



26 February 2019

Napau Pedro Stephen AM, Chairperson Torres Strait Regional Authority

Thank you for the opportunity to make a submission to Joint Standing Committee on Northern Australia, Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia.

Introduction

The Torres Strait Regional Authority (TSRA) is an Australian Government Statutory Authority established in July 1994 under the Aboriginal and Torres Strait Islander Commission Act 1989, which is today known as the Aboriginal and Torres Strait Islander (ATSI) Act 2005.

The TSRA has the responsibility to:

- Formulate, coordinate and implement programs for Torres Strait Islander and Aboriginal people living within the region;
- Monitor the effectiveness of these programs, including programs conducted by other bodies;
- Advise the Minister for Indigenous Affairs on matters relating to Torres Strait Islander and Aboriginal Affairs in the Torres Strait;
- Recognise and maintain the special and unique Ailan Kastom of the Torres Strait Islander people living in the Torres Strait Region; and
- Undertake activities necessary to perform its function as defined by the ATSI Act 2005.

The TSRA performs separate functions under the *Native Title Act 1993* (Cth) as the Native Title Representative Body (NTRB) for the Torres Strait region. In 2018, the Minister for Indigenous Affairs renewed the TSRA's NTRB status until 30 June 2019.

The current engagement, structure and funding of representative bodies, including land councils and native title bodies such as prescribed body corporates.

- Engagement: Engagement across the Torres Strait region is mixed, with some Prescribed Body Corporates (PBC)s engaging highly with external stakeholders such as the TSRA and Office of the Registrar of Indigenous Corporations (ORIC). However failure to engage with external stakeholders does not necessarily indicate a lack of capacity or capability within the PBC. In some instances PBCs are simply able to

manage their own affairs without the assistance of local NTRBs such as TSRA. Similarly, high engagement may be indicative of a low level of capability to achieve compliance within the PBC, and a high reliance on supporting stakeholders to undertake a range of tasks including basic administration.

- **Structure:** The structure of PBCs is largely the same throughout the Torres Strait with most managing the native title rights and interests of determined land and water which they are charged with. The exception to this is Mer and Badu where the PBC acts as a trustee over the determined land. This adds a layer of complexity to the obligations and tasks that this PBC undertakes.
- **A number of PBCs have also established 'arm's length' economic enterprise entities** which hold and manage investment and economic enterprises for the PBC.
- **Funding:** The TSRA provide two funding rounds each year under the Authority's Grant Funding Guidelines. Grants are assessed against their ability to meet the criteria set out in the Guidelines. The intent of this grant is to support the internal function of PBCs in the Torres Strait. As such funding might be awarded for the purposes of setting up internet, buying office supplies or hiring a part time administration assistant. The TSRA also provide ad-hoc financial assistance for a range of reasons including the provision of legal assistance for PBCs. Alternative funding is also available from other sources, but the TSRA has limited visibility over this.

Legislative, administrative and funding constraints, and capacity for improving economic development engagement.

- To an extent the capacity for improving economic development and engagement with Traditional Owners (TO's) in the Torres Strait is reliant on the functionality of PBCs managing native title rights and interests. Proponents looking to build facilities on determination land, that the PBCs manage, will enter into an Indigenous Land Use Agreement. PBCs play a large part in the process, including facilitation of consultation with the TO's. Thus, activities which encourage economic development in a region, such as the construction of a health centre, may be delayed if PBCs are not functional.
- In addition to this projects which encourage economic development in the region are also sometimes delayed as a result of land disputes. TO's in conflict are unable enter into Indigenous Land Use Agreements (ILUAs) in a timely manner. This has the effect of delaying or postponing projects indefinitely. The TSRA is working with PBC's to insert effective dispute resolution processes into PBC Rule Books to better manage land disputes.

Strategies for the enhancement of economic development opportunities and capacity building for Traditional Owners of land and sea owner entities.

- Enhancement of economic opportunities in the Torres Strait rely on efficient and capable advocates. PBCs must have the capacity to manage financial affairs, in

particular those which holds assets intended to run as a profitable business. An aspect of this capacity is the knowledge PBC directors have through external training opportunities. Stakeholders such as ORIC and the National Native Title Council provide courses focussed at governance training, financial management and strategic direction. Importantly, directors perform their role without monetary compensation and as such TSRA's part in providing financial assistance for directors to attend this training is also vital to ensuring PBCs have access to the correct tools for success. More could be done in this regard to improve access to essential training in the Torres Strait and retention of this knowledge within PBCs.

Other salient issues which have been brought to the attention of the NTRB are:

- Lack of personal incentives for PBC boards to fulfil their corporate governance and compliance obligations and manage the affairs of their PBC effectively;
- Failure of many PBCs to achieve capacity effectively manage their own affairs
- Lack of understanding corporate governance and compliance by PBC boards and officers and lack of training therein;
- Lack of ongoing governance and compliance funding for PBCs which do not have sufficient revenue flow from future act activity;
- Corporate 'churning'-relatively high turnover of board requiring constant training of new board members and other corporate officers;
- Lack of resources to address logistical issues of convening compliance meetings where air travel to attend is usually required;
- Lack of resources for administration training for PBC staff;
- Numerous Native Title/traditional owner land disputes and lack of ability and resources of PBCs to resolve them;
- Land disputes impeding the progress of having future acts validly commenced on PBC held Native Title land.
- Difficulty in PBCs obtaining adequate compensation for invalid past acts and also future acts;
- Failure of PBCs to request assistance on governance, compliance and other matters;
- Lack of acknowledgement and respect by proponents and other stakeholders as to the necessity of obtaining the free, prior and informed consent of common law Native Title holders for the use of their lands;
- Lack of understanding among proponents and other stakeholders as to appropriate PBC engagement (e.g. lack of cultural awareness) the quest of obtaining free prior and informed consent for their project; and
- Lack of pro bono assistance for PBCs for non-Native Title legal issues and financial and other professional advice which would assist them to achieve corporate aspirations.

