



# **TORRES STRAIT REGIONAL AUTHORITY**

## **Native Title Programme**

### **Prescribed Bodies Corporate - Capacity Building**

#### **Grant Guidelines**

**2016**

**NOTE: It is in the interest of all grant applicants to read and be familiar with Part A and Part B of these Guidelines before submitting a grant application. Applications which do not follow the guidelines are unlikely to be competitive in the grant assessment process.**

## Part A — Background Information

The limited availability of funding for Prescribed Bodies Corporate has been a matter of on-going concern to the TSRA, Native Title Representative Bodies (NTRBs), industry bodies, governments and to the PBCs themselves. The 2006 inter-departmental Steering Committee Report *Structures and Processes of Prescribed Bodies Corporate* recommended that PBCs should receive funding for essential administrative costs through their NTRB. The TSRA subsequently endorsed the recommendations made in this report and has established a PBC Capacity Building grant funding facility which is managed through the TSRA's Native Title Programme. Capacity Building includes support for activities which are **essential in order for PBCs to fulfil their role of managing Native Title under the Native Title Act 1993 (Cth)** and can include limited administrative support funding.

The TSRA Guidelines for support funding to PBCs follow the Department of Prime Minister and Cabinet (PM&C) *Guidelines for Basic Support Funding for Prescribed Bodies Corporate (PBCs)*. The PM&C Guidelines provide a clear rationale for the funding of PBCs, and outline the Australian Government's policy position in relation to the support needs of PBCs. The PM&C guidelines state that the NTRB should not be considered the first or only stop for funding.

Funding should be sought appropriately from State and Territory Governments and agencies, industry and other relevant Australian Government departments and agencies.<sup>1</sup> This is particularly important for PBCs in the region who have taken over land management roles previously performed by the Queensland Government. The responsibility for the on-going funding for activities relating to the transfer of DOGIT or Reserve lands remains a Queensland Government responsibility and is outside of the guidelines for eligibility for PBC support funding from the TSRA.

These Guidelines provide information about basic funding to support the essential day-to-day operations of Prescribed Bodies Corporate (PBCs) within the TSRA's native title representative body area. Funding available through this grant scheme is limited and all applications will be considered equitably on the basis of meeting those functions which are essential for meeting PBCs responsibilities under both the *Native Title Act 1993* and the *CATSI Act 2006*, and which increase the capacity of PBCs to become autonomous and self-sustaining.

The TSRA does not receive additional funding from the Australian Government to support PBCs. Each year the TSRA Board allocates part of the TSRA budget for the PBC Support grants. Funding is limited and applicants are advised that they may not be funded to the level sought, nor is there any guarantee of on-going funding on an annual basis. PBCs are therefore encouraged to explore all available avenues for raising revenue through leasing and fee for service arrangements as well as applying for grant funding from other bodies.

Many PNCs in the region also wish to undertake activities that are **not directly related** to their Native Title function. The TSRA encourages PBCs to seek funding for those activities through the Indigenous Advancement Strategy funding scheme administered by the Department of Prime Minister and Cabinet. Funding is available under the five (5) key themes of:

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<sup>1</sup> The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has published a toolkit on potential funding sources for PBCs on its website ([www.ntru.aiatsis.gov.au](http://www.ntru.aiatsis.gov.au)).

- Jobs, Land and Economy;
- Children and Schooling;
- Safety and Wellbeing;
- Culture and Capability; and
- Remote Australia Strategies.

In response to the recommendations made by the Northern Australia White Paper Report, the Commonwealth Government has committed \$20.4 million for funding to PBCs which will be released over four years commencing in 2015. This funding is available for PBCs who wish to:

- Increase their capacity to take advantage of economic opportunities;
- To build long-term organisational capacity including the PBCs ability to access professional expertise i.e. business consultancies, legal expertise and accounting services; and
- Direct support for effective native title agreement-making.

There is no closing date for applications, and each application is considered on a case by case basis in accordance with the proposed outcomes of the project and the objectives of the funding guidelines. Further information can be obtained from the Department of Prime Minister and Cabinet webpage or through the Native Title Office.

In 2014 the TSRA introduced Tier 1 and Tier 2 PBC support arrangements to streamline the support provided to PBCs in Torres Strait. Tier 1 arrangements apply to PBCs who earn over \$100,000 per year and have a requirement for the submission of Audited Financial Statements. These PBCs have reached a capacity where they manage their own affairs including enterprise organisations as well as community DOGITs or Reserves transferred to them by the Queensland State Government. The Tier 1 arrangement provides eligible PBCs the option of entering into a formal Memorandum of Understanding (MOU) with the TSRA for fee for service activities that are negotiated directly between the TSRA and PBC.

Tier 1 PBCs who have an MOU in place with the TSRA are not eligible to apply for basic support funding under these guidelines. Those PBCs are eligible to invoice the TSRA directly for services performed under the fee for service arrangements stipulated in their MOU. PBCs who have not been classified as a Tier 1 PBC through an MOU with the TSRA are eligible to apply for basic support funding under these guidelines.

PBC tiered grant funding support arrangements (as of 1 July 2016)

- Tier One
  - Mer Gedkem Le (Torres Strait Islanders) RNTBC.
  - Mura Badulgal (Torres Strait Islanders) RNTBC.
- Tier 2
  - All other PBCs located in the Torres Strait region.

## **Initiative Aims**

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

- Whole of government coordination;
- Cooperation with stakeholders; and
- Resolving native title issues through agreements where possible.

These goals are supported by the TSRA's Native Title Programme which provides resources for the native title system to enable effective stakeholder participation.

PBCs have functions and obligations under:

- the Native Title Act 1993;
- the Native Title (Prescribed Bodies Corporate) Regulations 1999;
- the Corporations (Aboriginal and Torres Islanders) Act 2006;
- other Commonwealth and/or State legislation.

The primary roles of PBCs are to:

- *protect and manage* determined native title in accordance with native title holder's wishes; and
- *ensure certainty* for governments and other parties with an interest in accessing or regulating native title lands and waters by providing a legal entity through which to conduct business with the native title holders.

The TSRA recognises the importance of PBCs for the realisation of Programme Outcomes and Regional Objectives under the *Torres Strait Development Plan* and the *Torres Strait and Northern Peninsula Area Regional Plan*. The PBC Capacity Building grants have been established to assist PBCs to manage essential day to day administrative activities in order to discharge their duties under relevant legislation.

## **Who can apply (eligibility?)**

Funding is available only to registered PBCs in the Torres Strait region who have not entered into a Tier 1 PBC support memorandum of understanding with the TSRA. Funding is available to PBCs administering both inhabited and non-inhabited islands. Grant funding for PBC Capacity Building is not available to 'related' Indigenous Corporations which have been established to carry out business activities.

Board Members and employees of the Torres Strait Regional Authority are not eligible to apply for grant funding either in their own right or on behalf of another person or organisation. Organisations who wish to apply for grant funding, and who have TSRA Members or employees who hold Director positions within their organisation, must ensure that other Directors are used to sign the grant application forms.

## **What will be considered for funding?**

The prime consideration in determining priorities for the allocation of PBC basic support funding will be the extent to which the need identified is essential for the PBC to meet its legislative requirements, this includes effective engagement within the community in order to represent the community in Native Title matters.

For guidance essential support is considered to be the maintenance of a part-time office for each registered PBC. Some items that may be considered for grant funding are shown below. This list is non-exhaustive and a grant application may be submitted for additional items where they can be demonstrated to be **reasonable and essential to the legislated role of the PBC**. Each item includes some explanatory notes showing the type and level of information that should be provided. This will enable the Grant Assessment Panel to better determine the level of assistance than can be provided.

- Lease of office premises – Applicants must provide a copy or extract of the lease which shows as a minimum; details of the location and ownership of the property, the name of recipient of the lease payment, the tenure of the lease, monthly payments and conditions regarding the lessee’s (your) responsibility for utilities (electricity, telephone), building repairs and maintenance, insurance and any other property related cost.
- Cost of insurance (including public liability for owned property). Note that for shared facilities only the insurance component relating to the PBCs core Native Title functions should be included.
- Costs to meet regulatory compliance obligations, for example, annual general meetings, special general meetings, Director’s meetings; and preparation of regulatory reports;
- Travel and accommodation costs for Indigenous Community Volunteers (ICV) - indicate whether you have an existing agreement with ICV or are proposing to establish a new agreement;
- Cost of communications facilities, for example, internet, telephone, fax. PBCs are encouraged to examine ‘bundled’ communications packages from a single supplier eg (Telstra / Optus) to reduce their overall communications costs.
- Utility costs, for example, power, water, rates (copies of the past 12 months accounts or records such as power cards may be requested to justify the amount requested). Note that for shared facilities only the utility component relating to the PBCs core Native Title functions should be included.
- Office set-up costs which may include one desk-top or lap-top computer, a printer / copier, office and accounting software, office furniture.
- Consumable supplies (stationery, cleaning, catering).
- Travel expenses to and from training or related conferences – the application should indicate whether specific training or conferences have been identified.
- Interpreter services may be considered on a case by case basis.
- **Either** Assistance with:
  - book-keeping and auditing;
  - fee for service activity planning;
  - preparing external grant funding applications;
- **Or** Part-time office staff (max 20 hours per week) where the following supporting documents are available:

- Evidence of an office working environment is which meets the standard of the Workplace Safety Act.
- A duty statement or job description which identifies the position is required to meet those functions which are essential for the PBC to perform its role, including developing capacity to transition from grant funding to a position of autonomy and self-sustainment.
- An employment contract, including pay rates, conditions and superannuation provisions, and
- Evidence of the qualifications and experience of the person identified for the position.
- Insurance certificate for workers compensation.

The TSRA recognises that in some cases it may not be possible to identify qualified and experienced office staff before grant funding has been secured. In such cases, funding may be agreed in principle, provided the remaining criteria above can be met. Funds will be released when recruitment action has been completed.

If a part-time staff member is required for greater than 20 hours per week then the additional costs should be met from other PBC revenue (ie fees for service, external grants or leasing fees).

#### **What is not funded?**

The following activities are not eligible for PBC grant funding:

- full-time administrative positions.
- activities not related to PBC Capacity Building that are the responsibility of other TSRA programme areas, local government, the Queensland Government or other Australian Government agencies. This includes land management functions following the divestment of Reserve or Deed of Grant in Title (DOGIT) lands to PBCs.
- governance training and capacity building costs which are the responsibility of the Office of the Registrar of Indigenous Corporations (ORIC), or where other organisations have programs that can assist with these requirements.
- purchase of capital items such as buildings, motor vehicles, water craft or other infrastructure related plant and equipment.
- Native title Land and or sea related legal advice which can be are met by the TSRA Native Title Office or funded under the IAS programme;
- Legal Services which can be provided on a pro-bono basis through ORIC's LawHelp programme;
- any costs relating to any commercial or social enterprise or other non-Native Title ventures undertaken by the PBC as an Indigenous Corporation;
- repayment of existing debt; and
- other services which are provided to a PBC by its Native Title Representative Body under the *Native Title Act 1993*.

## **Timing for submissions**

Submissions are to be received in accordance with the due dates for the TSRA Common Funding Rounds. The funding round dates are notified in the Torres News, Radio 4MW, Community Notice Boards, TSRA Ranger Offices and on the TSRA website ([www.tsra.gov.au](http://www.tsra.gov.au)). Please refer to Part B – Administrative Information, for advice on the handling of late applications.

## **Assessment criteria and process**

Grant application is a competitive process. The total funding available is always less than the total funding requested by grant applicants. Applications for funding will be considered on their merit against the assessment criteria shown below.

- Is the organisation seeking assistance eligible for PBC support funding?
- Is the funding required to meet critical needs relating to the functioning of the PBC?
- Has the PBC attempted to minimise its administrative costs, including meeting arrangements and reporting requirements?
- Does the funding meet the grant purpose outlined in these guidelines?
- Does the PBC have the capacity to manage the grant and deliver the outcomes?
- Does the PBC have current grant funding from past applications that remains unspent?
- Has funding been sought, obtained or should be available from other sources?

## **Guidance on Meeting the Assessment Criteria**

1. If it has not already lodged the following documents with the TSRA, the PBC should provide proof of its eligibility. This should include:
  - Certificate of Incorporation.
  - Proof of Native Title determination.
2. The PBC should explain whether funding has been sought under alternative Commonwealth or State funding schemes. Note this will not exclude the PBC from consideration for TSRA funding. The TSRA when assessing the application will consider whether:
  - there are alternative sources of funding available for the activity proposed;
  - the PBC has attempted to obtain or has obtained such funding, and the amount involved; and
  - there is a further need for funding through the TSRA PBC grant facility.
3. If a funding application has been made to:
  - State government departments or agencies;
  - Local government authorities;
  - Australian Government departments or agencies; and/or

- Private sector entities (for example companies proposing to carry out future acts on native title lands).

the applicant should attach the covering letter of the application sent to that body.

4. The prime consideration in determining priorities for the allocation of PBC basic support funding will be the extent to which the need identified is critical to the operation of the PBC to meet its legislative functions under the Native Title Act.
5. The PBC should explain what avenues have been explored to keep reporting and meeting obligations to a minimum, appropriate to their particular circumstances.
6. Requests for funding to comply with *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) obligations should show that the PBC is taking advantage of the lower reporting requirements that may be available under the CATSI Act to reduce costs, or set out the reasons why lower reporting requirements are considered inappropriate.
7. The TSRA will assess applications to determine funding levels and conditions for funding against the above criteria.
  - Consideration will include an assessment of risk affecting the protection of public monies and the achievement of funded activities against the benefits derived from protecting native title interests resulting from successful native title determinations.
  - In assessing funding applications the TSRA will take into account other possible funding sources.
  - The TSRA will take into account any supporting documentation provided with funding applications and may seek additional information from other parties with interests in the native title system.
8. The TSRA recognises that PBCs are independent bodies with prescribed statutory functions and responsibilities. From time to time, conflicts of interests may arise in relation to the TSRA's consideration of funding applications given that PBC decisions may impact on other TSRA funded Projects. The TSRA has established a Grants Assessment Panel to manage the assessment process in a transparent manner. The mechanism by which grant funding decisions can be appealed and reviewed is explained in Part B – Administrative Information.

## **Part B — Administrative Information**

### **Late applications**

Late applications may be considered by the TSRA only in exceptional circumstances and only when the application has been received prior to the meeting of the Grant Assessment Panel. Acceptance will be determined on a case-by-case basis. Where there are unforeseen circumstances that prevent you from submitting your application by the due date, you should contact the TSRA as soon as possible by phone or email and explain the situation. You should confirm the unforeseen circumstances briefly in writing as part of your submission.

The prior notification of the late submission and the reason for late submission will be taken into account in determining whether the submission will be considered in the current funding round or deferred until the next funding round.

### **Funding Allocation**

The TSRA may approve less funding than requested in an application, or approve only some of the activities or budget lines proposed in the application. If this occurs, the TSRA will work with you to revise your project's objectives, activities and budget prior to the release of funding.

### **Funding Agreements**

The TSRA will forward the Torres Strait Regional Authority's Standard Funding Agreement (SFA) to the PBC outlining the amount of the grant, the conditions for which the grant funding can be used and the reporting / acquittal requirements. The recipient must return two signed copies of the SFA, agreeing to all conditions, to the TSRA before grant funding can be released.

### **Payments**

Payment will only be made by bank transfer into an account established by the recipient specifically for the management of grant funds. All funding is subject to the terms and conditions set out in the Standard Funding Agreement and the Terms and Conditions Standard Funding Agreement, particularly conditions relating to the deposit of funds, auditing and the recovery of unspent monies.

### **Conflict of Interest**

Grant funded activities must be undertaken in such a way that avoids conflicts of interest, whether perceived or actual. This applies particularly to the selection of suppliers (persons who perform the work or provide goods and services), who must as far as is practicable be engaged through an open and competitive process so as to demonstrate value for money.

### **Legal Advice**

As may be necessary, PBCs are required to obtain independent legal advice in relation to activities proposed under the grant. The TSRA does not provide legal services to PBCs on matters outside of Native Title.

### **Tax and Government funding**

Applicants should make their own enquiries about any possible taxation consequences (including income tax and Goods and Services Tax) that may be incurred as a consequence of the grant. PBCs should seek advice from a financial adviser or the Australian Taxation Office Business Call Centre on 13 28 66. The

ORIC's LawHelp service is also able to provide advice in relation to taxation issues on free call 1800 622 431.

### **Background Checks**

The TSRA may at any time during the grant evaluation process, examine the financial records of the applicant and undertake background checks, including criminal records, to determine the good character and business reputation of the applicant and/or funding recipient.

### **Privacy**

The TSRA is accountable to Parliament and to the public in respect of all aspects of its Programs. Treatment of submissions is subject to special obligations placed on Australian Public Service employees by the *Privacy Act 1988* and the *Public Service Act 1999*, which govern the TSRA's use of the information provided. In this context, the TSRA is generally unable to accept grant submissions on a confidential basis. Applicants are advised that all successful applications will be notified in the Torres News, published on the TSRA web site and reported in the TSRA Annual Report. This detail will include the name of the applicant, the purpose of the grant and the amount of the grant.

### **Media**

The TSRA may use any activities performed through grant funding agreements as the basis for a media release or in any other way to promote the TSRA and its programs. By submitting a grant application to the TSRA the applicant is agreeing to this condition. Further detail can be found in the *Standard Terms and Conditions for Standard Funding Agreements*.

### **Decision**

The TSRA will consider applications for funding and advise the applicant of the decision within three days of the delegate's decision. This is approximately seven weeks after the closing date for each grant round. Unsuccessful applicants will be invited to participate in a debrief to outline the reasons their application was unsuccessful and to explore alternate methods of achieving their objectives.

### **Period of Funding**

The TSRA's funding to provide basic support for PBCs is provided on an annual basis. PBCs seeking funding beyond the end of the financial year for which funding is approved will need to reapply for funding for subsequent financial year(s). A decision to provide funding for a PBC's administrative costs in any given year does not imply any commitment from the TSRA to provide funding in response to further applications. Each application is assessed each year on its merits against all other applications.

### **Review Procedure**

In accordance with the TSRA Service Charter, applicants have the right to the review and appeal of any decision made. For grant funding, an appeal of decision together with any supporting evidence must be lodged with the TSRA within 28 days of the date on which the applicant was notified of the decision. The appeal must demonstrate that the information available to the delegate at the time of making the decision has substantially changed, as demonstrated by evidence that was either:

- Not in existence at the time the application was made; or
- In existence but not discovered until after the application was made.