



## PBC support strategy – Consultation paper

October 2016

### What is the issue?

Registered native title bodies corporate, or Prescribed Bodies Corporate ('PBCs'), are growing in number as more native title claims are determined. There are currently about 160 PBCs covering over 30 percent of the Australian landmass.

The PBC sector could currently be characterised in the following way:<sup>1</sup>

- The growing number of PBCs has given rise to demands for more assistance with economic development, community development, corporate compliance, administration and governance, dispute resolution and land use planning.
- There is significant diversity in the environment within which PBCs operate. State-based, regional and local factors impact on PBC operations. This means no PBC is alike, and a blanket approach to support is not possible, though groups of PBCs may have issues in common.
- PBCs are integral to land management generally, and to the aspirations of native title holding groups. While there is evidence that PBC assets and income are steadily growing, most are small organisations, recently established, and many find it hard to access the resources they need to plan for their long term operation.
- Support for PBCs is provided in a variety of ways. The Commonwealth provides funding and assistance through a number of agencies and under multiple streams of funding which have evolved in response to a different pressures. Other limited support is provided by state governments, native title representative bodies and service providers (NTRB/SPs) and through the private and philanthropic sectors. It is important to ensure this funding and assistance is effectively targeted, coordinated and used to support PBCs and native title holders to generate economic benefits through the effective and sustainable management of their land.

Over recent years in addition to the increase in determinations there have been other positive developments, such as:

- ORIC reports significant growth in PBC assets and income<sup>2</sup>
- for the first time, the Commonwealth Government has allocated funding directly available for PBCs for capacity building for economic development opportunities
- state governments are committing to innovative funding models as part of settlements

---

<sup>1</sup> Deloitte Review of Native Title Organisations (2014)/White Paper on Developing Northern Australia (2015)/COAG Investigation into Indigenous Land Administration and Use (2015).

<sup>2</sup> Top 500 Aboriginal and Torres Strait Islander Corporations 2014-15, published September 2016.

- Commonwealth agencies such as the Indigenous Land Corporation have adopted policies supporting PBCs
- ORIC has exempted certain PBCs from corporate compliance obligations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act).

But it is clear that more can be done. Building a strong and effective PBC sector is a long term project. It requires collaboration between PBCs, governments, NTRB/SPs and a range of stakeholders.

### **How does the Commonwealth propose to address the issue?**

The Government's approach will be underpinned by the following guiding principles:

- Government supports native title holders and PBCs to use their rights for economic development in accordance with their aspirations.
- PBCs determine their own path to development.
- NTRB/SPs will continue to have a statutory role in assisting PBCs, based in the *Native Title Act 1993* (Cth).
- PBCs and NTRB/SPs must be involved in the development of reforms that affect the ability of native title holders to use their rights.
- The role of governments is to facilitate an effective land management system in which native title holders can exercise the full expression of their rights in land.
- Governments need to work closely with other actors in the native title sector to maximise support for PBCs.

As the PBC sector grows and changes, Government recognises that its framework of support available to PBCs will also need to evolve. The Department of the Prime Minister and Cabinet (PMC) suggests that this support include the elements below. It seeks feedback on this approach generally, and on the questions below in particular.

#### **1. Better engagement**

In order to develop policy for the post-determination environment, mechanisms must exist for all governments to engage with PBCs, to hear their views and to work together collaboratively. The native title system has established a comprehensive network of native title organisations, including NTRB/SPs and PBCs. The Government will continue to use NTRB/SPs to approach and provide support to PBCs as well as work directly with PBCs, preferably on a regional basis, where that is their wish.

*Question 1: What is the best way for the Commonwealth to engage with PBCs, now and into the future?*

#### **2. More effective, transparent, coordinated funding**

Within PMC, PBC-specific funds and assistance are currently provided in three ways: PBC Capacity Building Funding, PBC Basic Support Funding, and NTRB-SP statutory support.<sup>3</sup> In total this amounts to more than \$10 million per year in funding for PBCs.

---

<sup>3</sup> PBCs can also apply for funding under other Indigenous Advancement Strategy programmes and funding streams administered by PMC.

This is a significant amount, and when combined with funding and assistance from other Commonwealth agencies, state governments and from the private and philanthropic sectors, offers real potential for PBCs.

The Government is considering options to change the way this funding is delivered (see Attachment A). In summary, these changes aim to:

- enable PBCs, or an NTRB/SP or other provider authorised on their behalf, to apply for basic support funding
- remove the previous unofficial caps on basic support funding
- more effectively target PBC funding by enabling PMC or its representative to directly approach PBCs to negotiate the delivery of activities or a service. This could occur where PMC identifies that there is an unmet need to support a PBC or PBCs to increase their capacity to take advantage of economic opportunities and build long-term organisational capacity
- use current resources to support PBCs beyond direct funding, including through sector-facilitated training
- simplify application processes where possible
- ensure delegations are more appropriately linked to funding decisions
- provide greater transparency and clarity about the use of PBC funding.

Any changes to the way funding is administered will need to be consistent with the Indigenous Advancement Strategy Grant Guidelines.

*Question 2: Is current PBC funding reaching those PBCs that need support to maximise available opportunities for economic development and partnerships, within the context of the aspirations of the native title holder group? How can more PBCs take advantage of the existing funding opportunities?*

*Question 3: What are your views of these proposed changes to funding arrangements?*

*Question 4: How do PBCs want to get information about funding related changes in the future?*

Importantly, there is also scope for better coordination of available Commonwealth and State government funding. This includes funding provided through environment and economic development/participation focused programmes and available state government funding. PMC would be interested in hearing from jurisdictions, PBCs, NTRB/SPs and other stakeholders regarding how assistance could be better coordinated, noting funding is provided through multiple agencies.

*Question 5: What are the current support services available to PBCs? How can this be better coordinated?*

### **3. Other support**

For many PBCs, the use of native title rights and the development of their broader aspirations are still in the early stages, and governments can play an enabling role beyond direct funding. The Government is open to considering how broader support strategies could be improved. For example, direct funding of PBCs could be augmented by a number of specific and time limited projects that could accelerate the uptake and improve outcomes from PBC funding arrangements into the future. This could include:

- sector-facilitated training and networking
- promoting information about successful and diverse use of Indigenous land
- facilitating engagement between PBCs and the private sector.

*Question 6: Are PBCs interested in participating in these kinds of projects?*

The Government supports models of PBC capacity development which are Indigenous-led and build long term capacity. For example, PBCs can be supported to consult internally with the native title group and develop an agreed Plan of Management that outlines options and provides a framework to inform future land use decision making over a number of years.

This could achieve a similar outcome to that achieved by the Indigenous Protected Areas programme and would be similar to the ‘establishment funding’ component of the Deloitte Review’s recommended PBC funding model, which recommended that PBCs be provided with support to undertake planning to identify the economic or other aspirations and opportunities.<sup>4</sup>

*Question 7: Is there interest in funding for this purpose? How can it be prioritised?*

#### **4. Minor legislative and institutional role reform**

The COAG Investigation into Indigenous land administration and use recommended that further consideration be given to proposed reforms to native title legislation and institutions with a role in the native title system to better support PBCs to build their capacity and their accountability to native title holders.

The COAG Investigation recommended the Government consult with native title stakeholders about the merits of a system of low cost and final dispute resolution between members of the native title group and the PBC. Disputes can be a significant drain on limited PBC resources. NTRB/SPs have a statutory role to assist PBCs to resolve native title related disputes between members, and disputes with other constituents. Options to improve the dispute resolution services available to native title holders and PBCs could include expanding the existing dispute resolution role of bodies such as the National Native Title Tribunal.

*Question 8: Would a system of low cost and final dispute resolution between members of the native title group and the PBC lead to earlier consideration and potentially resolution of disputes?*

The COAG Investigation also recommended the Government consult with native title stakeholders about ways to improve the accountability to the native title holding group in relation to PBC compliance with the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (the PBC Regulations). The PBC Regulations set out the key functions of a PBC, including requirements for consultation, and for the management and use of native title monies.

---

<sup>4</sup> Social Return on Investment analysis of IPA areas found that ‘Indigenous corporations are able to successfully engage in economic opportunities. Each IPA has enabled the relevant PBC to develop a plan and vision for Community members and offers a portal through which the PBCs can engage with external partners to develop economic opportunities. Existing partnerships across the corporate, non-profit and government sectors are testament to this.’

The Investigation identified gaps in relation to oversight for compliance with the Regulations. Regulatory cover would provide an accessible and cost effective accountability mechanism to the benefit of the native title group.

The COAG Investigation also recommended the Government consult with native title stakeholders about ways to improve the accountability to the native title holding group for the use of native title monies held outside of a PBC. Where monies are not held by a PBC, this can result in the native title group having reduced oversight and less of a say in how the group's benefits are used. Extending the transparency and accountability provisions to non-PBC bodies would improve accountability for the use of those monies to the native title group.

*Question 9: How could the accountability of PBCs to native title holding groups for compliance with the PBC Regulations be improved?*

*Question 10: Should the PBC Regulations that relate to the transparency and accountability to native title holders about the use of native title monies also apply to native title monies held outside the PBC?*

The COAG Investigation highlighted the importance of supporting efficient native title decision-making processes. The legislative framework for streamlined processes already exists. The Government is working to improving information about availability and benefits of the use of these mechanisms for streamlined decision-making processes where appropriate. The COAG Investigation recommended this framework could be improved by a minor amendment to the PBC Regulations to provide that native title holders may give consent to a native title decision using either a traditional decision-making process or a decision-making process agreed on and adopted by the group.<sup>5</sup>

*Question 11: Are current mechanisms for streamlined decision-making processes, such as standing authorisations and alternative decision-making processes, being used by PBCs? How can information about these mechanisms and their usefulness be improved?*

---

<sup>5</sup> This was a recommendation of the Australian Law Reform Commission review of the *Native Title Act 1993* (Cth), 2015.

## **Next steps - feedback and stakeholder views**

This consultation paper complements the work currently underway to ensure the native title system is sustainable by ensuring native title holders are best placed to achieve economic independence and advance their social and cultural wellbeing. Its purpose is to generate ideas, stimulate discussion and seek your input on the way forward.

Please provide comments by 2 December 2016. You may wish to consider the questions above when providing your comments. There are two ways that you can do this:

### **Email**

[nativetitle@pmc.gov.au](mailto:nativetitle@pmc.gov.au)

### **Mail**

Assistant Secretary, Land Branch  
Department of the Prime Minister and Cabinet  
PO Box 6500  
Canberra ACT 2600

The Government will not be responding to individual submissions. However the Government will acknowledge receipt of your submission and will refer to the submissions received to inform its PBC Support Strategy. Please ensure your submission is marked 'confidential' if you do not wish it to be made publically available.

## Attachment A - PBC support funding options

Funding stream	Current features	Options for change
<b>NTRBs/SPs STATUTORY SUPPORT FOR PBCs</b>	<ul style="list-style-type: none"> <li>▪ NTRB/SPs have defined statutory functions to support PBCs</li> <li>▪ All NTRB/SPs provide some form of in kind assistance but total funding across all NTRB/SPs spent on these activities is unknown.</li> <li>▪ NTRB/SPs submit an annual budget for consideration.</li> </ul>	<ul style="list-style-type: none"> <li>▪ From 2016-17, NTRB/SPs have outcomes-based funding arrangements relating to a list of agreed milestones, including milestones relating to PBC development, incorporation and compliance. NTRBs/SP are already operating under these arrangements.</li> </ul>
<b>PBC BASIC SUPPORT FUNDING</b>  Approx. \$4 million in 2016-17	<ul style="list-style-type: none"> <li>▪ PBCs apply for basic support funding and outline their budget and proposed activities before the commencement of the funding period or when a new PBC is created. All applications must be appropriately authorised by the PBC. NTRB/SPs assess the application and authorise appropriate amounts and activities.</li> <li>▪ Funding is provided to PBCs if they do not have substantial levels of income or assets.</li> <li>▪ Funding is provided to PBCs which do not have substantial levels of income or assets.</li> <li>▪ NTRB/SPs administer funding on behalf of PBCs but PBCs can also apply directly.</li> <li>▪ No specific guidelines apply.</li> <li>▪ \$50,000 cap (generally) imposed in recent years to ensure the majority of applications received can be funded.</li> <li>▪ Funding approved by Secretary as part of current activities undertaken by NTRB/SPs.</li> </ul>	<ul style="list-style-type: none"> <li>▪ PBCs or their authorised parties can apply directly for funding. A new application process will need to be introduced.</li> <li>▪ Remove the current \$50,000 nominal cap if activities justify expenditure.</li> <li>▪ The Minister for Indigenous Affairs would make funding decisions as part of an annual PBC Basic Support Funding application round, with new applications to be considered as required.</li> </ul>
<b>PBC CAPACITY BUILDING FUNDING (White Paper on Developing Northern</b>	<ul style="list-style-type: none"> <li>▪ Supports PBCs to take advantage of economic opportunities, to build long term organisational decision making capacity and assist with their regulatory obligations in agreement making.</li> <li>▪ IAS PBC Capacity Building Application available online.</li> <li>▪ No closing date on applications, but an identified amount available each financial year.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Enable PMC or someone engaged on its behalf to directly approach PBCs to negotiate delivery of an activity or service. This would occur where PMC identifies that there is an unmet need to support the PBC to increase its capacity to take advantage of economic opportunities and build long-term organisational capacity.</li> </ul>

Funding stream	Current features	Options for change
<p><b>Australia)</b></p> <p>Approx. \$5 million p/a</p>	<ul style="list-style-type: none"> <li>▪ PBC or third party authorised by PBC can make application.</li> <li>▪ No limit on funding application amount.</li> <li>▪ The grants may be awarded as one-off payments, or on a single year or multi-year basis at the Department’s discretion.</li> </ul>	<ul style="list-style-type: none"> <li>▪ A simplified assessment process to minimise administrative workloads on the organisation, particularly where the organisation already receives IAS funding.</li> <li>▪ Trial: <ul style="list-style-type: none"> <li>○ sector-facilitated training and networking</li> <li>○ support for PBCs to consult internally with their native title group and develop an agreed Plan of Management outlining options and providing a framework to inform future land use decisions, with an emphasis on economic development.</li> </ul> </li> </ul>