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Fees for services and PBCs

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One of the greatest challenges for most PBCs is the lack of the funds and resources they need to carry out their responsibilities under the Native Title Act, and to undertake the broader range of activities that native title holders want them to become involved in.

The challenges that native title holders are only too familiar with were highlighted in a [review](#) by Deloitte Access Economics in 2014 of the roles and functions of native title organisations around the country. They reported that most PBCs carry a substantial burden of 'core activities', yet PBCs are also expected to undertake additional activities to meet the expectations of the native title group, all with minimal funding and limited resources.

The review suggested that targeted resources could be provided to build the capacity of PBCs in the early stages of their operations and that consideration should be given to providing a basic level of funding to support the governance and core compliance responsibilities of PBCs.

Availability of funding

Since 2014 there has been an increase in support and funding directed towards PBCs, particularly in the areas identified in the report. PBCs may now be eligible to apply to the Australian Government for basic support funding, capacity building funding, IAS Community Led grants, and the Indigenous Entrepreneurs Fund (see [PBC funding options here](#)). Nonetheless, as [research](#) has found in recent years, this funding is unlikely to cover the core operating costs of many PBCs, and they will have to continue to rely on the volunteer labour of native title holders to carry out many of the organisation's responsibilities.

Other sources of income

When PBCs are established, many of them rely on assistance from the regional Native Title Representative Body and whatever basic support funding is available from government. Only a few are likely to have access to significant sources of income from native title settlement agreements or future act agreements involving

major resource or infrastructure projects.

While some PBCs may eventually be able to develop additional sources of income through activities such as cultural heritage and natural resource management and local business opportunities, most will need to rely on charging fees for the native title services they provide in order to cover the cost of providing these services.

What can a PBC charge fees for?

The Native Title Act and the Native Title (Prescribed Body Corporate) Regulations 1999 (PBC Regulations) make express provision for a PBC to charge a fee for the costs it incurs in performing some of its statutory functions. These provisions are primarily focused on the future act functions of a PBC and include:

- providing comments on proposed future acts
- exercising procedural rights in response to proposed future acts
- negotiating 'right to negotiate' future act (section 31) agreements

Significantly, a PBC may also charge a fee for the costs it incurs in negotiating indigenous land use agreements. The scope of these agreements can extend well beyond future acts, to any matter concerning native title rights and interests in the agreement area.

Not surprisingly, the precise nature of the activities and costs a PBC may charge for are not identified in the Native Title Act. However, by way of guidance the PBC Regulations note that in certain contexts a PBC could charge a fee for the costs of contacting affected native title holders, arranging meetings or travel, or obtaining legal advice.

How much can a PBC charge?

The Native Title Act and the PBC Regulations do not specify how much a PBC can charge for the costs it has incurred, other than to say that the fee must "not ... amount to taxation".

Courts have looked at this issue in other contexts and have indicated that they will be guided by broad principles such as whether the fee is proportionate to the cost of the service, or whether the fee has a close relationship to the cost to the provider of providing the service, or has a discernible relationship to the value of the service to the person receiving it.

It was explained in the Native Title Newsletter in January/February 2011 in an overview of the draft PBC Regulations that in practice this means that "PBCs must be able to justify their 'pricing structure' based on either data of the cost of the services over time, or perhaps industry standard".

A pricing structure can be developed based on the actual costs identified in the accounts and budgets of an organisation plus a reasonable allocation for the indirect costs (or 'overheads'). However, for some PBCs it may be simpler to follow the common practice of identifying the direct costs that are incurred in providing a service and then applying an 'administration cost' (eg 15%-20%) that would be considered reasonable by industry standards.

Restrictions on charging fees

The Native Title Act makes it clear that a PBC may not charge a fee to native title holders or claimants, another PBC, or a native title representative body. Furthermore, a PBC may not charge a fee for participating

in any court proceedings or an inquiry such as a Native Title Tribunal determination about a future act matter.

Request for the Registrar's opinion

The Native Title Act makes provision for a person or organisation that has been charged a fee by a PBC to seek an opinion from the Registrar of Indigenous Corporations as to whether the fee is one that the PBC may charge. Both the PBC and the person who requested the opinion can pursue further avenues of review and appeal if they do not agree with the opinion that the Registrar provides.

The person seeking the opinion from the Registrar is not required to pay the PBC's fee while the review is being undertaken. If the Registrar is ultimately of the opinion that the fee is not one that the PBC may charge, the PBC is required to withdraw the fee. The complete details of the review process are set out in the PBC Regulations and also in a [policy statement](#) published by the Registrar.

Good practice considerations for PBCs

Because a fee charged by a PBC in this context can be reviewed, it would be good practice for a PBC to develop a reasonable and justifiable pricing structure. It may also wish to consider making its fees available on request and providing a quote for the cost of its services before undertaking any work. These practices should minimise the risk of a PBC experiencing significant delays in receiving its fees because they are under review by the Registrar.

Other fees for services work

Once a PBC has developed the capacity to perform its core functions with the support of income received from its future act fees for services work, it may be in a position to explore opportunities to undertake other income and employment generating activities outside of its future act responsibilities.

The diversity of fee for service activities that PBCs have developed can be seen around the country. They include fee for service work in land and sea management such as [weed and feral animal control](#), [biodiversity monitoring and management](#), [biosecurity surveys](#), [water quality testing and management](#), [carbon farming projects](#), [conducting eco-tours](#) on country, providing other [natural resource management](#) services, and [cultural heritage management](#) services of various types.

These are just a few of the activities that PBCs are currently engaged in beyond their 'core activities' so as to turn the aspirations and vision of their native title community into an everyday reality.

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