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Regional Governance Structures in Indigenous Australia: Western Australian Examples

Manuhuia Barcham



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Abstract

The last few years have been witness to a dramatic change in indigenous affairs in Australia. This process has resulted in the disestablishment of ATSIC and a movement towards the promotion of regional governance structures for indigenous Australia. This article investigates three organisations in the Southwest of Western Australia which may form the basis of a regional governance structure. These three cases illuminate a number of generic issues that must be considered if the aim of the current shift in indigenous affairs policy is to lead to robust and successful outcomes for indigenous Australians. Issues of capacity, legitimacy and the 'fit' of structures to indigenous populations are of critical import to the success or failure of this process.

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Biographical Note

Manuhuia Barcham is Director of the Centre for Indigenous Governance and Development (CIGAD) at Massey University.

Introduction

The last few years have seen the Australian government move towards a 'whole-of-government' approach to indigenous affairs. This process has resulted in the disestablishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) and a movement towards the promotion of regional governance structures for indigenous Australia. Based on the new policy mechanisms of Shared Responsibility Agreements (SRAs) and Regional Participation Agreements (RPAs) these changes in indigenous affairs were designed to ensure that local communities had a greater say in decisions that affected them. This article investigates three organisations in the Southwest which may form the basis of a regional governance structure, these being: the South West Aboriginal Land and Sea Council (SWALSC), Community Action Groups (CAGs) and the Noongar Partnership Alliance (NPA). These three cases illuminate a number of generic issues that must be considered if the aim of the current shift in indigenous affairs policy in Australia is to lead to robust and successful outcomes for indigenous Australians. Issues of capacity, legitimacy and the 'fit' of structures to indigenous populations are of critical import to the success or failure of this process. This paper concludes that a loose confederation based on a dispersed governance model could well provide the best approach towards regional governance for indigenous Australia but also asserts that, if these changes are to be successful, there is a need for proper resourcing to be made available.

Background

At an operational level Indigenous Affairs is now managed through the Office of Indigenous Policy Coordination (OIPC) which is based within the Department of Families, Community Services and Indigenous Affairs (FaCSIA). The shift towards a whole of government approach has also seen indigenous service provision

transferred to the respective mainstream agencies. And, in line with the desire to improve the local nature of these new relationships, multi-agency Indigenous Coordination Centres (ICCs) have also been established at various sites across Australia. Housing staff from a variety of different departments these ICCs operate under the auspices of the OIPC with their key role being the coordination and delivery of Indigenous-specific and mainstream programs at the regional level as well as the negotiation of Shared Responsibility Agreements¹ (SRAs) and Regional Participation Agreements (RPAs) with local indigenous communities.²

SRAs and PRAs are key elements in the Australian Federal government's new approach to indigenous affairs. The key goal of this shift is more direct engagement by government with indigenous communities in order to ensure that funding and service delivery for Indigenous communities is coordinated and effective. This move towards a 'whole-of-government' approach was presaged to some extent by the Council of Australian Governments (COAG) agreement in 2000 to begin to work together to improve the social and economic well being of Indigenous Australian communities.

Council of Australian Governments

The underlying lessons that COAG felt needed to be learnt from the previously uncoordinated approach of Federal and State level departments and agencies to indigenous issues and communities was that:

- governments must work together better at all levels and across all departments and agencies; and
- Indigenous communities and governments must work in partnership and share responsibility for achieving outcomes and for building the capacity of people in communities to manage their own affairs.³

COAG's recent policy and operational shift can be usefully summarised by the comment that "responsibility for the condition and well-being of Indigenous communities is one shared by the community, its families and individuals and with governments"⁴ – that is, it is a shared responsibility.

The connection between the activities of COAG and the development of SRAs (and by extension RPAs) was strengthened with the June 2004 release of COAG's *National Framework of Principles for Government Service Delivery to Indigenous Australians*. Following a general trend in international service delivery best-practice the new national framework was designed to recognise "the need for services to take account of local circumstances and to be informed by consultations and negotiation with local representatives (OIPC 2004, p. 19)."⁵ In this document we again see how the restructuring of the Australian government's approach to indigenous affairs is based on a desire for an increased focus on direct engagement with indigenous people and communities by the Australian government through the devolution of responsibility to local and regional-level groupings.

Regional governance structures

The Australian Government's recent reforms of indigenous affairs are based on a move away from the idea of a single national representative structure for all indigenous Australians, and towards the development of specific agreements with particular indigenous communities through regional indigenous representative bodies. In many respects this move closely follows the general international literature which has increasingly focused on the issue of context-specific reform in terms of creating robust and sustainable governance structures and processes. However, while these new regional governance bodies are designed to function as the interface between indigenous communities and the various levels of Australian government, there are a number of issues which need to be addressed

including the legitimacy and effectiveness of representational structures in large regional organisations and the interaction of non-local indigenous populations with local indigenous groups (especially in urban areas).⁶

A number of regional governance arrangements are already approaching completion with a number of indigenous communities and groups in consultation with their local ICCs. The first of these new regional partnership agreements was, however, signed in August 2005 between the Australian Commonwealth, the Western Australian Government and the Ngaanyatjarra Council.

The Ngaanyatjarra regional participation agreement

The area covered by the Ngaanyatjarra Council (the Ngaanyatjarra Lands) spans the three shires of Ngaanyatjarraku, East Pilbara and Laverton. The Lands comprise a vast area of the Western Desert – covering approximately 3% of mainland Australia. However, despite covering such a vast area the actual population is relatively low, totalling only about seven thousand individuals. The remote nature of the region combined with the relatively austere nature of the surrounding environment and the lack of substantial pastoral or mineral-extraction interests, means that not only are the majority of the resident population the traditional owners of the territory but also that they continue to maintain *de facto* (and, as the recent Native Title ruling shows *de jure*) control over the Lands⁷ As such, traditional modes of socio-political organisation continue to exert a strong influence on the running of these communities – even though the Council and Shire structures are necessarily modern constructs.

The maintenance of a ‘traditional’ Aboriginal life-style is an important point to note as it lends an aura of legitimacy to Government structures that base their policies on such premises. It thus gives gravitas to the Ngaanyatjarra Council’s claim to act as the legitimate regional governance structure for the region. It

should also be noted that even before the signing of the recent RPA Ngaanyatjarra communities have (through their Council) long provided much of the infrastructure for the region including stores, health clinics, aerial services and roads. The combination of a high degree of cultural legitimacy combined with their proven success in managing and maintaining the regional infrastructure make the Ngaanyatjarra Council an obvious candidate as a regional governance structure.

The signing of the agreement thus sees the Ngaanyatjarra Council gain recognition by the Commonwealth and State government as the official regional governance organisation for Ngaanyatjarra and the Ngaanyatjarra Lands. The agreement commits the Commonwealth government to providing AUD\$8million to the Ngaanyatjarra Council over the next three years for infrastructure support and resourcing for the twelve communities within the Lands.⁸ However, as noted above, the Ngaanyatjarra Council has for a number of years functioned as a *de facto* regional governance structure for Ngaanyatjarra. In many respects then the signing of the Ngaanyatjarra RPA looks like the continuation of business as usual.

However, unlike Ngaanyatjarra the majority of Aboriginal Australian groups do not possess, or do not look like they will gain, strong native title rights. In addition, years of contact with non-Aboriginal Australian society has meant that many of these groups have had to dramatically change their cultural practices and as such are seen by many non-Aboriginal Australians as being less 'authentic' than groups such as Ngaanyatjarra which have suffered far less disruption to their cultural and linguistic forms. In a sense then, the Ngaanyatjarra case does not offer much in terms of models of best-practice for the construction of RPAs apart from for other indigenous groups living in very remote areas.⁹

Instead, more helpful lessons are likely to come from 'hard cases'. That is regions where the resident Aboriginal populations have undergone what is generally identified as a high degree of acculturation, where there is an admixture of

traditional owners and historic peoples and where there is a mixture of urban, rural and remote areas within the region in question.¹⁰ One such group can be found in the Southwest of Western Australia.

Noongar – the indigenous people of southwest Western Australia

Noongar are the traditional owners of much of the Southwest of Western Australia.¹¹ Noongar traditional lands stretch from Jurien in the North through to Dalwallinu in the Northeast and Hopetoun in the Southeast and all areas in between. Noongar can be found throughout this territory – in remote rural communities through to large metropolitan areas such as Perth. Numbering in excess of 27 000 individuals Noongar represent one of the largest single indigenous groupings in Australia.

In the post contact era Noongar social form has tended to focus on discrete social groupings known as families. Christina Birdsall has argued that it is this form of kinship organisation that has “enabled the Nyungar people to maintain themselves as a discrete socio-political group within the wider Australian society” (Birdsall 1988, p. 137). These families are the key signifier of Noongar identity both vis-à-vis the non-Noongar world as well as in relation to other Noongar families.

Noongar families are generally spread over a discrete set of towns (a run) which are recognised by other Noongar families as belonging to that family. And, within these families, Noongar individuals generally claim one town as their primary town. These links to country and to other members of the family are maintained by ongoing movement around these family runs. However, in the wake of the history of enforced transportation and institutionalisation of Noongar over the last

century many Noongar families often ended up residing great distances from their traditional country. What has happened in these situations is that people have generally tended to return home when the situation permitted. This process has created a 'line of towns' through which individuals and groups passed on their way home to their country (Birdsall 1988, p. 142). As a result of this process Noongar movement tends to operate not only around family runs but also along these lines as well. One of the side effects of this forced relocation of individuals and families and their eventual return over time to their own 'country' has thus been the creation of a broader web of kinship across the Southwest as individuals from disparate regions of Noongar country had children together. This broader kinship web may play an important role in the creation of a broader Noongar corporate identity – linking together as it does families across the entire Southwest. The question that needs to be asked though is can all these families unite – can they (following Birdsall's terminology) become 'one Noongar family'? Can they become a 'Noongar nation'?

In the wake of the disestablishment of ATSIC there are three main organisational structures from which a possible regional governance structure for indigenous Australians in the Southwest might emerge – The South West Aboriginal Land and Sea Council (SWALSC), Community Action Groups (CAGs) and the Noongar Partnership Alliance (NPA). In some respects these organisational structures (or proto-organisational structures in the case of the NPA) are active competitors for this role. In this next section of the paper I describe these three organisations before moving into a discussion of the implications of these developments for not only the Southwest but other indigenous groups looking at the creation of RPAs in the near future.

South West Aboriginal Land and Sea Council

The South West Aboriginal Land and Sea Council (SWALSC) is the current Native Title Representative Body (NTRB) for the Southwest of Western Australia.¹² Operating as an NTRB, only the descendants of traditional land owners in the Southwest, that is Noongar, are entitled to belong to SWALSC. The South West Aboriginal Land and Sea Council (SWALSC) was created by the Noongar Land Council (NLC) executive in an attempt to overcome the deadlock amongst Noongar that threatened to derail the re-registration of the Southwest NTRB.¹³

SWALSC as an organisation is made up of an executive and an elected arm. The executive arm operates under a CEO who controls the day to day running of the operation while the elected arm operates through a council system. Under SWALSC Noongar country is split into 14 wards.¹⁴ Each ward elects four members to the SWALSC full council. These four members are in turn elected to fill certain positions within their ward, these being: an executive committee member, a ward representative, a women's representative and an older person. While all four sit on full council they are also meant to sit on their respective sub-committees.¹⁵ However, apart from the full council and the executive council, lack of funds meant that none of these other sub-committees met in either 2004 or 2005.

Native title claims in the southwest

As SWALSC is the NTRB for the Southwest its primary mandate is the negotiation, and eventual settlement, of native title in the region. In the wake of the passage of the *Native Title Act (1993)* 78 individual claims had been laid by Noongar over various sections of the Southwest. However, despite the sheer number of these claims it should be noted that there had long been a desire amongst Noongar for the creation of a Single Noongar Claim (SNC).¹⁶ This desire, when coupled with the NLCs lack of capacity to fully support all 78 existing claims, meant that from 1998 the NLC began a process of consolidation of the various claims. However, while the general wish was for the consolidation process to lead to a single claim

it was decided by the NLC executive that the move from 78 claims to a single claim would, for pragmatic reasons, be too risky due to the possibility that it could fail registration. And so, it was decided to undergo an intermediate step whereby the 78 claims would be reduced to six, and from there the six remaining claims would then be consolidated into one single claim. With this long-term goal in mind the 78 original claims were withdrawn in 1998 and replaced by six larger claims covering the same total area (Noongar Land Council Annual Report 1998/1999, p. 3).

In withdrawing their claims the named applicants of the original claims were transferred over to the new six claims.¹⁷ In addition to becoming the named applicants of the six new claims these individuals also became the initial members of the working parties for each of the claims. These working parties were to be the key point of communication and deliberation between SWASLC and the respective native title claimants.

This process raised a number of issues about the governance and legitimacy of these new working parties. A number of Noongar families who had interests in various of the six new claims felt that their interests were not being either protected or served by the working parties as they were then constituted. With membership of the working parties restricted to those who had been named applicants of the initial 78 claims or those individuals granted membership of the working parties by the aforementioned named applicants, a number of Noongar individuals and families felt that the native title process was being hijacked by certain other Noongar families and individuals who had managed to 'get in first'.

In addition, as working party meetings began to be held, Noongar individuals would attend and be voted on to the working party by current working party members. This process meant that working parties began to grow in size exponentially. This had a number of important ramifications, the most important being the negative effect it had on the achievement of quorums at any meeting

as attendance by working party members was often sporadic. Some people were also concerned that meetings were being 'stacked' by certain individuals and families to ensure advantageous results for either their families or for themselves. The general feeling among many Noongar was that the working parties were not representative of all Noongar interests, and these feelings were relayed by various means back to SWALSC.

The single Noongar claim

In February 2003 SWALSC held a number of claimant meetings across the entire Southwest where they asked whether or not Noongar wanted to proceed with the creation of a single claim. Given the current status of native title in Australia, especially in the wake of the Ward and Yorta Yorta decisions, and the degree of native title extinguishment in the South West, a single native title claim was seen as providing a much stronger position to argue from. However, while SWALSC would move towards a single claim it was decided that they would retain the existing structure of the six working parties. Nonetheless, concerned with the negative feedback they had been receiving about the current working party system SWALSC presented an alternative working party structure to Noongar at these meetings. Both resolutions, that SWALSC move towards the creation of a single Noongar claim and that the working party system be restructured, were carried at all of the claimant meetings.

After this initial round of meetings SWALSC researchers began to compile lists of genealogies and family names associated with various regions across the South West linked back to lists of apical ancestors.¹⁸ Once these lists were compiled a meeting would be called in the respective regions and the lists of family names would be put up in the room and Noongar present at the meeting would add or subtract names until agreement was reached in the room that only families who had traditional interests in the region and could speak for country were left on the

list. From late May until December 2003 the researchers then called a family meeting with each of the Noongar families to confirm family genealogies and family connections to country, although research capacity issues prevented this being achieved for all families.

In addition, at these meetings each family nominated two family members who would become the family's representatives on the new regional working parties. The methods for selection by each family of their representatives were left up to the families. Some families chose to have a show of hands, others voted, while still others decided to have private discussions without the researchers present and then tell SWALSC of their decision.¹⁹ During these meetings and the ensuing decision making process much weight was given to the opinion of the elders of each family.²⁰

The loss of revenue that has occurred as a result of general cuts in OIPC funding to NTRBs in 2005 has hit SWALSC hard. With reduced funding levels they had to reduce the number of meetings with the working groups.²¹ As a result, government and Noongar trust in SWALSC has been reduced. One of the key results of this unfortunate chain of events has been the refusal of the Western Australian state to proceed with the SNC and their decision instead to move ahead with the six underlying claims. The reason for these problems can be traced back mainly to a single issue – that of reduced funding for SWALSC by OIPC. This is a real issue not only for the native title process in the Southwest but also for any group that attempts to become a regional representative body. As this one example has shown a lack of adequate funding to hold regular meetings has led to reduced levels of legitimacy from both the indigenous community and the various government stakeholders that wish to work with such a regional governance structure.

Once a native title determination is made SWALSC will cease to function as an NTRB. However, there is the distinct possibility that SWALSC may become the

Prescribed Body Corporate (PBC) for the Southwest.²² One interesting issue which has not received the level of consideration it probably should have in light of the recent changes to indigenous affairs is the relationship between PBCs and regional governance structures. PBCs are a key element of the native title system and their governance structures, as required under the Native Title Act, could readily lend themselves to use as the foundation for a regional governance structure. This might be problematic though in regions such as the Southwest where a sizeable proportion of the resident Aboriginal population are not traditional owners. This is a point that will be discussed in more detail later in this article.

Nonetheless, SWALSC has a number of real strengths – the strongest probably being the high degree of legitimacy and support it has managed to garner amongst Noongar society in the last five years. With over 2 000 registered members SWALSC has the largest membership base of any Noongar organisation. Its innovative use of Working Party groups combined with a broader ward structure for its other representative functions lends it a high degree of legitimacy as a possible contender as a regional governance structure in the Southwest.

Community action groups

The second organisational structure in the Southwest I want to discuss is the Community Action Group (CAG) concept. Established following the recommendations of the 1998 Kaata Wangkinyiny Region Noongar Plan, CAGs are local level representative structures whose membership is drawn from all the Aboriginal family groupings in the community.

CAGs were designed to provide a forum for all Aboriginal families in a community to have a say on issues which concerned them as well as to provide a mechanism for the local Aboriginal community to provide information to, and receive

information from, government agencies and other service providers. CAGs, at least as they have operated up until now, operate largely as conduits for information although there is informal discussion about the possibilities of CAGs forming the basis for a broader regional governance structure for Indigenous Australians in the Southwest.

While the initial push behind the creation of CAGs may have come from Noongar resident in particular communities their ongoing development has mainly been driven by the Western Australian Department of Indigenous Affairs. While this may be changing now – with a number of communities across the South West discussing the possibility of forming CAGs (including groups in Perth) – there is still a need to ensure that true ownership of the CAG concept lies with Noongar if there is going to be any long term sustainability of the concept.

Creating CAGs

The first step in the creation of a CAG, like the construction of the SWALSC working groups, was the process of family-mapping. At community meetings individuals and families would determine what the family groupings or clusters were in the community. Once these were decided then the respective groupings nominated a representative or representatives to sit on the CAG. Individual members may represent one family or a cluster of associated families. And, like SWALSC's working groups, CAG members were selected by families in their own way with family members being accountable to their own families. As such, each CAG is slightly different depending on what type of structure the various families in the community wished to adopt.

However, unlike the family-mapping exercises used for the construction of the SWALSC working groups family representation on the CAGs is "not necessarily based on traditional Noongar structures of community organisation, native title or

customary associations to land” (Smythe 2005, p. 7). Instead, CAG membership is determined by contemporary community residency, with CAGs providing not only for traditional owners but also historic peoples who, although not traditional owners of land, may now reside within a particular community. And so, in Katanning for example, a family mapping exercise was conducted which then led to the creation of nine family clusters. Of these nine clusters eight were local families while one was comprised of families originally from outside the region (both Noongar and non-Noongar).

The reason for this difference is that CAGs, unlike the SWALSC working groups, are concerned largely with the issue of service provision. In this respect then, it is best that CAGs have as wide a representational base as possible as service delivery issues often concern not only traditional owners but all aboriginal peoples within a community. CAGs do not, so far at least, appear to be concerned with issues of speaking for country, but if this issue did come up then some thought would have to go into how CAGs were constituted given the widespread belief in indigenous Australia that only traditional owners of country have the ability to speak for country. This issue has the potential to be highly controversial and as such it will be explored in greater detail later in the article.

In order to minimise the likelihood of CAGs becoming a site of conflict within a community, CAGs are not incorporated and do not directly hold monies. In addition they do not provide services or programmes and do not directly seek funding. While there is some initial evidence at a local level that CAGs have led to reduced levels of violence and family feuding within communities as well as a more equitable structure between families in the various communities where they have been established (See Department of Indigenous Affairs 2004, p. 3) it is questionable as to what extent this has been a result of CAGs not holding monies or being responsible for service delivery – although anecdotal evidence would seem to confirm this.

A number of CAGs have begun to discuss the possibility of developing formal relationships with their local Shire governments and other service delivery agencies (Department of Indigenous Affairs 2004: 15). This formalisation of linkages could positively impact on the way in which issues of concern to indigenous communities are taken up into Shire plans. Indeed, there is the possibility that CAGs could be recognized as Advisory Committees under the Local Government Act (1995) which would then require local governments to provide administrative support to the CAGs (Department of Indigenous Affairs 2004, p. 16). If this was to occur, such a development could help overcome some of the capacity issues which continue to bedevil indigenous community organisations. However, as noted above, the relatively informal nature of CAGs has been one of the key reasons behind their success as it is meant they have avoided becoming a site of contestation for power.

Formalising relationships with councils and other agencies may necessarily lead to a formalising of the structures of CAGs, which may in turn see the opportunity for service delivery operations and the like to be transferred to CAGs. The possibility therefore arises that CAGs could take on other functions beyond the 'information provision service' that they currently provide. In doing so they could lose the very elements which lay behind their success; such as the fact that they are not directly involved in financial matters, an issue that frequently acts as a catalyst for power struggles and disunity within communities.

Issues of concern

The Western Australian Department of Indigenous Affairs is a strong supporter of the CAG-system – arguing in a recent report that “CAGs are becoming the cornerstone to effective coordination of services to the Noongar community by Local, State and Commonwealth Governments” (Department of Indigenous Affairs 2004, p. 3).²³ The initial CAG pilots were supported by funding from DIA, the

relevant ATSIC regional councils and the then Department of Family and Community Services (FACS). Subsequent CAGs have received support from DIA both in the establishment period, in the running of community meetings and the like, and in the ongoing meeting process.

In its official publications the DIA appears cognisant of the fact that, in terms of the related issues of ownership and long term sustainability, CAGs must be seen by Aboriginal communities as belonging to those communities and not to outside groups like government. Indeed, DIA have argued that “although government can assist in establishing these CAGs, it is important that the Noongar community does not see them as a creation of government (Department of Indigenous Affairs 2004, p. 3).”

However, while CAGs have been described by the DIA as being “a local Noongar initiative based on traditional family structures” (Department of Indigenous Affairs 2004, p. 3) it is questionable as to how sustainable they are as an organisational form without the continuing financial and administrative support of government departments such as DIA. Indeed, it is worrying that while DIA has been strong on rhetoric in terms of the ownership of the CAG concept by local Aboriginal communities it has provided no clear exit strategy in terms of their involvement in creating and maintaining CAGs in the region.

Another issue of concern is that to date CAGs have only been established in small regional towns and centres. No CAGs have as yet been created in the Perth Metropolitan area which is where the majority of the Southwest’s Aboriginal population (Noongar and non-Noongar) reside. The transient nature of the Aboriginal urban population combined with the sheer size of the Aboriginal population in an urban centre such as Perth may not be conducive to the formation of CAGs in these areas. The large Aboriginal population in urban centres, even in smaller centres such as Albany and Bunbury, means that the family representative structure upon which CAGs are constructed may not be able

to function effectively. Indeed, Smythe has gone so far as to argue that the CAG model seems to be suited only to small rural towns where the Indigenous population is discrete and stable (Smythe 2005, p. 53).

Nonetheless, in late May 2005 over 50 CAG representatives from the Department of Indigenous Affairs Wheatbelt and Southern regions met in Bunbury for the first Noongar Country CAGs Forum. Outcomes from the meeting included:

- support for the continued expansion of CAGs;
- agreement for a Noongar Leadership Program;
- recognition of the role of CAGs in alleviating family feuding; and
- acknowledgement of CAGs' important role in achieving social, economic and cultural outcomes.²⁴

While such suggestions are positive in terms of the perceived success of the CAG model, external agencies (including DIA) must be cognisant of their limitations – the most crucial being their current inability to make any distinction between traditional owners and historic peoples. This is a distinction that is crucial if CAGs are to be drawn into any discussion about country, something which is a distinct possibility if CAGs are seen by Shire authorities as being the representative body for Indigenous communities in the Southwest. Nonetheless, CAGs do appear to have been successful in accomplishing what it was they were designed to do – that is the provision of a mechanism for information to flow between local Aboriginal communities and stakeholders such as local governments and other service provision agencies.

Noongar partnership alliance – a Noongar nation?

The third structure I want to discuss is something called the 'Noongar Nation' by its proponents. The idea of a Noongar Nation is not new but it is only in the last

few years that any real movement has occurred in terms of making it become reality.²⁵ In 2000 a number of prominent Noongar leaders came together to form the Coalition of Aboriginal Agencies (CAA).²⁶ The CAA was constructed on a model first utilised by the Midland Aboriginal Advisory Group (MAAG) which emerged in 1997/98 when a number of people working in service delivery agencies for the Aboriginal community in the Midlands area of Metropolitan Perth came together to try and provide some coordination in the delivery of services to that community. The catalyst for the creation of this group had been the realisation by various people working in the Aboriginal service delivery area in Midlands that the thirteen agencies working in the region often did not know what the other agencies were doing – a situation which was leading to much unnecessary overlap of service provision. The success of MAAG led a number of prominent Noongar leaders to create the Perth Aboriginal Reference Group (PARG) in an attempt to replicate the success of MAAG in other parts of Perth.

Building on this success, PARG managed in 2000 to obtain funding from the Western Australian Government to form the Indigenous Families Programme (IFP). In the same year many of the individuals behind the creation of PARG met in Clontarf in 2000 for a workshop where the idea of a Noongar Nation was mooted. These ideas came together in the creation that year of the CAA.²⁷ The underlying idea of the CAA was that Aboriginal control and development of services for Aboriginals would lead to better outcomes for Aboriginals (Coalition of Aboriginal Agencies 2000, p. 2). By coming together under a single umbrella it was hoped that a more coordinated approach could be taken in terms of service delivery for Aboriginal Families in the Perth metropolitan area.

While the CAA and IFP had a degree of success over the next few years the concept of the Noongar Nation itself did not really progress beyond mere rhetoric. One possible reason for this may have been the existence of the various ATSIC regional councils – an organisational structure that fulfilled a similar niche. However, the disestablishment of ATSIC created a catalyst which saw the concept

of a Noongar Nation once again come to the fore. And so, in the wake of the 2004 announcement of the upcoming disestablishment of ATSIC, the Perth Noongar Regional Council and the Noongar Country Regional Council convened a meeting in Mandurah, just outside Perth, on 20-22 December 2004. There they discussed the possible creation of regional governance structure for the Southwest. The proposal for a regional framework which emerged from these initial and later discussions was based on the idea of a Noongar Partnership Alliance (NPA) which would act as the foundation for emergence of a regional structure in the Southwest based on the signing of an SRA.

Building on the foundation laid by the CAA, the NPA concept brought together former ATSIC regional Chairs and Commissioner with the founders of CAA in the signing of the Doorndjil Yoordaniny (Coming Together) Declaration in May 2005.²⁸ The NPA concept has thus been explicitly constructed as a response to the recent moves by the Australian Federal government. As such, the key focus of the NPA is to “provide a strong connection between representatives elected by communities as a whole and service providers” (Perth Noongar Regional Council and Noongar Regional Council 2005, p. 3). The NPA sees CAGs as playing a vital role in its representative structure.

At a regional level the NPA would:

- negotiate with government on service delivery issues in the region;
- establish strategic directions for the delivery of services by Departments;
- work with the ICC to find out what Departments want to do and what their budgets are;
- participate in determining public investment in the region through a regional budget based on the expenditures of all government Departments;
- determine regional priorities; and

- look at ways of pooling funding which cut across Departmental Programme boundaries and consider local mutual obligation initiatives (Perth Noongar Regional Council and Noongar Regional Council 2005, p. 14).

The CAGs in turn would:

- provide a forum at the local level for negotiating with government agencies and organisations for negotiation of what services are to be provided and how they are to be delivered;
- represent the interests of the community, families and individuals; and
- work with the ICC to negotiate shared responsibility agreements with the community, families and individuals and consider mutual obligation initiatives (Perth Noongar Regional Council and Noongar Regional Council 2005, p. 14).

In the first six months of 2005 over 36 community meetings were held across the Southwest promoting the concept of the NPA as the regional governance structure for the Southwest. Building on existing structures the NPA is being promoted as a regional authority into which CAGs can link into, with CAGs providing a “forum at the local level for negotiating with government agencies and organisations what [sic] services are to be provided and how they re to be delivered” as well as electing representatives to the Noongar Partnership Alliance (Perth Noongar Regional Council and Noongar Regional Council 2005, p. 3).

Discussion

As the previous section has shown there are three organisational structures (or proto-organisational in the case of the NPA) which could conceivably act as

regional governance structures in the Southwest. Each structure has both strengths and weaknesses. Before going into a discussion of the specific issues raised in the Southwest I want to first discuss some of the more generic issues which face any group wanting to construct a regional governance structure.

Capacity issues

One of the key constraints in the construction of any regional governance structure will be the issue of capacity – or, more precisely, the issue of a lack of capacity. In many respects the key limitation on capacity within these organisations will arise from the issue of funding. The Federal government has been quite adamant that regional governance structures, if created, will receive no specific funding from the Federal government except when they are brought together with Departments for the purposes of consultation. Given this issue, one of the key factors behind the success or failure of these regional governance structures will be their ability to raise capital. One obvious source of funding for any regional governance organisation is in the field of service provision, something which the shift in the last twenty years in Australian politics towards ‘contracting out’ service delivery has facilitated. This is where, one would imagine, the Ngaanyatjarra Council will be receiving the majority of its income. However, as noted above, Ngaanyatjarra Council has a long history of receiving funding for service provision and over that time it has developed both its internal governance structures as well as its service delivery capacity as in a sense the old adage of ‘it takes money to makes money’ applies to organisation wanting to take on service delivery operations. Often, it is organisations that already possess experience in winning service delivery contracts, such as the Ngaanyatjarra Council, that win the relevant contracts.

It is unrealistic to imagine that a regional governance structure will be able to emerge fully formed – let alone with the capacity to win service delivery contracts

in order to provide an ongoing source of income – without the necessary funding being put in place to create the necessary structures and processes within the organisation. Similarly, given the precedent set by the Yorta Yorta judgement the likelihood of achieving a sizeable land base through native title in the Southwest is slight. And so, in terms of possible sources of funding for a regional governance structure in the Southwest self-funding through the leverage of assets gathered from the native title process appears unlikely.

In many respects, current Federal government policy appears to be a case of the Federal government wanting to have its cake and eat it too. That is, it is unwilling to fund Aboriginal representative structures but it wants these structures to exist when it wishes to consult them. This is a real issue which, if not taken seriously, could limit the capacity for the various voices of Aboriginal Australia to be heard by all levels of government.

In addition, a key issue that needs to be addressed, but has often been left out of discussions of the recent shift in Australian indigenous affairs policy, is the role in which 'whole-of-government' approaches demand a high degree of coordination and information sharing between government agencies. Anecdotal evidence is full of stories of problems of miscommunication and misunderstanding between Commonwealth agencies and departments, let alone their relationships with State and Territory governments and stakeholders such as indigenous communities and groups. It would be a mistake to think that indigenous communities should be the ones to absorb the high transaction costs that these information asymmetries can cause – especially as it is these communities that can least afford to bear these costs. Shared responsibility, as a concept and as a policy mechanism, needs to cut both ways. Government agencies and departments at all levels of government need to be ensure that they are shouldering a fare share of the capacity burden that these reforms entail (Humpage 2005, p. 58).

Natural groupings

Another factor which needs to be taken into consideration by groups wanting to form a regional governance structure is the extent to which they 'fit' with the populations they are created to represent. When talking about the issue of 'fit' I am referring to the way in which the regional governance structure incorporates one or more groups.²⁹ Even in the Southwest, where various factors have meant that Noongar share relatively common cultural characteristics, the presence of large numbers of non-Noongar Aboriginal peoples complicates matters when it comes to discussions about regional governance models.³⁰

As discussed above, SWALSC's membership base is, for the moment, restricted to traditional owners in the Southwest (Noongar). This poses a problem if SWALSC does wish to become the regional governance structure, as in all likelihood a regional governance structure would have to deal with service delivery issues – something that concerns all indigenous peoples in the Southwest, not just Noongar. Similarly, CAGs membership base is composed of both Noongar and non-Noongar groups (and even some of the Noongar groups included in some CAGs are not traditional owners but rather more recent migrants to particular towns). This is not problematic at the moment given CAGs primary focus on service delivery issues. However, if CAGs were drawn into debates about country (which is a very real possibility, even if they do not become the basis of a regional governance structure) then this particular membership base would cause problems as non-traditional owners are not, as a rule of thumb in indigenous Australia, permitted to speak for country.³¹

Native title and service delivery issues are very different issues and if a single regional governance structure is to be constructed in the Southwest then consideration must be given to how this single structure would deal with these very different concerns. Urban centres such as Perth provide particular challenges given their large, mixed Aboriginal populations. And so, even though the

Southwest appears in many respects to be a 'natural grouping' in term of an area in which a legitimate single regional governance structure may emerge, there are still a number of issues which would need to be addressed first.

One of the key problems to be confronted in discussions about the creation of regional governance structures is thus who is being represented within these structures and who is authorised to speak on whose behalf about what issues. The question of legitimacy is thus of critical import. One of the key features behind legitimacy is the ability for organisations to maintain clear channels of communications and to carry out the functions their constituents expect them to fulfil – and this requires funding.

Regional governance: one structure or many?

When discussing SWALSC earlier in the article I put forward the proposal that some analysis should go into an exploration of the possible relationship between regional governance structures and PBCs. One possible way of overcoming the capacity issues that confront indigenous organisations in Australia would be for these two forms of organisation to be rolled into one. Or, taking this idea one step further, the possibility exists that all three organisational structures discussed in this article could be folded into one single entity which could function as the regional governance organisation in the Southwest. To an extent this is what the NPA proposal is promoting.

The question that needs to be asked though is: is this the best option? In a recent collection of papers on indigenous community governance in Australia Will Sanders has discussed the problems associated with a push for unified governance structures for indigenous organisations. Following an argument made over a decade ago by Tim Rowse, Sanders has argued that we need to move

beyond the idea of that a single unified organisational structure may be the most appropriate structure for indigenous communities.

As discussed above, a single regional governance structure for the Southwest would be faced with a number of issues including, for example, the need to overcome the tension between native title and service delivery issues and the respective roles of traditional owners and historic peoples in any such structure. Utilising a dispersed governance model where these organisations work in a loose confederation may actually be a better option for not only the Southwest but other regions around Australia. For, as Sanders has argued, “dispersed governance divides the tasks of community and regional collective decision making into ‘do-able’ bits and pieces. And second, it offers opportunities for the representation of a diverse range of interests” (Sanders 2004, p. 19). Indeed, SWALSC is not even adequately resourced at the moment to fulfil one function. How well would a mega-organisation incorporating all the functions identified above function if resourcing was not adequate? This could lead to conflict as some functions may need to be prioritised over other functions – say native title issues over service delivery issues. The notion of dispersed governance is thus a concept that deserves further attention.

Conclusion

The three cases of the South West Aboriginal Land and Sea Council (SWALSC), Community Action Groups (CAGs) and the Noongar Partnership Alliance (NPA) have illuminated a number of generic issues that must be considered if this new policy focus on a ‘whole-of-government’ approach to indigenous affairs and the related promotion of regional governance structures for indigenous Australia is to lead to robust and successful outcomes for indigenous Australians. Issues of capacity, legitimacy and the ‘fit’ of structures to Aboriginal populations are vital factors in the potential success of regional governance efforts. As it stands, the

current policy shift of the Federal government has been interpreted by some Aboriginal individuals as being a way to provide a veneer of legitimacy to government efforts to 'properly' consult with indigenous communities. In discussions, indigenous Australians have expressed a desire that if they were going to create regional governance structures they wanted to ensure that they had some real power – that is they would be involved in service delivery for Aboriginal populations and would be able to act as a real voice for the Aboriginal communities that they represent. The issue of funding seems to be of paramount importance. For, as former Federal Liberal Senator and current member of the National Native Title Tribunal Fred Chaney has recently argued, "the road to hell in this area is definitely paved with good intentions. We must be honest and open about the reality that attempts will fail if competent, legitimate indigenous governance structures are not equipped to fulfill their end of the deal." (Chaney 2004, p. 63)

Notes

¹ Shared Responsibility Agreements (SRAs) are agreements between the Commonwealth or State governments and Indigenous communities or groups to provide a discretionary benefit from the government to those communities in return for the community undertaking various obligations.

² In some areas State and Territory governments have discussed the possibility of placing their staff in ICCs although this has not happened yet.

³ http://www.indigenous.gov.au/coag/coag_initiative.html

COAG Indigenous Trials – COAG Initiative, accessed on 10 October 2005.

⁴ http://www.indigenous.gov.au/coag/coag_initiative.html

COAG Indigenous Trials – COAG Initiative, accessed on 10 October 2005.

⁵ COAG is currently sponsoring trials of a whole-of-government approach to service delivery with a number of indigenous communities utilising both Commonwealth and State/Territory funding.

⁶ While ATSIC itself was based on local regional councils these councils reported up through the national ATSIC body.

⁷ The legitimacy of the claim of Ngaanyatjarra to their Lands has been upheld in the recent positive determination of Native Title in the region. See *Mervyn v Western Australia* [2005] FC 831, Black CJ, 29 June 2005.

⁸ The Ngaanyatjarra RPA includes:

- funding to establish a committee of Ngaanyatjarra people that will represent the needs of the community to Government;
- a mechanism for the community to work through a central contact point in dealing with government agencies, rather than each agency individually; and
- improved access to municipal services, including housing and power.

As discussed above, RPAs can be linked to Shared Responsibility Agreements (SRAs) and this is what happened with the Ngaanyatjarra RPA which is linked with three SRAs. The three Ngaanyatjarra SRAs include:

- a Ngaanyatjarra-wide agreement aimed at improving essential and municipal services in the Ngaanyatjarra communities with A\$4.2 million of Commonwealth funding with Ngaanyatjarra communities agreeing to

ensure that individuals pay power bills, reduce over-consumption of power and enter into arrangements to settle any outstanding debts;

- a Warburton based agreement worth A\$167 000 aimed at tackling the issue of education for young adults; and
- a Wanarn-based agreement which will see the Community contribute \$120,000 towards renovating the old store into a youth centre and for the fit out of a new store, the Shire of Ngaanyatjaraku providing a youth worker for the centre and the Australian Commonwealth Government providing an interest free loan and funding for construction of a training centre.

⁹ This is not to say that nothing useful can be taken from the Ngaanyatjarra experience. A number of valuable lessons such as in the negotiation process of agreement making itself will probably be able to be abstracted from this process. And, as the RPA and SRAs proceed in the Lands, more useful policy learning will probably emerge.

¹⁰ Indeed, these 'hard cases' are more the norm than the exception in modern indigenous Australia.

¹¹ I use the term Noongar here, although it is variously spelt in other publications as Nyoongar and Nyungar.

¹² SWALSC, as the regional native title representative body, operates under the Commonwealth Native Title Act of 1993 as amended in 1998.

¹³ The NLC was the previous NTRB for the Southwest. For a period in 2002 both the Noongar Land Council and SWALSC co-existed sharing not only their executive but also their entire staff. The Noongar Land Council still exists. It has never been wound up and a number of Noongar individuals continue to assert that they are the office holders of the Noongar Land Council and that the NLC is still the legitimate NTRB for the Southwest although the NLC has no legitimacy in the eyes of the Australian government.

¹⁴ These fourteen wards were created in alignment with various shire boundaries within the Southwest region. They do not map at the moment on to the six working groups which constitute the decision making body of the native title claimants, although there have been recent moves to try and bring these different structural aspects of SWALSC into alignment.

¹⁵ These committees also included a youth leadership sub-committee, an economic development sub-committee, a language and culture advisory sub-committee and a finance and audit sub-committee.

¹⁶ A number of Noongar individuals have told me that the reason that there was a general consensus in this period of consultation among Noongar for the move towards a single claim, and in fact the original desire for a single claim by many in the mid-1990s was the belief by many that Noongar constituted a single group – a Noongar Nation.

¹⁷ The six claims are Yued, Ballardong, Gnaala Karla Booja, Combined Metro Claim, South West Boojarah and Wagyl Kaip. These are also the regions upon which the six working groups are constructed. The Ballardong claim is currently unregistered.

¹⁸ Some overlap between not only families, but apical ancestors as well, occurred across regions.

¹⁹ Research officers were ordered to ensure that each family adopted a decision making structure, whatever that may be, and then to record how this structure operated, that is how the family came to their decision.

²⁰ In the smaller families the decision making was structured around the oldest male while larger families structured proceedings around the oldest surviving sibling set (including cousins).

²¹ In 2005 only a few meetings have been held by each of the Working Groups – with all of them being in the second half of the year.

²² The Native Title Act provides for the establishment of Prescribed Bodies Corporate (PBCs) for each native title determination in order to hold in trust or manage the determined native title on behalf of the native title holders.

²³ In fact, one could easily argue that the CAG concepts success is largely due to DIA's efforts to champion the concept.

²⁴ Tarwangin – a newsletter produced by the Department of Indigenous Affairs http://www.dia.wa.gov.au/newsletter/archive/newsletter_227.html, accessed on 10 October 2005.

²⁵ The genesis of the concept can be traced back to the early 1970s when educated Noongar youth began to liken themselves and their predicament to that faced by North American indigenous groups such as the Navaho nation.

²⁶ Unlike CAGs the CAA emerged directly from the Perth Metropolitan area. The CAA was a coalition of the six major Aboriginal Perth metropolitan agencies: Derbal Yerrigan Health Service, Yorganop Aboriginal Child Placement Service, Mangri, Noongar Alcohol and Substance Abuse Service, Aboriginal Legal Service of Western Australia and the Aboriginal Advancement Council of Western Australia.

²⁷ The government funded IFP functioned as a form of secretariat for the CAA.

²⁸ While the Doorndjil Yoordaniny Declaration has provided a pivotal point upon which the revitalised concept of the Noongar Nation has turned it must be noted that the Declaration itself was based upon broader Western Australian Aboriginal issues and not just those of the Southwest.

²⁹ I am not using the concept of 'fit' as used in the work of researchers associated with the Harvard Project on American Indian Economic Development. For these researchers, a degree of 'fit' (by which they mean there should be a high degree of correlation between the particular traditional governance structures of a specific group and the modern governance structures adopted by that same group) is required if governance structures are to function most efficiently (Begay and Cornell 2003). While this is an important distinction to make (path-dependant implications to the side) it is not what I am referring to here.

³⁰ Another issue which will need to be addressed by a regional governance organisation is the role of Noongar living off their traditional country in the management of their traditional country but that is not an issue discussed in this paper.

³¹ Indeed, this is a fear that has confronted SWALSC when they sought to consolidate the six claims into a single claim. Thus, Robin Yarran who is a current native title claimant over Noongar country, is against the single Noongar claim because he believes that "it is not possible [to create a single claim], because

there are different tribal groups of Noongars and we have tribal boundaries, that we refer to as our Country, and we wish to retain our individual rights to speak for our own part of Noongar country as Traditional Owners." (taken from the Yarrans objection to the Balladong claim – WAG 6181/98, lodged on 4 May 2004, Between Cedric Anderson, Donald Collard, Sylvia Rachel Collard & Ors on Behalf of the Balladong People and the State of Western Australia)

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