



Discussion Paper

Regional and national representation: A Traditional Owner led model

Overview

The Minister for Indigenous Australians, the Hon Ken Wyatt AM, MP announced the formation of the Co-Design Senior Advisory Group for the Voice to government in November 2019. The purpose of the co-design process is to enhance local and regional decision-making and provide a voice for Indigenous Australians to government. The Senior Advisory Group then formed a National Co-Design Group, and a Local/Regional Co-Design Group to ensure broad consultation and input. One of the key roles of the Senior Advisory Group is to advise the Minister on options for the structure and membership of a national Indigenous voice, ones that will ensure that Indigenous Australians are heard at all levels of government - local, state and federal.

The National Native Title Council (NNTC) is Australia's peak native title body. While our membership comprises organisations set up under the Native Title Act 1993 and equivalent State legislation, our purpose includes advocating for the rights recognition of Traditional Owner groups.

It is the view of the NNTC that Traditional Owner groups are not simply landholding bodies but must instead be recognised and supported as individual societies and nations with systems of governance through which self-determination and nationhood is expressed. Indigenous system of laws and customs, held collectively, are recognised through the Australian common law in native title. The recognition by the Australian common law of the rights of individual Indigenous groups to self-govern through their own systems of laws and customs is consistent with UN Declaration on the Rights of Indigenous Peoples. Native title assumes and enlivens a whole range of existing and functioning Indigenous governance arrangements. It recognises distinct Nations with rules and processes for determining such things as membership, boundaries and who can speak for people and country.

The purpose of this discussion paper is to examine the merits of a Traditional Owner led model that recognizes Traditional Owner groups as individual nations and ensures regional and national representation with cultural authority. The paper does not seek to exclude First Nations people who do not live on country or who are not connected, through the legacy of European settlement, to their Traditional Owner groups, and it does not seek to exclude organisations who have been pivotal in First Nations advancement that are not Traditional Owner led. Instead it seeks a pluralistic model that recognizes the nations and sovereignty of Traditional Owner groups that is inclusive of all First Nations people and organisations. At a minimum, whatever model is adopted, Traditional Owner groups must be supported as nations able to speak on all matters relevant to their self-determination. For any local or regional model to have legitimacy it must incorporate the voices of Traditional Owners.

Key principles

The NNTC supports the UN Declaration on the Rights of Indigenous Peoples, and, in seeking this model, makes particular reference to Articles 3, 4 and 5 which supports the right of First Nations people to self-determination and in exercising their right to self-determination:

- to freely determine their political status and freely pursue their economic, social and cultural development;
- to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions;
- to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Specifically, the NNTC supports the right of First Nations communities to adopt their own laws, customs and practices in determining their own model of a local voice and how those local groups will interact with regional and national bodies.

Whichever model is adopted should be considered within a nation-building framework. A key factor of nation-building is developing strong relationships with stakeholders, to move away from a siloed approach to policy development and service delivery towards a more holistic approach where cultural nations have governing and decision-making powers over all the laws, policies and services present in their communities.¹

A Traditional Owner led model has cultural authority and legitimacy, which is not always captured in other forms of regionalization, such as service delivery or partnership alliances. As previously submitted by the NNTC, there is a need for the National Voice to be built upon local and regional structures that are representative of Australia's First Peoples and have legitimacy under traditional laws.²

Aboriginal and Torres Strait Islander people comprised a vast multitude of individual nations that existed some 80,000 years prior to assertion of sovereignty by the British Crown. They were and they remain individual self-determining societies and nations with strong systems of governance and with laws, customs and economies that deal with every aspect of the lives of their members and their interactions, alliances and enmities with neighbouring groups.

These nations are what we now refer to as Traditional Owner groups. Local Traditional Owner voices are already captured in the native title process and parallel recognition State and Territory based processes, as well as the cultural heritage legislation of some jurisdictions. It is expected that the national native title process alone will result in over 300 Traditional Owner groups formally holding native title rights to 60 per cent of Australia's land and water mass.

Elections and appointments to a national body

The NNTC recommends a regional election process that is Traditional Owner led, but inclusive for all First Nations peoples in that region. How the model is adopted will be different in each region depending on a range of factors including how a region's boundaries is determined. Many regions or cultural blocs contain communities with diverse colonial histories and political processes; meaning while a cultural connection between communities is maintained, a political partnership is not a

¹ National Native Title Council, Discussion paper: nation-building and native title, September 2019.

² National Native Title Council, submission to Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples, Melbourne 26 September 2018, p.3.

feasible option. For other groups, boundary and other disputes arising from colonisation have resulted in political divisions, which will not be easily overcome. And for others, regionalization represents a loss of individual community autonomy and power, that communities have worked so hard to maintain through colonisation. Recognising the rights of local communities to choose their own way of participating according to their own laws, customs and histories also means recognizing that one model will not work for each First Nation group in Australia.

The Torres Strait Regional Authority (TSRA) is an example where the regions are clearly demarcated by physical boundaries. Formed as a statutory authority in 1994 and able to receive direct funding from the Commonwealth, the TSRA board is formed by 20 members, one each elected from each island.³

Another electoral example has arisen in Victoria with the First People's Assembly of Victoria was created to represent First Nation Victorians in the Treaty process. There were 21 seats filled by election over five regions determined loosely on cultural lines and agreed by an all Indigenous treaty working group. A further 11 seats were reserved for each of the 11 formally recognised Traditional Owner Groups. Only Victorian Traditional Owners can sit on the Assembly. Victorian Traditional Owners living interstate were permitted to enroll and vote but not sit on the Assembly. First Nations Australians who were not Victorian Traditional Owners could likewise vote but not sit on the Assembly.⁴

This means that many long-standing First Nations residents in Victoria cannot be part of the Treaty process, beyond voting in a Traditional Owner. One alternative to this for the Voice model may be for, alongside reserved seats for formally recognised Traditional Owner groups, each region could vote in Traditional Owners along with other local residents or other nominees from other long-standing community organisations, discussed below in the multiple structures section. A further option is for First Nations residents to be appointed to a national body, as raised in the appointments section.

First nations residents

All First Nations peoples are Traditional Owners; however due to historical and contemporary colonial processes, such as Stolen Generations, the development of missions, and other forced relocations, as well as choosing to move to cities or other areas for education, employment or lifestyle reasons, many First Nations peoples do not reside on their own country. Rather, they live on the country of others, in some circumstances for many generations.

First Nations people living off country can find themselves being excluded, completely or partially from political processes. However, some jurisdictions, such as the Northern Territory have a history of pluralism in governance, working with both Traditional Owners and residents. For example, 'having Land Trusts of traditional owners supported by the land councils; royalty associations servicing traditional owners and other Aboriginal residents; and local councils representing residents working on a range of other matters in relation to numerous Commonwealth and Territory agencies.'⁵ The NNTC encourages regional structures, including governance and elections, to consider how they might include First Nations residents to ensure they also have a national voice.

³ National Indigenous Australians Agency (NIAA), Working group: structure and membership, Workshop Paper: Thursday 26 March 2020, p. 13.

⁴ First Peoples Assembly of Victoria <https://www.firstpeoplesvic.org/>

⁵ Westbury, N and Sanders, W. Governance and service delivery for remote Aboriginal communities in the Northern Territory: challenges and opportunities, CAEPR Working Paper No. 6/2000, p.5.

If the inclusion of First Nation residents is deemed culturally inappropriate by some regional groups, the national body may want to consider the appointment of First Nations residents into the elected body.

Multiple existing structures

In some jurisdictions there are multiple existing governance structures that have developed from local activism and service delivery, land rights, native title, and other government partnerships. For example, in NSW there are included, amongst others, the following regional governance structures in place built on principles of self-determination and regional autonomy:

- NSW NTSCORP and regional claims (native title rights to land and waters)
- NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs) (Land acquisition and use)
- NSW Regional Alliances under Local Decision Making (LDM) framework (service delivery and government partnerships)
- Murdi Paaki Regional Assembly (MPRA) (service delivery)
- Empowered Communities (regional economic development)

While holding similar principles, each of these structures involves different structures, governance, and membership. The co-design process could consider a range of options to be inclusive of existing structures, such as regional Traditional Owner representatives with appointed positions from other existing structures and organisations or elected representatives from each organization, although this could mean that the elected persons may not be culturally or geographically representative.

Regional boundaries

The NNTC supports local and regional First Nations communities to define their own boundaries for nation-building and other political processes, rather than using existing non-Indigenous boundaries, such as States and Territories.

There will need to be an appropriately resourced process, including First Nations mediators, available for regional groups to resolve issues relating to boundaries.

Where there is not an existing process of cultural regionalisation, the Voice co-design committees will need to consider how regional boundaries might be developed and negotiated locally. It is important that the regional boundaries are not arbitrary or rushed for convenience, rather based on existing cultural and political nations.

Appointments

The NNTC supports an appointment process to be carried out after the regional nominations have taken place and the initial national body has been elected. The appointment process would assess whether the following demographics have been captured by local and regional voice nominations:

- Age: older and younger people
- Gender: male, female, and other non-binary identifying persons
- Differently abled persons
- First Nations people who permanently reside on country that is not their own
- Previous regional bodies not included in the regional model
- Stolen Generation First Nations people

For example, it is important to capture First Nations youth, who are the future of all our communities and Australia; however, youth may not be elected or nominated for a representative position due to the history of age preferencing in the native title system. The Board of Murdi Paaki Regional Assembly (MPRA), which has been operating for over 25 years in New South Wales,

appoints four youth members each election cycle, ensuring intergenerational skills transfer and the development of youth leadership.⁶

Conclusion

The NNTC urges the Co-Design groups to consider the cultural authority of a Traditional Owner led model that is, where appropriate, inclusive of First Nations residents and existing regional governance structures that might not be Traditional Owner led but have been pivotal to First Nations advocacy, activism and self-determination. Key to this Traditional Owner led model is the recognition of our pre-colonial status as nations with complex governance arrangements not confined to land but governing every aspect of our lives. The Voice must form part of our reclaiming our nationhood and contribute to our nation building processes. How the model is adopted in each region will reflect the localized complexity of our colonial histories and the political processes and relationships we have developed in the last 250 years. If the model is not Traditional Owner led, then at a minimum, any model adopted must support Traditional Owner groups as nations able to speak on all matters relevant to their self-determination. For any local or regional model to have legitimacy it must incorporate the voices of Traditional Owners.

⁶ National Indigenous Australians Agency (NIAA), Environmental scan: key Indigenous local, regional and national models and structures, n.d, p.4.