



YAWOORROONG MIRIUWUNG GAJERRONG YIRRGEB NOONG DAWANG ABORIGINAL CORPORATION

PBC support strategy – consultation paper

Submission made on behalf of the MG PBCs 2 December 2016

This submission is made on behalf of Miriung and Gajerrong #1 (Native Title Prescribed Body Corporate) Aboriginal Corporation RNTBC (ICN: 4506) (**MG PBC#1**) and Miriung and Gajerrong #4 (Native Title Prescribed Body Corporate) Aboriginal Corporation RNTBC (ICN: 4693) (**MG PBC#4**), (collectively referred to in this submission as the **MG PBCs**).

By way of background, MG native title comprises two separate determinations over two adjacent areas in the East Kimberley. The MG PBCs were established in April 2004 and November 2006 to represent Miriung and Gajerrong (**MG**) people as a group and to manage their native title rights and interests in the MG native title determined areas. The MG PBCs are governed by 5 MG directors. The MG PBCs do not hold any assets, do not have any employees and do not receive any government funding.

The MG PBCs are currently administered and managed concurrently by MG Corporation, which was established in 2006 to receive and manage the benefits transferred under the Ord Final Agreement (**OFA**) to the MG people. The OFA is a registered Indigenous Land Use Agreement by which MG native title holders agreed to surrender their ancestral native title rights over certain farmland development areas in exchange for a range of benefits which included administrative funding for MG Corporation for ten years.

Notwithstanding that administrative funding for MG Corporation ceased in June 2015, MG Corporation currently provides resources to enable the MG PBCs to perform their basic compliance functions under the *Native Title Act 1993* (Cth) (**Native Title Act**), the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (**PBC Regulations**) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The resources provided by MG Corporation to the MG PBCs largely take the form of legal staff to ensure relevant statutory obligations are met.

This submission does not address questions 4, 5, 10 or 11 set out in the consultation paper.

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

The most effective way for the Commonwealth to engage with PBCs is directly, as opposed to through NTRBs or other representative bodies. While the MG PBCs are willing to work collaboratively with the relevant NTRB in relation to policy development and various regional issues, engagement with the Commonwealth is best achieved directly given the interests of the PBC may not always align with the interests of the relevant NTRB.

In the experience of the MG PBCs, the most effective way for the Commonwealth to directly engage with PBCs is through representatives of the Regional Office of the Department of Prime Minister and Cabinet (**PM&C**). Locally based government representatives are better able to provide place-based advice and guidance in relation to policy developments and funding opportunities.

The MG PBCs encourage the Regional Office to take a pro-active approach to engagement with PBCs in order to keep PBCs informed of all relevant developments. For example, it would be useful to receive periodic updates from PM&C in relation to relevant developments. The MG PBCs

would find it useful to attend quarterly forums during which government representatives and representatives from PBCs share knowledge and discuss developments relevant to the region.

It must be recognised, however, that this issue cannot be considered in isolation from the issue of administrative funding for PBCs. Direct Commonwealth interaction with PBCs requires resources. Administrative funding for PBCs is therefore crucial in order for PBCs to not only protect and manage determined native title, but to ensure that they are across all relevant developments and opportunities to allow them to generate economic and social benefits through the effective management of native title. A sustainable source of administrative funding is also crucial for PBCs to ensure certainty for governments and other parties interested in accessing native title land.

Question 2: 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? How can more PBCs take advantage of the existing funding opportunities?

As noted above, the MG PBCs have historically received funding through MG Corporation under the OFA. Given administrative funding for MG Corporation has now ceased, the MG PBCs are currently considering applying for 'basic support funding' to ensure that they can continue to perform their basic compliance functions and 'capacity building funding' under the Indigenous Advancement Scheme to maximise economic development opportunities.

As noted at question 1 above, information in relation to existing funding opportunities is most effectively conveyed directly by the Regional Office of PM&C.

Question 3: What are your views on the proposed changes to funding arrangements?

The MG PBCs support the aims of the proposed changes to funding arrangements listed in the consultation paper. In particular, the MG PBCs support:

- the removal of previous unofficial caps on basic support funding;
- the simplification of application processes where possible; and
- greater transparency and clarity in relation to the use of PBC funding.

Further, the MG PBCs support the provision of sector-facilitated training. It should be noted, however, that there is an abundance of governance training available for directors of Indigenous organisations, however the efficacy of such training is questionable. The MG PBCs support the allocation of resources for robust sector-facilitated training, which includes accredited governance courses with an examination component rather than ad hoc and uncoordinated information sessions.

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

The MG PBCs support the introduction of broader support strategies for PBCs, including:

- sector-facilitated training and networking;
- promoting information about successful and diverse use of Indigenous land; and
- facilitating engagement between PBCs and the private sector.

It should be noted that the extent to which PBCs will be able to participate in such projects will be dependent on securing sustainable administrative funding.

Question 7: Is there interest in funding for this purpose?

The MG PBCs support the allocation of resources for PBCs to undertake planning to identify economic development opportunities. Such an approach will only be effective, however, if it is facilitated by an independent and appropriately qualified third party. For example, a 'broker model'

could be employed to provide PBCs with expertise and guidance in relation to economic development opportunities.

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?

The MG PBCs have not had cause to refer to the dispute resolution procedures in relation to disputes between members of the native title group and the PBC.

However, the MG PBCs note that the best approach to dispute resolution is to mitigate against the risk of a dispute arising. This is particularly important in relation to land management and the distribution of native title benefits to members of the native title group. By way of example, if PBCs have clear and robust benefit distribution and land management policies and procedures in place, disputes are less likely to arise between members of the native title group and the PBC itself.

The MG PBCs support the involvement of the State and Commonwealth Governments in developing standard form policies and procedures that PBCs can adopt to their specific circumstances.

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

The MG PBCs follow the relevant statutory regulations in relation to consultation and consent of the common law native title holders, including in relation to preparing evidence of such consultation and consent. Specifically, the MG PBCs prepare 'Native Title Decision Reports' in accordance with regulations 8 and 9 of the PBC Regulations.

Accountability of PBCs to native title holder groups for compliance with the PBC Regulations could be improved through a national registration database for all documents created in accordance with regulations 8 and 9.