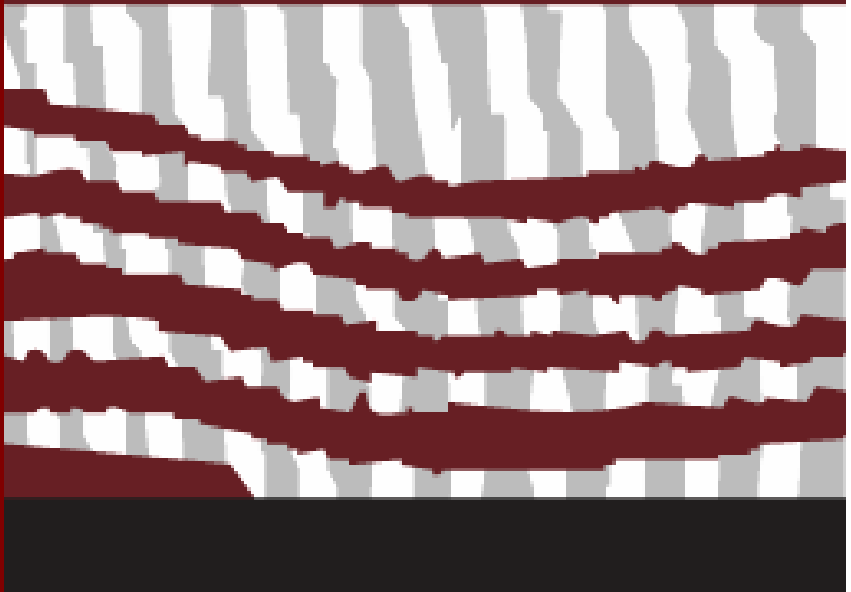


First National Prescribed Bodies  
Corporate Meeting:  
Issues and Outcomes  
Canberra 11-13 April 2007

Toni Bauman and Tran Tran



**NATIVE TITLE RESEARCH REPORT**  
**No. 3 / 2007**  
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## Acknowledgements

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## Abbreviations

AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AGD	Attorney General's Department
ATSIC	Aboriginal and Torres Strait Islander Commission
BIA	Backing Indigenous Ability
CALM	Department of Conservation and Land Management (Western Australia)
CDEP	Community Development Employment Program
CRC	Cooperative Research Centre
DAFF	Department of Agriculture, Fisheries and Forestry
DCITA	Department of Communications, Information Technology and the Arts
DEST	Department of Education Science and Training
DEW	Department of Environment and Water Resources
DEWR	Department of Employment and Workplace Relations
DITR	Department of Industry, Science and Resources
FaCSIA	Department of Family and Community Services and Indigenous Affairs
IBA	Indigenous Business Australia
ICC	Indigenous Coordination Centre
ILC	Indigenous Land Corporation
ILUA	Indigenous Land Use Agreement
IPA	Indigenous Protected Area
LAAC	Lhere Artepe Aboriginal Corporation
MCA	Minerals Council of Australia
NHT	National Heritage Trust
NTA	<i>Native Title Act 1993 (Cth)</i>
NTRB	Native Title Representative Body
NTSP	Native Title Service Provider

NTRU	Native Title Research Unit
OFA	Ord Final Agreement
OIPC	Office of Indigenous Policy Co-ordination
ORATSIC	Office of the Registrar of Aboriginal and Torres Strait Islander Corporations (formerly ORAC)
PBC	Prescribed Bodies Corporate
RNTBC	Registered Native Title Bodies Corporate
RPA	Regional Partnership Agreement
SRA	Shared Responsibility Agreement
WDLAC	Western Desert Lands Aboriginal Corporation

## Executive Summary: PBC National Meeting 11-13 April 2007

### A. What are PBCs or RNTBCs?

1. PBCs are corporations which are registered with the Office of Registrar of Aboriginal Corporations (ORATSIC) and which have prescribed functions under the *Native Title Act 1993* (NTA) to:
  - hold, protect and manage determined native title in accordance with the objectives of the native title holding group; and
  - ensure certainty for governments and other parties interested in accessing or regulating native title land and waters by providing a legal entity to manage and conduct the affairs of the native title holders.<sup>1</sup>
2. Once a native title determination is handed down by the Federal Court, PBCs are registered with the National Native Title Tribunal (NNTT) and are referred to as Registered Native Title Bodies Corporate (RNTBC). RNTBCs either hold native title on trust or act as agents or representatives of the native title holders.
3. PBCs/RNTBCs also have functions and obligations under:
  - the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations); and
  - the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) which repealed and replaced the *Aboriginal Councils and Associations Act 1976* (ACA Act) on 1 July 2007 and the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006* (Cth) (CATSI Consequential Act).

They may also have functions under other Commonwealth, State and Territory legislation and be expected to fulfil broader community social and cultural roles.

4. There are now 48 RNTBCs across Australia, mostly remotely located, some with exclusive possession of their lands and others with a non-exclusive limited range of native title rights and interests. Government estimates a total of 100-150 PBCs once all claims have been processed within the next 10-15 years (though these figures have been queried by PBCs and NTRBs/NTSPs as underestimates).

### B. The first national PBC Meeting

5. Between 11 and 13 April 2007, the first national meeting of Prescribed Bodies Corporate was facilitated in Canberra by the Native Title Research Unit (NTRU) of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) as part of a broader project designed to draw attention to PBCs and provide support to them.

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<sup>1</sup> Attorney General's Department 2006, *Structures and Processes of Prescribed Bodies Corporate*, Attorney General's Department, Canberra, <[http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle\\_Nativetitle\\_Prescribedbodiescorporate\(PBCs\)](http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_Prescribedbodiescorporate(PBCs))> at 15 December 2006.



6. Twenty-three PBC representatives attended the meeting - 10 from Western Australia, 4 from mainland northern Queensland, 4 from the Torres Straits, 2 from New South Wales, 4 from the Northern Territory and 1 from Victoria.

### **C. What do PBCs aspire to?**

7. PBCs have diverse needs and aspirations. Most are poorly resourced and unable to carry out their considerable functions effectively. They all need support.
8. They are engaged in a variety of activities, ranging from large scale mining and other development agreements, cultural heritage and social programs, to little or no activity. The degree and kind of activity is related to the availability of resources, the level of Future Act Activity, the nature of Indigenous Land Use Agreements (ILUAs), and access to joint land management conservation arrangements and other partnerships.
9. PBC aspirations relate not only to performing their statutory functions, but to also acting as agents for social, cultural and economic change. PBCs at the meeting shared a range of core aspirations relating to improved governance, natural resource management, language and cultural maintenance, capacity building, economic development, social and emotional wellbeing, community relations, improved health, housing and education, and networking with other PBCs.

### **D. PBC Reform**

10. The PBC national meeting took place in the context of significant legal and policy change affecting PBCs. Reforms to the native title system have included changes to the NTA and the claims resolution process and measures to encourage the effective functioning of PBCs. They were contained in a 2006 report examining the structures and processes of PBCs by an inter-Departmental Committee comprised of representatives of the Attorney-General's Department, FaCSIA and the Office of the Registrar of Aboriginal Corporations (the PBC Reform Report).
11. The changes coincided with commencement of the CATSI Act on 1 July 2007 which provides for a two year transition period for existing corporations to transition to the new law.
12. All of the PBC Reform Report's recommendations have been accepted by the Commonwealth Government, and are being implemented through a combination of amendments to the NTA, changes to the regulations and administrative changes.
13. Representatives of the Attorney Generals Department, the Department of Family and Community Services and Indigenous Affairs and the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations attended the PBC National Meeting to discuss the changes.
14. Major changes to the NTA include:
  - the limiting of statutory requirements for PBCs to consult with and obtain the consent of native title holders to decisions to surrender

- native title rights and interests (though native title holders will still be able to stipulate other mandatory consultations as part of the rules or constitution of the PBC);
- the ability for existing PBCs to be determined as PBCs for subsequent determinations of native title where all of the native title holders agree;
  - the use of default PBCs where there is no functioning PBC and native title holders cannot agree on the PBC at the time of a determination, where a liquidator has been appointed to a PBC; or where native title holders choose to avail themselves of the default body; and
  - PBCs being able to recover costs which are incurred in performing functions at the request of third party proponents on a fee-for-service basis (for example, where the proponents want to have relevant future acts processed more quickly than would be possible if support was provided through an NTRB or NTSP).
15. The CATSI Act scales corporate governance requirements according to the size of the corporation and contains specific provisions tailored to PBCs. It provides that ‘small’ corporations:
- have minimum annual reporting requirements consisting of a ‘general’ report containing basic corporate details which does not have to include audited financial statements;
  - may apply to the Registrar of Aboriginal and Torres Strait Islander Corporations to submit this report and hold their annual general meeting every two years; and
  - may hold meetings by video or teleconference.
16. Key policy changes affecting PBCs are that:
- PBCs may access assistance from NTRBs/NTSPs for their day-to-day operations beyond their first Annual General Meeting (as FaCSIA advises has always been the case); and
  - PBCs may now apply for limited funding through NTRBs/NTSPs Native Title Program funding on a one year funding cycle.
17. FaCSIA’s representative explained FaCSIA’s preference for funding PBCs through NTRBs/NTSPs because the latter already have expertise in administering native title program funds including preparing funding submissions, meeting reporting requirements and accounting for funds, and are familiar with PBCs.
18. FaCSIA’s representative also noted that funding PBCs directly would give rise to a range of administrative costs for both FaCSIA and PBCs which would be incommensurate with the funding which FaCSIA envisages providing to PBCs.
19. Whilst the reforms appear to begin to address PBC needs, the PBC national meeting was informed by FaCSIA that there are no new funds specifically identified for PBCs in the native title system at least in the next financial year, and that FaCSIA’s priority of funding claims processing will remain.

### **E. Responses to FaCSIA's support guidelines**

20. Many PBCs at the meeting preferred direct funding from FaCSIA and direct relationships between PBCs and Governments.
21. FaCSIA's draft PBC support guidelines list the following examples of funding for which PBCs may apply:
  - insurances and financial services (including bank fees and charges).
  - costs to meet regulatory compliance obligations, for example, annual general meetings, special general meetings, director's meetings, and reports.
  - assistance with preparing funding submissions to other agencies.
  - assistance with book-keeping and auditing.
  - investment advice.
  - communications facilities, for example, telephone, fax or email.
  - utility costs, for example, power, water, sewerage, telephone and internet accounts.
  - administrative facilities for the production and copying of documents (including information technology facilities and support, paper and stationery).
  - facilities for storage of records relating to PBC functions.
  - in certain circumstances assistance for the cost of employing office staff.
22. PBCs at the meeting identified a range of other needs which are not covered by FaCSIA's guidelines and which are not amenable to one year funding cycles including:
  - a range of technical expertise and advice which NTRBs/NTSPs are often unable to provide relating to business development, scientific expertise, natural resource management, legal and anthropological matters, eco-tourism and sustainable land management, 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 services;
  - capacity building;
  - travel expenses (eg purchasing vehicles, paying for airfares and travel to and from training);
  - meeting costs other than for AGMs;
  - resources to employ skilled staff consistently;
  - research;

- advocacy and representation at local, state and national levels and community relations work; and
  - language and culture maintenance initiatives including the setting up digital archives of cultural materials.
23. Participants identified a range of issues in funding being channelled through NTRBs/NTSPs including that:
- NTRBs/NTSPs are already under-resourced and often lack the capacity and expertise to carry out their functions;
  - NTRBs/NTSPs could act as gatekeepers for PBCs, becoming ‘accountability police’ and controlling funding;
  - NTRB/NTSPs priorities will not always match those of PBCs with some native title groups already feeling disadvantaged in NTRB/NTSP prioritisation;
  - PBCs will have to compete with NTRB/NTSP funding for claims processing funding which has been identified as a priority by FaCSIA; and
  - the approach perpetuates PBC dependence upon NTRBs/NTSPs.
24. PBCs at the meeting agreed that there is a need to develop formal understandings between PBCs and NTRBs/NTSPs, which reflect their relationships as partners, which establish clear roles and responsibilities and which set out transparent processes of accountability for accessing funding through NTRBs.
25. FaCSIA’s PBC funding approach also raises a number of longer term governance issues since it was made clear that:
- Government expects that the role of NTRBs/NTSPs will be substantially diminished once claims are processed in an estimated 10 to 15 years; and
  - Government does not intend to fund PBCs in perpetuity as such a commitment of funds is of policy and budgetary concern.

#### **F. What do PBCs need?**

26. Supporting the goals of PBCs will require more than a ‘kick start’. PBCs need core ongoing government funding to not only meet their statutory functions including the negotiation of future acts but also to assist the development of independent Indigenous enterprise and to implement agreements.

#### **G. Funding sources outside the native title system**

27. The PBC Reform Report notes that land management is primarily a responsibility of States and Territories which should support PBCs, particularly in agreement-making processes, though a number of PBCs were sceptical of receiving state assistance particularly where the land involved little future act activity.

28. The reforms also identify that assistance may be available to PBCs from Australian Government departments and agencies which provide a range of programs that PBCs may potentially access to build capacity, obtain training, develop partnerships or progress specific projects.
29. Commonwealth Government representatives from a range of Departments, a number of whom were unfamiliar with the native title context, made presentations at the PBC meeting providing information about their funding programs. There was significant disparity between their perceptions of the effectiveness of a number of their programs and the manner in which PBCs experience them on the ground.
30. Government presenters nominated regional ICCs and their solution brokers as one-stop-shops which could assist PBCs, yet the experience of PBCs with ICCs was highly variable and ICCs appear to have little understanding of the native title context.

#### **H. PBC Strategic approaches**

31. A number of participants wanted to develop their capacity as legitimate stakeholders by:
  - developing networks with other PBCs, and engaging in forums to share information and experiences and develop strategic approaches to addressing common issues;
  - gaining the support of international forums;
  - lobbying directly with governments and influencing policy;
  - being engaged in government processes such as community consultations;
  - developing the profile of PBCs to attract funding and qualified and talented consistent staff; and
  - refocusing the debate on compensation and adequately valuing native title.
32. PBC participants suggested that Governments:
  - be responsive to the needs of PBCs rather than imposing solutions on them;
  - view PBCs more broadly as vehicles to achieve a number of social outcomes and as legitimate stakeholders in the community;
  - engage with PBCs more directly through consultation, and visit them ‘on the ground’;
  - be more transparent about its goals and objectives in relation to PBCs and about the resources and funding that it is willing to provide;
  - create a pool of funding specifically for PBCs;
  - respect the sovereignty and independence of PBCs, recognising that PBCs are determined to become effective but that they are disadvantaged at the outset through limited funding and assistance;

- support PBC state based meetings followed by annual national meetings to measure changes;
- recognise that Governments should be responsible for the statutory obligations they place on PBCs and fund them accordingly so that PBCs have adequate support and expertise to capitalise on potential economic opportunities;
- address the fact that PBCs will exist in perpetuity and will require a secure resource base through their land holdings, rather than having to trade off their land to cover administrative and operational costs;
- give PBCs tax concessions for land rates for their land; and
- appropriately value compensation.

### I. Why support PBCs?

33. PBCs are a critical component in the native title system and are central to community relations and economic development.
34. PBCs provide certainty in agreement-making, as they constitute an easily identifiable negotiating party with whom agreements can be reached.
35. There are key risks for industry if PBCs are not appropriately resourced, including increased costs and substantial delays in industry agreement-making.
36. There are significant issues when third parties who are wishing to make agreements with PBCs are funding the agreement-making process including the ability of PBCs to arrive at free, prior and informed consent, the potential for conflict of interest and the perception that the negotiations lack integrity.

### J. The way forward

37. Effective co-ordination of and co-operation between States and Territories and Commonwealth Government initiatives in a whole-of-Government approach to be brokered locally through ICCs and include Shared Responsibility and Regional Partnership Agreements is required.

### Recommendations

**Recommendation 1:** That AGD and FaCSIA consider the recommendation of PBCs represented at the PBC national meeting that funding be provided directly to PBCs wherever possible.

**Recommendation 2:** That FACSIA, AGD and ORATSIC consider the provision of assistance to PBCs including dedicated staff members within each agency or within a centralised team who understand PBC structures and needs, and who can:

- simplify and facilitate access to government programs;
- identify funding programs and grants as they arise and advise PBCs re funding opportunities and relevant contacts within government departments; and

- develop policies and programs directed at the needs of PBCs.

**Recommendation 3:** That FaCSIA, and/or ORATSIC and/or AGD facilitate or fund the NTRU at AIATSIS to:

- provide opportunities for PBCs to network (eg national meetings and/or attendance at the national native title conference);
- co-ordinate information flow and resources; and
- gather PBC data and develop PBC profiles.

**Recommendation 4:** That FaCSIA develops policy regarding the roles of ICCs in supporting PBCs and their co-ordination of Commonwealth, State and Territory initiatives.

**Recommendation 5:** That FaCSIA provides information to ICCs and other Commonwealth and State and Territory Government Departments concerning the needs, roles and functions of PBCs, noting that the Perth, Sydney and Cairns ICC offices have dedicated native title officers.

**Recommendation 6:** That AIATSIS co-ordinates a follow-up meeting of Government presenters at the PBC meeting.

**Recommendation 7:** That Commonwealth, State and Territory Governments increase consultation with PBCs including the co-ordination of State and Territory, regional and local PBC meetings involving ICCs.

**Recommendation 8:** That NTRBs/NTSPs:

- undertake PBC regional audits to establish their relative needs and priorities;
- organise meetings of PBCs from their regions; and
- consider developing Memoranda of Understanding or other formalised agreements with PBCs regarding day-to-day operations and funding processes.

**Recommendation 9:** That FaCSIA considers the need for additional funding for PBCs for their operational requirements including salaried positions and for PBCs to engage proactively with government programs and other stakeholders.

**Recommendation 10:** That Government should not rely upon third party funding/fee-for-service provisions as an alternative to adequate Government funding. PBCs must be free to choose how to engage with third parties to avoid any potential for conflict of interest, pressures to reach agreement, difficulties in arriving at the free prior and informed consent of native title holders and perceptions concerning the integrity of processes.

## 1 Introduction

### 1.1 What are PBCs and RNTBCs?

Prescribed Bodies Corporate (PBCs) are corporations which are registered with the Office of Registrar of Aboriginal Corporations (ORATSIC) and have prescribed functions under the *Native Title Act 1993*(NTA) to:

- hold, protect and manage determined native title in accordance with the objectives of the native title holding group; and
- ensure certainty for governments and other parties interested in accessing or regulating native title land and waters by providing a legal entity to manage and conduct the affairs of the native title holders.<sup>2</sup>

Once a native title determination is handed down by the Federal Court, PBCs are registered with the National Native Title Tribunal (NNTT) and are referred to as Registered Native Title Bodies corporate (RNTBC). RNTBCs either hold native title on trust or act as agents or representatives of the native title holders.

There are now 48 RNTBCs across Australia, mostly remotely located, some with exclusive possession of their lands and others with a limited range of native title rights and interests (see Map in Attachment 1 for their distribution).<sup>3</sup> They have diverse needs and aspirations and most are poorly resourced and unable to carry out their functions effectively. There is increasing pressure from a range of sectors to provide them with greater support.

### 1.2 AIATSIS NTRU PBC Project and the First National PBC Meeting

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has embarked on a research and resource project to develop greater understanding of the PBC environment and native title holder aspirations and to bring together resources and develop networks that may benefit them.

As a part of this Project, a workshop was held by the Native Title Research Unit (NTRU) at AIATSIS in Canberra on 5-6 December 2006 which was attended by staff of Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSPs) who have been or will be involved in the design and establishment of PBCs (NTRB PBC workshop). The report on that workshop is available at [http://ntru.aiatsis.gov.au/major\\_projects/psc\\_rntbc.html](http://ntru.aiatsis.gov.au/major_projects/psc_rntbc.html).<sup>4</sup> Participants repeatedly advised the need for PBCs to be consulted and to be provided with

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<sup>2</sup> Attorney General's Department 2006, above n 1.

<sup>3</sup> Numbers as at 16 May 2007.

<sup>4</sup> Strelein L and Tran T, 2007, *Native Title Representative Bodies and Prescribed Bodies Corporate: native title in a post determination environment*, Native Title Research Report No.2/2007, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.



an opportunity to inform policy and research deliberations. They strongly supported AIATSIS's plan for a subsequent workshop of PBC members.

Between 11 and 13 April 2007, the first national meeting of Prescribed Bodies Corporate was facilitated by the NTRU at AIATSIS and at the Heritage Hotel in Narrabundah in Canberra.<sup>5</sup> Twenty-three PBC representatives attended the meeting. There were ten participants from Western Australia, four from mainland northern Queensland, four from the Torres Straits, two from New South Wales, four from the Northern Territory and one from Victoria, reflecting the general distribution of PBCs, most of which are located in Western Australia and Queensland (see Attachment 2 for a list of participants and their locations).<sup>6</sup>

Evaluation forms showed that PBC participants rated the meeting highly. They commented particularly on the usefulness of the information they received about potential sources of Government funding and the efficient organisation of the meeting. They welcomed the opportunity to network, learn from each other's experiences and hear from government representatives directly. A number indicated that the meeting might have been held over a longer time frame; others that they wished the meeting had happened some time ago. All sought additional workshops and meetings.

### **1.3 This report**

Whilst the NTRB PBC workshop report reflects the perspective of NTRB staff working with PBCs, this report presents the perspectives of PBCs themselves. However, PBCs and NTRBs/NTSPs share many concerns about the future of PBCs and the lack of support which is currently provided to PBCs. The PBC meeting did differ from the NTRB PBC workshop in that there was a greater emphasis at the PBC meeting on providing PBCs with information about a wide range of potential Government funding sources.

This report provides a record of the meeting, and also aims to be of practical assistance to PBCs, particularly those who were unable to attend the meeting.<sup>7</sup> Since the National PBC Meeting, the Department of Family and Community Services and Indigenous Affairs (FaCSIA) has released draft guidelines for supporting PBCs, some of the detail of which is also incorporated into this document.<sup>8</sup> Further practical information for PBCs is also available in the PBC toolkit which has been developed by the NTRU.

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<sup>5</sup> The meeting was reported in the *Koori Mail*, 25 April 2007, p. 18.

<sup>6</sup> The term 'PBC' is used advisedly throughout this report, not only because of its popular usage, but also because a few PBCs at the meeting were not yet RNTBCs.

<sup>7</sup> Not all PBCs were invited to the meeting because of budgetary restraints and the high costs of travel from remote areas.

<sup>8</sup> Department of Families, Community Services and Indigenous Affairs 2007, *Draft Guidelines for Support of Prescribed Bodies Corporate (PBCs). Policy and Legislative Framework. Funding Applications*, Land Branch Native Title Program, Canberra.

## 2 Functions of PBCs/RNTBCs

RNTBCs (and PBCs) have functions and obligations under:

- the *Native Title Act 1993* (NTA);
- the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations) (to be amended with changes to the NTA and PBC reforms); and
- the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) which repealed and replaced the *Aboriginal Councils and Associations Act 1976* (the ACA Act) on 1 July 2007 and the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006* (Cth) (CATSI Consequential Act).

Under the NTA and PBC Regulations, PBC functions and obligations include:

- advising native title holders about and processing and negotiating Future Act notices;
- consulting with native title holders and documenting evidence of consultation and consent;
- exercising negotiating, implementing and monitoring native title agreements;
- preparing submissions to the National Native Title Tribunal (NNTT) or other arbitral bodies about right to negotiate matters;
- considering compensation matters and bringing native title compensation applications in the Federal Court;
- bringing native title determination application cases in the Federal Court;
- holding money (including payments received as compensation or otherwise related to the native title rights and interests) in trust;
- investing or applying money held in trust as directed by the native title holders;
- consulting and considering the views of the relevant native title representative body (NTRB) or native title service provider (NTSP) for an area about proposed native title decisions; and
- any other function relating to the native title rights and interests as directed by the native title holders.

PBCs may also have functions or obligations:

- under other Commonwealth, State or Territory legislation which vary according to requirements of the legislation, and the nature of the native title rights held;
- the same as other land owners if they have a determination of exclusive possession;
- under State and Territory legislation relating to cultural heritage; and

- on Land Trust areas for which they are traditional owners under a range of State or Territory Government land rights legislation, including permit issues.

In addition, PBCs may be expected to fulfil broader roles with respect to Indigenous issues, and to become involved in activities such as town-planning, social harmony projects, cultural protocols, welcomes to country and interpretive and cultural signage.<sup>9</sup>

### 3 PBCs/RNTBS: A national snapshot

Of a total of 67 positive native title determinations, 48 have RNTBCs (with some determinations relating to more than one RNTBC). 10 RNTBCs are waiting to be advised; 14 are the result of litigated determinations and 53, the result of consent determinations.<sup>10</sup> Of the 48 existing RNTBCs, 37 are trustees and 11 are agents.<sup>11</sup> In Queensland, 22 RNTBCs are located in the Torres Strait, a number of which relate to uninhabited islands; 16 are located in Queensland outside of the Torres Strait; 16 in Western Australia, 1 in New South Wales, 2 in Victoria, 2 in South Australia and 8 in the Northern Territory.

Table 1 below shows the distribution of RNTBCs across States and Territories. Table 2 shows their distribution across NTRBs and NTSPs with the majority (twenty) associated with the Torres Strait Regional Authority.

**Table 1: RNTBCs by State/Territory+**

State/Territory	Number of determinations	Number of determined PBCs	Number of PBCs waiting to be determined
New South Wales	1	1	0
Northern Territory	8	3	5
Queensland (Torres Strait)	22	20	0
Queensland (Other)	16	8	1
South Australia	2	0	2
Victoria	2	2	0
Western Australia	18	15	3
<b>Total</b>	<b>69</b>	<b>49</b>	<b>11</b>

+ These figures refer to the number of different PBCs. Whilst as at 30 May 2007 there have been 69 determinations recognising native title, there are not 69 PBCs because several PBCs relate to more than one determination and some determinations result in the establishment of more than one PBC.

<sup>9</sup> Figures as per 30 May 2007. Department of Families, Community Services and Indigenous Affairs 2007, above n 8.

<sup>10</sup> Note the description of a determination as either consent or litigated is as entered on the NNTT determination summaries. This does not necessarily reflect the complex processes of native title claims which often involve a combination of litigation and mediation.

<sup>11</sup> All Torres Strait PBCs are trustees (with the exception of Mer Gedkem Le which is both a trustee and agent), and all other Queensland PBCs are agents.

**Table 2: RNTBCs by NTRB/NTSP region**

NTRB Area	State	No
New South Wales Native Title Services	NSW	1
Central Land Council	NT	2
Northern Land Council	NT	1
Cape York Land Council	QLD	4
North Queensland Land Council	QLD	4
Torres Strait Regional Authority	QLD	20
Native Title Services Victoria	VIC	2
Kimberley Land Council	WA	5
Ngaanyatjarra Council (now Central Desert Native Title Services)	WA	5
Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation	WA	5
Total		49

Many PBC members are remotely located and their members are often separated from each other by significant distances (along the entire stretch of the east coast, for example). These factors create significant practical difficulties in ensuring attendance at meetings, including AGMs, and in PBCs accessing infrastructure, resources and information. Relationships between PBCs and NTRBs/NTSPs vary including the degree and quality of assistance which NTRBs/NTSPs have the capacity to provide PBCs.

PBCs have had little opportunity to benefit from the experiences of other PBCs or to share information with them. Many lack administrative and governance capacity and are poorly resourced and most have not been compliant with reporting requirements under the ACA Act. Some PBCs have dedicated staff and office premises (though often basic and operated by a single individual); others have no office premises, fax machines or phone numbers, making it difficult to make contact with their representatives.<sup>12</sup> The public Register of Aboriginal and Torres Strait Islander corporations (administered by ORATSIC) is often out of date with respect to information for contact persons of PBCs. Updating information for executive and other PBC members is a difficult and time consuming task given the often lack of resources of PBCs, the geographical separation of many PBC members and the remoteness of many PBCs.

PBCs thus operate in a challenging environment. They are required to be responsive to and balance the needs and expectations of native title holders who look to them to resolve problems against those of the broader community. They must also meet the administrative requirements of CATSI legislation and their statutory functions and obligations under the NTA and other Commonwealth, State and Territory legislation.

<sup>12</sup> This created logistical difficulties in identifying appropriate representatives to attend the meeting and in arranging travel. In most instances, initial contacts were provided by NTRBs or NTSPs and the NTRU is grateful for their assistance.

## 4 Overview of the first national PBC Meeting

The first national meeting of PBCs was designed to:

- assist in the development of a PBC network;
- assist PBC members in understanding their roles;
- inform Government policy and program development;
- build relationships between representatives of PBCs;
- build the capacity of PBCs;
- identify issues relevant to PBCs;
- identify research issues for NTRU; and
- provide PBCs with information about resources they might access.

The workshop was held over three days and was designed to be interactive with considerable small group discussion to give PBCs the opportunity to engage with each another and with the representatives of government departments who made presentations. The workshop was facilitated by two Indigenous facilitators, Kerry Arabena a descendant of the Meriam people of the Torres Strait who is an AIATSIS Visiting Research Fellow and Tony Lee, a Yawuru man from Broome, a member of the Kunin (Native Title) Aboriginal Corporation and a previous Member of the NNTT. Participants were welcomed to Canberra by Ngunnuwal woman, Mrs Matilda House, who was introduced by Professor Mick Dodson, the Chairperson of AIATSIS, and a member of the Kunin (Native Title) Aboriginal Corporation. Short presentations were given throughout the workshop by representatives of the Miriuwung Gajerrong (Warren Gerrard and Christopher Griffiths), Yindjibarni (Alum Cheedy), Gunditj Mirring (Eileen Alberts) and Lhere Artepe (Janet Turner) PBCs.

As was the case at the NTRB workshop in December 2006, presentations were made by representatives of the Attorney-Generals Department (AGD) and FaCSIA who provided information on proposed PBC reforms, and by representatives of ORATSIC who discussed recent legislative changes affecting Aboriginal and Torres Strait Islander corporations. Representatives from a range of other Commonwealth Government Departments provided information about funding opportunities, programs and training relevant to PBCs including: the Department of Education, Science and Training (DEST), Department of Environment and Water Resources (DEW), the Department of Communications, Information Technology and the Arts (DCITA), the Indigenous Land Corporation (ILC), the Department of Employment and Work Place Relations (DEWR) including Indigenous Business Australia (IBA), and FaCSIA's Indigenous Leadership Development Group (see Attachment 3 for a list of Government presenters to the meeting).

Day 1 provided the opportunity for PBCs to familiarise themselves with each other's activities, issues (including an oft expressed struggle for recognition), structures, challenges, and aspirations. Copies of the draft NTRU's PBC toolkit which identifies relevant Commonwealth and State and Territory

funding programs were distributed. At the end of Day 1, presentations were made by DCITA about language and culture programs and by the AIATSIS library and audiovisual archives concerning 'Keeping History Alive'. The day concluded with a tour of the AIATSIS audio and visual archives and library.

Day 2 focused on the recent native title reforms, proposed funding arrangements, and changes to Corporations legislation with presentations by AGD, FaCSIA, and ORATSIC. PBCs formulated strategic responses to information provided within the parameters of the proposed reforms. Training issues and needs were also discussed with representatives of ORATSIC, FaCSIA's Indigenous Leadership Development Group and DEST.

Day 3 continued to provide participants with information about potential partnerships and alternative sources of Commonwealth Government funding including funding for economic and land based and environmental activities. A range of future actions and recommendations were identified in small group discussions.

Overall, the quality of presentations and the capacity of Government representatives to communicate often complex and technical information with their PBC audience varied. It was also apparent that a number of Government representatives were unfamiliar with the native title context and PBCs in particular. There is a need to further consider the relevance of programs they discussed to PBC needs and to the native title context more broadly.

## **5 PBCs/RNTBCs at the national meeting**

PBC representatives at the national meeting represented a microcosm of the national PBC/RNTBC post native title determination landscape.

### **5.1 Shared aspirations and goals**

Most PBCs at the meeting were committed not only to performing their statutory functions, but to also acting as agents for social, cultural and economic change. Whilst all were conscious of the necessity to limit their activities to manageable levels, they also saw their roles as providing the necessary cultural influences in holistic approaches to the social and emotional wellbeing of their members. Their aspirations often involved issues such as health, housing, education, employment, training and economic development which may not be conservatively seen as part of their statutory functions, but which nevertheless, often find their way into native title agreements. That is, it is difficult, if not impossible in many cases, to distinguish categorically between native title and other functions. Notwithstanding, participants were adamant that PBCs should not be responsible for providing services which are the responsibilities of governments.

They repeatedly stressed that they have their own law, culture and governance, and many were disappointed that their status as native title holders and land owners seems to receive little recognition. Many commented that they do not have a sense of control over what happens on their country.

Whilst the levels of activity and aspirations of PBC representatives at the national meeting varied, most, if not all, shared a range of core aspirations. These included:

- independence;
- caring for country;
- an adequately staffed office on-country with trainees;
- supporting Indigenous identity as an important aspect of capacity building and building self esteem;
- cultural and social aspirations which were aimed at social and emotional well being and involved preserving and reaffirming land, law, language, identity and culture including activities such as:
  - getting native title holders, particularly youth, on to country;
  - establishing cultural and language centres;
  - developing youth programs;
  - language revival and maintenance programs; and
  - recording of sites, life histories and songs.
- financial recognition of the contribution of elders;
- autonomy and economic independence through economic development (for example, creating an effective capital base for on-country housing);
- building working relationships with other Indigenous Aboriginal organisations in the area;
- representing the local community and developing productive relationships with non-indigenous land owners;
- economic development activities which can provide an economic base, but are also ‘culturally-friendly’;
- improved education and employment including trust accounts for university education; and
- developing business opportunities that support and maintain culture, language and the environment.

They also shared common goals in wanting to:

- ensure that PBCs operate effectively;
- develop networks with other PBCs to effectively engage with governments;
- influence health, housing and education outcomes in their communities; and
- develop good governance processes that are transparent.

## **5.2 Examples of PBC activities from the meeting**

PBCs represented at the meeting are engaged in a variety of activities, ranging from large scale mining and other development agreements, cultural heritage and social programs, to little or no activity. The degree of PBC activity is related to the availability of resources and the level of Future Act activity, the kinds of Indigenous Land Use Agreements (ILUAs) which may have been negotiated, access to joint land management conservation arrangements and other partnerships and, in some cases, the length of time PBCs have been established.

### *5.2.1 Mining and other resource sector agreements*

A handful of PBCs at the meeting have negotiated, or are in the process of negotiating, mining and other resource sector agreements which vary in scale. Some of these agreements have provided opportunities to protect cultural interests and rehabilitate land and provided PBCs with much needed operational support. Examples include:

- The Tjurabalan Coyote Gold Mine agreement;
- The Ngan Aak Kunch's (Wik's) current ILUA negotiations with Chalco and the potential for other mining agreements with exploration currently taking place;
- The Western Desert Lands Aboriginal Corporation (WDLAC) Newcrest and Bila Nifty Pipeline Agreements; and
- Yarnangu Ngaanyatjaraku Parna's agreements involving Ngaanyatjarra Council and Weston Mining (now BHP Billiton).

### *5.2.2 Land and Water Management and conservation partnerships*

A number of PBCs are engaged in or are negotiating conservation and environmental projects and joint management arrangements.

In Victoria, Gunditj Mirring, are involved in negotiating co-management arrangements with Parks Victoria of the Mt Eccles National Park and have obtained 5 year funding through an ILUA. They also have a sophisticated series of partnerships with government departments, academics and community groups focussed on returning water to Lake Condah and are responsible for an area which has been declared under the Indigenous Protected Areas program in DEW.

In New South Wales, Arakwal Bundjalong at Byron Bay have ILUAs with the State Government which provide for joint management arrangements over the Arakwal National Park and the Cape Byron Reserve (Lighthouse) Trust area. Githabul has recently successfully negotiated the largest native title settlement of Parks in Australia over 10 National Parks, 3 Stock Routes and 7 State Forests.

In Western Australia, a number of PBCs are engaged in or developing management partnerships over Class A reserves with the Western Australian Department of Conservation and Land Management (CALM) and other WA State Government Departments. These include the Yarnangu Ngaanyatjaraku



Parna, Karajarri and the Western Desert Lands Aboriginal Corporation (the latter over the Rudall River). Tjurabalan has exclusive possession over their native title lands and have a declared Indigenous Protected Area (Paruku). Miriuwung Gajerrong's native title agreement with the Western Australian Government in relation to the Ord Stage 2 Irrigation project (the Ord Final Agreement (OFA)) provides benefits for the settlement of all native title issues. It involved the establishment of the Yawoorroong Miriuwung Gajerrong Corporation (MG Corporation) to implement the OFA and provided it with operational funding for 10 years. It provides for the transfer of freehold title to a number of community living areas and over six conservation areas which will then be leased back to the Department of the Environment for joint management with the relevant *dawang* clan groups. \$4 million has been provided for over 4 years to prepare the joint management plans.

In Queensland, the Kaiwalagal Aboriginal Corporation works in partnership with the National Heritage Trust (NHT) to employ coordinators for its conservation and ranger programs and has also received funds from Envirofund. Activities include culling feral animals, turtle monitoring, fire management, noxious weed eradication, removing marine debris (such as ghost nets) and monitoring seagrass with the Department of Primary Industries. Its conservation program also extends to community education as rangers engage with schools and speak about future land and sea claims. The Djabugay Native Title Aboriginal Corporation has limited native title rights over the Barron Gorge National Park and is attempting to engage the Queensland Government in meaningful discussions over its management plan.

### *5.2.3 Pastoral, Agricultural and Farming activity*

A number of PBCs are involved in cattle grazing including Karajarri which adjusts land to neighboring pastoralists on Frazier Station. Miriuwung Gajerrong's OFA allows the Government to proceed with the extension of the Ord River agricultural irrigation project and MG Corporation will receive, among other benefits, parcels of commercial farmland once the development proceeds with which to generate business development, joint venture opportunities and wealth creation. Western Yalanji have non-exclusive rights over Karma Waters Station with a land use and access agreement.

### *5.2.4 Research Partnerships*

A number of PBCs are engaged in research partnerships involving cultural heritage management and environmental issues. For example, Lhere Artepe is involved in the Desert Knowledge Cooperative Research Centre, WDLAC with the Australian National University and Mualgal with Monash University and the University of Melbourne. Some PBCs have research partnerships with educational institutions for ongoing anthropological work on land and sea claims. Gundij Mirring has been particularly proactive in developing research partnerships with Monash University, University of Melbourne, Swinburne and AIATSIS.

Research partnerships often raise issues of intellectual property, as Karajarri has discovered in negotiating a research partnership with a University around plant properties research.

### *5.2.5 Visits to country*

Most if not all the PBCs at the meeting emphasised the need to preserve their cultural heritage by recording and archiving cultural information, and assisting native title holders to visit country with other knowledgeable people. WDLAC has a program called 'Karninyipa-Jukurpa', which among other land management and cultural heritage activities, assists native title holders in visiting and returning to country. Yarnangu Ngaanyatjaraku Parna assists in trips back to country with motor vehicle support from Ngaanyatjarra Council; their PBC area is extensive covering approximately 10 communities some of which are located at significant distances from each other.

### *5.2.6 Recording and archiving cultural information*

A number of PBCs are recording, mapping and archiving sites of cultural significance including the Barbarrum Aboriginal Corporation and Arakwal. Mualgal is engaged in recording archeological sites and interpretative work with Monash University and in cultural heritage management with Envirofund. Kaiwalagal Aboriginal Corporation is recording rock art and other archeological sites, whilst Ngan Aak Kunch hope to source funding for language preservation and practice within the community in its ILUA negotiations with Chalco.

Many PBCs wish to establish cultural centres ranging in scale from the Nyinika Ninna cultural and interpretive centre in Tennant Creek to smaller scale community based keeping places.

### *5.2.7 Cultural tourism*

Native title lands can provide opportunities to generate income through tourism and a number of PBCs are interested in tourism ventures. For example, Tjurabalan is hoping to develop tourism in its Paruku IPA and the Djabugay Corporation is associated with Tjabugay Dance Theatre and Tjabugay Country Tours in the Cairns region. Djabugay is attempting to rationalize these activities in ensuring that Board members for each of their corporations are the same. Mualgal's research partnerships are also aimed at moving forward to cultural tourism ventures.

### *5.2.8 Community relationships*

Building positive working relationships with others in the community is a priority for PBCs, not only with non-Indigenous residents and land owners, but also amongst PBC members and with other Indigenous groups and organisations including NTRBs/NTSPs. PBCs such as WDLAC carry out cross cultural training with mining companies and many PBCs such as Arakwal and Lhere Artepe are regularly involved in welcome to country and education programs. Developing appropriate cross-cultural training and awareness programs is essential, as is the development of communication strategies such as the Miriuwung Gajerrong strategy which aims to ensure that its members and others in the community are informed of the activities of the group.

Relationships between PBCs and other local Indigenous organisations can be vexed. A number of local community organisations have been in operation for significant periods of time, and have been representing or providing services to the native title holders who are now members of the PBC. Some PBCs at the meeting saw themselves as the ‘poor cousins’ of such organisations, and as relatively under-resourced despite the fact that they represent the traditional owners of the community, and are founded on traditional laws and customs, which they perceive should be the primary *modus operandi* in any community.

#### *5.2.9 Education and employment*

Education and employment were recurring themes at the meeting, some PBCs being involved in employment programs as a part of agreements reached over their land. Tjurabalan has an employment agreement within the Coyote Gold mine agreement but this has not yet been implemented. Lhere Artepe has an employment program under its Green Corps Desert Park programs and is involved in the Community Development Employment Program (CDEP), as are a number of PBCs represented at the meeting. CDEP programs are also often part of joint management arrangements over conservation areas. Ngan Aak Kunch is considering partnering with TAFE in order to develop training and education programs that will complement the Chalco workforce under its ILUA.

#### *5.2.10 Regional Partnerships*

A number of PBCs were seeking to negotiate or have negotiated Memoranda of Understanding and other regional partnerships with private, public and charitable organisations as well as with State and Territory Governments and local Shires and Town Councils.

#### *5.2.11 Economic and Business Development*

Many PBCs are interested in business planning and economic development support.

Substantial agreements, such as the WDLAC’s Newscrest Agreement and their Birla Nifty Pipeline Agreement and Tjurabalan’s ‘Coyote’ Gold Mine, provide a significant basis for economic development and business opportunity. Some of the larger and more established PBCs from Western Australia, such as WDLAC, aim to or have entered into joint ventures or equity arrangements with mining companies and are generating revenue through permit systems. Others have established economic development trusts, such as the MG Corporation under the OFA and aim for joint ventures and other forms of wealth creation. Still others have invested or wish to invest in property and shares. Lhere Artepe is beginning to develop partnerships with local businesses.

A number of PBCs at the meeting are also engaged in small business enterprises –Arakwal, for example, is aiming to develop a caravan park which was part of an ILUA at Broken Head; WDLAC is hoping to create various training and employment and business opportunities with industry such as the

provision of catering for mining companies, as Tjurabalan is also attempting to do.

However, PBCs without a capital base are finding it difficult to obtain loans for small business ventures and listened with interest to Indigenous Business Australia's presentation regarding the possibility of loans. Many PBCs who are engaged or seeking to engage in small businesses will need considerable support to be successful.

#### *5.2.12 Social programs*

Although no PBCs represented at the meeting are involved in providing health services, a number sit on a range of advisory committees involving health, social and emotional wellbeing and social behavior. Djabugay, for example, has been working with a local clinic to identify ways of promoting health outcomes within its community and Lhere Atepe is part of a social harmony working group in Alice Springs. WDLAC, in partnership with Newcrest and the WA Government, is seeking to provide a kidney dialysis machine on country.

### **5.3 PBC Needs**

PBC aspirations, their stages of development and the skills and capacities of individual members vary considerably. Their needs, as FaCSIA's draft PBC support guidelines point out, are based on considerations such as:

- geographical location (remoteness);
- the nature and extent of native title rights and interests held;
- the nature of the relevant group of native title holders;
- the complexity of consultation and decision making processes; and
- the level and type of future act activity in the PBC's area.<sup>13</sup>

#### *5.3.1 Start-up and ongoing funding needs*

As the reforms recognise, PBCs need basic infrastructure and administrative support to comply with legislative functions and requirements under the NTA and the CATSI Act. They also need administrative support if they are to apply, manage and acquit appropriated funding from other government departments.

PBCs at the meeting with access to start-up funding and assistance, which had often been provided by NTRBs/NTSPs and/or obtained as part of a negotiation package, appeared to display greater confidence than others. The two Miriuwung Gajerrong PBCs receive assistance from the MG Corporation established and funded under the OFA. Lhere Atepe, and the recently determined Gunditj Mirring PBCs, are other examples, each having received initial assistance from their respective State or Territory Governments. The Patta Aboriginal Corporation in Tennant Creek received start-up funding as

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<sup>13</sup> Department of Families, Community Services and Indigenous Affairs 2007, above n 8.

part of a compensation package. WDLAC, through its Newcrest ILUA and Tjurabalan used mining royalties payments to assist in setting up their PBCs.

In contrast, PBCs such as Kaiwalagal, Djabugay and Barburrum, whilst having a range of aspirations and goals, have apparently not received such assistance. Barburrum PBC, though incorporated for a number of years, only recently held its second meeting because it had been unable to access assistance to do so. Karajarri have sold cattle to cover administrative costs.

Whilst PBCs such as Lhere Artepe and Miriuwung Gajerrong are often held up as examples of apparent affluence, and are supported by their respective NTRBs, they are nevertheless, challenged in meeting their native title functions and ongoing administrative costs. Lhere Artepe has sold some of the land acquired through native title negotiations to cover administrative costs and has only one staff member. Miriuwung Gajerrong PBCs are provided limited assistance by the main MG Corporation, but it is struggling to meet the implementation requirements under the OFA. Housing is a critical issue in Kununurra and a full time Future Act project officer position has not been filled after 10 months of operations.

Overall, the majority of PBCs at the meeting lacked the resources to carry out their basic statutory functions, let alone engage in long term projects. Support and resources are particularly needed early on to ensure that the native title holders have the capacity to make informed decisions about how they will use and manage their land, their short, medium and long term aims and goals, and how any decisions will be implemented.

### *5.3.2 Strategic and operational planning*

Many PBCs at the meeting recognized the need for effective strategic planning which is reflected in day-to-day operational planning. Some had done little if any planning; others were more advanced in working on 5 year plans. WDLAC is seeking legal, financial and other professional advice to create a sustainable governance structure in a process which also involves a range of planning. Others have developed business plans for specific projects such as Arakwal's plan for a proposed cultural centre and for which they are seeking funding.

Effective planning is time consuming and requires specific skills to ensure plans which are realistically matched against resources and staged over the short, medium and long term.

## **6 The Legal and Policy Context of the PBC National Meeting**

Both the NTRB PBC workshop and the national PBC meeting took place in the context of significant legal and policy change affecting PBCs. In September 2005, the Government announced a package of reforms to the native title system including changes to the NTA and the claims resolution process and a process for examining measures to encourage the effective

functioning of PBCs. Information on these changes was provided to both workshops and is outlined below.<sup>14</sup>

### **6.1 Commonwealth review of Prescribed Bodies Corporate**

On 27 October 2006, the Attorney-General and the Minister for FaCSIA released a report examining the structures and processes of native title PBCs (the PBC Reform Report). The Commonwealth's review was carried out by a Steering Committee chaired by AGD and comprised of officers from AGD, FaCSIA and ORATSIC.

The Review observed that PBCs need to operate effectively so that native title holders can utilise their native title rights to derive significant economic and other benefits and to discharge their land management obligations. The PBC Reform Report aimed, as outlined by a representative of the AGD to the NTRB PBC workshop, to:

- identify basic functions and resource needs of PBCs;
- ensure functions and resources are aligned with existing funding sources; and
- assess the appropriateness of the existing statutory governance model.<sup>15</sup>

The report identified:

- the need for a greater understanding of the functions, needs and responsibilities of PBCs among all stakeholders in the native title system;
- the need for a more coordinated effort in pulling together resources that already exist that PBCs can utilise; and
- that the needs of PBCs will differ greatly, depending on various factors (such as geographical location and type of likely Future Act activity).<sup>16</sup>

The key recommendations of the report included measures to:

- improve the ability of PBCs to access and utilise existing sources of assistance, including from NTRBs (and NTSPs);
- authorise PBCs to recover costs reasonably incurred in performing specific functions at the request of third parties;
- encourage greater State and Territory government involvement in addressing PBC needs; and
- improve the flexibility of the PBC governance regime while protecting native title rights and interests.<sup>17</sup>

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<sup>14</sup> See also L Strelein and T Tran, 2007, *Native Title Representative Bodies and Prescribed Bodies Corporate: native title in a post determination environment*, Native Title Research Report No.2/2007, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

<sup>15</sup> S Marshall 'Examination of Structures and Processes of Prescribed Bodies Corporate' (Presentation delivered at the NTRBs and PBCs: Current Policy and Practice Workshop for NTRB Staff, AIATSIS, Canberra, 5 December 2006).

<sup>16</sup> Ibid.

All of the report's recommendations have been accepted by the Government, and will be implemented through a combination of amendments to the NTA, changes to the regulations as well as through administrative changes involving, for example, the greater prioritisation of PBCs in NTRB activity plans and encouraging the cooperation of the State and Territories.

## 6.2 PBC governance regime

The PBC Reform Report recognised that existing legislation and regulations impose unnecessary burdens on PBCs and that there is a need for greater flexibility in accommodating the specific circumstances of native title holders. It recommended that:

- mandated statutory requirements for PBCs to consult with and obtain the consent of native title holders on 'native title decisions' should be limited to decisions to surrender native title rights and interests (though native title holders will still be able to stipulate other mandatory consultations as part of the rules or constitution of the PBC); and
- an existing PBC should be determined as a PBC for subsequent determinations of native title where all of the native title holders agree (thus not requiring a distinct PBC for every determination of native title so that claim groups, where it is agreed, may be able to use existing structures and pool resources into maintaining them).

Legislative and regulatory changes to the NTA which are relevant to PBCs are summarised in Table 3 below.

**Table 3 Major changes to the NTA (and relevant regulations) concerning PBCs.**<sup>18</sup>

Provision	Legislative changes	Implications
Subpara 24MD(6B)(c)(iii)	'Registered' is inserted before 'native title body corporate'	Makes technical amendments to sub para 24MD(6B)(c)(ii)
Sub para 58(e)	Enables measures to remove statutory requirement for PBCs to consult with the common law holders on all decisions affecting native title.	Aims to remove burden on PBCs and limit compulsory consultation to decisions that relate to the surrender of native title rights and interests on land or waters. (This is a default provision only – there may be a higher threshold stipulated by the rules of the PBC itself).
s 58 - Native Title (Prescribed Bodies Corporate)	Section 58(e)(i) limits the power to make regulations for agent PBCs such that agent PBCs	This enables the regulations to allow agent PBCs to enter agreements if they have been

<sup>17</sup> Attorney General's Department 2006, above n 1.

<sup>18</sup> Explanatory Memorandum, *Native Title Amendment Bill 2006*, [4.1]-[4.11].

Regulations 1999(Cth) – regulations relating to agreement making	would need to consult with and obtain the consent of the common law holders to all agreements concerning native title. There is no such requirement for trust PBCs. This will be removed.	made in accordance with the processes stipulated in the regulations.
Proposed s 59A (s 59A(3) allows regulation changes) – using existing PBCs in subsequent determinations	Enables existing PBCs to be determined as a PBC for subsequent determinations of native title where the native title holders covered by all determinations agree to it.  Amendments will also be made to the PBC regulations to prescribe how the consent of the common law holders for the existing PBC and those proposing the use of the existing PBC is to be obtained.	Encourages economies of scale in PBCs especially where there have been determinations in multiple areas for the same claim groups such as for example, in Miriuwung Gajerrong.  Note that the existing PBC structure can not be changed (eg from agent to trust) for subsequent determinations.
S 253 – Definition of an agent PBC	This definition was already inserted by Schedule 1 of the Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006 (CATSI Consequential Act) when that Act commenced on 1 July 2007.	The changes incorporated the definition into the NTA before 1 July 2007.  This new definition is related to the insertion of s 59A and corrects a technical error.

### 6.2.1 Default PBCs

Under s 57(2)(c) of the NTA, the Court must determine a ‘default’ body corporate which will perform the functions of the PBC where there is not a functioning PBC. *The Native Title Amendment (Technical Amendments) Act 2007* allows for ‘default’ PBCs to be used where:

- native title holders do not nominate a PBC at the time of a determination;
- native title holders cannot agree on the PBC at the time of a determination;
- a liquidator has been appointed to a PBC; or
- the native title holders choose to avail themselves of the default body.<sup>19</sup>

The default PBC is an option of last resort, as participants at the PBC meeting also insisted, and will hold native title rights temporarily for the native title claim group until a new PBC is formed. Although there are no regulations prescribing how a default PBC would function, it is understood that the functions of the default PBC are limited to exercising procedural rights, conducting consultations and obtaining consent from native title holders in

<sup>19</sup> This builds on recommendation 15 in Attorney General’s Department *Structures and Processes of Prescribed Bodies Corporate* (2006), 28 [8.28]. See L Strelein and T Tran, 2007, above, n 14.



Future Acts. Default PBCs have to consult with the native title holders and require their consent when making decisions. The PBC Reform Report proposes using bodies such as the Indigenous Land Corporation (ILC) as default PBCs or a body appointed by the Minister such as the relevant NTRB.

Many PBC representatives at the national meeting considered that it was preferable that PBCs were designed and resourced adequately in the first instance in order to ensure their long term survival, rather than having to resort to default PBCs.

### **6.3 PBCs and the CATSI Act**

The NTA amendments coincided with the commencement of the CATSI Act on 1 July 2007. ORATSIC, which is responsible for administering the CATSI Act, was represented at the PBC meeting by Deputy Registrars, Ms Toni Matulick and Mr Joe Mastrolembo and other ORATSIC staff members set out in Attachment 3. They outlined some of the legislative changes and discussed their implications, noting that ORATSIC offers assistance to PBCs in corporate design, corporate governance and managing disputes.

The CATSI Act scales the corporate governance requirements according to the size of the corporation and contains specific provisions tailored to PBCs. The minimum obligations of PBCs under the CATSI Act include conducting Director's meetings, maintaining a register of members, conducting annual general and general meetings, and keeping accounts and records. However, the CATSI Act distinguishes between 'small', 'medium' and 'large' corporations. If PBCs fall within the income, assets and employees threshold for 'small' corporations under the CATSI Act, they will have lower reporting requirements than was required under the ACA Act.<sup>20</sup>

The CATSI Act provides that 'small' corporations:

- have minimum annual reporting requirements consisting of a 'general' report containing basic corporate details which does not have to include audited financial statements;
- may apply to the Registrar of Aboriginal and Torres Strait Corporations for an exemption so as to submit this report and hold their annual general meeting every two years; and,
- that meetings may be held by video or teleconference.

PBCs have two years from 1 July 2007 to make changes under the new Act in the transition period. However, given that most PBCs were already non-compliant with reporting requirements under the ACA Act, changes and complexities in the CATSI Act caused some dismay at the national meeting, despite the fact that the changes have been designed to streamline administrative requirements for Aboriginal and Torres Strait Islander corporations. In particular, the requirement to change constitutions within the transition period is an added administrative burden when many PBCs already

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<sup>20</sup> These thresholds are based on gross operating income, consolidated gross assets and number of employees. Details are in the regulations made under the CATSI Act. See also Department of Families, Community Services and Indigenous Affairs 2007, above n 8.

have little or no resources to hold the AGMs which are required to do so. Difficulties in maintaining and managing member information were also raised at the meeting as was the fact that the signatures of PBC members appear on ORATSIC's web site and could easily be forged (these signatures also include signatures of the deceased which, as the meeting noted, can be offensive to relatives).

#### **6.4 The Reforms and other corporations dealing with native title**

PBCs are not the only corporate groups managing and representing the interests of native title holders. The reforms proposed by the government do not account for the needs of those corporations that have been established by native title groups prior to a determination or to manage native title outside determination processes or which sit alongside the PBC to manage other funds or economic development opportunities. Many of these corporations may be carrying out the functions of PBCs such as the management of Future Acts, negotiating a range of native title related agreements, and managing related benefits.

As the NTRB PBC workshop report notes, there is a need to develop better understandings of the growing corporatisation of native title groups and their relationships with other Indigenous community organisations.<sup>21</sup>

#### **6.5 Statutory differences between PBCs and other Aboriginal corporations**

Many members of PBCs/RNTBCs have already been involved in the other corporations managing native title discussed above in 6.4 and are uncertain as to the differences between the rules and regulations which govern them and those which govern PBCs and RNTBCs. Some of the differences, which were also outlined to the PBC meeting, are noted below:

- RNTBCs and PBCs are special types of Aboriginal and Torres Strait Islander Corporations because they are created especially for common law native title holders to hold or manage native title.
- PBCs must have the words 'registered native title body corporate' or 'RNTBC' in their name, to signify this and must be registered with ORATSIC as required by the NTA whilst other Aboriginal and Torres Strait Islander Corporations can choose to register under other state or territory associations law or under the *Corporations Act 2001 (Cth)*.
- RNTBCs have obligations under the NTA such as the requirement to consult with and obtain consent from native title holders in relation to any decisions which surrender or affect native title rights and interests.
- If an Aboriginal and Torres Strait Islander corporation becomes or ceases to be an RNTBC, it must notify the Registrar of Aboriginal and Torres Strait Islander corporations within 28 days.

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<sup>21</sup> L Strelein and T Tran, above, n 14, [4.6], p. 21.

- RNTBC directors and officers are protected from a range of criminal and civil penalties for breach of duties as long as they have acted in good faith in complying with obligations under native title legislation (not including the duty to trade while insolvent).
- RNTBCs are not required to value their native title rights and interests as part of their assets, for the purpose of determining their size classification under CATSI.
- RNTBCs must ensure that their constitution is consistent with native title legislation.
- The Registrar of Aboriginal and Torres Strait Islander corporations must not change the RNTBC's constitution on the basis of an act done in good faith and with the belief that the corporation or its officers are complying with native title legislation.
- The Registrar of Aboriginal and Torres Strait Islander corporations is not able to de-register an RNTBC as long as it remains an RNTBC and manages or holds native title interests.

## **7 Resourcing of PBCs from within the native title system**

Funding for PBC administrative costs has been a matter of on-going concern to a range of stakeholders including PBCs themselves, NTRBs/NTSPs, industry bodies and governments. The *Report on the Operation of Native Title Representative Bodies* by the former Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account (March 2006) recommended that the Commonwealth examine appropriate means for resourcing the core responsibilities of PBCs.

Iain Anderson, First Assistant Secretary of the Attorney-Generals' Legal Services and Native Title Division delivered a handout to the meeting which identified major findings of the PBC Reform Report and sets out where PBCs might access funding.<sup>22</sup>

The handout notes that PBCs can access:

- assistance from NTRBs who can perform their statutory functions in relation to PBCs at any time (for example, NTRBs can use their Native Title Program funding to assist PBCs to negotiate Future Act agreements);
- assistance from the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations;
- assistance from Australian Government departments and agencies which provide a range of programs that PBCs may potentially access to build capacity, obtain training, develop partnerships or progress specific projects; and
- assistance from State and Territory governments.

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<sup>22</sup> *Prescribed Bodies Corporate Reforms and the role of the Attorney-General's Department*. AGD, Canberra. Handout to PBC National Meeting, 12 April 2007.

The handout notes examples of resources currently available within the native title system which PBCs will be able to access as a result of the reforms as follows:

- NTRBs will be required to give appropriate priority to providing assistance to PBCs;
- NTRBs will be able to assist PBCs with their day to day operations in certain circumstances; and
- PBCs will be able to charge Future Act proponents for reasonable costs incurred in performing their native title functions (for example, where the proponents want to have a Future Act processed more quickly than would be possible if support was provided through an NTRB).

### **7.1 FaCSIA's approach to supporting PBCs**

The Commonwealth's approach to supporting PBCs has been progressively developed through the reform process, including discussions led by Greg Roche, Assistant Secretary of FaCSIA's Land Branch, at the NTRB PBC workshop and at the PBC meeting. Since the meeting, as noted, FaCSIA has completed its draft guidelines for supporting PBCs which have been circulated for comment by FaCSIA including to PBCs and NTRBs/NTSPs and have not, at the time of writing, been finalised.

At both the NTRB PBC workshop and the PBC Meeting, Greg Roche noted that Government estimates, calculated on the number of extant claims and the likelihood that they would reach a final determination, are that there will be around 100-150 PBCs with a significant proportion in the Torres Strait (though this figure was queried as an underestimate at both meetings).

Under the power point heading, 'Resourcing', he noted that:

- FaCSIA had to ensure PBC needs are met when funding NTRBs;
- FaCSIA may fund PBCs for day to day operations; and
- PBCs can charge third parties.<sup>23</sup>

Greg Roche reiterated the Government's position as provided to the NTRB PBC workshop that PBC resource issues would be addressed in three ways:

- FaCSIA ensuring that NTRBs give appropriate priority to assisting PBCs when funding NTRBs under their Program Funding Agreements;
- FaCSIA allowing NTRBs to use their native title program funding to assist PBCs with their day-to-day operations (with FaCSIA's prior approval);
- FaCSIA considering direct funding for PBCs (ie, funding provided other than through NTRBs) to assist with day-to-day operating costs in limited circumstances.<sup>24</sup>

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<sup>23</sup> G Roche 'Resources and PBCs' (Presentation delivered at the First National Meeting of PBCs, AIATSIS, Canberra, 12 April 2007).

<sup>24</sup> See also L Strelein and T Tran, 2007, above, n 14.

At both the NTRB PBC workshop and the national PBC meeting, Greg Roche described FaCSIA's categorisation of PBCs according to the following criteria, noting that FaCSIA funding would be targeted at the middle most common range:

- Low: few if any Future Acts, required to perform their statutory functions very irregularly and thus requiring a low level of support.
- Middle: some Future Act activity and insufficient funds for ongoing needs;
- High: high level of Future Acts and state government support (rare instances with self-funding and successfully negotiated resource agreements and/or compensation).

His comments that NTRBs/NTSPs have always been able to use their native title program funding to assist PBCs to perform their statutory functions in their day-to-day operations (eg, purchasing infrastructure and utilities), were met with some surprise at both the NTRB PBC workshop and the PBC national meeting. There has been some confusion in the sector as, for many years, NTRBs/NTSPs have operated under an Aboriginal and Torres Strait Islander Commission (ATSIC) and subsequent Office of Indigenous Policy Coordination (OIPC) funding policy which limited NTRBs to providing support to PBCs in their day-to-day operations up to the time of the PBC's first Annual General Meeting. NTRBs/NTSPs in particular have interpreted this as meaning that they could not provide any support at all for PBCs, which, as Greg Roche notified the PBC meeting, was not the case.

The meeting was notified that FaCSIA's preference for funding PBCs through NTRBs is owing to the fact that NTRBs/NTSPs already have expertise in administering Native Title Program funds including preparing funding submissions, meeting reporting requirements and accounting for funds and are familiar with PBCs. NTRBs/NTSPs also have well established administrative infrastructure which is lacking in the majority of PBCs. Greg Roche suggested that the significant administrative requirements of both PBCs and FaCSIA in funding individual PBCs would be incommensurate with the small amounts of funding under consideration by FaCSIA. Greg Roche noted that the NTA provides for NTRBs/NTSPs to assist PBCs in the exercise of their statutory functions and suggested that it would be illegal for FaCSIA to fund PBCs to carry out these functions as the NTA clearly gives these functions to NTRBs/NTSPs and the NTA provides that a PBC cannot be recognised as an NTRB.

Both the PBC meeting and the NTRB PBC workshop were notified that FaCSIA's existing priority of funding NTRBs/NTSPs for claims processing will remain, and that there will be no additional funding in the native title system specifically for PBCs – at least in the next financial year.

Of particular concern was FaCSIA's advice that submissions to the NTRB/NTSP funding round for 2007/08 were due in the near future around mid May. This left little time for PBCs to enter into dialogue with NTRBs/NTSPs. FaCSIA has recognised this concern in its draft funding guidelines, noting that the release of the guidelines after funding submissions

for 2007-08 were due may result in the need for NTRBs/NTSPs to make further separate funding applications.

## **7.2 FaCSIA's Draft PBC Funding Guidelines**

Many of the administrative needs which PBCs identified at the meeting, and which NTRBs/NTSPs identified at the NTRB PBC workshop, are reflected in the non-exhaustive list of items eligible for funding as administrative costs under A(c) in the draft PBC support guidelines.<sup>25</sup> These include:

- office premises (rent only).
- insurances and financial services (including bank fees and charges).
- costs to meet regulatory compliance obligations, for example, annual general meetings, special general meetings, director's meetings, and reports.
- assistance with preparing funding submissions to other agencies.
- assistance with book-keeping and auditing.
- investment advice.
- communications facilities, for example, telephone, fax or email.
- utility costs, for example, power, water, sewerage, telephone and internet accounts.
- administrative facilities for the production and copying of documents (including information technology facilities and support, paper and stationery).
- facilities for storage of records relating to PBC functions.
- in certain circumstances assistance for the cost of employing office staff (see note below).

The draft support guidelines also note that governance training and capacity building costs will not generally be met by FaCSIA since Government regards that the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations has programs that can assist with these matters. Meeting costs are to be minimised as much as possible, for example, by using telephone hook-ups if this is feasible.

To obtain funding for employment of PBC office staff, it will be necessary to show that:

- there is a real and on-going need;
- other avenues to fund staff have been explored;
- competent and experienced staff are available; and
- staffing costs have been kept to a minimum.

Under the draft guidelines, funding will not be provided for more than one (1) financial year. The NTRB/NTSP will need to show funds provided for PBC

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<sup>25</sup>Department of Families, Community Services and Indigenous Affairs 2007, above n 8, p. 7.

administrative costs as a separate prioritised activity in its Operational Plan and as a discrete item in its Financial Budget, and quarantine these funds from other uses unless otherwise agreed by the FaCSIA's Land Branch.

The draft guidelines set out that NTRBs/NTSPs should take the following steps:

- (a) liaise with the PBC to identify requirements;
- (b) ensure that any application for PBC administrative costs is consistent with the criteria and requirements set out in these Guidelines;
- (c) include the PBC costs in its annual submission for funds for its NTRB activities (or in a separate submission if necessary);
- (d) manage, report on and account for any NTP funds provided through the NTRB/NTSP for PBC administrative costs, as required by the terms and conditions of its Program Funding Agreement.

### *7.2.1 Direct funding*

Although not FaCSIA's preferred option, in rare circumstances under the draft PBC support guidelines, PBCs will be able to seek agreement to apply for direct funding by writing to FaCSIA's Branch Manager of the Land Branch.<sup>26</sup> Reasons for seeking direct funding may include:

- the original native title claim was not handled by the NTRB/NTSP for the area;
- there is a significant conflict of interest between the PBC and the NTRB/NTSP; or
- other circumstances preclude funding being provided via the NTRB/NTSP (for example, there is a longstanding negative relationship between the PBC and the NTRB/NTSP).

Where a PBC's reasons refer to an NTRB/NTSP, a copy will be forwarded to the NTRB/NTSP for comment.

### **7.3 PBC responses to FaCSIA's funding approach at the national meeting**

PBCs received the news of the proposed funding arrangements as described by Greg Roche at the national meeting with mixed feelings. Many were pleased to see some certainty and recognition of their needs, but felt that the reforms did not go far enough. Some were concerned about perpetuating ongoing relationships of dependency on NTRBs; others welcomed NTRB assistance. One participant expressed the view that PBCs must achieve independence and that they should only require funding for the initial stages.

PBCs were concerned at the lack of Government recognition that moneys received from agreements are used to cover costs that are imposed on them by government legislation and rules and regulations. As one PBC participant

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<sup>26</sup> FaCSIA, PO Box 7788, Canberra Mail Centre ACT 2610.

noted: 'all our money goes on meetings, AGMs, financial records etc – none of it is used to meet our own needs especially the needs of the old people'. They were particularly concerned about one year funding cycles which make no provision for short, medium and long term planning and make it impossible to attract skilled staff. The approach to supporting PBCs in terms of high, medium and low activity was also seen as disturbing, since as noted in 5.3.1, PBCs which may be seen as having a high level of activity, are also struggling to meet legislative requirements and process Future Acts and implement agreements.

Whilst a number of PBC needs are addressed in the guidelines, PBCs at the meeting identified a range of other funding requirements including:

- a range of technical expertise and advice which NTRBs/NTSPs are often unable to provide relating to business and economic development, scientific expertise, natural resource management, legal and anthropological matters, eco-tourism and sustainable land management, 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 services;
- capacity building;
- travel expenses (eg purchasing vehicles, paying for airfares and travel to and from training);
- meeting costs other than for AGMs;
- resources to employ skilled staff consistently;
- research;
- advocacy and representation at local, state and national levels and community relations work;
- language and culture maintenance and initiatives and setting up digital archives of cultural materials; and
- IT support including the development of PBC web pages.

Native title agreement-making and negotiation processes require land management and implementation over time. PBC participants felt that a lack of adequate funding for post determination processes makes the claims process meaningless. There was also considerable discussion concerning the range of PBC capacity and training needs, not all of which, as the guidelines suggest, can be accounted for through ORATSIC's services, which cannot possibly effectively service the approximately 2500 registered Aboriginal and Torres Strait Islander corporations.

Overall, PBCs were realistic about the limitations of current funding arrangements and aimed to capitalise on them. However, many were discouraged by the news that there would be no additional funding directly allocated for PBC requirements and felt that the approach compromised their aspirations to independence and to having more direct engagement with



Governments. FaCSIA's response to such a reaction was to question, as Greg Roche did at the meeting, whether the role of the PBC is one of landholder or economic development agent.

FaCSIA's PBC funding approach also raises a number of longer term governance issues, including issues of representation, since it was made clear that:

- the Commonwealth Government expects that the role of NTRBs will be substantially diminished once claims are processed in an estimated 10 to 15 years; and
- the Commonwealth Government does not intend to fund PBCs in perpetuity as such a commitment of funds is a real policy and budgetary concern.

#### **7.4 NTRB and PBC partnerships**

There is significant overlap and inter-relationship between the statutory functions of NTRBs/NTSs and PBCs which give rise to a lack of clarity in their respective roles and responsibilities. Under the NTA, NTRBs for example have facilitation and assistance functions (ss.203 BB and 203 BC), certifications functions in relation to applications for registration (ss 203BE), dispute resolution functions (203BF), agreement-making functions (203 BH), internal review (203BI) and other functions (203 BJ).

The relationships between PBCs and NTRBs/NTSPs also vary considerably. Some PBCs work productively with NTRBs/NTSPs who already provide them with ongoing support within their limited resources and are appreciative of this support; others are suspicious of NTRBs and are competitive with them.

Participants considered that Governments should establish direct working relationships with PBCs even if using NTRBs as intermediaries may be less complicated. In small group discussions, they noted a number of potential issues arising out of the information provided by Greg Roche regarding support for PBCs particularly concerning their relationships with NTRBs/NTSPs. They include the following.

- There is the potential for:
  - exclusion of PBCs by NTRBs/NTSPs from decision making and consultation processes or for the interference of NTRBs/NTSPs in PBC decision making processes;
  - the compounding of existing uncertainties regarding overlapping roles and responsibilities of PBCs and NTRBs/NTSPs under the NTA; and
  - the compounding of existing uncertainties surrounding other roles and responsibilities such as the responsibility to inform PBCs about issues concerning legislative changes, the recent reforms and submission time frames for funding through NTRBs (One participant commented: 'whose responsibility is it to let us know?').

- Support for PBCs may be required for activities which may not be a priority for NTRBs/NTSPs or which NTRBs/NTSPs may not have the expertise or capacity to carry out.
- NTRB/NTSPs prioritisation of native title claims already sees some claim groups receiving less support than others.
- NTRBs/NTSPs currently have insufficient resources to progress the number of extant claims and providing funding and support through them will increase their burden.
- Distrust between PBCs and NTRBs/NTSPs could be a serious disadvantage to PBCs accessing support.
- PBCs may lack confidence in the ability of an NTRB/NTSP to carry out its own functions let alone adequately assist PBCs.
- NTRBs/NTSPs might act as gatekeepers of key resources in the new funding arrangements, detracting from the independence of PBCs in managing its own affairs.
- NTRBs/NTSPs will control the funding of PBCs in the new arrangements and there is a need to develop processes of accountability and transparency in PBCs accessing funding through them.
- Although many PBCs are reliant on NTRBs/NTSPs for their expertise, this should not compromise PBC autonomy or enable NTRBs/NTSPs to make decisions for them.
- PBCs will exist in perpetuity whereas NTRBs/NTSPs will no longer be as pivotal in the native title system once claims are finalised.
- NTRBs/NTSPs acting as intermediaries can cause unnecessary delays in implementing PBC projects.
- NTRBs/NTSPs need to carry out an audit of PBC needs in their regions in order to develop fair priorities and support guidelines.

A number of PBCs at the meeting suggested that the draft guidelines give rise to a potential for reinforcing relationships of dependency between NTRBs/NTSPs and PBCs. In contrast, they sought the fostering of their autonomy and independence or, at the very least, some form of partnership between NTRBs/NTSPs and PBCs.

In the immediate future, building productive relationships between NTRBs/NTSPs and PBCs, and clarifying role and responsibilities is essential. There was general agreement at the national meeting that there is a need to develop formal understandings between PBCs and NTRBs/NTSPs, possibly in the form of Memoranda of Understanding, which reflect their relationships as partners, which establish clear roles and responsibilities and which set out transparent processes for PBCs to access funding through NTRBs. The draft support guidelines note that a 'constructive partnership between the PBC and the NTRB/NTSP will facilitate positive outcomes over time for the native title holders'.<sup>27</sup> Nevertheless, some participants at the meeting commented that, in

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<sup>27</sup> Department of Families, Community Services and Indigenous Affairs 2007, above n 8, p 7.

certain instances, developing partnerships with NTRBs/NTSPs will take time and, in others, may not be achievable.

## **8 Other Commonwealth, State and Territory Funding Programs**

The reforms clearly indicate that PBCs should be exploring the full range of Commonwealth, State and Territory funding programs and capacity building initiatives which might benefit them and not be dependent upon FaCSIA funding.

### **8.1 State and Territories**

The PBC Reform Report identified that State and Territory governments have the primary responsibility for the day to day management of land. Given that they are often directly engaged in dealings with PBCs, the Report encouraged State and Territory governments to address PBC needs as part of the resolution of native title claims and to promote a better understanding of their functions, needs and responsibilities early in any agreement-making processes.<sup>28</sup>

Questions were raised at the meeting as to whether it is realistic to expect the States to fund PBCs where they have little interest in land areas with limited Future Act activities. Such a policy approach might exacerbate the existing uneven distribution of resources and potentially compound disadvantage for many PBCs. There is also a need for co-ordination of Commonwealth, State and Territory involvement with PBCs and discussions between the States and Territories and the Commonwealth regarding their respective responsibilities for PBCs.

PBCs at the national meeting requested State and Territory based meetings where State and Territory potential funding sources could be identified and partnerships between PBCs and State and Territory Governments encouraged.

### **8.2 Other Commonwealth Government Programs**

The PBC Reform Report identified a range of Commonwealth Government Departments programs that PBCs may potentially access to build capacity, obtain training, and develop partnerships or progress specific projects. The list was attached to AGD's handout at the meeting and additional information packages and brochures setting out a range of potential PBC funding programs were provided by Commonwealth Government representatives (Attachment 4 provides a list of handouts to the meeting and Attachment 5, a list of power point presentations). Other potential funding sources are discussed under the following section in this report concerning training.

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<sup>28</sup> State and Territory Attorney-Generals met in December 2006 where they agreed to consider PBC establishment and needs.

Whilst much of the funding program information which was provided to the meeting is available on the web sites of relevant Departments, the poor communication resources of many PBCs including limited web access will make it difficult for them to access the information. Funding regimes also often change annually and significant resources are required for PBCs to keep up to date with these changes.

In a number of instances, there appeared to be a severe disparity between the perceptions of presenters as to the effectiveness of their programs and the experiences of PBCs on the ground. This raises the need for further dialogue between government bodies and PBCs as a stakeholder group.

#### *8.2.1 Department of Communications, Information Technology and the Arts (DCITA)*

The meeting was informed of DCITA's Backing Indigenous Ability (BIA) Telecommunications Program which is part of the Connect Australia Package. The Package has a number of elements including the rolling out of community phones, a highly flexible computer/internet package, videoconferencing, training and skills development, and the development of online content such as newsletters and PBC web pages.

Some of the programs are restricted to communities with permanent populations greater than 150, and to the value of \$10,000 per year over three years until June 2010. However, the training and on-line content development is available to communities of any population.

The BIA Program was of significant interest to PBCs from remote areas given their concerns about access to improved communication technology and raised the issue of e-learning which could be of considerable value to PBCs. Ralph Lahey representing DCITA noted that there would be some flexibility in the dates for submissions which closed this financial year on 20 April 2007, and that further funding rounds will be held. Applications have a community consultation requirement.

At the end of Day 1, the presentation by DCITA's Stephen Cassidy concerning Indigenous Languages and Culture Programs also created significant interest in its support for oral histories, on-country visits, the documentation of culture, support for arts and crafts and language centres, and language revival funding.

#### *8.2.2 Department of Employment and Workplace Relations (DEWR) and Indigenous Business Australia (IBA)*

Both DEWR and IBA noted that they have important roles to play in assisting PBCs to improve their economic outcomes through increased employment opportunities and the development of business enterprises.

The meeting was informed that the Australian Government's Indigenous Economic Development Strategy includes twelve key initiatives covering the areas of employment, business development and money and asset management. It was noted that there were four particular initiatives that may be of particular interest to PBCs regarding use of assets including:

- home ownership and business development,

- economic development on land,
- improved returns from Trusts, and
- skills to realise economic outcomes.

The Strategy includes initiatives aimed at improving access to training and support for Indigenous business entrepreneurs and asset and wealth management initiatives. The Strategy looks at reforming CDEP to maximise employment for Indigenous Australians and seeks ways to improve linkages to the Vocational Education and Training Sector. A number of participants at the meeting were concerned about the possible demise of CDEP programs in their areas and the uncertainty surrounding replacement programs. The meeting was informed of the range of assistance DEWR provides to assist employment and pre-employment, DEWR's programs to help Indigenous organisations develop and expand and measures to promote entrepreneurs. PBCs were advised to talk to their local ICC solution brokers about tailoring assistance to meet their needs.

The work of Indigenous Business Australia established by Commonwealth statute is linked to the Indigenous Economic Development Strategy and has four key programs:

- enterprises and business ventures (IBA Enterprises);
- investments for asset building (IBA Investments);
- home ownership (IBA Homes); and
- IBA Partnerships.

IBA's approach employs a commercial model to achieve commercial outcomes, and these in turn can be used to address social objectives and to promote economic independence. In doing so, IBA can offer PBCs:

- training and support for business planning, financial management and appropriate governance structures (once skilled, PBCs can use other IBA programs to realise and develop assets);
- pre-start up business support;
- commercial loans at lower interest rates; and
- ongoing business, mentoring and commercial governance support.

IBA Investments partners with the incorporated client in a joint venture with the private sector to obtain a majority stakeholding. Once the investment and PBC capacity grows, IBA can be bought out of its shareholding. There was some concern at the meeting that PBCs may not have the initial capacity for IBA to be interested in engaging with them.

### *8.2.3 Department of the Environment and Water Resources (DEW)*

The meeting was told how DEW manages key legislation affecting PBCs: the *Environment Protection and Biodiversity Conservation Act 1999*, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, the *Protection of Movable Cultural Heritage Act 1986*, and the *Natural Heritage Trust of Australia Act 1997*. DEW also has an emphasis on environmental

health in remote areas and a network of Indigenous Land Management Facilitators (a list of contacts was handed out at the meeting). DEW's main programs are listed below.

**Indigenous Heritage Program:** This program funds the conservation of Indigenous heritage and is focussed on protection of Indigenous heritage values in a whole-of-government approach.

**Natural Heritage Trust:** The Natural Heritage Trust, administered jointly by the Department of Environment and Water Resources and the Department of Agriculture, Fisheries and Forestry supports Indigenous environmental and natural resource management activities and is associated with Envirofund and Community Water grants.

**Marine Management:** Involves cultural heritage values, co-operative management and cultural and traditional values, particularly of the Great Barrier Reef.

**Environmental health in remote areas.**

**Joint management of national parks.**

**Green Corps programs.** Green Corps is a voluntary Commonwealth environmental training programs designed to give young Australians the opportunity to participate in projects which restore natural environment and heritage and gain accredited and informal on-project training to expand career opportunities. The program is delivered in partnership by Jobs Australia and Greening Australia. Rocky Sainty of the program described how it works in helping rehabilitate land in southern Tasmania.

**Indigenous Protected Areas (IPAs):** IPAs involve the voluntary declaration of areas of land as IPAs for better conservation, biodiversity and cultural heritage outcomes as part of the National Reserve System. IPAs lend themselves to the protection of important Indigenous cultural and historical sites and to the development of cultural awareness – Gunditj Mirring for example, has an IPA over a site which is the focus of a cultural awareness program. A recent evaluation of the IPA program has attracted additional funds and DEW has signed an agreement with ILC for additional funds over the next three years. The meeting was told that a recent survey shows that IPAs have potential for economic development benefits, positive early childhood education outcomes, and reduction in substance abuse and can contribute to strengthening community structures. Indigenous landowners can obtain support to manage their lands for the protection of natural and cultural features and develop strategic plans.

There was significant interest in IPAs at the meeting. There was some concern from those PBCs who already have IPAs as to DEW's responsibility in ensuring they were negotiating with appropriate representatives. Bruce Rose, the Director of Indigenous Land Management, noted that DEW does not do the consultations themselves, and there was some concern that funds are often channelled through NTRBs/NTSPs or land councils, 'bypassing the traditional owners'. The question of whether IPAs can be negotiated when native title interests are shared with non-Indigenous land owners remains to be fully

investigated, though it was indicated to the meeting, that, with the agreement of the parties, this would seem to be possible.

#### *8.2.4 The Indigenous Land Corporation (ILC)*

The Indigenous Land Corporation (ILC) was established via the *Native Title Act 1993* to assist Indigenous Australians to acquire and manage land including pastoral leases and farms to provide social, cultural, economic or environmental benefits for Indigenous Australians. Funding is primarily grants based, with loans provided on occasion, according to circumstances. The ILC provides skills support including in financial management, and will fund governance and other specific project support for PBCs, though not with recurrent funding.

Examples of ILC-funded land management projects provided to the meeting include:

- funding to the Yamatji Land and Sea Council for an economic development officer (a partnership with mining companies, local government and the Western Australian Government);
- capacity development projects and planning initiatives for the Yarnangu Ngaanyatjaraku PBC;
- working closely with Ngarluma PBC including providing assistance with infrastructure on Mt Welcome Station and corporate governance training with the aim of acquiring a town-based office for the conduct of a pastoral business and related employment and training in the Pilbara;
- assisting in the transfer of Lake Gregory and Billiluna pastoral leases in the south east Kimberley to the Tjurabalan Lands PBC; and
- providing various levels of assistance and capacity development for the Karajarri PBC on Frazier Downs, a cattle station south of Broome through the ILC's Kimberley partnership with the Department of Agriculture and Food Western Australia.

The ILC is able to purchase water licences, either when it acquires a property or otherwise, where it considers there are sound business reasons and positive outcomes for Indigenous stakeholders. The meeting was informed that the ILC Board places a significant emphasis on education and employment and training outcomes.

#### *8.2.5 National Native Title Tribunal (NNTT)*

The list attached to the AGD's handout at the meeting notes the NNTT as a potential source of assistance. Although the NNTT does not have funding programs for PBCs, it may be able to assist particularly through its geo-spatial mapping systems by providing PBCs with maps for agreement-making and Future Act processes. The NNTT might also be involved in supporting PBCs in agreement-making processes, in dealing with Future Act determinations and in applications for compensation.

#### *8.2.6 Other Government potential funding sources not represented at the meeting*

Although not represented at the meeting, according to AGD's handout, the Department of Agriculture, Fisheries and Forestry's (DAFF's) National Indigenous Forestry Strategy identifies opportunities for Indigenous people to participate in the growth of Australia's forest and wood products sector.

The Working in Partnership program of the Department of Industry, Tourism and Resources (DITR) is designed to foster better relationships specifically between the mining industry and Indigenous communities through support for regional committees to meet on a regular basis in some of the country's main mining provinces.

The Department of Transport and Regional Services (DOTARS) administers the Regional Partnerships Program aimed at stimulating regional growth through economic and social participation opportunities and improving access to services. Its Sustainable Regions Program relates to ten regions across Australia including the Far North East of New South Wales, the Kimberley, and the Atherton Tablelands, among others.

Investigations are required as to the availability of funding under new climate change and drought water initiatives, including the possibility of partnerships with CSIRO and Land and Water Australia.

### **8.3 The role of ICCs and Solution Brokers**

Most if not all of the Commonwealth Government presenters mentioned the co-ordinating role of Indigenous Coordination Centres (ICCs) as 'one stop shops' which can provide PBCs with information concerning potential funding and assistance in making submissions. The meeting was also repeatedly notified that ICC solution brokers should be the first point of contact (contacts for ICC offices were handed out at the meeting). Some Commonwealth Departments also have their own staff in ICC offices, including dedicated native title officers in Cairns, Perth and Sydney.

Yet, many ICCs appear to be unaware of PBCs and lacking in understanding of the native title context. Participants noted that the quality of services provided by ICCs was highly variable and dependent upon the capacity of regionally based staff and their understandings and knowledge of local situations. It was also unclear as to whether ICCs could assist in identifying State and Territory based Indigenous programs and co-ordinating them with Commonwealth programs.

The ICC has the potential to play an important role in coordinating PBC specific services. A follow-up meeting of presenters at the meeting is planned by AIATSIS to discuss related issues and the future co-ordination of PBC needs.

### **8.4 Partnerships and joint ventures**

PBCs already have a range of partnerships from large to small scale and of varying degrees of success. The Government presentations also revealed significant potential for PBC involvement in other partnerships. PBCs may



also benefit from negotiating Shared Responsibility or Regional Partnership Agreements (SRAs and RPAs) through ICCs.

Whilst there may be a need for PBCs to expand and operationalise partnerships to achieve outcomes, partnerships and joint ventures also require adequate resourcing to ensure their effectiveness including the development of the capacity of PBCs to build partnerships. There is a range of risks in developing partnerships and entering into joint ventures without adequate resources and capacity including:

- additional administrative, planning and management requirements;
- additional relationships to manage;
- unequal partnerships causing discontent;
- the need to have expectations, aims, roles and responsibilities in partnerships clearly defined;
- the potential need for third party arms length assistance in negotiating fair partnerships; and
- the potential loss of PBC independence.

Some of these risks were reflected in comments at the PBC meeting concerning the processes and calculation of returns for PBCs from partnerships. PBCs also raised the need for equity in any native title development agreements.

## **9 PBCs, training and capacity development**

Representatives of ORATSIC (see Attachment 3), of DEST (Neil McLauslan, Branch Manager, Funding and Performance) and of FaCSIA's Indigenous Leadership Development Group Branch (Geoffrey Richardson, Branch Manager) presented to the meeting around training and capacity building issues. Whilst a number of PBCs are seeking nationally accredited training, there is also a need, as one participant noted, for investment in non-accredited training for a range of practical skills such as fixing generators and motor vehicles. Many PBCs have also included various aspects of training and capacity building in native title agreements.

### **9.1.1 ORATSIC**

ORATSIC offers training for Indigenous Corporations and their Directors. Two of these programs are a three-day Introductory Corporate Governance workshops and a Certificate 4 in Business (Governance). ORATSIC also provides non-accredited information sessions on good corporate governance and PBCs may request customised information sessions.

There is a need for the development of a training program which is specifically tailored to the needs of PBCs and to the native title context. Participants also suggested that ORATSIC develop 'Train the Trainer courses' which will facilitate the rolling out of governance training across the country, given

ORAC's limited capacity to satisfy the needs of the existing corporations it services.

### *9.1.2 DEST*

Neil McLauslan noted that training and its delivery is largely a State and Territory responsibility to which the Australian Government contributes around \$1.32 billion per year. PBCs could access Indigenous specific training programs as a part of its 'Skilling Australia's Workforce Initiative' and make use of the Australian Apprenticeships Access Program. Contacts can be made through the local TAFE or State or Territory Education and Training Departments for information on training and Registered Training Organisations can be asked to customise training to PBC needs.

### *9.1.3 FaCSIA's Indigenous Leadership Development Group*

There was significant interest in developing PBC leadership throughout the workshop. FaCSIA's leadership programs are highly participatory and community orientated and include gender specific programs. A premium 10 month program for Indigenous Men's and Youth Leadership is available as well as advanced learning opportunities such as attending overseas forums, Higher Education Contribution Scheme (HECS) Scholarships, and other scholarships and programs specifically targeted to remote Indigenous communities. The focus of the programs is on assisting leaders to care for themselves and supporting Indigenous capacity to deal with their own issues. Courses are held in Canberra and regional centres. Some of the PBC representatives at the meeting were involved in these courses or were completing nationally accredited Certificates 2 or 4 Level courses with the Australian Indigenous Leadership Centre.

## **9.2 Training and Capacity Development Needs**

PBCs emphasised the need to think of training and capacity building outside the 'box', noting that Indigenous views of what constitutes capacity building can differ from those of the mainstream. They emphasised as a high priority the need to support capacity building in cultural initiatives which, given the resources, they might undertake themselves. Such initiatives included on-country teaching of language and the cultural meanings of landscapes and the teaching of local Indigenous languages in schools which were seen to be essential in building self-esteem and in reproducing cultural information.

Participants identified a wide range of capacity building and training needs, a number of which are similar to those which were identified by NTRBs/NTSPs at the NTRB PBC workshop. They related to the following:

- report writing for grants acquittals and preparing tenders and contracts;
- submission writing;
- communications and information technology;
- auditing skills and training needs;

- interpreting;
- financial skills relating to tax, accounting, understanding and using financial statements, for example;
- understanding and using government processes;
- cultural and natural heritage management and preservation, including ranger training;
- developing cultural protocols and cultural awareness programs, including engagement with non-Indigenous people;
- building self esteem and wellbeing;
- developing and delivering cross cultural awareness and engagement training;
- managing technical and archival information;
- non-accredited on the job training;
- participatory community development skills including facilitation, negotiation and mediation;
- interpreting legislation especially in relation to obligations and rights under the NTA and state land rights legislation;
- critical policy interpretation and writing;
- organisational communication; and
- research and project management.

## **10 Strategic Approaches from the PBC Meeting**

Many if not all participants wanted to develop their capacity as legitimate stakeholders and as leaders by:

- developing networks with other PBCs, and engaging in forums to share information and experiences and develop strategic approaches to addressing common issues;
- gaining the support of international forums;
- lobbying directly with governments and influencing policy;
- being engaged in government process such as community consultations;
- developing the profile of PBCs to attract funding and qualified and talented consistent staff; and
- refocussing the debate on compensation and adequately valuing native title.

They recognised the need for PBCs to:

- develop and articulate through strategic plans understandings of what they aimed to achieve as opposed to the expectations of governments;

- map out the roles, functions and responsibilities of PBCs;
- capitalise on the funding opportunities that were available to them including
  - negotiating with NTRBs/NTSPs for funding for 2007/2008; and
  - considering company and trust structures to carry out 'other' business;
- consider innovative alternatives to cash funding such as the donation of buildings or the use of vacant crown land in the PBC area;
- identify options for economic independence including carbon offsetting, water and forestry licences;
- prioritise community consultations;
- develop agreements and partnerships with other bodies (such as with local councils to carry out work contracts); and
- lobby internationally to locate PBC aspirations within international law and other non-Government organisations.

PBC participants suggested that Governments:

- be responsive to the needs of PBCs rather than imposing solutions on them;
- view PBCs more broadly as vehicles to achieve a number of social outcomes and view them as legitimate stakeholders in the community;
- engage with PBCs more directly through consultation, and visit them 'on the ground';
- be more transparent about its goals and objectives in relation to PBCs;
- be transparent about the resources and funding that it is willing to provide;
- create a pool of funding specifically for PBCs;
- respect the sovereignty and independence of PBCs, recognising that PBCs are determined to become effective but that they are disadvantaged at the outset through limited funding and assistance;
- support PBC state based meetings followed by annual national meetings to measure changes;
- recognise that Governments should be responsible for statutory obligations they place on PBCs and fund them accordingly (PBCs are often expected to negotiate agreements with large mining companies without adequate support and expertise to capitalise on potential economic opportunities);
- address the fact that PBCs will exist in perpetuity and will require a secure resource base through their land holdings, rather than having to trade off their land to cover administrative and operational costs;
- give PBCs tax concessions for land rates for their land; and
- appropriately value compensation.

## 10.1 Actions arising

PBCs at the meeting undertook to:

- report the outcomes of the meeting back to their communities;
- review the draft report of the meeting and respond to AIATSIS in a timely manner with comments;
- initiate direct contact with Commonwealth, State and Territories, agencies and ministers;
- negotiate funding arrangements with NTRBs; and
- contact State and Territory offices for details of funding programs specific to their region or area.

AIATSIS undertook to:

- draft the issues, outcomes and recommendations arising from the meeting;
- provide information to PBCs through its publication services;
- assist in developing State interactions with PBCs at the Native Title Consultative Forum; and
- perform case studies and evaluations on current PBCs.

AIATSIS was requested to:

- forward information from this workshop to other Government Departments to inform them about PBCs and their funding requirements.

## 11 Conclusion: the need for co-ordination

The Australian Government policy on native title is outlined in the draft PBC support guidelines as:

*The Australian Government is committed to a fair, stable and effective native title system with a focus on:*

- *whole-of government coordination;*
- *cooperation with stakeholders;*
- *resolving native title issues through agreement where possible; and*
- *the speedier resolution of native title claims.*

There are three key Commonwealth Departments with responsibility for PBCs in the native title regime:

- the Attorney-General has responsibility for the native title system as a whole including responsibility for issues relating to PBCs to ensure that, overall, the native title system works effectively;
- the Minister for Family and Community Services and Indigenous Affairs (FaCSIA) has formal responsibility for parts of the NTA which are relevant to PBCs - decisions about PBC funding, for example - and primary administrative and policy responsibility to oversee the implementation of the recommendations of the Reform Report; and

- the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations has responsibility for ensuring that requirements of the CATSI Act (formerly the ACA Act) are observed.

None of the responsible Departments appear to have staff specifically dedicated to post native title determination PBCs issues. Supporting PBCs also requires co-ordination with a wide range of other Commonwealth and State and Territory Government Departments whose programs might assist PBCs. In order to realise the Australian Government's native title policy, effective co-ordination and co-operation in a whole-of-Government approach is required at all levels of Government. It could be brokered locally through ICCs and include Shared Responsibility and Regional Partnership agreements.

Supporting the goals of PBCs will not only require a 'kick start'. It will also require ongoing commitments from Governments within timeframes longer than one year. Native title negotiations do not conclude at the point of determination and the success of PBCs impacts on the effectiveness of the native title regime as a whole – as indeed does the success of those other Aboriginal corporations which are also engaged in native title work. PBCs need core government funding to meet not only their statutory functions including negotiating Future Acts but to also assist the development of independent Indigenous enterprise and the implementation of agreements.

PBCs are a critical component in the native title system and their success is essential to community relations and broader economic development in towns and in Aboriginal communities. They provide certainty in agreement-making, as they constitute an identifiable negotiating party with whom agreements can be reached. Their ability to expedite development agreements for industry and support economic development is directly related to the resources they have to do so.

There are key risks for industry if PBCs are not appropriately resourced, including increased costs and substantial delays in industry agreement-making. There are also significant issues when third parties who are wishing to make agreements with PBCs are also funding the agreement-making process. PBCs must be free to choose how to engage with third parties to avoid any potential for conflict of interest, pressures to reach agreement, difficulties in arriving at the free prior and informed consent of native title holders and perceptions concerning the integrity of processes.

PBCs at the national meeting, saw themselves as in perpetuity, wanted recognition and identified the need to work on long term solutions to build their capacity to ensure their survival. Many aspire to independence and to becoming sovereign entities, which are capable of achieving tangible and sustainable outcomes for their communities.

PBCs have a sense of urgency about achieving their aims, which is related to their hopes that elders will see some rewards for their hard work on native title issues before they pass away. These aims, as one participant commented, are to realise 'how to convert recognition into ownership', to restore culture and pride, to create business without compromising the environment, and to realise in practice the significance of partnerships, rather than, as another participant commented, 'remain captive to the native title system even after native title is

granted'. PBCs will be here in perpetuity and there is a need for a long term solution and further policy development around the complexities of providing them with support.

## 12 Recommendations

**Recommendation 1:** That AGD and FaCSIA consider the recommendation of PBCs represented at the PBC national meeting that funding be provided directly to PBCs wherever possible.

**Recommendation 2:** That FaCSIA, AGD and ORATSIC consider the provision of assistance to PBCs including dedicated staff members within each agency or within a centralised team who understand PBC structures and needs, and who can:

- simplify and facilitate access to government programs;
- identify funding programs and grants as they arise and advise PBCs re funding opportunities and relevant contacts within government departments; and
- develop policies and programs directed at the needs of PBCs.

**Recommendation 3:** That FaCSIA and/or ORATSIC and/or AGD facilitate or fund the NTRU at AIATSIS to:

- provide opportunities for PBCs to network (eg national meetings and/or attendance at the national native title conference);
- co-ordinate information flow and resources; and
- gather PBC data and develop PBC profiles.

**Recommendation 4:** That FaCSIA develops policy regarding the roles of ICCs in supporting PBCs and their co-ordination of Commonwealth, State and Territory initiatives.

**Recommendation 5:** That FaCSIA provides information to ICCs and other Commonwealth and State and Territory Government Departments concerning the needs, roles and functions of PBCs, noting that the Perth, Sydney and Cairns ICC offices have dedicated native title officers.

**Recommendation 6:** That AIATSIS co-ordinates a follow-up meeting of Government presenters at the PBC meeting.

**Recommendation 7:** That Commonwealth, State and Territory Governments increase consultation with PBCs including the co-ordination of State and Territory, regional and local PBC meetings involving ICCs.

**Recommendation 8:** That NTRBs/NTSPs:

- undertake PBC regional audits to establish their relative needs and priorities;
- organise meetings of PBCs from their regions; and

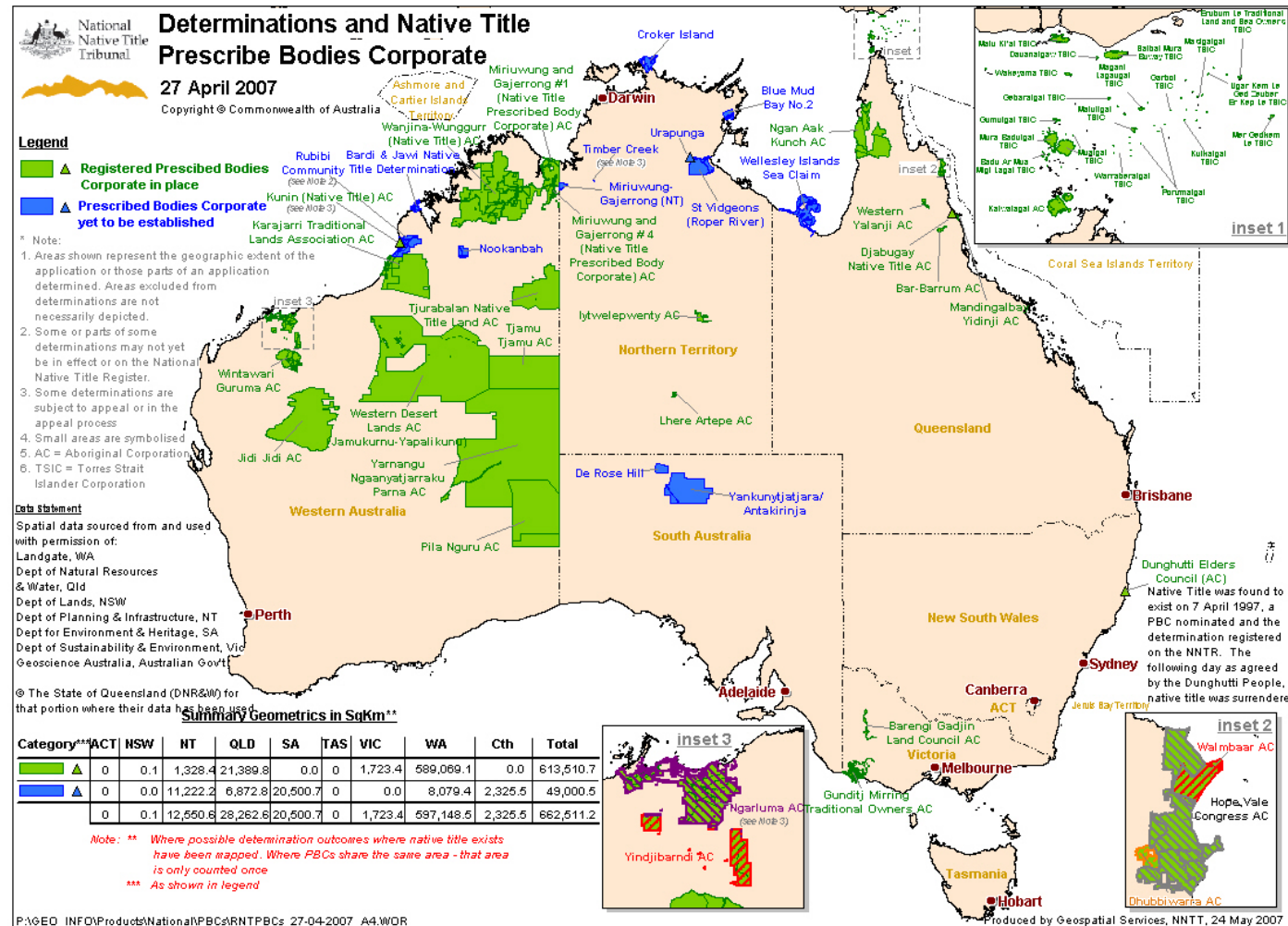
- consider developing Memoranda of Understanding or other formalised agreements with PBCs regarding day-to-day operations and funding processes.

**Recommendation 9:** That FaCSIA considers the need for additional funding for PBCs for their operational requirements including salaried positions and for PBCs to engage proactively with government programs and other stakeholders.

**Recommendation 10:** That Government should not rely upon third party funding/fee-for-service provisions as an alternative to adequate Government funding. PBCs must be free to choose how to engage with third parties to avoid any potential for conflict of interest, pressures to reach agreement, difficulties in arriving at the free prior and informed consent of native title holders and perceptions concerning the integrity of processes.



## Attachment 1: PBC Map



## Attachment 2: Participants List

**Note:** spelling of corporation names follows spelling which is formally registered with ORATSIC.

NAME	POSITION	PBC
<b>WESTERN AUSTRALIA</b>		
<b>KLC</b>		
Donovan Jenkins	Senior Project Officer, Treasurer, Public Officer, and Governing Committee Member	Tjurabalan Native Title Land Aboriginal Corporation TNTLAC
Chris Griffiths	Governing Committee member	Yawoorrong Miriuwung Gajerrong Corporation, MG #1 PBC Governing Committee, MG #4 PBC Governing Committee
Warren Gerrard		Member of the Yawoorrong Miriuwung Gajerrong Corporation, MG #1 PBC, MG #4 PBC and staff member of the Yawoorroong MG Corporation
Joseph (Joe – preferred name) Edgar	Deputy Chair, Karajarri	Karajarri Traditional Lands Association Aboriginal Corporation
<b>YAMATJI</b>		
Alum Cheedy	Public Officer	Yindjibarndi Aboriginal Corporation
<b>NGAANYATJARRA</b>		
Bobby West		Tjambu Tjambu Aboriginal Corporation
Jasmine Campbell	WDLAC Project Manager	Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalinkunu) (Martu and Ngurrara)
Lynn Dunn	Public Officer for WDLAC	Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalinkunu) (Martu and Ngurrara)
Preston Thomas	Governing Committee member	Yarnangu Ngaanyatjarraku Parna Aboriginal Corporation
Tyson Mowarin	Board Member and Treasurer	Ngarluma Aboriginal Corporation
<b>VICTORIA</b>		
Eileen Alberts	Secretary	Gunditj Mirring Traditional Owners Aboriginal Corporation

## NORTHERN TERRITORY

### CLC

Richard James	Public Officer	Patta Aboriginal Corporation
Benedict Stevens (Mparntwe)	Governing Committee Member	Lhere Artepe Aboriginal Corporation
Noel Kruger (Irlpme)	Deputy Chair	Lhere Artepe Aboriginal Corporation
Janet Turner (Antulye)	Governing Committee Member	Lhere Artepe Aboriginal Corporation

## NEW SOUTH WALES

Dianne Torrens		Githabul PBC
Yvonne Stewart		Arakwal People (alternative name is Byron Bay Bundjalung People)

## QUEENSLAND

### TSRA

David Bosun	Chairperson	Mualgal (Torres Strait Islanders Corporation)
Enid Tom		Kaiwalagal Aboriginal Corporation
Simeon Baluz	Committee Member	Gebaragal PBC
Richard Newie	Committee Member	Gebaragal PBC

### NQLC

Warland (preferred name Tommy) Brim	Chairperson	Djabugay Native Title Aboriginal Corporation
John Wason	Chairperson	Barbarrum Aboriginal Corporation
Patrick (Danny – preferred name) OShane	Public Officer	Western Yalanji Aboriginal Corporation

### CYLC

Phyllis Yunkaporta	Governing Committee Member	Ngan Aak Kunch Aboriginal Corporation (Wik)
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### Attachment 3: Government representatives at the meeting

Department	Section	Title
<b>Department of Family and Community Services and Indigenous Affairs</b>		
Greg Roche	Land Branch	Assistant Secretary
Geoffrey Richardson	Indigenous Leadership Development Group	Branch Manager
Rebecca-Bigg-Wither	Land Branch	Senior Legal Officer
<b>Attorney-Generals Department</b>		
Iain Anderson	Legal Services and Native Title Division	First Assistant Secretary
Julia Galluccio	Native Title Unit	Legal Officer
<b>Office of Register of Aboriginal and Torres Strait Islander Corporations</b>		
Toni Matulick	Capacity Development Branch	Deputy Registrar
Joe Mastrolembo	Regulation and Incorporation Branch	Deputy Registrar
Tammy Pemper	Regulation and incorporation support services	Project Officer
Sayuri Piper	Legislation and Policy	Acting Senior Legislation and Policy Officer
<b>Department of Communication Information Technology and the Arts (DCITA)</b>		
Louise O'Neal	Strategic Development and Regional Division, Indigenous Telecommunications Services	Assistant Manager
Ralph Lahey	Strategic Development and Regional Division, Indigenous Telecommunications Services	
Stephen Cassidy	Indigenous Languages and Culture	Manager
Isobelle Watts	Strategic Development and Regional Division, Indigenous Telecommunications Services	Administrative Officer
<b>Department of Environment and Water Resources</b>		
Bruce Rose	Indigenous Land Management	Director
Rocky Sainty	Green Corps Program	

**Natural Heritage Trust**

Julia Curtis	Australian Government Natural Resource Management Team	Policy Liaison
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**Department of Employment and Workplace Relations (DEWR)**

Jasmine Fielder	Indigenous Economic Development Implementation and Policy Team	Director
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**Department of Education Science and Training (DEST)**

Neil McAuslan	Funding and Performance	Branch Manager
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**Indigenous Land Corporation (ILC)**

Allan Padgett

**Indigenous Business Australia (IBA)**

Kaely Woods	Policy & Partnerships	Assistant General Manager
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**Observers**

Greg Marks	FaCSIA	Consultant
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Lisa Corbellini	Office of Native Title, WA Govt	Senior Policy Officer
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## **Attachment 4: List of documents circulated to the meeting**

### **Attorney- General's Department (<http://www.ag.gov.au/nativetitlesystemreform>)**

- *Prescribed Bodies Corporate reforms and the role of the Attorney-General's Department ( including Attachment: existing sources of assistance for Prescribed Bodies corporate)*
- [\*Structures and Processes of Prescribed Bodies Corporate\*](#)
- *Structures and Processes of Prescribed Bodies Corporate Summary of Recommendations*

### **Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)**

#### [Native Title Research Unit](http://ntru.aiatsis.gov.au/) (<http://ntru.aiatsis.gov.au/>)

- *Table of Abbreviations*
- *Participants Contacts List*
- *Registered Native Title Bodies Corporate Contact Details List*
- *Registered Native Title Bodies Corporate Toolkit (Draft) February 2007*
- *New South Wales Registered Native Title Bodies Corporate Toolkit (Draft) February 2007*
- *Northern Territory Registered Native Title Bodies Corporate Toolkit (Draft) February 2007*
- *Queensland Registered Native Title Bodies Corporate Toolkit (Draft) February 2007*
- *Victoria Registered Native Title Bodies Corporate Toolkit (Draft) February 2007*
- *Western Australia Registered Native Title Bodies Corporate Toolkit (Draft) February 2007*
- *Native Title Research and Access Service*

#### [Indigenous Facilitation and Mediation Project](http://ntru.aiatsis.gov.au/ifamp/index.html) <http://ntru.aiatsis.gov.au/ifamp/index.html>)

- *Finding Training Solutions in Indigenous Decision-Making and Conflict Management: A Resource Guide for Native Title Representative Bodies Information Flyer*

(see [http://ntru.aiatsis.gov.au/ifamp/research/pdfs/Training%20Resource%20Guide\\_Part%201.pdf](http://ntru.aiatsis.gov.au/ifamp/research/pdfs/Training%20Resource%20Guide_Part%201.pdf) and [http://ntru.aiatsis.gov.au/ifamp/research/pdfs/Training%20Resource%20Guide\\_Part%202.pdf](http://ntru.aiatsis.gov.au/ifamp/research/pdfs/Training%20Resource%20Guide_Part%202.pdf))

## **Department of Communications, Information Technology and the Arts (DCITA)**

[Indigenous Programs and Services](http://www.dcita.gov.au/indigenous_programs) ([http://www.dcita.gov.au/indigenous\\_programs](http://www.dcita.gov.au/indigenous_programs))

- Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts. [\\$36.6 million to improve Indigenous telecommunications](#). Media release 23 February 2007.

### [Backing Indigenous Ability](#)

- Backing Indigenous Ability Telecommunications Program: *Fact Sheets*
  - [BIA telecommunications program fact sheet \(File size: 17Kb\)](#)
  - [Element 2—Internet access fact sheet \(File size: 15Kb\)](#)
  - [Element 3—Videoconferencing fact sheet \(File size: 15Kb\)](#)
  - [Element 4—Training and skills development fact sheet \(File size: 15Kb\)](#)
  - [Element 5—Indigenous online content fact sheet \(File size: 15Kb\)](#)
  - [Element 6 —Regional Agents fact sheet \(File size: 9Kb\)](#)
- [Backing Indigenous Ability Telecommunications Program: Guidelines for Applicants](#)
- [Backing Indigenous Ability Telecommunications Program: Application form](#)

Indigenous Arts & Culture Program: *Indigenous arts, culture and language programs assist communities to keep their culture strong*

(see [http://www.dcita.gov.au/indigenous\\_programs/arts\\_culture\\_and\\_languages](http://www.dcita.gov.au/indigenous_programs/arts_culture_and_languages))

## **Department of Education, Science and Training (DEST)**

([http://www.dest.gov.au/sectors/indigenous\\_education/](http://www.dest.gov.au/sectors/indigenous_education/))

## **Department of Employment and Workplace Relations (DEWR)**

(<http://www.dewr.gov.au/dewr/>)

- [Indigenous Employment and Business Opportunities](#)
- [What are Structured Training and Employment Projects \(STEP\)?](#)
- [What is a Corporate Leader for Indigenous Employment?](#)

## **Indigenous Business Australia (IBA)**

(<http://www.iba.gov.au/>)

- *Your In to Greater Opportunities*  
(see <http://www.iba.gov.au/>)

- *Business Proposal Assessment*  
(see <http://www.iba.gov.au/ibainvestments/assessmentprocess/>)
- [\*IBA Partnerships: Indigenous Partnerships\*](#)
- [\*IBA Enterprises: Indigenous Business Assistance\*](#)
- [\*IBA Investments: Indigenous Equity and Investments\*](#)
- *Live in Your Own Home: Fair and Affordable Indigenous Home Finance*  
(see <http://www.iba.gov.au/files/IBAHomesBrochure.pdf>)
- *Property, Insurance & Other Services*
- *Construction, Mining & Transport*
- *Tourism*
- *Agriculture, Forestry & Fisheries*  
(see <http://www.iba.gov.au/ibainvestments/investmentportfolio/> for all of the above)

### **Department of Environment and Water**

(formerly Department of Environment and Heritage: <http://www.environment.gov.au/>)

- *Facilitators Database*
- [\*Indigenous Protected Areas Newsletter 3\*](#)
- [\*Natural Resource Management Facilitator Network: Factsheet\*](#)
- [\*Natural Resource Management Facilitator Network: Regional Facilitators Contact Details\*](#)
- [\*Australian Government Facilitators: Contact Details\*](#)

### **Department of Families, Community Services and Indigenous Affairs (FaCSIA)**

(<http://www.facsia.gov.au/>)

- *National Indigenous Leadership Programs 2007 Welcome & Introduction*  
(see [http://www.oipc.gov.au/programs/Indigenous\\_Leadership\\_Programs/default.asp](http://www.oipc.gov.au/programs/Indigenous_Leadership_Programs/default.asp))

### **Office of Indigenous Policy (<http://oipc.gov.au/>)**

- *Contacts for Indigenous Coordination Centres*  
(see <http://www.indigenous.gov.au/icc/contact.html>)



### **Minerals Council of Australia**

(<http://www.minerals.org.au/>)

- [\*National Press Club Address 4 April 2007\*](#) by Mitchell H. Hooke, Chief Executive Officer, Minerals Council of Australia  
(see also [Transcript: National Press Club Address - 4th April 2007 \(pdf:254kb\)](#))

### **National Library of Australia**

(<http://www.nla.gov.au/>)

- *Community Heritage Grants*  
(see <http://www.nla.gov.au/chg/>)

### **National Native Title Tribunal (NNTT)**

(<http://www.nntt.gov.au/>)

- *Determinations and Native Title Prescribed Bodies Corporate Map* (March 2007)
- [\*Guide to Sources of Assistance and Funding for Prescribed Bodies Corporate\*](#) January 2007.

### **Office of the Registrar of Aboriginal and Torres Strait Islander Corporations (ORATSIC)**

(<http://www.ORATSIC.gov.au/>)

- [\*Get in on the Act: a guide to the start of the Corporations \(Aboriginal and Torres Strait Islander\) Act 2006\*](#)
- [\*Who we are, what we do\*](#)
- [\*Fact sheet: What's in the corporation's rule book?\*](#)
- [\*Fact sheet: Native title\*](#)
- [\*Fact sheet: The Bill and the review – some differences\*](#)
- [\*Fact sheet: Duties of directors and other officers\*](#)
- [\*Fact sheet: What the Bill means for funding bodies\*](#)
- [\*Fact sheet: Arrangements for corporations to move to the new CATSI Act\*](#)
- [\*Fact sheet: The Bill and the ACA Act – some differences\*](#)
- [\*Fact sheet: The CATSI Act and the Corporations Act – some differences\*](#)
- [\*Terms of Reference: ORATSIC's contribution to AIATSIS research program 'Building capacity in native title communities'\*](#)

**Tasmanian Aboriginal Land and Sea Council Green Corp Team**

- *Project Outlines and Work Schedule*

**Yawoorroong Miriuwung Gajerrong Aboriginal Corporation**

- *PBC Conference presentation*

**Indigenous Land Corporation**

(<http://www.ilc.gov.au/site/page.cfm>)

**Department of Transport and Regional Services**

(<http://www.dotars.gov.au/>)

**Land and Water Australia**

(<http://www.lwa.gov.au/>)

**CSIRO**

(<http://www.csiro.au/>)

**Department of Industry Tourism and Resources**

(<http://www.industry.gov.au/>)

**Department of Agriculture, Fisheries and Forestry**

(<http://www.daff.gov.au/>)

## **Attachment 5: List of power points presented to the meeting by Commonwealth Government representatives**

*Backing Indigenous Ability 2007*, Department of Communications, Information, Technology and the Arts presentation to the National Meeting of Prescribed Bodies Corporate. 13 April 2007. Hotel Heritage, Canberra.

Jasmine Fielder and Kaely Woods 2007 *Supporting Indigenous Economic Development* Department of Employment and Workplace Relations and Indigenous Business Australia presentation to the National Meeting of Prescribed Bodies Corporate. 13 April 2007. Hotel Heritage, Canberra.

Neil McAuslan. 2007. *Commonwealth Government Investment in Training*. Department of Education, Science and Training presentation to the National Meeting of Prescribed Bodies Corporate. 12 April 2007. Hotel Heritage, Canberra.

Greg Roche, 2007 *Resources and PBCs*, Department of Families, Community Services and Indigenous Affairs presentation to the National Meeting of Prescribed Bodies Corporate. 12 April 2007. Hotel Heritage, Canberra.

*Indigenous Protected Areas, 2007*, Department of the Environment and Water Resources presentation to the National Meeting of Prescribed Bodies Corporate. 13 April 2007. Hotel Heritage, Canberra.

Rocky Sainty 2007, *Green Corps*, Southern Channel Indigenous Land Management Team presentation to the National Meeting of Prescribed Bodies Corporate. 13 April 2007. Hotel Heritage, Canberra.

Rocky Dainty, Bruce Rose, Brian Prince and Julia Curtis 2007 *Working with Indigenous Australia: Land Management and Heritage Conservation* Department of Environment and Water Resources presentation to the National Meeting of Prescribed Bodies Corporate. 13 April 2007. Hotel Heritage, Canberra.