Facilitation and Assistance Policy

COMMENCEMENT OF POLICY

This Policy commences from 31 July 2018. It replaces all other policies and procedures in relation to the facilitation and assistance functions of the TSRA whether written or not.

POLICY VERSION AND REVISION INFORMATION

Current Version: Version 1
Review Date: September 2022

Policy Authorised by:

[Signature]
Chief Executive Officer
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PART 1 — INTRODUCTION

1.1 Introduction

(1) The Torres Strait Regional Authority ("TSRA") is the Native Title Representative Body (NTRB) for the Torres Strait area. The TSRA's legislative functions are set out in section 203B of the Native Title Act 1993 (Cth) ("the Act"), which includes its facilitation and assistance functions.

(2) An NTRB may only perform its facilitation and assistance functions if requested to do so.

(3) However, an NTRB may continue to perform its dispute resolution functions under section 203BF without being asked.

1.2 Powers of the Representative Body

(1) As the representative body for the land and waters in the Torres Strait, the TSRA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) The TSRA may:

(a) research and prepare native title applications and to facilitate research into, preparation of and making of native title applications;

(b) assist registered native title bodies corporate, native title holders and persons who may hold native title in consultations, mediations, negotiations and proceedings relating to the following:

(i) native title applications;

(ii) future acts;

(iii) indigenous land use agreements or other agreements in relation to native title;

(iv) rights of access conferred under this Act or otherwise;

(v) any other matters relating to native title or to the operation of this Act.

(3) Section 203BK(2) of the Act enables the TSRA to enter into arrangements and contracts to obtain services to assist in the performance by the representative body of its functions.

1.3 Policy Purpose

The purpose of this Policy is to guide the TSRA when making decisions about applications seeking assistance from the TSRA, but does not derogate from the Act. If this Policy is inconsistent with the Act, the Act prevails.
1.4 Resource issues

(1) The TSRA receives funding to enable it to perform service delivery responsibilities as a representative body under the Act. Such funding is project based. In expending that money the TSRA is bound by the funding conditions it receives its funding from and the provisions of the Act.

(2) The TSRA must make decisions as to which applications in relation to native title it will proceed with in any given financial year. This must be set out in an operational plan and associated budget. Therefore the TSRA has developed a process through which applications can be made and criteria against which applications can be assessed.

(3) Assistance will not be provided by the TSRA in the form of a grant, even where the applicants do not wish to be represented by the TSRA. Rather, the TSRA will provide advice, services and support to applicants or, in exceptional circumstances, meet the costs incurred by the applicant's representative as agreed between the applicant and the TSRA.

1.5 Resolution of conflict among claimants

(1) As the representative body, the TSRA represents all Aboriginal and Torres Strait Islander People in the region and must impartially seek just outcomes to fulfil that role.

(2) Therefore, it is a general policy of the TSRA that assistance for the lodgement or further advancement of native title matters may not be made available in cases where there are outstanding disputes between the native title holders or persons who may hold native title. Prior to offering assistance for a native title matter, the TSRA will offer to mediate in any such dispute where appropriate.

(3) Resolution will be attempted by any reasonable means agreed to by the parties involved. Assistance may be provided for the purposes of mediation and investigation to resolve disputes.

(4) If there is a dispute between the native title claimants, then applications for assistance may be asked to make an undertaking that they will participate in good faith in any mediation or arbitration which may be taken to resolve the conflict between the groups.

(5) Participation in mediation or arbitration may be a condition of giving assistance to resolve the dispute about native title matters.

1.6 Assistance to individuals

(1) Since native title is a communal or group title, it is TSRA's policy that native title claims should be brought by the common law native title holders as a group. It will therefore only be in rare cases where the TSRA will bring in an application on behalf of an individual (for instance, where only one native title holder survives). The TSRA will have consideration to the number of people who could benefit from a native title determination when prioritising applications for assistance.
1.7 Definitions

In this Policy, the following definitions apply:

**Act** means the *Native Title Act 1993*.

**applicant** means an entity or group that applies for funding, or on whose behalf an application for funding is made.

**application** means an application for assistance made under section 203BB(4) of the Act.

**complete application** see section 13.

**decision maker** means the CEO, or a person delegated by the CEO to authorise the provision of Assistance under the Act.

**disbursements** means amounts of money paid by the representative body to the body or person for the purpose of legal assistance and includes, but is not limited to, the following:

(a) Fees in relation to initiating or taking a step in a legal action;
(b) Fees for the preparation of expert opinions;
(c) Travel expenses (other than travel expenses mentioned in paragraph 9f);
(d) Fees for obtaining copies of reports and records;
(e) Fees charged for the provision of transcripts from courts;
(f) Fees charged by interpreters;
(g) Any other item contained within the assessment of costs document.

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**PART 2 — HOW FACILITATION AND ASSISTANCE IS PERFORMED**

2.1 How facilitation and assistance is performed

(1) In performing its facilitation and assistance functions under the Act, the TSRA must:

(a) Perform its facilitation and assistance functions in relation to a matter that relates to land or waters that:
   (i) are wholly within the area for which the body is the representative body; or
   (ii) are partly within that area.

(b) Give priority to the protection of the interests of existing native title holders;
(c) Act in a way that promotes an orderly, efficient and cost-effective process;

(d) consult with any body or person who holds or may hold native title over the area.

2.2 Consent required if matters relate to same land or waters

(1) If the TSRA represents another party in the proceeding, dispute or issue, the TSRA may only represent a different party if consent is given from the person who is being represented by the TSRA.

(2) If consent is not given under sub-section (1), the TSRA may provide funding to the body or person to obtain independent assistance.

2.3 Conditions of funding

(1) Funding provided by the TSRA to a third party, will only be provided subject to conditions relating to:

(a) The purposes for which the money may be spent;

(b) The period within which the money is to be spent;

(c) The acquittal of money spent;

(d) The giving of information relating to the expenditure of the money, including the production and publication of financial statements; and

(e) The appointment of a person, in cases where TSRA considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds provided, otherwise than in accordance with the conditions of the funding;

(f) The third parties continuing satisfactory performance of its functions and continuing compliance with the terms of the funding agreement; and

(g) The giving of information relating to the performance of the third party's functions and its compliance with the Act.

(2) The provision of funding, is subject to a condition that if:

(a) TSRA's recognition as a representative body, at any stage, is withdrawn under section 203AH; and

(b) The withdrawal takes effect during the period for which funding is provided:

(i) the funding grant will end;

(ii) any funding uncommitted at that date will not be paid and any funding paid that is uncommitted must be returned.
2.5 Excluded Costs

(1) In these guidelines, a cost is an excluded cost if it is any of the following:

(a) Compensation for loss of earnings due to time spent in preparing for, or appearing in, legal action;

(b) Compensation for costs (including legal representation costs) incurred by an applicant to make an Application or to review a decision of the TSRA;

(c) Compensation for costs (including legal representation costs) incurred by a funding recipient in dealing with TSRA in relation to the Application;

(d) Compensation for costs incurred in the preparation of an itemised bill of costs;

(e) Giving an indemnity for costs that may be awarded against the funding recipient;

(f) Travel for the purposes of participating in legal action in person unless attendance is reasonably required by an entity presiding over the action;

(g) Living expenses;

(h) Filing fees for courts in jurisdictions where the court is able to waive all or part of the filing fee;

(i) A fee paid to a legal practitioner in advance to secure the legal practitioner to act on the funded body or person's behalf (whether or not it is described as a retainer).

PART 3 — APPLICATION PROCESS

3.1 Application must be in accordance with the selection criteria

(1) A decision maker must not authorise the provision of assistance unless the application for the provision of the assistance is made in accordance with the selection criteria as outlined in this document.

3.2 What assistance is available

(1) Applicants may apply for the following assistance:

(a) Research - To research and prepare native title applications, and to facilitate research into, preparation of and making of native title applications;
(b) Assistance to Registered Native Title Bodies Corporate, Native Title Holders and Persons - To assist registered native title bodies corporate, native title holders and persons who may hold native title (including by representing them or facilitating their representation) in consultations, mediations, negotiations and proceedings relating to the following:
   (i) Native title applications;
   (ii) Future acts;
   (iii) Indigenous land use agreements or other agreements in relation to native title;
   (iv) Rights of access conferred under this Act or otherwise;
   (v) Any other matters relating to native title or the operation of this act.

(c) Facilitate the representation of a body or person by providing funding for legal costs, or other reasonable costs.

3.3 Application Requirements

(1) A decision maker may refuse to consider an application that is not a complete application.

3.4 What is a complete application

(1) An application is a complete application if the application is:
   
   (a) Made in writing using the application form provided by the TSRA; and
   
   (b) Submitted to the TSRA electronically (including by online lodgement when available), by mail to the following address:

       Torres Strait Regional Authority
       46 Victoria Parade,
       PO Box 261
       Thursday Island QLD 4875

   (c) The applicant has completed all questions on the application form; and
   
   (d) The applicant has addressed each of the selection criteria.

3.5 Responsibilities of applicants

(1) An applicant has the following responsibilities:

   (a) To give honest and accurate information, that is not misleading, in an application and to a decision maker when required;

   (b) To tell the decision maker if the circumstances of the applicant change before the decision maker makes a decision on the application, if the change may affect the application.
(c) The decision maker may refuse to consider an application if:

(i) the application contains dishonest, inaccurate or misleading information, or
(ii) the circumstances of the applicant change in a way that may affect the application and the applicant does not tell the decision maker of the changed information.

3.6 Eligibility for assistance

(1) Assistance may only be provided to registered native title body corporates, native title holders and persons who may hold native title.

3.7 Request for further information

(1) A decision maker may, by notice in writing, request that an applicant provide any information, within the period specified in the notice, that the decision maker reasonably requires to enable the decision maker to decide the application.

(2) If the information is not provided to the decision maker within the specified period, the decision maker may refuse the application without further consideration.

3.8 Consent to obtaining, disclosing and using further information

(1) By making an application an applicant consents to a decision maker disclosing information in the application to, or obtaining information from, any of the following persons:

(a) An agency;
(b) An organisation that provides legal aid;
(c) A relevant industry body;
(d) The applicant's legal practitioner;
(e) A legal practitioner not associated with the matter to which the application for legal assistance relates;
(f) Another body or person as reasonably required in order for the decision maker to make an informed decision for the purpose of performing functions relating to the provision of assistance in relation to the application.

3.9 Notice of Decision

(1) The decision maker must, not later than 28 days after the receipt of the complete application, give the applicant, or the entity that applied on behalf of the applicant, written notice of the decision maker's decision.
(2) The notice must:

(a) include information about how the applicant may seek a review of the decision; or

(b) enclose a copy of the funding agreement to be signed by the applicant.

### 3.10 Making a decision on an application

(1) A decision maker must decide whether or not to authorise the provision of assistance and what form that assistance will take in relation to a complete Application.

(2) In deciding whether to authorise the provision of assistance, the decision maker must have regard to the following matters:

(a) Whether the authorisation of the provision of the assistance is reasonable in all the circumstances;

(b) The likely cost of the legal action;

(c) The number and relative merits of other applications for assistance;

(d) Whether the applicant is authorised by a group;

(e) Whether the applicant's interests are capable of being protected by other parties to the proceedings;

(f) Whether the applicant's participation will enhance the prospects of mediated outcome;

(g) The legal considerations, which include but are not limited to the following:
   (i) the prospects of success of the legal action;
   (ii) whether the parties have taken genuine steps to resolve the dispute before initiating proceedings;
   (iii) whether the party has been found by a court to be a vexatious litigant.

(h) Whether it would be consistent with priorities determined by the TSRA under paragraph 203B(4)(a) of the Act to provide the assistance sought;

(i) Whether, to provide the assistance sought, the TSRA would need to allocate or re-allocate resources in a way that interferes with the efficient performance of its functions.

(j) Whether the TSRA would breach a condition imposed under section 203CA of the Act if the TSRA were to provide assistance.

(k) If the assistance sought was in relation to an application under section 61 of the Act:
(i) whether the provision of that assistance could promote an orderly, efficient and cost effective process for making such applications;

(ii) in the case where one or more other applications have been made or are proposed to be made in relation to the land or waters over the Application, whether the provision of assistance would be reasonable given the requirement to minimise the number of applications covering the land or waters.

(i) The views of any other registered native title body corporate, native title holders or persons who may hold native title who are affected by the matter.

(m) Whether the Court requires the applicant's participation.

(n) Any other relevant information to the making of the decision.

(3) The decision maker may decide the weight that should be given to each matter relevant to the circumstances of the case.

(4) The decision maker may authorise the provision of assistance to an applicant who does not meet the requirements of this part only if:

(a) the decision to authorise the provision of the assistance is reasonable; and

(b) there are exceptional circumstances.

(5) In determining the prospects of success of the legal action, matters to which the decision maker may have regard include, but are not limited to, the following:

(a) whether a party to the legal action has a reasonable case to argue;

(b) whether the legal action is fanciful or raises only speculative arguments.

(6) In deciding whether to authorise the provision of assistance, the decision maker may have regard to an opinion from Counsel, a solicitor and the views of a relevant government organisation, including the National Native Title Tribunal.

3.11 Priority of applications for assistance

(1) In addition to available funding and the matters listed in clause 3.10, the decision maker will give higher priority to an application which satisfies a greater number of the following criteria:-

(a) the areas sought to be claimed are subject to development pressures;
the applicants do not have secure land tenure to the land they wish to claim (for example, a lower priority will generally be given to applications where the applicants have secure tenure such as a pastoral or 99 year lease);

the claim raises test case issues (a test case that is a case that will, when and if a determination is made, decide and clarify issues that might affect other native title claims). In general, applications will be given priority where this is the case. However where a test case covering the same legal issues as those raised by the application is already before the Court, it may be considered more prudent to await a decision of the Court before considering the implication further;

the applicant group includes people whose availability as witnesses is at risk as a result of their age or state of health;

there are legislative changes pending which may adversely affect the claim;

a substantial number of people will benefit from the successful outcome of the claim or negotiations;

the applicants have negotiated in good faith with other people who assert native title interests in the area sought to be claimed by the applicants;

disputes among claimants have been satisfactorily resolved;

the claim area does not overlap with any existing claim and the applicants are not already part of a larger claimant group for which assistance has been granted by the TSRA;

if assistance is not provided, there is little potential impact on native title rights and interests;

the likely outcome will promote or improve the relationship between Aboriginal and Torres Strait Islander claimant groups and people and other interested parties;

the land tenure research completed to date does not indicate widespread extinguishment of native title over the area claimed;

the relevant area is subject to (or to be subject to) non-claimant application(s); and

there are other matters which the TSRA considers gives grounds for assigning priority to the application.

Where the request for assistance relates to a compensation application, a higher priority will be given to an application which satisfies a greater number of the following criteria:-

(a) the issue where valuation of native title rights and interests have been clarified;
(b) there has already been a determination of native title for any or all of the area concerned; and

(c) there is any other matter which the TSRA considers give grounds for assigning priority to the application.

3.12 Assistance to decision maker

(1) In the ordinary course, applications for assistance and their priority will be assessed, and report and recommendations prepared by the Principal Legal Officer of the TSRA with input from other TSRA staff as appropriate.

(2) Where the Principal Legal Officer is the solicitor on record for, or otherwise involved in the conduct of a matter which concerns or relates to the matter in respect of which an application for assistance is made, or where any other actual or potential conflict of interests exist, the application will be considered at the first instance by an independent legal practitioner that the decision maker, acting reasonably, appoints.

(3) The decision maker will ensure that any independent legal practitioner appointed is briefed with all the relevant information to enable them to undertake their assessment and provide their recommendation. In these circumstances the decision maker will also refrain from consulting with or receiving reports from any relevant internal legal staff, including the Principal Legal Officer relating to the merit or otherwise of the application for assistance.

3.13 No assistance for retrospective costs

(1) A decision maker must not authorise the provision of assistance for costs incurred before the date on which the decision maker receives a complete application, except in exceptional circumstances.

3.14 Decision

(1) In making the decision, the decision maker will consider the report and recommendations prepared in accordance with clause 3.12 but will not be bound by them. The decision maker may seek any other advice considered necessary or appropriate before making their decision.

(2) The applicants will be informed in writing of the decision regarding the application. Applications may be:

(a) rejected outright;

(b) deferred pending further information and advice being obtained;

(c) accepted (conditionally, partially or otherwise).

(3) If the decision maker decides to accept the request, conditionally, partially or otherwise, then the applicants will be informed in writing as to the terms of the conditions (if any) of the assistance to be provided by the TSRA.
(4) If the decision maker decides to reject or defer the application, then if requested, written reasons for the decision will be supplied within 30 working days of the decision.

3.15 Review of decisions

(1) An applicant may apply for an internal review of any decision made under this Policy.

(2) The internal review process that must be followed is published on the TSRA's website in accordance with section 203BI of the Act.

(3) If the decision of the decision maker is not to assist the applicant and an internal review was sought in relation to that decision, the applicant may apply to the Secretary of the Department under section 203FB of the Act for an external review.

3.16 General terms and conditions for successful applicants

(1) Successful Applicants are required to execute a funding agreement that is appropriate and matches the level of funding provided. Agreements will detail conditions of funding including:

   (a) Review procedures;

   (b) The time frame for funding;

   (c) The grant amount and payment schedule.

(2) The TSRA will not provide successful applicants with funds until they have complied with all requirements, terms and condition outlined in their funding agreements.
Application for the Performance of Facilitation and Assistance Functions – Section 203BB of the *Native Title Act 1993* (Cth)

The Torres Strait Regional Authority as a representative body must not perform its facilitation and assistance functions in relation to a particular matter unless it is requested to do so.

If this form is submitted, it is taken that the Applicant has made a request for TSRA to perform its facilitation and assistance functions.

This form also requires the Applicant to specify the assistance sought and the reasons for that assistance. Assistance that can be obtained is stipulated in the *Native Title Act 1993* (Cth). The “Facilitation and Assistance Policy” ("Policy") dated 30 May 2018 and the “Application for Financial Assistance – Costs” document dated 30 May 2018 should also be considered when making an application, which can be found on the TSRA’s website.

Questions on this form must be answered in full. Please do not cross-reference answers provided in a previous application form, as these will not be considered by the TSRA.

**GENERAL INFORMATION**

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<td>1.</td>
<td>Name and address of applicant (individual, name of applicant group or organisation):</td>
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<td>Applicant’s solicitor’s name:</td>
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<td>Contact address:</td>
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<td>Telephone:</td>
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<td>6.</td>
<td>Is the application for a registered native title bodies corporation, native title holder or persons who may hold native title?</td>
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<td>□ Registered Native Title Bodies Corporate Name:</td>
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<td>□ Group Application You must provide full details of the group, the person who represents the group and whether all members of the group are native title holders or may hold native title over the affected area.</td>
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<td>□ Sole Applicant Name:</td>
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INFORMATION ABOUT ASSISTANCE SOUGHT

7. If the assistance is sought in relation to a current native title proceedings, provide the name of the native title proceedings:

8. If there are no current proceedings, what is the area of land for which assistance is sought?

9. Under what subsection of the Native Title Act 1993 (Cth) are you applying for facilitation or assistance?
   - ☐ Subsection 203BB(1)(a) (research and prepare native title applications)
   - ☐ Subsection 203BB(1)(b)(i) (native title applications)
   - ☐ Subsection 203BB(1)(b)(ii) (future acts)
   - ☐ Subsection 203BB(1)(b)(iii) (indigenous land use agreements or other agreements in relation to native title)
   - ☐ Subsection 203BB(1)(b)(iv) (rights to access incurred under the Native Title Act 1993 (Cth) or otherwise)

   You must attach sufficient information regarding the matter for which assistance is sought.

10. At what stage is the inquiry, mediation, proceeding, agreement or dispute?
11. If you are an individual, do you have sole native title rights over the area, and if not, who else may hold native title rights and interests over the area and are they a party to the inquiry, mediation, proceeding, agreement or dispute?

12. Please address the relevant criteria set out in sub-section 3.10 and 3.11 of the Policy.

Note: Applications for funding should address sub-sections 3.10(2)(e), (f), (g), (k) and (m) and provide details of any matters that may affect the priority of the application under sub-section 3.11 (attach a separate page if insufficient space)

13. What has happened in the matter during the past 6 months (for example, the legal of activity allocated by the Courts, nature of any orders made, meeting the mediation outcomes, directions hearing, development agreement).

14. What is anticipated to happen in the proceedings during the next 6 months? (For example, level of activity allocated by the Courts, date of next directions hearing, date/reason for anticipated meetings/mediation, development agreement).
15. If applicable, how does the anticipated workload in question 14 compare with the work done in the past 6 months? (For example, do you expect an increase, decrease or similar workload?)

Cost Estimate if seeking funding

Based on your answer to Question 14, please estimate your anticipated legal costs in relation to the proceedings for the next six months.

You must provide a breakdown of anticipated professional fees, travel disbursements and general disbursements with reference to the Assessment of Costs document, available from the TSRA’s website.

PLEASE ATTACH AN ITEMISED BUDGET TO YOUR APPLICATION
DECLARATION

I, ________________________________ (applicant/solicitor/agent) declare that the information provided in this application is true and correct to the best of my knowledge and belief. I agree:

- that the TSRA may obtain information about the application/proceedings (including a legal opinion) from other government or industry bodies or from the applicant’s solicitor;
- that the TSRA may disclose information in the application or information obtained from the applicant to another applicant or government or industry body for the purposes of deciding whether to authorise assistance; and
- to adhere to the general terms and conditions of the Policy if a grant of assistance is approved as a result of this application.

Signed: __________________________________________

Dated: __________________________________________

Please submit this application via email to [INSERT EMAIL ADDRESS]

The TSRA does not require a hard copy. Please advise the TSRA on [INSERT PHONE NUMBER] if you do not have access to email.

Only complete applications will be accepted and processed. Your application will be deemed incomplete if:

- any relevant questions are not answered, or are only partially answered; and/or
- the required supporting documentation is not provided.
Application for Financial Assistance

Assessment of Costs

May 2018

1. Introduction

1.1. This document applies to the assessment of costs relating to a request for assistance from the Torres Strait Regional Authority ("TSRA") where the TSRA has determined that it is appropriate to facilitate the representation of the body or person by a person other than the TSRA.

1.2. This document is used to determine whether the estimated costs, and the costs claimed under grants of financial assistance are reasonable. Regard is also given to the terms and conditions that apply to each individual grant of assistance, and the provisions of the Policy.

2. Solicitor Fees

2.1. Solicitor fees are payable at an hourly rate of $290 (inclusive of GST) to be billed in 6 minute units.

2.2. The solicitor hourly attendance rate of $290 is inclusive of the following:-

2.2.1. attendances that require the skill of a lawyer (including attendances in conference, by telephone, on Counsel, appearing in Court and instructing in Court);

2.2.2. reading documents whether in printed form or otherwise (including letters, emails, text messages and instant messaging); and

2.2.3. preparation of documents, which includes letters, emails, text messages and instant messaging. The solicitor charge for preparing a document is inclusive of typing, printing, posting, faxing and emailing, and any other administrative task relating to the preparation or transmission of that document;

2.2.4. assistance for an attendance for the preparation of a file note, memorandum or report may only be claimed where the document is forwarded by way of a report to a client.

2.3. No uplift for care, skill and responsibility is payable.
3. **Counsel Fees**

3.1. Counsel fees are payable in accordance with the rates specified for payment of junior and senior counsel.

3.2. Junior counsel fees are payable at an hourly rate of $330, inclusive of GST, or $2,640, inclusive of GST, per day.

3.3. Senior counsel fees are payable at an hourly rate of $450, inclusive of GST, or $3,600, inclusive of GST, per day.

4. **Paralegals and Articled Clerks**

4.1. Paralegals and articled clerks are payable at an hourly rate of $66, inclusive of GST, to be billed in six minute units.

5. **Daily Cap and Combined Daily Cap**

5.1. A daily cap of eight hours applies to all professional fees. The daily cap also applies where solicitors or counsel apportion costs across multiple matters funded by the TSRA.

5.2. A combined daily cap of 12 hours applies to travel time and professional fees payable. The combined daily cap is subject to the daily cap of eight hours for professional fees.

6. **Attendances without charge**

6.1. Attendances upon the Funding Section of the TSRA are not payable.

6.2. Attendances to receive, print and file documents (letters, emails, text messages or instant messaging) are not payable.

6.3. Attendances to leave telephone messages are not payable.

7. **One solicitor per matter**

7.1. In general, one solicitor is to have primary carriage of a matter, unless otherwise specified in the terms and conditions of the grant.

8. **Internal conferencing**

8.1. In general, charges for an internal conference or supervision between solicitors or officers within the same firm are not payable, unless otherwise specified in the terms and conditions of the grant.

9. **Reading documents**

9.1. When charging for reading documents, the number of pages and a description of the content must be provided.
10. **Research**

10.1. Charges for legal research will generally not be payable, unless specified in the terms and conditions of the grant.

10.2. Some allowances may be payable for research if it is demonstrated that the research is reasonable and necessary to determine a legal question of some complexity that is not procedural in nature.

11. **Administrative Attendances**

11.1. An attendance by a solicitor to undertake a task that is purely “administrative” in nature (does not require legal skill or knowledge) is payable at the administrative rate of $27.50, inclusive of GST, per hour to be billed in six minute units.

11.2. The TSRA, having regard to all the circumstances of a particular case, can determine that a particular attendance could reasonably have been undertaken by an administrative officer, a paralegal or articled clerk and is to be paid at such rates as provided for in this document.

12. **Administrative Work**

12.1. Administrative work, or work undertaken by administrative staff is payable at an hourly rate of $27.50, inclusive of GST.

12.2. Administrative work includes:-

- typing
- collation, pagination and indexing
- posting
- sending circular letters
- filing court documents; and
- service of any document.

12.3. General administrative work, including file maintenance, management, attendances to organise meetings or travel, and maintaining databases, will not be payable without the prior written approval from the TSRA.

12.4. Administrative staff, or a paralegal or an articled clerk, cannot separately charge for administrative work in relation to solicitor costs in preparing a document, as a charge for preparing a document is inclusive of all administrative task (e.g. typing, printing, posting, facing and emailing) relating to that document.

13. **Travel**

13.1. Payment for time spent travelling by a solicitor is payable at an hourly rate of $165, inclusive of GST.
13.2. Payment for travel time and travel costs are not available for travel not exceeding 50km from the place of business where the solicitor or counsel is based.

13.3. The TSRA will pay for travel costs involving travel exceeding 50km from a solicitor or counsel's place of business, if it determines that the costs are reasonable and necessary.

13.4. Receipts must be provided in order to obtain reimbursement for any travel costs payable under a grant of financial assistance, including (but not limited to):
   - taxi fares;
   - car hire;
   - parking; and
   - airfares.

Incidentals

13.5. Incidentals incurred in the course of travel are not payable by the TSRA. These costs are considered to be general business expenses.

14. Disbursements

Photocopying

14.1. The cost of photocopying is payable as a disbursement at a rate of $0.275, inclusive of GST, per page, to a maximum of $250, inclusive of GST, for a six month grant.

Printing

14.2. Internal printing costs are not payable as a disbursement in any circumstances.

14.3. External printing costs may be payable where these costs are considered reasonable and necessary.

Telephone calls

14.4. Telephone calls are payable at cost and where considered reasonably incurred.

Fax and postage

14.5. Fax and postage are payable at cost and where considered reasonably incurred.

Other disbursements

14.6. Expert reports and expert witness reports are generally payable to a maximum of $2,500 per report, inclusive of GST.
14.7. Connection reports and other anthropological reports are considered on a case by case basis but generally payable to a maximum of $10,000, inclusive of GST.

14.8. In some instances, a counsel opinion on the merits of a matter may be approved, and if approved is payable to a maximum of $4,000, inclusive of GST.

14.9. Other disbursements, such as fees for service, title and document searches and freedom of information requests are payable at cost.

14.10. Receipts are required for all disbursements exceeding $100.

15. Travel Disbursements

Airfares

15.1. Only economy airfares are payable. Airfares are to be booked at the lowest economical fare.

15.2. Receipts and boarding passes are required for payment.

Vehicle Mileage

15.3. Vehicle mileage is payable at the rates specified by the Australian Tax Office. Current rates are contained in Schedule 1 of the Income Tax Assessment Regulations 1997 (Cth).

Meals and Accommodation

15.4. An allowance for meals and accommodation is payable in accordance with Attachment A.

15.5. To obtain payment, the TSRA must be provided with times and dates of travel.

15.6. Receipts for accommodation expenses are required for payment.

15.7. Receipts for meal expenses are not required for payment.

16. Disbursement exemptions

16.1. The cost of items such as general office overheads (including office equipment), office maintenance and account keeping fees are not disbursements payable under a grant of financial assistance.

16.2. Court filing fees are disbursements payable under a grant of financial assistance.

17. GST

17.1. Any accounts rendered to the TSRA must be in the form of, or accompanied by, a tax invoice to the Torres Strait Regional Authority that clearly identifies the GST component of the invoice.
17.2. GST components for each disbursement item and third party invoices must be indicated on the invoice. Where GST has not been incurred on a disbursement or an invoice from a third party (for example for title searches or a transcript) the invoice should set out the disbursement cost plus 10% GST. GST should be remitted to the Australian Tax Office in the usual way.
## MAXIMUM TRAVEL ALLOWANCE RATES PER DAY

### QLD

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**WA**

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**TAS**

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**Other**

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<tr>
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</tbody>
</table>
ACCEPTANCE OF GRANT TERMS AND CONDITIONS

Matter number:

Date of grant approval letter from the Torres Strait Regional Authority:

You must confirm your acceptance of the grant terms and conditions by signing and returning the "Acceptance of Grant Terms and Conditions" form within 14 days of the date of this letter. Otherwise, the grant will be cancelled, all grant funds will be decommitted and the TSRA will not make any payments to you or your client in relation to the proceedings.

This form must be returned whether or not you intend to seek a review of the Department’s decision.

Please email this form to [insert]. If you do not have access to email, please telephone [insert].

Name of Proceedings: ____________________________________________________________

DECLARATION

I, _________________________________________________________ (applicant/solicitor/agent) confirm:

☐ I have authority to submit this grant acceptance notice on behalf of the grant recipient, or I am the grant recipient, I have read and understood the terms and conditions of this grant of financial assistance, and I agree to be bound by the terms and conditions of the grant of assistance.

OR

☐ I do not accept the terms and conditions of this grant of assistance and I intend to seek a review of the TSRA’s decision within 28 days of the date of the grant approval letter.

Signed: _________________________________________________________________

Name: _________________________________________________________________

Dated: ________________________________
Grant terms and conditions

Scope and duration of grant

This grant is made subject to the terms and conditions set out in the Funding Policy dated [insert date] (the Policy) and the additional terms and conditions set out in this letter.

This grant is valid for the period from [insert date from when the application was received to 6 months from when the application was received].

This grant covers legal costs and disbursements associated with [insert law firm] representation of [insert native title group or person] under section 203BB(1)(b)(i) [insert relevant section e.g. if it relates to research and preparing native title applications section 203BB(1)(a) may apply, or any of the other matters set out in section 203BB] of the Native Title Act 1993 (Cth).

Payment

To obtain payment for work carried out under this grant you must provide the TSRA with an itemised invoice for assessment. The invoice must be provided in accordance with this letter and the Policy and must be addressed to the "Torres Strait Regional Authority".

If you are registered or are required to be registered for GST, the invoice must be correctly rendered tax invoice for the amount claimed plus GST.

If you are not registered and are not required to be registered for GST, the invoice must be for the amount claimed only.

To be considered complete, each invoice must include sufficient detail to enable the TSRA to determine the reasonableness of costs, must be arithmetically accurate, and must include all supporting documentation (such as receipts).

Invoices must set out on a day-to-day basis:

- the date of the work;
- the specific nature of the main activity or task undertaken;
- the person or persons who undertook the work;
- the time involved, on each day, in undertaking the work, or other basis for calculating the cost of the item (e.g. the number of pages for photocopying);
- the unit cost per item; and
- the total cost of the item.

If an invoice submitted is incomplete, you will be notified and no payment or processing of the invoice will be made until it is corrected and resubmitted.

The notification of an incomplete invoice does not extend the 30-day period for submitting final invoices.

The final invoice relating to the grant must be received by the TSRA no later than 30 days after the expiry of the grant. After this time, all grant funds will be decommitted and no further payment under the grant will be approved. If you are unable to submit your final invoice within this timeframe, you
must notify the TSRA within 30 days of the expiry of the grant. Depending on the circumstances, the TSRA may agree to provide one extension only of an additional 14 days for you to submit your final invoice.

Payment will be provided at the times and in the manner specified in this letter, subject to the following:

(a) the costs are authorised under the grant;
(b) there are sufficient funds available under the grant; and
(c) you have complied with the terms and conditions of the grant.

Without limiting our rights, we may withhold or suspend any payment in whole or in part until you have performed the obligations under this grant.

Grant funding extensions or variations to terms and conditions

If you consider that further funds are required or additional work needs to be undertaken that is outside the terms of the grant, you must contact the TSRA before any additional costs are incurred and before the expiry of the current grant. Similarly, to seek a new grant for any work outside the scope of the grant, you must advise the TSRA before any costs are incurred.

This grant has been made subject to the following additional terms and conditions:

ADDITIONAL TERMS AND CONDITIONS OF THE GRANT AGREEMENT

PART 1 – GRANT OFFER AND AGREEMENT

1.1 Terms and conditions of the grant offer

(1) The grant offer sets out terms and conditions on which the grant is to be made.

(2) In making the grant offer, the TSRA must have regard to any obligations with which the TSRA must comply under the Native Title Act 1993 (Cth).

(3) The TSRA may withdraw a grant offer if the TSRA becomes aware that the applicant, or an entity that applies on behalf of the applicant, has provided dishonest, inaccurate or misleading information.

1.2 Grant agreement

(1) A grant agreement party is, in addition to the TSRA:

(a) if the applicant applied, the applicant; or

(b) if a legal practitioner applied on behalf of the applicant, the applicant and the legal practitioner; or

(c) if a legal practitioner applied on behalf of the applicant and there is more than one legal practitioner involved in the legal action to which the grant relates, the applicant and each legal practitioner; or
(d) in any other case, the applicant and the entity that applied on behalf of the applicant.

(2) Any changes made to the original terms and conditions in the grant offer must be in writing.

(3) The signed grant offer is a grant agreement and the applicant is then a grant recipient.

1.3 Application of grant agreement to legal practitioners

If one or more legal practitioners is a grant agreement party under section 1.2, then a reference to a grant recipient is taken to include each legal practitioner.

1.4 Obligation to comply with terms and conditions

Each grant agreement party is obliged to fulfil the terms and conditions set out in the grant letter of offer and in the additional terms and conditions for the grant agreement.

1.5 Legal practitioner appointed after grant agreement signed by applicant

(1) This section applies if the grant includes components for legal representation costs:

(a) a grant recipient is not represented by a legal practitioner at the time the grant recipient signs a grant agreement; and

(b) the grant recipient subsequently appoints one or more legal practitioners to act on behalf of the grant recipient for the purposes of the grant.

(2) The grant recipient must, in writing, tell the TSRA as soon as reasonably practicable the names of the appointed legal practitioners.

(3) The grant recipient must provide the grant agreement to each legal practitioner.

(4) The grant agreement is taken to have been varied to include each legal practitioner as a grant agreement party.

PART 2 – GENERAL ADMINISTRATION

2.1 Obligations on grant recipients in relation to information

(1) Grant recipients must give accurate and honest information that is not misleading to the TSRA when requested under section 2.2 or if required to do so under section 2.3.

2.2 The TSRA may ask for information

(1) The TSRA may, by notice in writing, ask a grant recipient to provide any information that the TSRA reasonably requires to:

(a) verify information; or
(b) administer the grant.

(2) In the notice, the TSRA may specify that the information must be provided:

(a) at regular intervals (for example, each month) during the grant period; or

(b) within a specified period.

2.3 Grant recipients must tell the TSRA when certain things happen

(1) A grant recipient must tell TSRA in writing as soon as is reasonably practicable and before the end of the grant period, if:

(a) the grant recipient takes steps to withdraw from, discontinue or otherwise end the legal action that is the subject of this grant; or

(b) the instance of legal action that is the subject of this grant is determined before the end of the grant period; or

(c) there are any changes to the legal action that may affect this grant; or

(d) one or more of the grant recipient’s legal practitioners changes; or

(e) the grant recipient believes that, by incurring a cost, the grant recipient will exceed the grant amount; or

(f) the grant recipient believes that, by incurring a cost, the grant recipient will exceed the maximum amount of legal financial assistance available under the grant in relation to a particular type of cost; or

(g) a cost order is made in the proceedings;

(h) all of the following apply:

(i) the grant period ends; and

(ii) the grant recipient needs longer than 30 days to submit outstanding invoices to the TSRA for payment; or

(iii) the grant recipient’s circumstances change and the change may affect the grant.

Note: if paragraphs (f) or (g) apply, the grant recipient must submit a new complete application to the TSRA before any cost is incurred.

2.4 Notices about determined proceedings

For the purposes of paragraph 2.3(1)(b), the grant recipient must tell the TSRA the decision made in the legal action.
PART 3 – CONSEQUENCES OF CERTAIN EVENTS FOR GRANTS

3.1 Consequences of certain events for grant

(1) The following paragraphs set out the action that the TSRA may take if certain events occur that affect grants.

(2) If there is more than one possible consequence for an event, the TSRA must decide what the consequence (if any) will be and tell the grant recipient in writing.

3.2 Events resulting in termination of a grant agreement

(1) The TSRA may terminate a grant agreement as a consequence of the following events:

(a) the grant recipient provides dishonest, inaccurate or misleading information;

(b) the grant recipient fails to tell the TSRA about something under sections 2.2, 2.3, 2.4 or 4.1;

(c) the grant recipient fails to comply with a term or condition of the grant agreement or another obligation in the Policy;

(d) the grant recipient fails to comply with subsection 2.2(2);

(e) the grant recipient takes steps to withdraw from, discontinue or otherwise end legal action;

(f) the grant recipient takes no steps to pursue legal action;

(g) the instance of legal action is determined before end of the grant period;

(h) one or more of the grant recipient’s legal practitioner changes and the grant recipient does not inform the TSRA;

(i) the grant recipient does not tell the TSRA about a change in circumstances that affects the grant;

(j) a legal practitioner representing the grant recipient does an act that constitutes professional misconduct;

(k) the grant recipient fails to submit invoices within 30 days after the day on which the grant period ends;

(l) the grant recipient receives a cost order under section 4.1(5).

(2) If the TSRA terminates a grant agreement as a consequence of an event, the TSRA may also:

(a) refuse to pay an amount of legal financial assistance that was payable before the date of termination;
(b) take steps to recover an amount of legal financial assistance already paid as described in section 3.6.

3.3 Events requiring a new grant agreement

(1) If any of the following events happen, the TSRA will require the grant recipient to make a complete application for a new grant:

(a) one or more of the grant recipient’s legal practitioner changes and the TSRA determines that a new application is necessary due to the change in legal representation;

(b) the grant recipient tells the TSRA that the grant recipient will exceed the grant amount as mentioned in paragraph 2.3(1)(f);

(c) the grant recipient tells the TSRA that the grant recipient will exceed the maximum amount of legal financial assistance available under the grant in relation to a particular type of cost as mentioned in paragraph 2.3(1)(g);

(d) funding is required for a new stage of a proceeding;

(e) a costs order is sought by the grant recipient against a party to the proceeding under section 4.1(3).

Note: If a new application is required as result of paragraphs 2.3(1)(f) or (g), the new grant may commence from the date of the notification if a complete application is submitted within 14 days of that notification.

(2) In determining the amount of legal financial assistance available under a new grant for the purposes of paragraph 1(a), the TSRA may have regard to the amount of legal financial assistance paid or payable under the old grant.

(3) With the exception of submission of final invoice assessment and review, the old grant agreement will be terminated before the new grant starts.

3.4 Events resulting in variation of a grant agreement

(1) The TSRA may vary a grant agreement as a consequence of the following events:

(a) the grant recipient fails to comply with a term or condition of the grant agreement or another obligation in the Policy;

(b) the grant recipient takes steps to withdraw from, discontinue or otherwise end legal action;

(c) the instance of legal action is determined before the end of the grant period;

(d) the instance of legal action is not determined before the end of the grant period;

(e) one or more of the grant recipient’s legal practitioner changes but does not inform the TSRA;
(f) the grant recipient does not tell the TSRA about a change in circumstances that affects the grant.

(2) If the TSRA varies a grant agreement, the TSRA must tell the grant recipient in writing about the variation.

(3) With the exception of review outcomes, the grant agreement is taken to have been varied to reflect the TSRA's decision.

3.5 Events resulting in withholding of financial assistance

(1) The TSRA may withhold financial assistance as a consequence of the following events:
   
   (a) the grant recipient provides dishonest, inaccurate or misleading information;

   (b) the grant recipient fails to tell the TSRA about something under sections 2.2, 2.3, 2.4 or 4.1;

   (c) the grant recipient fails to comply with a term or condition of the grant agreement or another obligation in the Policy;

   (d) the grant recipient fails to comply with subsection 2.2(2);

   (e) the grant recipient exceeds the grant amount by incurring a cost;

   (f) the grant recipient, by incurring a cost, exceeds the maximum amount of financial assistance;

   (g) the grant recipient takes steps to withdraw from, discontinue or otherwise end the legal action;

   (h) the grant recipient does not tell the TSRA about a change in circumstances that affects the grant;

   (i) an adverse costs order is made against the grant recipient in accordance with subsection 4(4);

   (j) the grant recipient fails to submit invoices within 30 days after the day on which the grant period ends.

(2) If the TSRA withholds legal financial assistance that is, or will be, payable under a grant as consequence of an event, the TSRA must tell the grant recipient in writing how much and for what period the TSRA will withhold legal financial assistance.

(3) The grant agreement is taken to have been varied to reflect the TSRA's decision.

3.6 Events requiring payment recovery

(1) The TSRA may seek recovery of paid financial assistance as a consequence of the following events:

   (a) the grant recipient provides dishonest, inaccurate or misleading information;
(b) the grant recipient fails to tell the TSRA about something under sections 2.2, 2.3, 2.4, 4.1 or 5.1(1);

(c) the grant recipient fails to comply with a term or condition of the grant agreement or another obligation in the Policy;

(d) the grant recipient does not tell the TSRA about a change in circumstances that affects the grant;

(e) the grant recipient fails to apply for a costs order as mentioned in section 4(3) after receiving funding to make the costs order;

(f) a costs order is made in the grant recipient’s favour, but the grant recipient fails to repay the TSRA or fails to do so within the required period.

(2) Consistent with the terms of any grant agreement, if a grant recipient is required to repay all or part of the grant amount to the TSRA, that amount will be a debt owing to the TSRA. The TSRA will pursue recovery of that amount.

PART 4 – COSTS ORDERS IN PROCEEDINGS

4.1 Costs orders in Proceedings

(1) The TSRA acknowledges that:

(a) Section 85A(1) of the NTA was intended to remove any ground for anticipation or expectation that, unless cause is shown for another order, costs will follow the event and a range of factors must be taken into account in deciding whether to seek costs or enforcing costs. Factors that would tend to support seeking or enforcing costs include:

(i) that the other party caused unnecessary expense and delay in the proceedings;

(ii) that there is an apparent need to deter vexatious litigation in the future;

(iii) that the debtor is apparently able to pay; and

(iv) the anticipated expenses in recovering costs does not outweigh the recoverable or potentially recoverable costs.

(b) In some cases, it may be appropriate to seek a costs order but to defer a decision on enforcing the order (e.g. where the person’s financial circumstances are unclear, or as to defer a vexatious litigant).

(2) If any cost order is made in the proceedings that affects the grant recipient either adversely or favourably, the grant recipient must inform the TSRA.
The scope of this funding grant does not include funding to seek or enforce a costs order, however the applicant may make a new application to fund the seeking of a costs order against a party to the proceedings which must address the considerations outlined in section 4.1(1).

If a costs order is made against the applicant or the applicant's legal practitioner (adverse costs order), the applicant must inform the TSRA about the costs order and provide a copy of any relevant documents filed in the Court (that is publicly available) and the decision within 14 days of the adverse cost order being handed down.

If an adverse cost order is made, the TSRA:
(a) must terminate the grant agreement if the Court found the grant recipient to be a vexatious litigant; and
(b) may terminate the grant agreement if the grant recipient or legal practitioner caused unnecessary expense and delay in the proceedings.

If a costs order is made in the favour of the grant recipient, the grant recipient must repay the TSRA the amount received less any costs reasonably incurred in seeking or enforcing the costs order that was not reimbursed under the funding application or any funding application made under subsection (3) within 28 days of receiving the costs.

PART 5 – SETTLEMENT

5.1 Settlement

(1) If the proceeding for which the funding was received is settled, the grant recipient must:
(a) inform the TSRA of the date of settlement as soon as reasonably practical but not more than 14 days from the date of settlement;
(b) provide a final invoice for payment of the agreement within 30 days of the date of settlement.

PART 6 – FINANCIAL OBLIGATIONS ON GRANT RECIPIENTS

6.1 Monitoring grant amount

(1) Grant recipients are responsible for monitoring costs incurred or paid for the purposes of legal action to make sure that:
(a) the grant amount is not exceeded; and
(b) the maximum amount of legal financial assistance available under the grant in relation to a particular type of cost is not exceeded.

(2) One way a grant recipient may do this is by submitting invoices to the TSRA on a regular basis for payment of financial assistance available under the grant.
PART 7 – REVIEW OF DECISIONS

7.1 Internal review options

(1) This section applies if a decision maker decides:

(a) to refuse a grant application; or

(b) to make a grant less than the amount sought; or

(c) to make grant on terms and conditions (whether set out in the guideline or in the grant offer); or

(d) to take action if an event occurs (see Part 3 above).

(2) The applicant may apply for internal review of the decision within 28 days of being notified of the decision.

(3) The TSRA must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.

(4) The decision maker must finalise the review within 28 days of the TSRA receiving the review request.

(5) If a grant amount is approved or increased on review, a new grant offer acceptance form will need to be signed by the applicant and any other party to the agreement.

(6) The review must be consistent with the process published in accordance with section 203B1 of the NTA.

7.2 Complaints

If an applicant is dissatisfied with any aspect of the administration of an application or grant, the applicant may submit a complaint to the:

Chief Executive Officer

Torres Strait Regional Authority

[insert address]

7.3 Obligations of the TSRA in relation to confidentiality, privacy and conflict of interest

(1) Officers of the TSRA are obliged to maintain the confidentiality of information.

(2) An officer of the TSRA must disclose any interest that the officer has if that interest could conflict with the proper performance of their duties under the Policy. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
Subsection (2) applies to interests:

(a) whether direct or indirect, and whether or not pecuniary; and

(b) whether acquired before or after the officer’s duties under the Policy arose.

If a conflict of interest arises, the TSRA must utilise the established internal processes in place for managing the conflict of interest.

Grant components

The following is a table of the indicative budget for approved grant items:

<table>
<thead>
<tr>
<th>Item No</th>
<th>Expense type</th>
<th>Requested amount</th>
<th>Authorised amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Solicitor</td>
<td></td>
<td></td>
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