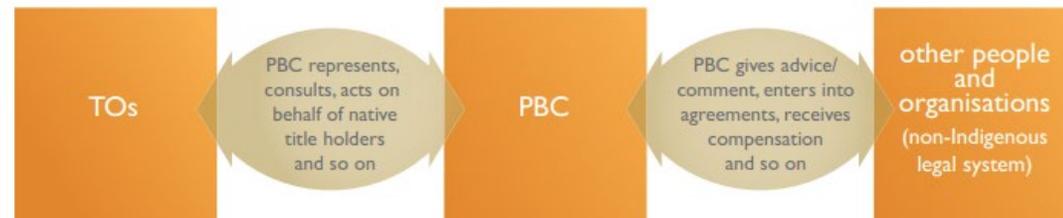
# Prescribed Body Corporates (PBCs)

## Roles and responsibilities of PBCs

PBCs are corporations incorporated under the CATSI Act and determined by the court to manage native title on behalf of the traditional owners (TOs).

## What the law says

When the Federal Court decides that native title exists, there needs to be some entity that can manage that native title. For example, when someone comes along who wants to explore for minerals or petroleum, there needs to be a legal entity that they can talk to so they can enter into a legal agreement. Thus, a PBC is created specially to manage the native title on behalf of the TOs.





# Prescribed Body Corporates Cont.

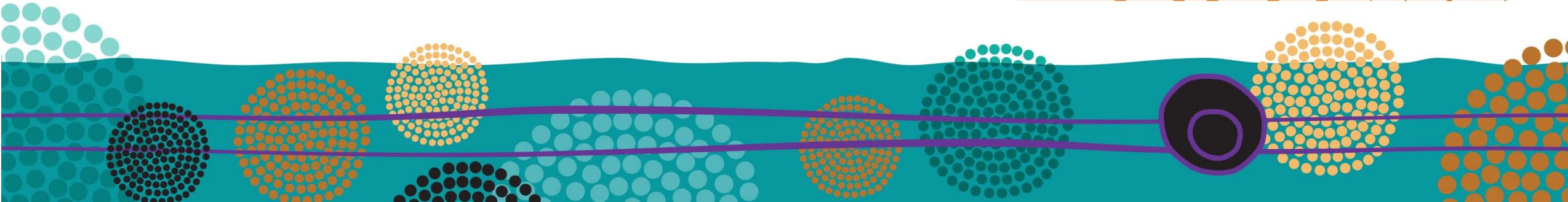
## **PBCs have legal responsibilities under:**

- the *Native Title Act 1993*
- the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (PBC Regulations)
- the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (and their rule book)
- other Commonwealth, state and territory legislation.

## **PBCs mainly exist to:**

- protect and manage determined native title in accordance with the wishes of the TOs
- ensure certainty for governments and other parties with an interest in accessing or regulating native title lands and waters by providing a legal entity through which to conduct business with the TOs.
- PBCs are the 'go-between' for TOs when they have to deal with the non-Indigenous legal system.
- Through a PBC, TOs can protect their native title rights and interests.

[Information sheet for PBCs v1-0\\_web.pdf \(oric.gov.au\)](#)





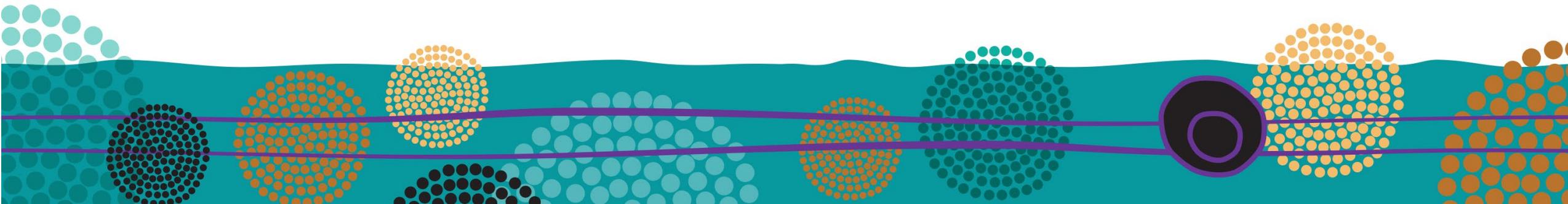
# PBCs Legal Responsibilities - Right to Negotiate

As mentioned, PBCs have legal responsibilities under the *Native Title Act* and is the entity via which third parties communicate with native title holders about their native title rights.

One of those responsibilities is giving effect to the statutory Right to Negotiate (**RTN**). The RTN is specified in Part 2, Division 3, Subdivision P, Native Title Act 1993 (Cth).

The RTN applies to the following kinds of future acts:

- creating a 'right to mine' (e.g. the grant of a mining or exploration tenement, or a petroleum permit or leases)
- varying a 'right to mine' to increase the footprint
- acquiring native title rights and interests for development, unless the purpose is to:
  - create an interest in the land for the Government party; or
  - set up an infrastructure facility.



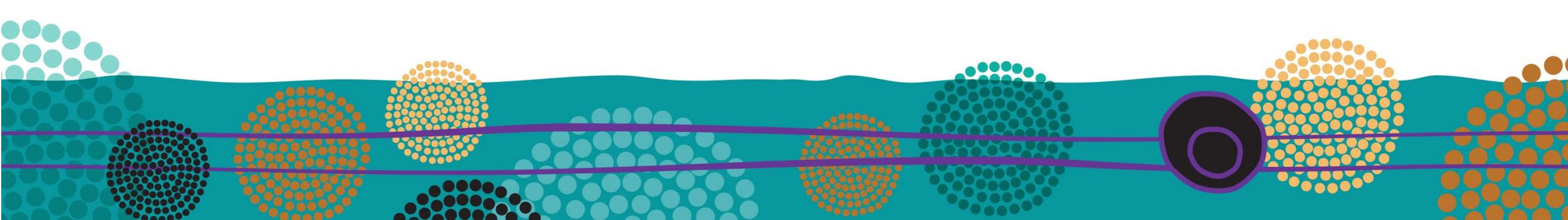


## PBCs Legal Responsibilities - Right to Negotiate cont...

The RTN process allows proponents to reach agreement with the relevant native title parties about what can occur on the land and what compensation will be offered for any impacts.

The RTN process doesn't give a native title party the right to veto grants but does ensure that parties negotiate in good faith.

In South Australia the RTN in relation to *mining* is provided for in the *Mining Act 1971 (SA)*. For other acts to which the RTN applies, including acts in relation to the grant of petroleum and geothermal licenses, leases or permits, the RTN is provided for in the *Native Title Act 1993 (Cth)*.





# Good Agreement Making

From SANTS' perspective there are several key components to the process of agreement-making:

## **(1) Timeline**

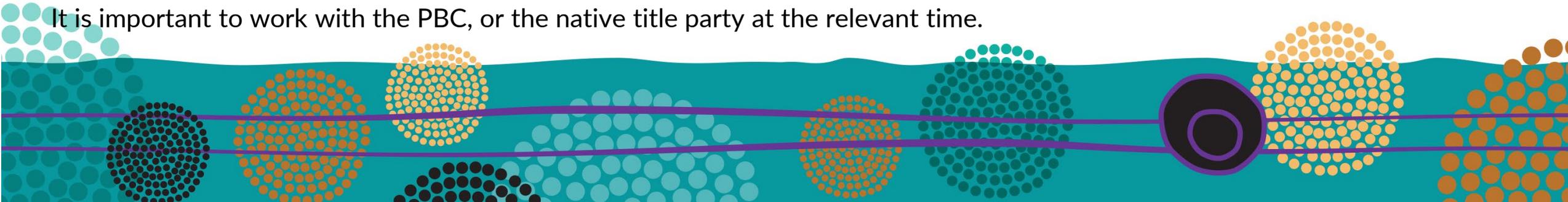
The RTN process usually takes 12 months to complete from the notification day if negotiations are successful. It can take an extra 6 months if negotiations stall.

PBCs have significant responsibilities to their native title holders. It is important to remember that once native title is recognised, any decision to allow an impact or an act to affect those rights and interests is significant. Time must be afforded to native title holders (through their PBC) to understand the impact and effect of any future act.

## **(2) Contacting the Native Title Parties**

Proponents should contact native title parties early. Contact should be made with the PBC at a time when a project or proposal is more than likely to proceed and not at the end or as a final step in the approvals process. As mentioned above compliance with the RTN process can take up to 12 months.

It is important to work with the PBC, or the native title party at the relevant time.





# Good Agreement Making cont...

## (3) Share Information

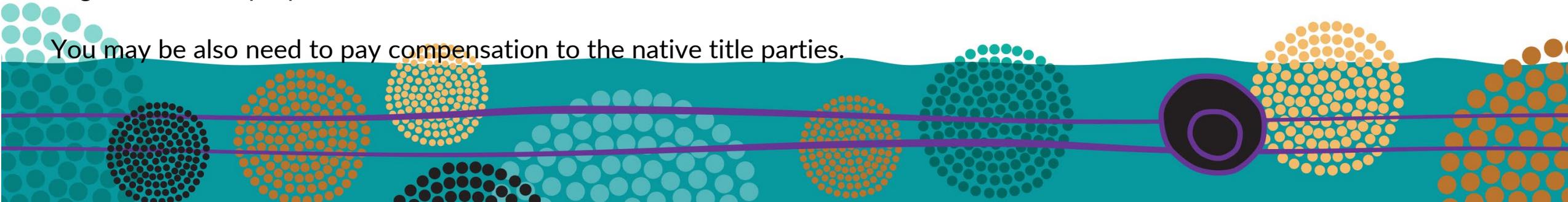
Proponents should provide useful and informative information that will enable the native title parties to understand the project. This will assist proponents in establishing a willingness of native title parties to participate in negotiations.

## (4) Financial Support

The future act process allows activities to continue while the process of resolving a native title claim continues through the Federal Court. Specific funding for such activities is not provided to South Australian Native Title Services (SANTS) through Commonwealth native title program funding. As such, SANTS and native title parties seek to recover costs for this work from proponents.

These costs include, but are not limited to, legal costs, specialist costs, meetings costs and disbursements and administrative fees for services performed by SANTS. Financial support is warranted to ensure that native title parties have appropriate independent legal representation. There is a power imbalance between PBCs, native title holders and proponents that needs to be addressed to ensure that any agreement through the RTN is reached through good faith negotiations and proper conduct.

You may also need to pay compensation to the native title parties.





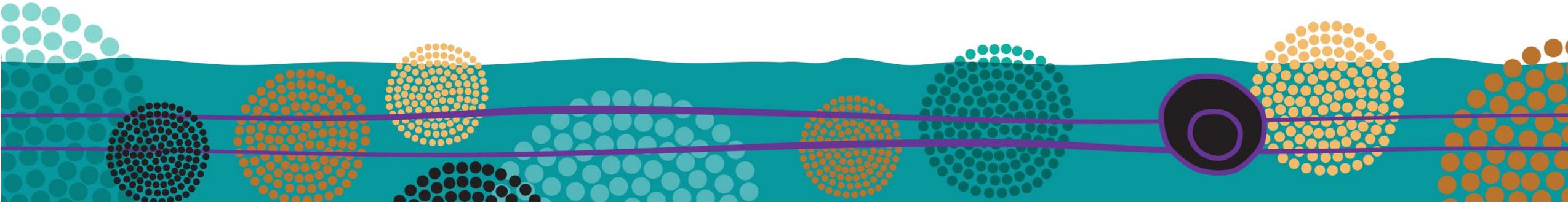
# Good Agreement Making cont...

## (5) Good faith

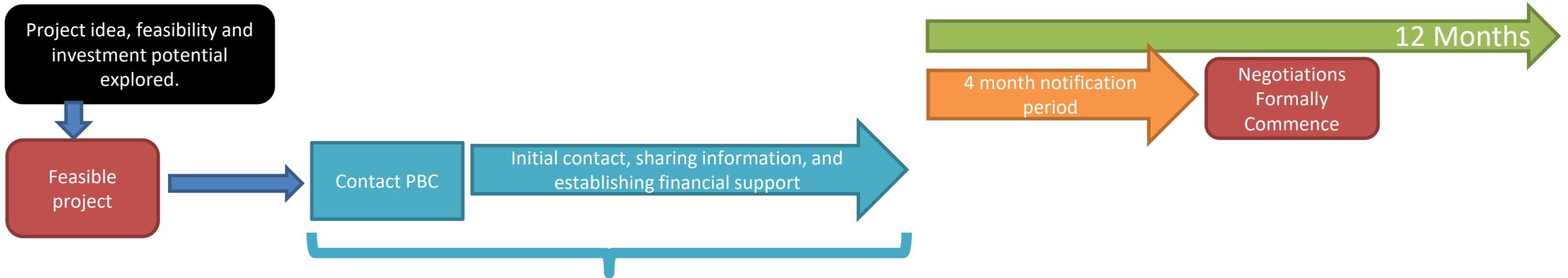
The law requires all parties to negotiate in good faith, that is with an open mind and a genuine desire to reach agreement.

## (6) Understand PBC requirements

There are requirements for the PBC to meet to ensure that the native title holders are properly informed and that they give their free, prior and informed consent to any decision that may affect their native title rights and interests. This requirement is outlined in the PBC Regulations.



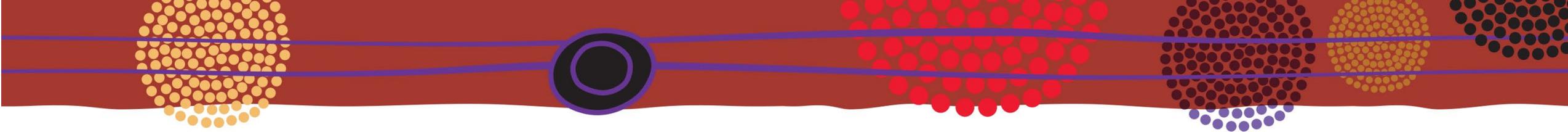
# Good Agreement Making cont...



This period before notification is given to formally commence negotiations can be a productive time in the negotiations between a PBC and a proponent – including to build understandings and relationships. There needs to be time for two-way learning.

For a petroleum or mining project to be successful there are many issues that need to be resolved by a proponent.

In SANTS view, one of those issues is giving effect to the RTN, and negotiating with the PBCs, who are established on behalf of native title holders. As such to ensure a successful outcome that is mutually beneficial to all parties engaging early is proper.



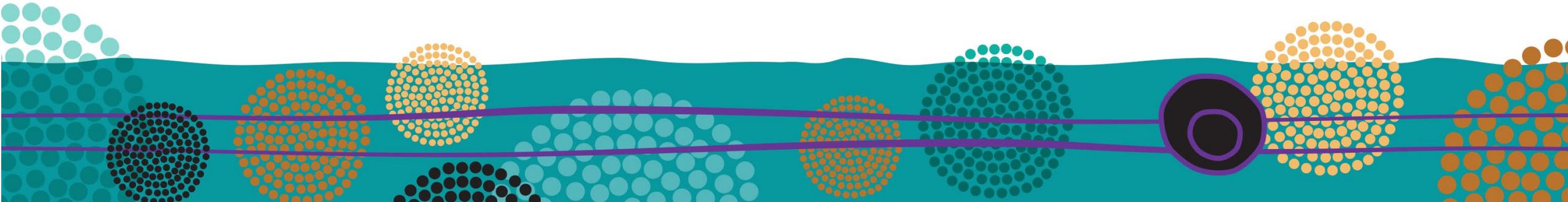
# UN Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007.

The Declaration is the most comprehensive international instrument on the rights of Indigenous peoples.

It establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous peoples.

The Declaration is particularly significant because Indigenous peoples, including Aboriginal and Torres Strait Islander peoples, were involved in its drafting.





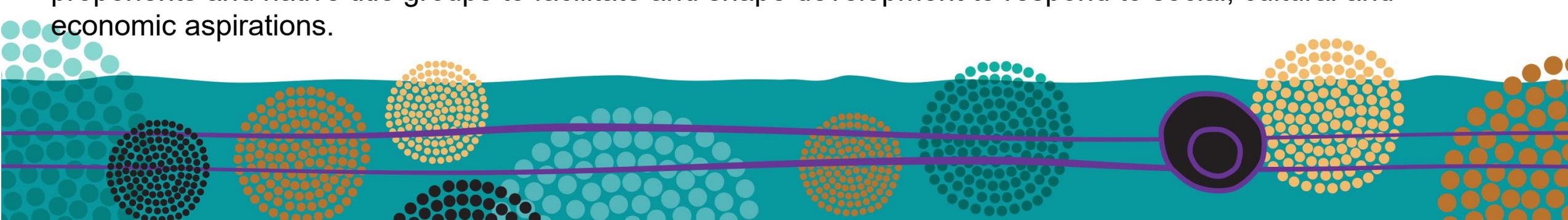
# UN Declaration on the Rights of Indigenous Peoples

Some of the foundational principles of the UNDRIP are:

- Self-determination
- Participation in decision-making
- Free prior and informed consent and good faith
- Respect for and protection of culture
- Equality and non-discrimination

The principles of the Declaration are important foundations which are increasingly influencing policy and practice across Aboriginal Affairs, including the National Agreement on Closing the Gap.

Development needs to be done in partnership with First Nations. The RTN provides the opportunity for proponents and native title groups to facilitate and shape development to respond to social, cultural and economic aspirations.





# A Partnership Approach to Aboriginal Engagement

Development needs to be done in partnership with First Nations.

The RTN provides the opportunity for proponents and native title groups to facilitate and shape development to respond to social, cultural and economic aspirations.

Agreement making requires effort, time and resources and a willingness to listen and learn and being open to doing things differently.

Development as a partnership can address the diversity of interests and aspirations to bring long-term positive change for First Nations and all South Australians.

