

NATIVE TITLE POLICY PAPER 6

National picture: Small native title corporations – income and costs

Iain G. Johnston and Belinda Burbidge

JULY 2018



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL
AND TORRES STRAIT ISLANDER STUDIES

FINDINGS

1

Native title and small PBCs

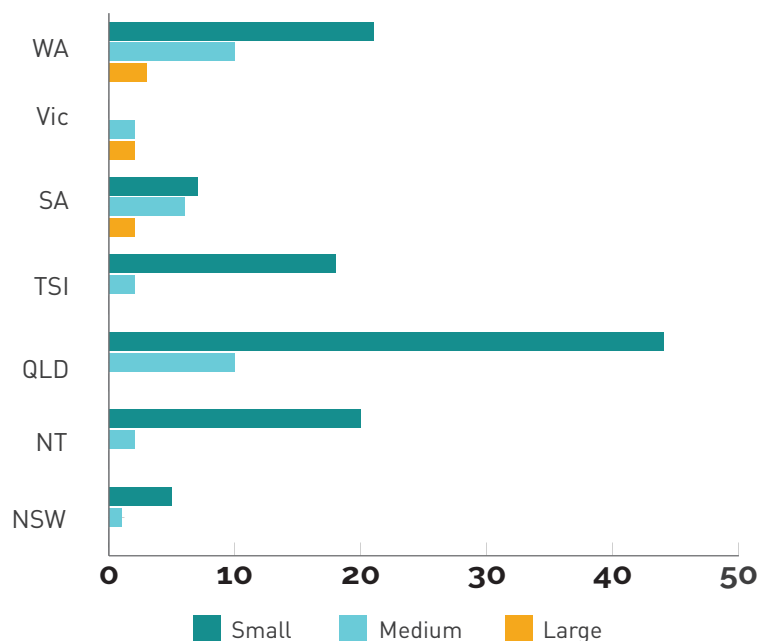
The Australian Government has proposed to finalise all existing native title claims by 2025 and the National Title Tribunal (NNTT) predicts that by that time more than **50%** of Australia will be recognised as native title lands and waters.¹ The majority of Prescribed Bodies Corporate (PBCs) across Australia who currently or will in future manage these claim areas are classified as small: numbering 123 or **70%** of all PBCs in 2018. Following these predictions the number of small PBCs will only increase.

All states and territories, excluding Victoria, Tasmania and the Australian Capital Territory, have small PBCs; they are the majority in each state and territory. In 2016, there were 54 registered PBCs on the Queensland mainland, 44 of these PBCs were reported as small.² Also, only **33%** of small PBCs reported an income in the 2015-16 financial year and most used the Prime Minister and Cabinet (PM&C) basic support funding to remain compliant. While the basic support funding assists with compliance and basic operations, most small PBCs struggled to keep to their doors open and adequately achieve their native title aspirations.

1 Reforms to the *Native Title Act 1993* (Cth) Options Paper November 2017, p. 3

2 For the purpose of the analysis the Torres Strait Islands have been addressed as a separate region from Queensland.

Figure 1: Distribution of PBCs by state and classified by size for the 2015-16 financial year



A PBC size is calculated according to its income, asset and the number of employees it has in a finance year, accordingly small PBCs will satisfy two of these three criteria: A small consolidated gross operating income of less than \$100,000, consolidated gross assets valued at less than \$100,000 and/or fewer than five employees (ORIC - corporation size and reporting).

Image: Guugu Yimithirr country, QLD.
Credit: Caden Pearson

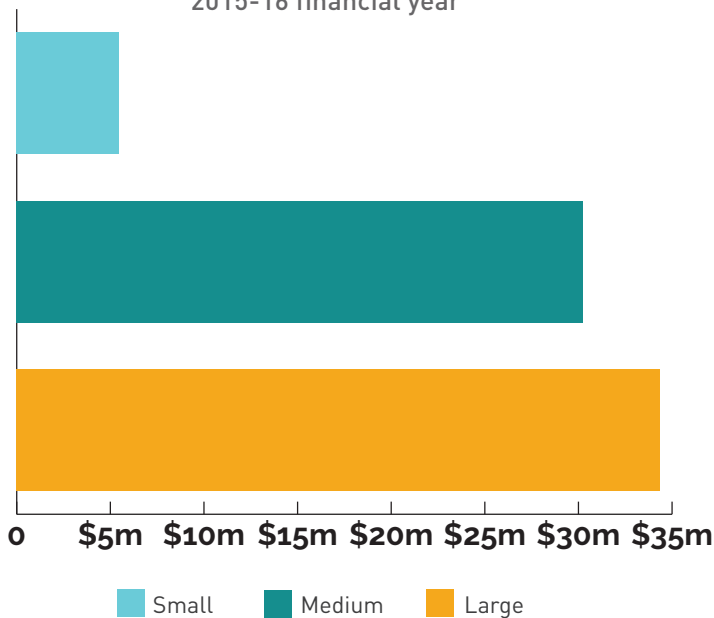
2

Median income of small PBCs

Nationally the PBC sector has grown since 2010; however, a substantial proportion of this growth was experienced by large PBCs. Between 2010–2011 and 2015–2016, the seven largest PBCs had a net income of just under \$34.4 million combined, whereas the 112 small PBCs had a net income of just over \$5.4 million.

In the 2015–16 financial year the national median income for all PBCs was \$50,000; however, the median income for new PBCs was just \$1,932. Existing PBCs had a national median income of \$82,198. Moreover in the same financial year, **9%** (14) of the 155 PBCs were granted exemption from submitting general (including financial) reports and a further **12%** (19) of PBCs did not provide financial information in their general reports. These PBCs likely had no income.

Figure 2: Median income of PBCs in the 2015-16 financial year



3

What are the responsibilities of small PBCs

PBCs have an important role in the native title sector as the holders and/or managers of native title, as access points for multiple parties with interests in native title land and waters as well as representatives of the land holding group. Some PBCs carry out additional activities to their statutory obligations, such as cultural and language programs, welcome to country ceremonies, local reconciliation and cultural awareness, cultural heritage, land management and economic development.

Many PBCs however are poorly resourced and as well as carrying cultural and corporate business, they also have to ensure compliance to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (the CATSI Act) which includes reporting activities and finances to the Office of the Registrar of Indigenous Corporations (ORIC).

Table 1: Reporting requirements for PBCs

Size and income of corporation	Report(s) required
Small corporations with a consolidated gross operating income of less than \$100,000.	1. General report only
Small corporations with a consolidated gross operating income of \$100,000 or more and less than \$5 million.	1. General report 2. Financial report 3. Audit report

4

Cost to run a small PBC

Between 2015 and 2017, AIATSIS and the Eastern Maar Aboriginal Corporation (EMAC) undertook a study 'Tracking native title work.' The study investigated how much it cost and how much time people spent conducting native title business. This project provided a useful example of the operational costs and time commitments of a PBC to claim, enact and manage their native title rights.

EMAC found they required an absolute minimum \$150,000 per annum to keep their doors open and to be compliant under the CATSI Act and respond to requests under the Native Title Act 1993 (Cth) (the NTA). Their major financial outlays included one staff member's salary and superannuation, insurance, office hire and equipment and car leasing. Excluded from this estimate were:

For PBCs not supported by their local NTRB, their costs are substantially higher and they cannot operate unless their PBC is receiving an income or financial support from elsewhere. To undertake native title work, PBC business and report to ORIC many small PBCs rely upon the \$50,000 Basic Support Funding (BSF) from PM&C. This grant was recently uncapped but is limited and is only intended to last for a maximum four year period; furthermore, it is only intended to be used for basic statutory requirements.

If all small PBCs were to receive \$150,000 in basic support funding this would require a commitment of Commonwealth investment of over \$18 million per annum to support smaller PBCs in moving towards self-determination and corporate sustainability.

Legal advice and administrative support provided by First Nationals Legal and Research Services (FNLRS)

Costs directors and members pay themselves to get to and from meetings, including the time taken away from work or other commitments

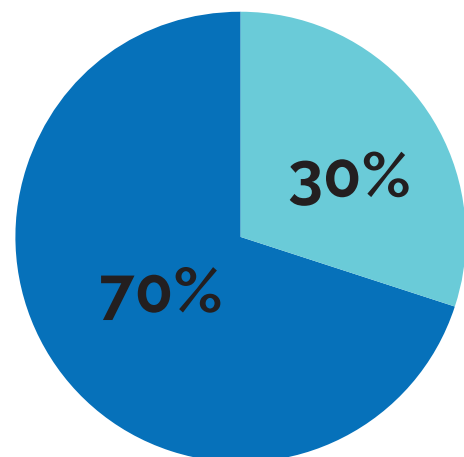
The costs of the voluntary labour by directors and staff to ensure EMAC got off the ground

5

How much time is spent on native title work?

As noted above, another cost for small PBCs is the voluntary labour native title holders and PBC directors and staff put into PBC business. As an illustration, Individual A from the EMAC study estimated they spent 12 working weeks on native title business, including an additional two days per week volunteer labour to EMAC between mid-2011 to late 2015. In total this equates to a year of unpaid labour, on top of their regular employment.

Figure 3: Unpaid weeks spent conducting native title business (in light blue) as a proportion of a 40 week working year



Eastern Maar labour in native title

PBC directors are often involved in other forms of employment and Individual A luckily had flexible working arrangements. However, lots of native title holders do not have flexibility in employment and are not able to participate in PBC business.

In terms of remuneration, for Individual A, native title work equates to \$160,000 unpaid remuneration, as per the standard rate designated by the Remuneration Tribunal for holders of part time public office. Collectively EMAC members spent 1,392 days attending events (including travel time but excluding overnight stays) and this equates to just over half a million dollars of unpaid remuneration. These figures are provided to demonstrate the cost value that community native title labour is worth, rather than arguing for or against remuneration within native title. It is also indicative of the value native title holders place on the work of the PBCs.



In summary, small PBCs who are struggling to stay afloat are dependent on a range of support from Government funding, NTRB/NTSP support and voluntary labour from native title holders. Yet, this is not a significant enough investment to see any significant growth in small PBCs from 2010–11 to 2015–16. AIATSIS research, NTRB experience and recent presentations at and contributions to forums, such as the 2017 and 2018 National Native Title Conferences and the jointly hosted PMC and National Native Title Council (NNTC) regional PBC forums, indicate a much greater financial investment by the Commonwealth and State governments is required to ensure that the majority of native title corporations have an opportunity to succeed and to build the number of medium and large corporations who realistically aspire to self-sufficiency.



CONTACT

For more information about the PBC capability project please contact:

Dr Belinda Burbidge
Research Fellow, AIATSIS
P 02 6261 4226
E belinda.burbidge@aiatsis.gov.au

Native Title Research Unit
AIATSIS
P 02 6246 1111
E ntru@aiatsis.gov.au

Top: Looking out towards Barunguba from Walbunja Country, South Coast, NSW.
Credit: Amity Raymont

Above: Bardi Jawi country, Dampier Peninsula, WA.
Credit: Belinda Burbidge