

**Department of Prime Minister and Cabinet PBC Support Strategy  
ETNTAC Submission in response to Consultation Paper October 2016**

**Question 1: What is the best way for the Commonwealth to engage with PBCs, now and into the future?**

On 14 March 2014, the Federal Court formally acknowledged the Esperance Nyungar Peoples' Native Title Claim (WAD6097/1998; WCD2014/002) over 29,000 square kilometres of land and waters in the southern Goldfields. (See *Bullen on behalf of The Esperance Nyungar People v State of Western Australia* [2014] FCA 197.)

Esperance Tjaltjraak Native Title Aboriginal Corporation (ETNTAC) was subsequently incorporated and registered as the PBC for the Esperance Nyungar People. ETNTAC was registered on 23 March 2015. On 21 April 2015 orders were made by consent in the Federal Court that ETNTAC be the PBC for the purposes of sections 57(2) and 57(3) of the NTA

The parties to the native title proceedings reached agreement on the terms of a proposed minute of consent determination of non-exclusive native title. The State Government and the Esperance Nyungar People also negotiated the Esperance Nyungar Government Indigenous Land Use Agreement W12014/006 (ENILUA) as a component of the consent determination package. The ENILUA includes a financial benefits package to assist the native title holders in setting up the PBC to manage their assets and land holdings for economic, cultural, residential and/or social purposes.

The ENILUA package provides for a grant of \$2.4 million over five years support to assist ETNTAC with its administrative and operational objectives. The terms of the ENILUA also require that a portion of these monies be spent against certain land development and culture and heritage objectives. Since its establishment, ETNTAC has opened an office in Esperance, employed a CEO and other key staff, held a number of Board meetings, complied with its obligations under the CATSI Act and developed and implemented key policies and procedures, including in relation to financial management.

As a consequence of having funds available at establishment, within less than 12 months ETNTAC has been able to become fully operational and to operate independently of its NTRB, Goldfields Land & Sea Council (GLSC). We have asked GLSC to complete work on one future act matter that commenced predetermination, they do not represent ETNTAC in relation to any current matters. Although GLSC received PBC Basic Support funding for ETNTAC in the 2015 financial year, we understand that no monies were made available in 2016. Given we have access to administrative and operational funds from the WA State Government under the ENILUA, this funding stream is probably not suited to our needs. We do, however, wish to further consider whether there may be an opportunity for funding other activities through IAS.

To this end, ETNTAC's Board wishes to have a direct relationship with the Department of Prime Minister and Cabinet and seeks to better understand the role of the Department in





relation to native title funding. Our Board also wishes to be kept directly informed in relation to the development of Commonwealth policy as it relates to our operations. We also seek information in relation to the full range of Federal support programs (eg. IPA funding and ranger funding) and we need to understand how the different Indigenous Commonwealth funding programs interact.

We would welcome the attendance of the Department at any of our Board or General meetings.

**Question 2:**

***(a) Is current PBC funding reaching those PBCs that need support to maximise available opportunities for economic development and partnerships, within the context of the aspirations of the native title holder group?***

In 2015, GLSC received PBC Basic Support funding on our behalf. We are concerned that there was a lack of transparency about the expenditure of these funds and that to some extent GLSC sought to control expenditure in a way that was not responsive to our needs. We found it difficult to know when and how these funds would be spent.

We are also firmly of the opinion that we do not require GLSC to auspice any of our funding. We have a comprehensive set of financial procedures and controls in place. We engage an external accountant and bookkeeper and we are about to have our first audit completed.

***(b) How can more PBCs take advantage of the existing funding opportunities?***

It would be useful if a representative of the Commonwealth would come and workshop and help us prepare an IAS application. We have some ideas about what we need (eg. a future acts officer) but find some aspects of the application form difficult to complete. (We have also been unable to download it properly!).

**Question 3: What are your views of these proposed changes to funding arrangements?**

In broad terms the ETNTAC welcomes the proposed changes and a simplified application and assessment processes should enable us to take advantage of available opportunities.

**Question 4: How do PBCs want to get information about funding related changes in the future?**

As set out above, we would like to receive this directly from the Commonwealth and not via the GLSC.

**Question 5: What are the current support services available to PBCs? How can this be better coordinated?**

ETNTAC is a newly established PBC and in many respects we are still finding our feet. We are not confident that the GLSC can provide us with the services we need. Although GLSC provided some assistance in the early establishment phase, we have found their services in relation to future acts a little ad hoc. This is not the fault of individuals – on an individual



level we have found many of the GLSC staff to be very helpful. The overall approach of the GLSC, however, does not seem to be focused on the delivery of services to us as a PBC, rather it seems more about controlling the policy and funding space.

It would assist if both Commonwealth and State agencies could collaborate to provide a range of cross-agency support services, that might include assistance with:

- Training coordination;
- Work place health and safety compliance;
- The development of land and environment services aimed at protecting native title rights and interests, including the establishment of a ranger program, biodiversity and landscape scale conservation and fire management; and
- Strategic and business planning.

***Question 6: Are PBCs interested in participating in these kinds of projects?***

Yes, we are interested in participating in these kinds of projects but only where they complement our existing objectives.

***Question 7: Is there interest in funding for this purpose? How can it be prioritised?***

We undertook a fairly large amount of planning during our establishment phase as this was a key component of the implementation of the ENILUA. This is therefore not a key priority for us at present.

***Question 8: Would a system of low cost and final dispute resolution between members of the native title group and the PBC lead to earlier consideration and potentially resolution of disputes?***

Yes.

***Question 9: How could the accountability of PBCs to native title holding groups for compliance with the PBC Regulations be improved?***

This has not been an issue for us to date, however, we are very conscious of our obligations under the Regulations. We also take very seriously the need for transparency in relation to decisions relating to the use of native title monies. Any decisions made by ETNTAC that do or are likely to affect native title rights and interests are not taken unless there has been appropriate consultation and consent from the native title holders. We have held two large consultation meetings since incorporation.

***Question 10: Should the PBC Regulations that relate to the transparency and accountability to native title holders about the use of native title monies also apply to native title monies held outside the PBC?***

Yes. We would welcome stricter requirements in relation to financial accountability and we already insist on this in any event. In the end, it makes our job as a PBC easier as it helps prevent misunderstandings and conflict.



***Question 11: Are current mechanisms for streamlined decision-making processes, such as standing authorisations and alternative decision-making processes, being used by PBCs? How can information about these mechanisms and their usefulness be improved?***

Except in relation to the formation of a Circle of Elders to assist with the carrying out of heritage surveys, we have not had need of any standing instructions from the native title holders. This is partly the result of the streamlined processes for dealing with future acts that are contained within the ENILUA.