



27 November 2015

*spirit
of
Change*

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Mr Greg Roche
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By email: nativetitle@pmc.gov.au

Dear Mr Roche

Capacity Building for Native Title Corporations – Consultation Paper

The National Native Title Council (NNTC) welcomes the opportunity to respond to the consultation paper setting out proposals for delivery arrangements for the PBC support measure arising out of the Northern Development White Paper.

The NNTC is the peak body of Native Title Representative Bodies and Native Title Service Providers (NTRB/SPs) from around Australia and was registered as a company limited by guarantee on 23 November 2006. The objects of the NNTC are, amongst other things, to provide a national voice for NTRBs/SPs on matters of national significance affecting the native title rights of Aboriginal and Torres Strait Islander people.

The NNTC welcomes the provision of the additional funding of \$20.4m to assist native title holding groups to maximise their economic potential. We are particularly pleased to note that the funding will continue beyond the initial four years and will be available across Australia. As you would be aware, NTRB/SPs have been calling for additional funding for PBCs over a number of years and whilst the funding will go some way to providing much needed assistance it will not be sufficient to cover the needs of current organisations nor the expected growth in PBC numbers in the coming years.

As at 27 October 2015 there were 145 PBCs throughout Australia, the largest number having been established in Queensland (69)¹. Importantly, this number will increase over time as more native title determinations are achieved. PBCs hold formal land management and community development responsibilities over their native title lands.

¹ Australian Institute of Aboriginal and Torres Strait Islander Studies, Registered Native Title Bodies Corporate (RNTBC) Prescribed Bodies Corporate (PBC) Summary, (27 October 2015) http://aiatsis.gov.au/sites/default/files/products/statistics_and_summaries/rntbc_summary_october2015-update.pdf (accessed 27 November 2015).

The NNTC provides the following general comments in response to the consultation paper based on views and comments received from NTRB/SPs.

The NNTC has particular concerns about the funding not being available for organisations established under settlement or regional arrangements outside the *Native Title Act 1993 (Cth)* and submits that the eligibility requirements should be broadened to capture those organisations established through alternative settlement arrangements. This would ensure that those corporations established through alternative settlements such as the Traditional Owner Settlement Act, 2010 (Vic) and the Corporations being established in the south-west of Western Australia would not be disenfranchised from access to the funds. In regard to the Victorian organisations, the NNTC would support the submissions of Native Title Services Victoria (NTSV) as well as the Federation of Victorian Traditional Owner Corporations.

The other key concern of the NNTC is that the funds will be provided directly to PBCs or groups of PBCs under the grant process of the Indigenous Advancement Strategy. The NNTC notes that whilst there is currently no legislative mechanism for NTRBs/SPs to carry out any particular function on behalf of PBCs, Section 203B(4) of the NTA specifically states that a “representative body must give priority to the protection of the interests of native title holders”.

The NNTC does believe that it is critical for PBCs to be afforded every opportunity to develop their own autonomous and sustainable structures, however many PBCs rely heavily on the support of NTRBs/SPs to assist in their day to day management as well as providing the expertise required for more complex negotiations such as entering into agreements with the extractive industry. The NNTC therefore submits that where it is practical to do so and where the PBC does not have sufficient capacity in its own right to manage the funding process and financial reporting that NTRB/SPs are also able to apply for funding on behalf of a PBC or group of PBCs. In addition, the NNTC would argue that NTRB/SPs are the best placed regional organisations to assist PBCs, as using more centralised agencies do not have an extensive network of regional services, which would increase transaction costs and potentially impact on service delivery quality and back-up support.

Finally the NNTC notes that, in association with the University of Melbourne, the NNTC submitted a proposal to the Minister that would both enhance and make more effective the provision of training to both NTRBs/SPs and PBCs. To date there appears to have been no response to this proposal. The NNTC would urge that the final arrangements for the management of PBC support resources be considered in the context of incorporating this proposal.

With these preliminary matters noted the NNTC provides the following responses to the specific questions raised in the discussion paper:

Is what is proposed the most effective way of increasing opportunities for native title holders to benefit from their rights and interests?

The injection of additional funding is certainly welcome, however simply providing additional funds will not allow the greatest scope for native title holders to benefit from their rights and interests. The majority of PBCs around Australia do not have the capacity to manage the compliance and administration of funds through a program such as the Indigenous Advancement Strategy and will

therefore be focussing significant time and effort on compliance and reporting rather than on providing benefits from native title rights and interests.

The NNTC submits that providing funds directly to PBCs will therefore result in limited success and unless the funding is sufficient to support staff inside the PBC, there should be scope to have the project and funds administered by a NTRB/SP.

The NNTC would suggest that the scope of the funding be flexible enough to deliver more than training to build long-term organisational capacity. In order to be in a strong position to enter into negotiations over development of land held under native title PBCs would need support and assistance to develop their governance structures (constitution, board structure, tax status, etc) undergoing strategic planning process and establishing business plans for the future of their communities as well as managing their own financial affairs and compliance requirements with a funding body. The development of such organisational structures would require human resources working with the PBC on a regular basis.

How will those organisations with the least capacity access the funds to get the most from their native title rights?

Success will be determined by the relationships that the PBC has developed with external organisations, either the NTRB/SP or other service provider(s) that can offer support and assistance. Should a PBC have no working relationship with an external organisation that can offer the support needed to access funds then they will be disenfranchised from the process.

The ability of the PBC to engage with the process could be significantly enhanced if the respective NTRB/SP were able to administer the funds on behalf of a PBC or group of PBCs. Whilst the NNTC recognises that there will be certain instances where there isn't a workable relationship between the NTRB/SP and the PBC, where practical NTRB/SPs can provide the administrative infrastructure to manage the implementation and compliance requirements, leaving the PBC free to focus on their desired project.

Is a panel of providers a practical means of support for the training needs of PBCs?

Whilst this proposal could provide a useful mechanism to support the training needs of PBCs, the NNTC would require clarification on the detail before being in a position to provide an informed comment. For example, what arrangements would be put in place for the training agreement between the PBC and the provider; would DPMC have a role to play in the arrangements. The NNTC would also suggest that there should also be flexibility in any training system whereby the PBC could, where appropriate, use a provider that is not on the panel.

Would an organisation such as ORIC maintaining a register of providers be a more cost effective and practical means of accessing training and services?

Whilst there may be merit in this proposal, some PBCs may be reluctant to engage in the process if ORIC were involved due to their predominant role as a regulator rather than a training provider. In this regard, as well as the diverse training needs of PBCs that will be broader than the remit of ORIC

the NNTC would support the submission of Native Title Services Victoria that the panel be maintained and managed by the Department of Prime Minister and Cabinet.

How can this funding both enhance economic opportunities and improve capacity, governance and cost effective and compliant decision making?

The NNTC fully supports the need for economic development not only for PBCs but also across the broader Aboriginal and Torres Strait Islander community. The NNTC also fully supports the desire of all PBCs to develop creative and autonomous organisations in their own right.

The NNTC firmly believes that the best approach to ensure success in both these goals is through the development of partnerships with a range of organisations across regions, including the relevant NTRB/SP, and other service providers within the region. This approach would be the best way to support and assist those PBCs with low capacity.

Finally, the NNTC would question the capacity of DPMC to process a large numbers of applications in a timely manner as well as administer and monitor the funding projects under the Indigenous Advancement Strategy, the initial experience of this program has not been a positive one for many NTRB/SPs and this could become problematic once awareness of the program grows.

I trust these comments have been useful for your purposes. In the meantime if you have any queries or require any further information please do not hesitate to contact me on 0400 854 067 at your convenience.

Yours sincerely



Carolyn Betts
Senior Policy Officer