5. Representative politics and the new wave of native title organisations

Introduction

The Native Title Act 1993 (NTA) has resulted in the statutory determination of a number of Aboriginal and Torres Strait Islander organisations now referred to as Native Title Representative Bodies (NTRBs). These organisations are arguably the linchpins of the NTA. They are empowered by statute to represent native title claimants and holders in a variety of circumstances and are already promoting themselves as the key inter-cultural brokers between native title interests and all other parties. Indeed, if it can be said that the High Court decision in Mabo v Queensland No. 2 and the passage of the NTA have fundamentally changed the nature of the relationships between indigenous peoples and the Australian government, then the progressive establishment of a nationwide framework of NTRBs constitutes a similar, potentially fundamental development in Aboriginal political organisation. This paper explores, in a preliminary way, how that change is being constituted in the indigenous and wider environment, and examines the politics of representation within which NTRBs are beginning to effect their presence.

Subsequent to the passage of the NTA, there has been considerable debate over the 'right' to represent native title clients and over the very meaning of 'representativeness'. As these matters are being negotiated in the indigenous domain, NTRBs are seeking to assert a regional approach to native title matters and a wider interpretation of the representative responsibilities assigned to them under the Act. This paper describes the current and emerging roles of NTRBs, and the nature of the politics of representation which are moulding their operation. It is argued that their future position is linked to, and constitutive of, an emerging regionalism that is being organisationally formalised within the indigenous polity.

The current status of Representative Bodies

At August 1995, twenty-one NTRBs have been determined by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs under s.202 of the NTA. Several more are expected to be determined in the near future. Some are statutory land councils with jurisdictions and functions established under Commonwealth and State land rights
legislation. One is an Aboriginal and Torres Strait Islander Commission (ATSIC) regional authority with pre-existing, broader responsibilities. Some are non-statutory land councils of long-standing; others are well-established Aboriginal legal services. A number of the smaller NTRBs in Western Australia and Queensland have only been very recently established. The differing legislative and operational histories of these organisations (especially across States), as well as the variation in their estimated populations and geographic coverage all underscore the disparity evident in their approaches to representing native title interests.

The viability of the NTA will ultimately depend on these organisations being able to fulfil their statutory roles effectively. It is not surprising, therefore, that issues associated with their roles and responsibilities, organisational and staffing structures, and funding levels already loom large. At its November 1994 meeting, the ATSIC Board of Commissioners agreed that a 'consolidation review' should be undertaken of their effectiveness, and the appropriateness of native title funding arrangements (Altman and Smith 1995: iii). That review was conducted from late April to the end of August 1995 with a final report published in September (see Altman and Smith 1995). During the review period, I participated in extensive, minuted consultations with the NTRBs in each State, with aspiring NTRBs, with some claimant groups, the National Native Title Tribunal (NNTT), ATSIC State and regional offices, and with key Federal government stakeholders including the Office of Indigenous Affairs in Prime Minister and Cabinet, the Department of Finance, and Attorney-General's Department (Altman and Smith 1995: 102-4). During the consultation process, a number of differing viewpoints were put forward by indigenous organisations as to the current and likely future role of NTRBs, in which 'representativeness' and 'representation' emerged as crucial underlying issues.

Legislative functions

Sections 202 and 203 of the NTA establish criteria for the determination of NTRBs by the Minister, define three main functional areas of responsibility, and propose a broad funding framework. The organisations are empowered to assist indigenous people to make and present claims to the NNTT; represent them in negotiations and proceedings in relation to acts affecting native title and the provision of compensation; and in any other matter relevant to the operation of the Act.

Importantly, the statutory framework does not give NTRBs mandatory or exclusive functions, and it specifically allows the Minister to prescribe more than one in relation to an area. Whilst they are positively
enabled to represent native title parties if requested, they are not obliged to undertake these responsibilities, nor are claimant groups or the NNTT required to utilise their services. The statute is vague as to the extent that they can initiate negotiations and proceedings and conversely, the extent to which they are reliant upon instructions from claimants and native title holders. This ambiguity in their representative authority was partly a reflection of State Government lobbying to avoid the establishment of a statutory-based land council regime across the entire continent. It was also partly based on the reluctance of development interests, at that time, to have to conduct negotiations through such representative organisations, preferring to deal directly with native title claimants and holders under the assumption this would prove more cost and time effective. And some indigenous groups opposed the formation of a national land council system. The result is that NTRBs have been established with a poorly defined representative status.

The early reluctance to encourage a national coverage of NTRBs with strong jurisdictional powers was perhaps short sighted, but is giving ground as they begin to establish their representative effectiveness. The implementation of the ATSIC review will further consolidate their position through its recommendation that they assume sole jurisdictional representation of native title interests within their regions, and have explicit functions and mandatory areas of accountability laid out initially in regulations. Importantly, the review also recommends that early consideration be given to formalising these roles and responsibilities by statutory amendment.

**Emerging roles**

As the process of native title claim determination is revealed to be time consuming and complex, with a multitude of indigenous, government and private parties marshalled into the mediation process, NTRBs are becoming involved in a wide range of duties on behalf of native title parties. While some of these duties are identified in s.202 of the NTA, others are being undertaken as the organisations assume broader roles in advocating indigenous land interests. NTRBs may be 'oiling the wheels' of the Act as Pearson argues but, as the review report notes, they are also 'clearly the workhorses of the native title regime' (Commonwealth of Australia 1994: 324; Altman and Smith 1995: viii). Their current range of native title responsibilities, as assessed by the review committee, include:

- the establishment and management of offices;
- the development of professional expertise in native title and other land-based matters;
• research and preparation of claimant and compensation applications;
• coordination and conduct of meetings with native title and other indigenous interest groups;
• native title mediation;
• responding to non-claimant and future act applications;
• site recording, clearance and protection;
• negotiations with resource developers and other non-indigenous parties with an interest in land;
• negotiations with Commonwealth, State and Territory, and Local Governments;
• negotiations for s.21 and other regional agreements;
• liaison and coordination with other NTRBs;
• educational and information roles; and
• court litigation in respect to native title matters.

NTRBs argued to the review committee that native title is not just about claiming land and accordingly, are adopting a wide perspective of their representative role. An emphasis is being placed on regional coordination of the native title activities listed above, with other land issues. The organisations variously stated to the review that they are 'representing the interests of potential native title holders'; 'working to get native title land'; operating as 'local level translators and educators'; 'uniting indigenous people in their region and State'; 'providing grass roots organisation'; as well as 'lobbying government' and 'driving the native title process'. Interestingly, these broad roles are almost identical to those foreshadowed by Justice Woodward (1974: 68–9) over 20 years ago for the newly-established Northern Territory Land Councils. Woodward argued that the Northern Territory Land Councils would carve out new directions, including possible future responsibilities of:

• developing Aboriginal policies on matters relating to land;
• representing Aboriginal people in negotiations with government and development interests in relation to land;
• protecting the interests of traditional owners concerning the use of land;
• making representations about priorities in expenditure for land purchase and management; and
• conciliating disputes.

Indeed, over a period of 20 years, the Land Councils progressively assumed such responsibilities. Influenced perhaps by the experience of the Northern Territory and New South Wales Land Councils, it has taken most NTRBs very little time to come up to political speed in asserting similarly wide, land-based responsibilities on behalf of their constituents. Overwhelmingly, there is a realisation among the organisations that the sometimes limited offerings potentially available as claimable native title land nevertheless provide significant leverage in dealings with government and development interests. If handled astutely, this leverage will reinforce
their political standing as they become involved in commercial transactions, resource agreements and related policy discussions with government. At this early stage in the implementation of the native title process, this is already apparent. A number of NTRBs are playing an instrumental role in facilitating consultations and agreements between native title, government and development interests.

For example, the Queensland State Government has sought to negotiate with prospective native title claimants via the Goolburri Land Council to secure the progress of the south-west Queensland and the Blackall to Gladstone gas pipelines. Funding from the Queensland Office of the Coordinator-General has enabled indigenous interests along the pipeline route to begin holding meetings, identifying traditional land interests and sites, and conducting research and training programs. These negotiations are occurring under the auspices of the Land Council without any native title claim before the Tribunal. The Land Council has indicated that this process has enabled it to obtain detailed land tenure histories for the area under development (a welcome breakthrough in that State) and to establish working protocols between potential native title holders and the State Government to secure future dealings. Further north, the Cape York Land Council is negotiating the basis for a regional agreement encompassing conservation, mining, tourism and cattle industry interests, covering land in Cape York Peninsula only part of which is subject to native title claim.

Similar examples of NTRB involvement in native title negotiations are evident in Western Australia. In Broome, Aboriginal groups with affiliations to land in the region of the town have, under the auspices of the Kimberley Land Council, set aside long-standing differences to form the Rubibi Working Group. That Group is undertaking strategic negotiations with developers and the Broome Shire Council, utilising the leverage of a series of claims to unalienated Crown land in and around the town to secure agreements relating to future coastal zone and sea management, town planning, site protection, and land designated for indigenous economic development.

In the Northern Territory, the Northern Land Council has recently negotiated what it regards as a 'milestone' agreement between native title claimants of the former St Vidgeon's pastoral lease and CRA over land subject to a native title claim. The so-called 'Walgundu Exploration Agreement' gives the company the right to explore over a period of 25 years and commits the parties to entering into negotiations for future mining, with criteria to be used in that case. It provides claimants with compensation provided at 5 per cent of CRA's costs of exploration per year, covers site protection, and Aboriginal employment during the exploration phase. The agreement ensures that CRA will not oppose the native title claim; that claimants will not litigate against CRA due to the
failure of the Northern Territory Government to follow the future act procedure laid out under the NTA; and that it will be valid regardless of whether the applicants succeed in their native title claim. Importantly, the agreement took only three months to negotiate and is also being hailed by CRA as an example of the very positive role which NTRBs can play in facilitating comprehensive consultations with prospective native title parties and securing widely accepted agreements (Commonwealth of Australia 1995: 1484–99).

Clearly, while State and Territory Governments and the mining industry have previously opposed any enhanced role by NTRBs, the views of some mining interests are changing as they come to recognise the importance to economic development prospects of having credible, professionally-run representative organisation on the ground, which can ensure thorough, but relatively speedy consultations and negotiations with the correct native title parties.

The politics of native title representation

The assertion by NTRBs of a more encompassing representative role is being played out against the backdrop of contention over the meaning of 'representativeness' itself. The right to represent and the conditions upon which representativeness is constituted within the Aboriginal public domain is, in fact, a long-standing issue in Aboriginal affairs. Successive inquiries into the operation of the National Aboriginal Consultative Committee, the National Aboriginal Conference and ATSIC, have continued to raise matters related to the cultural bases and effectiveness of such representative structures and their decision-making processes (Coombs 1984; Martin 1995a; O'Donoghue 1985; Weaver 1984). Of particular concern has been the societal level at which organisational forms of self-determination can be constructed (especially via government legislation) which will be accorded legitimacy by indigenous peoples. Issues now being debated about the 'representativeness' of NTRBs are firmly located within the historical debate over these matters, and within indigenous politicking and action about them.

Under the NTA, the Commonwealth Minister must not determine a NTRB unless he or she is satisfied that it 'is broadly representative of the Aboriginal peoples or Torres Strait Islanders in the area'. It is unclear what 'representative' in s.202 actually refers to and how it is assessed in order for an organisation to be legally determined. Presumably, given their proposed functions in native title matters, an organisation must be able to demonstrate that it has substantial support from a wide cross-section of indigenous land-owning groups – the prospective native title holders after
all – within their proposed region of jurisdiction. That is, it should have marshalled a sufficiently 'representative' indigenous constituency, thereby securing an informally delegated 'endorsement' or authority to act for, and speak on behalf of, that constituency. But perhaps more importantly, once determined to be a NTRB, it should certainly proceed to represent and serve the native title interests of that constituency. Inevitably, these organisations are expected to be all representative things to all people. Both government and indigenous people expect them not only to ensure equitable, 'democratic' access to their services, but to do so in a manner that is also culturally authorised from within indigenous society.

However, there has been contention within some regions as to whether particular NTRBs have managed to secure the endorsement of a broadly representative constituency, and whether that is reflected in their membership. Some have been criticised for selectively representing the interests of particular groups, or of doing so in an overly adversarial manner (Altman and Smith 1995). To assist in alleviating these tensions, the ATSIC review recommended steps be taken to formalise accountability to native title interests in their areas, to clearly define their functions and powers, and to develop systematic consultation and grievance procedures.

Underlining the pressure on NTRBs to be widely representative of native title interests in their regions, is the extent to which indigenous expectations for access to their services can be met. There are strong arguments put by NTRBs that the most equitable resolution to such access issues will occur by having native title management and funding coordinated regionally, rather than for a series of claimant groups to be separately and directly funded. Indeed, regional coordination allows for the representation of reasonably large cultural groupings, provides sufficient population and geographic coverage to generate economies of scale, enables ongoing mediation of debilitating conflicts within some claimant groups, and the development of strategic approaches that will be beneficial to the widest number of indigenous people.

Conversely, some claimant groups have argued for access to direct funding, by-passing NTRBs, and for greater control of their claims under the native title process. There was clearly an intention in drafting the NTA that indigenous native title parties should have choice in selecting the representation of their interests. That view was actively encouraged by the Prime Minister, in his second reading speech for the Native Title Bill, where he noted that NTRBs 'will not have a monopoly on representing native title claimants; individual claimants or groups of claimants can go elsewhere' (Hansard 16 November 1993: 2881). These comments inferred that NTRBs would have to compete with other organisations (including private law firms) for the right to represent.
Debate on the issue of the right to representation, and the 'representativeness' of NTRBs raises long-standing issues about self-determination; in this case, whether self-determination is necessarily equivalent to each claimant group being directly funded to be its own representative organisation. If it is, then one must ask, to what societal level should funded representation be delivered: to claimant groups that are separate language or cultural blocs; to communities; to clans; local descent groups; ceremonial associates; small family groups; to every individual with competing claims? Within the indigenous domain there is unquestionably a social momentum towards the value of localised identities and towards small congeries of people attached to core locales. This pull towards localism, or 'atomism' as Sutton describes it, is nevertheless engaged by a 'collectivism' which brings small-scale groups together by employing wider regional connections (social, historical, ceremonial and so on) to land as its basis (Sutton 1995a; see also Martin 1995b). It was precisely such a collectivist approach that was apparent in the Pitjantjatjara peoples' successful efforts via the *Pitjantjatjara Land Rights Act 1981* passed by the South Australian Government, to have their land returned en bloc as part of a regional settlement, rather it being disaggregated to component Pitjantjatjara groups being allocated separate titles (see Toyne and Vachon 1984).

The same 'atomist-collectivist tension' Sutton (1995a: 1) notes at work in the problem of group definition and cohesion in native title claims, also operates at the organisational level of indigenous politics. It is much in evidence in the politicking to do with access to funding, decision-making processes and competition over organisational jurisdictions. It is also apparent in the processes by which small groups seek and accept a wider organisational expression of their particular objectives (whether those be about health, legal assistance, service delivery or native title). But such an organisational approach to outcomes is precisely what many indigenous groups have enthusiastically pursued over recent decades. There are now over 2,400 incorporated indigenous associations in Australia, creating what Sutton aptly calls the 'new corporate tribes' (Sutton 1995b). This form of mainstream organisational expression within the Aboriginal domain is entirely legitimate, especially given the demands of contemporary governments for financial accountability, performance indicators and indeed, for legal incorporation as a precondition of funding. As well, in many cases, the bases of incorporated associations often reflect critical culturally-based parameters within a community or region, especially those concerning ties to country and particular locales, and the pivotal role of certain family groups. Overlaying these community and regionally-based incorporated organisations (and their often overlapping membership) is now the ATSIC regional framework.
Clearly then, alongside the pull of atomism, there is also a persistent and strong assertion of indigenous interests via larger-scale organisations. In spite of this, there is still an inclination to see indigenous representative legitimacy and self-determination as most appropriately based on small-scale local groups, and certainly to see social justice and equity issues as residing in the a priori cultural 'rightness' of such localism and diversity. However, the continuing amalgamation of indigenous groups via legal incorporation requires this view to be reassessed. Arguably, self-determination can also lie in the process of groups developing an organisational platform from a regional set of native title interests.

Evidence gained from the NTA process over the past two years indicates that a ‘micro-representative’ approach oriented to the local level (in this case, to every prospective claimant group), while seemingly equitable, may in fact diminish equally legitimate indigenous aspirations to mobilise the greater political experience and regional effectiveness made possible through organisations such as NTRBs. In spite of some notable attempts to form breakaway land councils, the experience under the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) overwhelmingly supports the argument that land-based rights have been successfully protected and advanced by the developing professionalism and political astuteness of the larger land councils (see Altman and Dillon 1988; Altman and Smith 1995; Martin 1995a).

NTRBs further argue that a micro-representative approach positively counteracts the accumulation of professional expertise in native title matters. Experience of the native title process confirms that adopting an open-ended ‘micro’ approach on representation has had unforseen cost consequences (in particular, soaring legal bills), mitigated against the lodgement of well-researched claims and has actively fuelled fragmentation within and between potential claimants. The approach has also encouraged the pursuit of narrow, legally based considerations on the part of some private law firms who focus attention on their immediate clients, rather than on considerations of inclusiveness and the dynamics of indigenous land ownership. Poorly prepared claims can result in protracted mediation, potentially costly litigation and limited short-term outcomes for claimants.

In the end, it is likely that NTRBs will be seen, by the present Commonwealth Government at least, as the preferred option for the most equitable and efficient management of these matters. More recently, some key mining interests have also noted that the Northern Territory model of land councils with clear statutory functions and responsibilities, is now an ‘extremely attractive’ one for them under the NTA. Realising the enormous complexity in identifying potential native title holders, and the need to have thorough, expert consultations carried out for the purposes of negotiating resource agreements, companies such as CRA are recognising the benefits
of having NTRBs 'sort out' these problems (Wand 1995: 1493–94). But this does not solve the issue of what constitutes representativeness; rather it focuses that aspect squarely on to the organisations in question.

In fact, none of the NTRBs currently determined are 'representative' in the sense of using the democratic electoral procedures employed by ATSIC. Nor do the majority have organisational structures that can be said to be based on indigenous principles of land-based authority. If such a structure is indeed possible, it has been most approximated by the Northern Territory Land Councils in their attempts over 20 years to fashion governing structures that incorporate the major community-based, land interest groups in their respective regions. NTRBs are not based upon traditional authority structures, even though they are being required to establish their public legitimacy partly in terms of being able to speak for, and on behalf of, land-owning groups. First and foremost, they are a new class of legislatively created institutions located at the interface between indigenous land values and aspirations, and those of the wider Australian political and economic system. They occupy an interstitial political position where they translate and negotiate issues between native title and other stakeholders. To perform this role they will not only have to be representative, but also continue to deliver the support of their constituency. To do this they need memberships, decision-making processes and governing structures that reflect - in more than just appearance - the major native title interests in their regions.

However, there will be limits to representation that such organisations can afford; limits that are both justifiable and necessary. The Commonwealth's seeming initial endorsement of a micro-level view of self-determination is being rapidly tempered by the realities of funding. Simply put, there will never be enough funds to enable each claimant group to be its own NTRB, nor even for NTRBs to concurrently proceed with all potential native title claims within their regions. Pragmatic representation will clearly be in order. The organisations will be required to make decisions about priorities between claims based upon equitable criteria, available resources and strategic assessments of how best to advance indigenous native title interests. Given resource and staff limitations, this will mean that some claims or compensation proposals will be judged of lower priority than others so that, for example, some individual interests may be placed below those of wider land-owning groups.

Moreover, as advocates for their constituents, it may be the case that some, having greater land-based credentials than others, will be more consistently or effectively represented in native title claims. While it is reasonable to expect a NTRB to fully investigate all asserted native title claims in its region, it is not realistic to expect it to finally represent all those asserted interests. In fact, one could argue that to do so would be
eminently 'un-Aboriginal'. For if the 'representativeness' of some NTRBs is an issue, then surely so is the 'representativeness' of the groups and individuals proposing themselves as claimants. Some will be recognised within the indigenous domain as owners of particular areas; others will not be. The range of connections to land are multiple, overlapping and subject to being performed and witnessed within the indigenous arena. These land-based ties are actively explored, constructed and redefined over each individual's lifetime. The preparation of a native title claim will involve these same processes of assertion, negotiation, and confirmation or denial of ownership interests.

In this actively-constituted indigenous domain, NTRBs must not only be well informed of the variety of native title rights and interests being asserted, but be able to recognise and act upon the fact that some claims to land are regarded as more central and legitimate, while others are regarded less highly, or as entirely spurious. The non-Aboriginal preoccupation with equity and appeals procedures should not pre-empt indigenous decisions about these matters by requiring the inclusion of individuals into a claimant group who are deemed to have no rightful or legitimate claims according to Aboriginal criteria (whether those criteria look to Aboriginal law, historical association, succession, ceremony, marital affiliations and so on), or by requiring NTRBs to represent all proposals put to it. That said, NTRBs must be able to put forward good reasons for not representing a particular claimant proposal, or for placing it at a lower level of priority than others. In the native title arena, the politics of representation are squarely located within family and community politics, the regional politics of land ownership and management, and the wider politics of funding. For these reasons, NTRBs should be legislatively required to fully consult with all potential native title interests in such matters, and to take instructions from native title claimants. In this regard, the ATSIC review recommends that NTRBs be responsible to their clients in a manner consistent with s.23 of the ALRA which aims to build legal protections to ensure land councils' powers are not abused.

Native title representation and political regionalism

In 1994, Noel Pearson explained to the Parliamentary Joint Committee on Native Title the indigenous politics of representation as he saw them applying to the NTRBs, arguing that:

We cannot have 320,000 incorporated organisations. There has got to be a point at which people surrender their jealous control to more rational regional service delivery ... at the end of the day if we are going to fuel the fantasy that we need to give absolute local control to people, and you are just giving everybody five bucks each, that is not going to result in good administration of important legislation like this.
There has got to be a point at which people of a region have to understand that, if their interests are going to be protected under legislation such as this, then they need to put aside their local differences, to get behind and have membership of a regional organisation (Commonwealth of Australia 1994: 324-5).

In the midst of this politicised arena of representation, many NTRBs are positioning themselves as influential regional voices. Their managers help constitute the regional and national Aboriginal leadership, and many are linked to networks of indigenous stakeholders and to key individuals in government agencies. Almost all have focused their operations at a regional level minimally matching that of an ATSIC regional council, or to a series of major cultural blocs. Despite the lack of defined functions, they are already utilising the NTA as leverage to further the political and economic interests of people in their regions. Ongoing issues to do with the adequacy of their representativeness will be moulded by their success in securing significant gains for their constituents. There are real dangers though, that NTRBs could lose credibility if they do not move quickly, through strategic use of the claims process, the right to negotiate provisions, and the leverage currently available through the outstanding issue of native title on pastoral leases, to get some tangible outcomes for their regional constituents. As noted earlier, some are seeking to advance these matters by negotiating land-related regional agreements which could be linked to wider native title resolutions in the future.

Relationships with regional councils will be critical. A number of NTRBs have extremely close links with ATSIC regional councils – in some cases, ATSIC councillors and commissioners are executive members of NTRBs. The ATSIC elected indigenous structure, and especially its regional council system, is held out by the Commission as the key to its future development. The Commission has a statutory responsibility to devolve budgetary decision making to regional councils which have, in turn, gained substantial control over ATSIC funding at regional levels. From 1995, they have full delegations to approve regional projects for funding that previously they only endorsed (ATSIC 1995: 3). The influence in ATSIC of a regionally-oriented policy perspective is evident in the pressure by some regional councils to emulate the 'authority' model of the Torres Strait Regional Authority; that is, to transform the councils into more financially independent regional authorities.

While ATSIC's own version of regionalism is being actively constituted as a form of indigenous political authenticity, criticisms have been made as to whether regional councils serve and speak for the range of Aboriginal interests in their regions. That is, the very same issue of representativeness impinges on the legitimacy of ATSIC regional councils as it does with NTRBs. Sullivan (1995) reports that in the Kimberley region, some organisations (including the Kimberley Land Council) have
well-established memberships which feel disempowered by the ATSIC regional council system. In seeking to resolve this issue, the Kimberley Land Council has moved to consider ways in which a 'partnership' between ATSIC and 'key community based representative organisations' might better advance regional agreements in respect to service delivery, and the development of regional indigenous 'self-governing structures' (Yu 1995a: 52). In other regions, ATSIC councils and NTRBs are already closely aligned. In the Murchison-Gascoyne region, for example, the ATSIC regional council has been instrumental in establishing and providing substantial funding to the Yamatji Sea and Land Council in the absence of monies from ATSIC's national allocation, and the Yamatji Council has received determination as a NTRB.

The future relationship between the NTRBs and ATSIC regional councils could be critical, especially with the possible transition of ATSIC councils into regional authorities, and in the context of negotiations for both land-based and service delivery regional agreements. The politics of representation, focused on the development of a regional polity, may involve NTRBs and ATSIC regional councils vying for leadership of a regional constituency. On the other hand, with strategic cooperation between NTRBs, ATSIC regional councils and other indigenous organisations, representational politics could prove to be a powerfully unifying device in which NTRBs constitute a 'further evolution' in the 'realignment and renegotiation of the ... structural relationship which exists between governments and Aboriginal people' (Yu 1995b: 13).

**Beyond representativeness**

Beyond the immediate issue of establishing representative credibility, NTRBs are developing, at varying rates, into a national network of strong, professional organisations with a decisive imput into the native title process and related policy considerations. Already there are working coalitions of NTRBs within States which meet to formulate strategic approaches on the full range of native title issues. There are moves afoot to establish a national coalition. These organisational extensions of the NTRB framework will in themselves raise important policy issues that will need to be responded to by State, Territory and Commonwealth Governments.

One of the major dilemmas for government in the early debates about native title legislation was to find a national organisation capable of representing indigenous land interests. At a time when key individual Aboriginal leaders were being publicly criticised for not being able to speak on behalf of a broad enough constituency, ATSIC played a significant role, delivering national Aboriginal support based on its elected regional
councils (ATSIC 1994: 22). Increasingly, NTRBs will assume this role, especially at the regional level, but also at the wider State and national level if they continue to amalgamate into larger political coalitions.

As they become influential power brokers within regional Aboriginal politics and regional economies, NTRBs could assert a growing impact in State and Federal political and policy arenas. For example, they are quickly becoming key players in the critical pressure points in native title relations between the States and the Commonwealth, especially in States such as Western Australia where the government is actively obstructing initiatives by both NTRBs and some elements of the mining industry itself to get on with the native title process. The fact that NTRBs are actively seeking to negotiate regional agreements with resource and other development interests will force State and Federal Governments to clarify their own policy approach to regional agreements and to formulate a preferred process for government involvement.

NTRBs will play an important role acting on behalf of native title claimants in relation to potential amendments to the NTA, providing government with a crucial consultative option at the regional level. Under interim regulations, they will have an important role in relation to Prescribed Bodies Corporate and native title holders regarding land use and management. These regional responsibilities link directly into critical land-related issues at the national level. For example, the Indigenous Land Corporation will need to consider directing its land purchase and management strategies according to native title outcomes dependent on the activities of NTRBs.

As NTRBs gain in professional experience and negotiating skills, and as their representative base strengthens, there may be increased tension between them, the NNTT and State counterpart Tribunals over jurisdictions and appropriate roles. The organisations will undoubtedly argue for the centrality of their role in ascertaining the views and acting on behalf of their indigenous constituency. It will be critical for the NNTT and State Tribunals to realise that their own areas of expertise do not lie in the indigenous domain, and to recognise NTRBs as legitimate and increasingly effective organisational representatives of native title interests. Indeed, such recognition can only serve to help develop such effectiveness.

If the political lessons of the land council system in the Northern Territory hold true for NTRBs (see Altman and Dillon 1988; Martin 1995a), especially in a post-native title claim period, their position will be consolidated as influential advocates for indigenous land-based rights and interests. In the meantime, there are clearly a number of important matters that remain to be resolved if they are to become effective. In particular, all are in need of a stable regime of sufficient funding to undertake their native title responsibilities; representativeness does not come cheaply. They
are also in need of an enhanced statutory framework which clearly defines mandatory areas of responsibility and accountability to their indigenous clients. While the Commonwealth continues to be reluctant to take this step, key mining industry spokespeople are already arguing its likely benefits.\textsuperscript{12} ATSIC will need to quickly and efficiently respond to their needs, not simply for program funds, but for corporate and administrative assistance. If NTRBs can establish themselves on a sound representative and management footing, there is every possibility that this emerging national institutional framework could mark a decisively new stage in Aboriginal politics. In particular, these organisations will become powerful political voices for a constituency, some of whom will have substantial decision-making powers over economic development. As such, they will generate a regional, land-based politicism with which ATSIC regional councils, governments and developers will have to contend.

Notes

1. I would like to thank Jon Altman, Hilary Bek, Julie Finlayson, David Martin and Neil Westbury for helpful comment and criticisms of earlier drafts of this paper. I nevertheless take full responsibility for any errors and the views expressed.

2. These are commonly called Representative Bodies and are abbreviated to NTRBs throughout the paper. While it is slightly cumbersome to have the abbreviation appear too frequently, it is used to avoid the more boring repetition of 'Representative Bodies'.

3. The recommendations of the review committee were accepted by the ATSIC Board of Commissioners in September and ATSIC is establishing a separate branch in central office to proceed with implementation of the report. Cabinet has noted the report recommendations and has agreed to adjust ATSIC funds so that NTRBs will be able to effectively perform their functions and facilitate the operation of the NTA at this crucial, early stage.

4. I participated in consultations in Brisbane, Tin Can Bay, Toowoomba, Rockhampton, Bundaberg, Mackay, Townsville, Cairns, Thursday Island, Mt Isa, Burketown, Adelaide, Alice Springs, Darwin, Broome, Derby, Port Hedland, Perth, Kalgoorlie and Canberra. I also attended a Canberra workshop of NTRBs conducted by the Native Titles Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies, at which Professor Jon Altman and I conducted sessions with NTRB staff on the review recommendations. I did not attend the New South Wales and Victorian consulations with NTRBs which were carried out by another group from the review committee. The review committee was chaired by the ATSIC Commissioner Mr Guy Parker and included Mr Murray Chapman (Assistant General Manager, Land, Heritage and Culture Branch, ATSIC), Mr Neil Westbury (Assistant Secretary, Native Title Special Projects Branch, Office of Indigenous Affairs), Professor Jon Altman (Director, Centre for Aboriginal Economic Policy Research, Australian National University) and Ms Diane Smith (Research Fellow, Centre for Aboriginal Economic Policy Research, Australian National University).
5. This is the same percentage as applies in respect of exploration agreements under the *Aboriginal Land Rights Act (Northern Territory)* 1976. The agreement also ensures that compensation may be received in any form, including the provision of benefits to the local Ngukurr community, with Aboriginal people making final decisions as to the form compensation takes.

6. These numbers are approximate and provided by the Registrar of Incorporated Associations, ATSIC, Canberra. They include associations established under Commonwealth legislation only.

7. Mr Paul Wand, Vice-President, Aboriginal Relations, of CRA further argued to the Parliamentary Joint Committee on Native Title and the Indigenous Land Fund (PJC) that CRA 'strongly endorse the need to have provisions in the NTA that will give standing and authority to the relevant Land Councils or regional councils [that is, to the NTRBs] to enter into agreements that will be legally binding and enforceable for the duration of those agreements' (CRA Submission to the PJC, see Commonwealth of Australia 1995: 1515).

8. It is also being tempered by the realisation amongst claimant groups that they should more appropriately organise themselves to be Prescribed Bodies Corporate. These are the incorporated associations able to be established under the NTA (ss.55–60) to hold native title rights in trust for native title holders. The native title holding members of Prescribed Bodies will have substantial decision-making powers over their particular areas of native title land. There appears to have been no initial statutory impediment to a NTRB also becoming a Prescribed Body Corporate, but subsequent regulations passed for the latter on 20 December 1994 seem to actively preclude this possibility.

9. The same comment can be applied to the NNTT.

10. See for example, Sullivan 1995; Menham 1995.

11. See also similar comments about the need for a partnership between NTRBs and ATSIC at the regional level by Darryl Pearce, Director of the Northern Land Council made at the same seminar (Pearce 1995).

12. CRA have recently called for a clearer statutory basis for NTRBs that 'will give standing and authority' to them, arguing that it would serve to make agreements and negotiations that legally binding upon both the NTRBs and the native title parties they represent (see Commonwealth of Australia 1995: 1515).