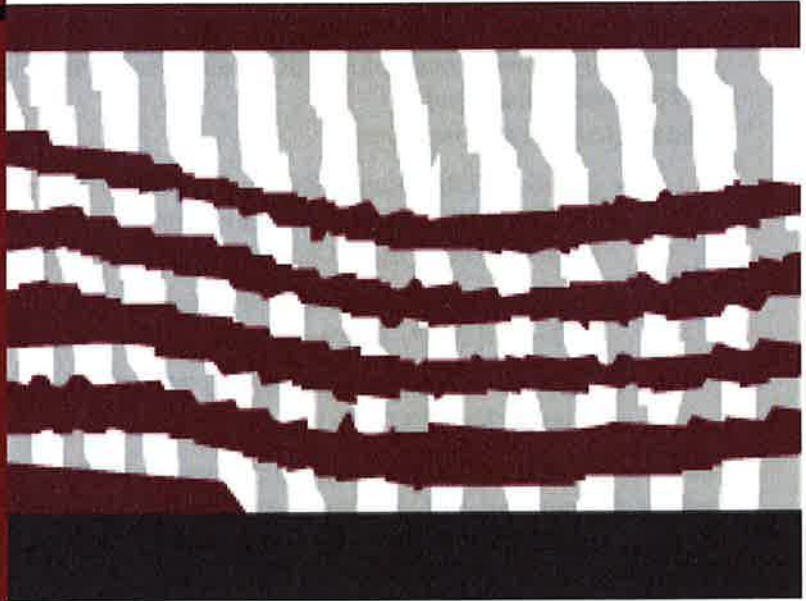


Summary of responses arising from
NTRU PBC workshops to FaCSIA
guidelines for supporting PBCs



Native title Research Unit

June 2007



AIATSIS
Australian Institute of Aboriginal
and Torres Strait Islander Studies

1. General Policy Responses

FaCSIA's draft guidelines state that PBCs will be able to apply for limited funding mostly for administrative assistance through the Native Title Funding Programs of NTRBs and NTSPs and that NTRBs and NTSPs may assist PBCs in their day-to-day operations.

1.1 Responses to principles in the guidelines

The responses of participants to the principles of this approach which arose at the workshops and at the PBC national meeting described above are summarised below:

- There is little indication that the guidelines will provide real support to PBCs since there is no apparent additional PBC dedicated funding in FaCSIA's Native Title Funding Program at least in the near future, and FaCSIA has a clearly stated priority of funding claims processing.
- There are issues of choice, self-determination and possibly discrimination with most if not all PBCs being compelled to apply for funding through NTRBs and NTSPs when other Aboriginal organisations are not generally required to access assistance through such intermediaries.
- The guidelines appear to simply transfer Government responsibility for PBCs to NTRBs and NTSPs.
- Governments should establish direct working relationships with PBCs even if using NTRBs as intermediaries may be less burdensome for them.
- There appears to be no legal requirement for NTRBs or NTSPs to administer PBC funding on behalf of FaCSIA raising the possibility of the implications of the refusal of any NTRB or NTSP to do so.
- A number of short, medium and long term governance and representative issues require consideration since PBCs currently rely to a large extent on NTRBs in representing and advocating for their needs at local, regional and national levels. This is of concern since it is apparent that:
 - Government expects to faze out NTRBs once claims are processed in an estimated 10 to 15 years; and
 - because of policy and budgetary concerns, Government does not intend to fund PBCs in perpetuity, yet PBCs will exist in perpetuity.
- Any lack of adequate funding for post determination processes makes the claims processes meaningless.
- There are a number of other Indigenous incorporated bodies which are carrying out similar native title functions to PBCs and have similar needs but which are not recognised in the guidelines.

- NTRBs acting as intermediaries can cause unnecessary delays in implementing PBC projects;
- a reshuffling resources within the system, will locate PBCs in competition with NTRBs for funding given the priority of claims processing; and
- any new policies promising funding and greater support to PBCs through NTRBs and NTSPs will increase the expectations of PBCs of them.

2. Specific responses to funding guidelines

2.1 Eligibility and prioritising

There is a need for a framework which sets out transparent and objective eligibility criteria including answers to the following questions:

- How are the ‘low’, ‘medium’ and ‘high’ Future Act activity eligibility categories which have been suggested to be specifically defined?
- How are PBC needs to be assessed? (A substantial level of activity can mean greater need. For example, Lhere Artepe, seen as a PBC of high level activity, has had to sell native title land to cover administrative costs, and apparently would not qualify for FaCSIA assistance.
- At what stage in a PBCs development can it be assisted financially? (PBCs need to be in place before a determination, and ready for Future Act activity whenever it might occur rather than being reactive).
- Who is authorised to bring a submission to the NTRB? Families? Individuals? Public Officers? Chairs? How is authority for a funding submission to be obtained?
- How are PBC activities to be defined as relevant given the difficulties in separating non-native title and native title outcomes (the specific and sometimes limited rights and interests which are identified in a determination, or the limited functions set out in the PBCs rules, may not necessarily be the key factor in determining the role and scope of the PBC as native title is used as a mechanism to achieve other goals)?;
- How will NTRBs prioritise their assistance amongst PBCs (there is a need for NTRBs to carry out an audit of PBCs in their regions and their needs and activities and for PBC strategic planning and visioning)?
- What is the formula for considering other income in assessing funding applications? Will assets be considered? (third party income may only be directed towards a particular process, not the PBC needs as a whole, and the quality of third party agreements will be highly variable).

2.2 Start-up and ongoing funding and the proposed 12 month funding

Whilst some PBCs may wish to remain dormant, many require assistance not only for their initial establishment but also in post determination processes. Negotiations and

sustainable land management expertise, and support for mining and other agreements;

- skilled strategic and operational planning matched against resources over the short, medium and long term;
- dispute management and decision-making facilitation, mediation and negotiation expertise;
- IT support including the development of PBC web pages;
- establishment costs, not just of PBCs, but also other corporate entities;
- economic development, small business advice etc;
- legal and anthropological expertise including assistance from anthropologists to get 'tourism operating in a way that does not interfere with sacred sites';
- programs to employ members of the community within the PBC itself;
- travel expenses (eg purchasing vehicles, paying for airfares and travelling to and from training);
- meeting costs including and logistical assistance other than for AGMs;
- financial advice and other professional expertise 'to make the money grow' (Mirriung Gadjerrong for example is working with Macquarie Bank);
- capacity building programs (including mentoring) for staff;
- resources to employ skilled staff consistently (without being able to offer reasonable salaries and appropriate working conditions, PBCs will also be unable to attract staff);
- research;
- advocacy and representation at local, state and national levels and community relations work (the success of PBCs is essential to community relations and broader economic development in 'open' town and Aboriginal communities regardless of their size);
- Future Act, agreement-making assistance including negotiation and co-ordination with other agencies;
- language and culture maintenance and initiatives and setting up digital archives of cultural materials

2.5 Other funding sources

The proposal that PBCs will access assistance from the states and from other State and Commonwealth funding bodies is dependent upon a range of highly variable factors including:

- There is little likelihood that the States will be interested in assisting PBCs where the Future Act activity takes place on land of little interest to them.
- Accessing funding from other Commonwealth and State Departments is dependent upon the effectiveness of Indigenous Co-ordinating Centres and their solution brokers which are nominated by all funding bodies as 'one stop

- Submission writing
- Information technology
- Skills and training audit in partnerships with TAFE
- Interpreting services
- Tax, financial accountability, accounting, understanding financial statements
- Understanding and using government processes
- Cultural and natural heritage – management, rangers, preservation
- Developing cultural protocols and cultural awareness programs
- Health and wellbeing
- On country teaching, visits, language
- How to do cross cultural training
- Librarian skills – technical, archival
- Non-accredited on the job training
- Community development skills
- Understanding legislation – NTA, land rights
- Policy reading and writing
- Organisational communication
- Research and project management
- Management skills

2.8 Third Party funding

A number of issues arise in the expectation that third parties should fund agreement-making processes. In such circumstances, the ability of PBCs to reach free, prior and informed consent is compromised and there is a clear potential for conflict of interest. Such agreement-making processes are easily perceived as lacking in integrity, and can mean that other parties involved in negotiations may not see the negotiations as independent.

Engaging externally with other parties, especially in the process of negotiating memorandums of understanding and ILUAs, can often be a daunting task for PBCs that have limited experience and expertise. Processes of engagement are often initiated by proponents rather than the PBCs themselves.

3 Suggestions from the PBC national meeting

Participants at the PBC national meeting asked Governments to:

- be responsive to the needs of PBCs rather than dictating what they should and should not do

- to progress specialised capacity building and provide expert advice;
- enable the pooling of resources and promote opportunities for communication and networking;
- provide submission writing assistance;
- inform other Government bodies about PBC needs;
- collect information on the role, functions and structures of PBCs as templates for use when designing corporate structures;
- generate tools and resources for cross cultural communication especially in terms of the implications of various models for the design of PBCs;
- collate information on the funding and resources that are currently available to PBCs from both government and non-public sources;
- facilitate opportunities for information sharing between PBCs;
- map the relationship between PBCs and existing corporations and agreements;
- carry out a skills assessment and identify existing expertise;
- develop partnerships with other government agencies such as the NNTT and ORAC in areas such as managing a corporation, how to apply for appropriate funding, developing templates etc;
- create resources for the CATSI transition;
- source more funding and support for NTRBs in its new proposed role;
- develop registers of qualified legal, economic, business, financial and other experts that are accessible to PBCs;
- identify funding programs and grants as they arise and advise PBCs (and all corporations for that matter) re funding opportunities and relevant contacts within Government Departments;
- network PBCs through a PBC email network or through the web;
- co-ordinate information flow and resources; and
- gather PBC data and develop PBC profiles.