



Our Ref: D1616545/01

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

Dear Assistant Secretary

This submission outlines the Western Australian (WA) Government response to the *PBC support strategy – Consultation paper* (Consultation paper) released on 2 November 2016.

The WA Government has previously made submissions and contributed to the development of material identifying various opportunities to create a supportive environment for Prescribed Bodies Corporate (PBCs). These submissions are referenced below for consideration.

Background - the PBC landscape in WA

The PBC landscape in Western Australian can, in brief, be depicted as follows:

- as at December 2016 there have been 64 native title determinations and there are currently 37 PBCs (with 3 in the process of being established), representing native title holders over approximately 1.3 million square kilometres of the State;
- by the end of 2018 it is estimated there could be up to 50 PBCs; and
- within 10 years up to 80% of WA land will be subject to a determination with a PBC managing the native title rights.

WA has significant exposure to native title and ultimately will have more land subject to native title and more PBCs operating in perpetuity than any other jurisdiction.

The development of PBCs with the capacity to engage sustainably in land management is therefore a key factor in long-term planning by the WA Government and the commercial sector. It is essential that PBCs become successful organisations that capably represent native title holders in the mainstream economy and the community.

The Commonwealth's guiding principles

The Consultation paper's guiding principles include support for native title holders and PBCs to use and fully express their rights in land for economic development.

The WA Government strongly encourages the Commonwealth to facilitate PBCs to develop long-term strategies beyond reliance on the future act system, which would see them integrate into local regional economies and build sustainable partnerships with other land users in the government and private sectors. (See **Attachment B**, p. 14; **Attachment E**, p. 3; **Attachment F**, pp. 6-7; **Attachment H**, pp. 2, 13; **Attachment J**, pp. 13-15).

In Western Australia there are signs of a new readiness among PBCs to explore these partnerships. Accordingly, the WA Government is engaging in discussions with a number of established PBCs, centred on the use of a Government Indigenous Land Use Agreement (ILUA) as a vehicle for State Government investment in the PBC's corporate governance and effective land use planning and administration.

Holistic settlements such as the Esperance Nyungar ILUA demonstrate how, with the right support, a PBC can develop an independent structure and business plan that provides enduring and cooperative partnerships within the community in which it operates (See **Attachment E**, pp. 3-4; **Attachment H**, p. 14; **Attachment J**, p. 14).

1. Better engagement

The Consultation paper asserts that all governments should work collaboratively to engage with PBCs. The WA Government clearly supports and works towards collaborative outcomes with PBCs. The Commonwealth must recognise that it is states and territories, private proponents, and the local community that are the primary parties engaging with PBCs on a day-to-day basis. Hence, developing Commonwealth PBC support mechanisms which recognise and complement these interactions should be a key focus of attempts to increase collaboration.

Existing Commonwealth resources should be designed to maximise support for PBCs, not just in relation to native title functions, but in all areas of development including administration, governance, land acquisition, land management, capacity building, advocacy and, where capable, service delivery. The WA Government suggests a greater level of collaboration in supporting PBCs could be achieved as follows:

- The criteria for Indigenous Business Australia (IBA) support for Aboriginal entities should be recalibrated to provide PBCs with assistance for business planning and economic establishment to capitalise on local and regional opportunities, including those offered by respective states and territories.
- An information sharing relationship between state/territories and Office of the Registrar of Indigenous Corporations (ORIC) should be formalised to facilitate PBC capacity building and governance training as a component of native title and settlement packages.
- To be most effective, the Commonwealth's support for PBCs will have to be tailored to the different jurisdictional contexts. In the absence of support from the Commonwealth, WA seeks to negotiate agreements which include initial PBC support funding. The State would welcome Commonwealth action to complement this process.
- The State is willing to provide the Commonwealth with on-going information about its activities in order to facilitate coordinated PBC support. An example would be securing Commonwealth contribution to support PBCs in receipt of State land transfers following a tenure improvement process.
- Commonwealth financial input to State development of comprehensive settlement packages could constitute a Commonwealth contribution in lieu of compensation that provides funds to support the operational costs of the emerging PBC formed as a result of the settlement or determination.

- The Commonwealth could create an Online ‘Hub’ for PBCs to lodge compliance and financial returns and apply for simplified programme support and funding – this could be further enhanced by incorporating a philanthropic component that allows corporate Australia to provide opportunities, partnerships and support directly to PBCs.

(See **Attachment A**, pp. 2-3; **Attachment C**, pp. 9-11; **Attachment D**, pp. 5-6; **Attachment I**, pp. 6-7).

2. More effective, transparent, coordinated funding

The WA Government suggests the Commonwealth consider the following changes to PBC funding arrangements:

- Funding provisions should be tailored to the particular circumstances of a PBC. This includes understanding:
 - *The level of activity of the PBC* – for example, funding for a newly established or low-activity PBCs should be geared towards administrative support, creating strong governance and clear decision making processes.
 - *The contextual circumstances of a PBC* – for example, obtaining information about funding and benefits a PBC may be receiving through other mechanisms (such as agreements with private or government proponents), to avoid duplication of funding.
- It is the long standing view of the WA Government that all PBCs should receive funding directly. Any continued channelling of funding through Native Title Representative Bodies or Service Providers (NTRB/SPs) should be subject to increased transparency and accountability measures, such as requiring clear transition plans from NTRBs about how they will utilise funding to support a demonstrable increase in PBC independence (see **Attachment A**, p. 4, **Attachment C**, p. 11). Commonwealth funding should not create an anti-competitive environment for service provision to PBCs (see **Attachment E**, p. 2).
- The Commonwealth should consider how the Indigenous Land Corporation (ILC), IBA and ORIC can have an increased focus on assistance to PBCs and other Aboriginal traditional owner corporations. (See **Attachment D**, p. 5).
- Unless already well established, PBCs will benefit most from long-term assistance rather than a one-off payment or single year of funding. The security of long-term funding allows PBCs to move beyond sole reliance or focus on future act or heritage processes to explore other activities aligned with the aspirations of native title holders. This can have the flow-on effect of increasing productivity (see **Attachment F**, p. 7; **Attachment A**, p. 3).
- Long-term Commonwealth funding can be tied to certain milestones to ensure it is used effectively. For example, where the WA Government enters agreements which provide start-up funds to a PBC or traditional owner corporation, those payments are tied to outcomes such as strategic business plans or budget submissions.

- Adherence to the Indigenous Advancement Strategy Grant Guidelines will be part of the Commonwealth's due diligence in providing grants, but these Guidelines should be revisited if they prevent optimal and individualised support arrangements being provided directly to a PBC.

3. Other Support

As mentioned above, while NTRB/SPs may have a role in helping PBCs reach independence, they should not be the sole or primary mechanism for such support. Increased support for growing the training and capacity building offered by ORIC, ILC or IBA would be useful to PBCs.

PBCs often prefer independence from NTRB/SPs, instead seeking direct engagement of private consultants which can be supported through comprehensive agreements. Support for the creation of a competitive native title services market will also assist PBCs secure higher quality services and better prices (see **Attachment E**, WA submission to the Deloitte Review of Native Title Organisations).

4. Minor Legislative and institutionalised role reform

In addition to the Consultation paper proposals, WA strongly recommends the progression of the technical amendments referred through the December 2014 Native Title Ministers Meeting (NTMM) to the Council of Australian Governments Investigation into Indigenous Land Administration and Use.

A list of amendments to assist PBCs to operate in a less burdensome regulatory environment and attract increased private investment is attached (see **Attachment G**). Examples of how the NTMM proposed amendments would assist PBCs include:

- Amendments which allow PBCs to streamline *Native Title Act 1993* (Cth) processes, where they choose to do so. This includes allowing PBCs to contract or simply opt-out of the future act regime in circumstances agreed by the native title holders.
- Amendments which make it easier for the State to provide services (including in conjunction with the PBC once it is further developed) such as low impact future acts and provision of public housing or other infrastructure. Money saved by streamlined processes can be channelled into government agreements with PBCs that encourage a broader range of local economic activity.
- Amendments which streamline processes associated with access to land by private investors, with a view to stimulating regional economic activity. For example, shortening the future act native notice period where the native title holders have been determined.
- Allowing a native title holding group to have determination and compensation questions resolved as part of one proceeding. This could allow a PBC to use compensation funds to assist its start-up and establishment costs.

Should you have any further questions relating to this submission, please contact Mr Adrian Murphy, Executive Director, Lands, Approvals and Native Title Unit, Department of the Premier and Cabinet on (08) 6552 5594 or adrian.murphy@dpc.wa.gov.au.

Yours sincerely



Richard May
A/DIRECTOR GENERAL

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- Attachment A:** WA Reform Position, January 2015.
- Attachment B:** Overview of Native Title in Australia: States' and Territories' Perspective, NTMM, August 2014.
- Attachment C:** Opportunities for more efficient and effective resolution of native title claims, NTMM, August 2014.
- Attachment D:** The roles and future directions for native title organisations, NTMM, August 2014.
- Attachment E:** WA Submission to the Deloitte Review of the Roles and Functions of Native Title Organisations, October 2013.
- Attachment F:** WA Submission to the Productivity Commission Inquiry, Non-Financial Barriers to Mineral and Energy Resource Exploration in Australia, April 2013.
- Attachment G:** List of WA suggested NTA Amendments.
- Attachment H:** WA Attorney General's Speech, LegalWise Native Title Conference, 14 June 2013.
- Attachment I:** WA Attorney General's Speech, LegalWise Native Title Conference, 12 June 2015.
- Attachment J:** WA Attorney General's Speech, LegalWise Native Title Conference, 16 June 2016.