

10. Noongar Nation

Manuhuia Barcham

Introduction

In the wake of the positive determination made in the case of the Perth metropolitan area in the Single Noongar (native title) Claim in late 2006, the idea of a Noongar Nation is gaining currency around Australia. The judgment made clear that Noongar constitute a single group—a Noongar Nation. Exploring how this came about is the aim of this chapter. The chapter begins with a discussion of the historical context of the southwest of Western Australia (WA), with its long history of European contact and the subsequent effects this contact had on Noongar language and culture. After looking at how Noongar historically constituted a discrete socio-cultural grouping, the chapter explores how Noongar socio-cultural forms adapted in the face of ongoing European contact and government interference. It then looks at the way in which the native title land claims have helped provide an organisational form that has enabled Noongar to speak as a single voice—as a Noongar Nation. Looking at the experiences of the Noongar Land Council and its successor, the South West Aboriginal Land and Sea Council (SWALSC), the chapter explores how, despite problems with administrative and governance issues, Noongar have been able to use the native title process to create an organisation that is not only representative of Noongar society, but that is able to articulate Noongar society's aims and desires. Following the successful ruling on the Perth metropolitan area in 2006, the chapter ends by looking at some of the issues that the Noongar Nation will need to face in the coming years.

Historical context

The southwest of WA has been inhabited for tens of thousands of years. At the arrival of European settlers, the Indigenous inhabitants of the southwest spoke variants of a language now known as Noongar (variously spelt Nyungar or Nyoongah). While the debate continues as to whether or not these were distinct but closely related languages or dialects of one single language, the original occupants of these lands were seen by both themselves and others as being qualitatively different—both culturally and linguistically—from their immediate neighbours to the north and east (see Berndt 1979: 81–3).¹

¹ One of the key traditional indicators of difference was the circumcision band to the west that separated Noongar (who practised neither circumcision nor incision) from their neighbours (who practised circumcision and/or incision).

In the immediate post-contact era the key social unit was the band, which was an aggregate of people, the size of which depended upon the particular ecology of their own local territory (Howard 1981: 2). This band structure was based on totemic forms of social organisation, which were attached to particular sites of significance within their estate. Bands were comprised of members of several of these totemic groups and their spouses and children (*ibid.* 2–3). The relatively benign environment of the southwest meant that Noongar social groupings were relatively large by Indigenous Australian standards, as compared to those of the neighbouring Western Desert, for example. And so, in places like the Swan River, bands that shared a number of common socio-cultural features came together to form larger, loose forms of social alliances (*ibid.* 4).

Permanent European settlement of the southwest occurred in 1829 with the establishment of the Swan River colony. Increasing numbers of European settlers led to radical changes for the region's Indigenous inhabitants. The creation of towns and farms impinged on Noongar traditional practices and subsistence lifestyles, as well as traditional forms of social organisation. With foraging forms of subsistence becoming increasingly difficult to sustain in the face of encroaching Western civilisation, Noongar became increasingly dependent on the introduced economy. The Indigenous inhabitants of the southwest were also hit hard by the effects of new diseases (Berndt 1979: 87).

Combined, these forces meant that by the beginning of the twentieth century many formal aspects of Noongar youth education had largely broken down. As a result of this, many traditional ceremonial practices and traditional rites began to be practiced less and less, and the Noongar language began to be replaced by English as the main mode of social communication. In this period, traditional forms of social organisation along totemic and band lines also started to be replaced by kinship systems based along European-style family lines, although place of origin and kinship ties remained an important determinant of Noongar social and cultural life (Howard 1981: 9). This social adaptation was compounded further by the removal of Noongar children to residential schools in the early to mid-twentieth century. However, despite all this, Noongar managed to maintain a coherent corporate identity, in contrast to both white Australian society and much of Aboriginal Australia.

'All one family'

In much of the twentieth century, Noongar social forms thus tended to focus on discrete social groupings known as families.² Christina Birdsall (1988: 137) has argued that it was this form of kinship organisation that 'enabled the Nyungar people to maintain themselves as a discrete socio-political group within the wider Australian society'. Birdsall (*ibid.*) went on to argue that while

² Technically these families are examples of matrifocal, bi-lateral, cognatic descent groups.

through the pressures of the assimilation policies of previous decades and the search for work ... they are now a people of the towns and cities whose first language is English ... [Noongar nonetheless] remain a distinctive socio-cultural category, maintaining a particular form of kinship organisation.

These families, and Noongar individuals, generally identify themselves in terms of their descent from a particular ancestor, these individuals generally being those born as a result of a union between a white man and a Noongar woman. Each of these groups has a surname by which they identify themselves in relation to other Noongar families. Thus, the generic question 'what your mob is?' is greeted, in general, by respondents with the name of the family to which they feel their strongest allegiance. Recent estimates are that there are about 400 Noongar families (SWALSC anthropologists, pers. comm.).

Birdsall (1988) argued that these families generally number some 200 to 300 individuals, who can be widely dispersed across the southwest. Anecdotal evidence, however, would seem to point to the fact that some of the families, such as the Kicketts, are much larger than this. These families are then further subdivided into smaller sections, usually numbering 40 to 150 people. The smaller parts of the family are usually descended from a set of 'sibling-cousins', usually older women, who act to hold the family together 'through close and continuing cooperation over the years' (1988: 141). It is within these smaller sections of 'the family' that most Noongar social interaction occurs. These families are the key signifier of Noongar identity, both vis-à-vis the non-Noongar world and in relation to other Noongar families.

Noongar families are generally spread over a discrete set or 'run' of towns, which is 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. In doing so, this process has created a 'line of towns' through which individuals and groups passed on their way home to their country. This process often took an extended period of time due to financial and other constraints, and as children were born and raised not all would carry on with their parents and would instead settle in one of these towns (Birdsall 1988). 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 married and had children together. This broader kinship web could play an important role in the creation of a Noongar nation—linking together as it does families across the entire southwest. In order to look more deeply into the emergence of a Noongar nation we need first to look at the process of native title in the southwest—as it is through this process that Noongar have been able to come together as a single corporate group.

Native Title Representative Bodies in Western Australia

In the wake of the recognition of native title in the Mabo case in 1992, and the subsequent passage of the *Native Title Act 1993* (Cth), representative bodies began to be established across Australia. The lack of suitable bodies in WA in the early 1990s to take on the functions of a Native Title Representative Body (NTRB) meant that the Aboriginal Legal Service of Western Australia Inc (ALSWA) was approached and asked whether or not they would be able to take on native title functions for the region. ALSWA already possessed some capacity in the area due to the existence of its Land and Heritage Unit. And so, in 1993 Greg Benn, former head of the Land and Heritage Unit, became the new head of the NTRB function within ALSWA. While ALSWA thus acquired the mandate to act as the NTRB in WA, this did not preclude the continued existence of other councils such as the Kimberley Land Council or the creation of new land councils. And by 1998, a number of land councils had been formed at a regional level in WA, including the Noongar Land Council.

Noongar Land Council

The Noongar Land Council was established in 1995. The impetus for its creation was a meeting in Narrogin convened by John Hayden, then Chair for the Kaata-Wangkanyini Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Council. One of the key motivating factors in the calling of this meeting was that the work of the ALSWA was seen by Noongar as being too far removed from their aims and desires, especially in terms of land rights issues in traditional Noongar country. In addition, Noongar leaders felt that while other Aboriginal groups across Australia were engaging with State and Federal Governments, Noongar were being left behind. Noongar leaders felt that the establishment of a land council, that is, a single Noongar body, would provide a focal point through which Noongar desires around land rights—such as the prosecution of the 78 claims by Noongar over various sections of the southwest along with other issues—could best be articulated. Over 200 Noongar individuals came together and decided by a vote at the meeting that a land council would be established for the southwest and it would actively seek to obtain NTRB status.

The two ATSIC regional councils in the southwest supported this initiative through grants of about \$100 000 in order to help form the Noongar Land Council.

At another meeting in Narrogin in late 1995, initial nominations were made for wards in the new land council. Nominations for these wards occurred with no consideration for linkage to country. Instead of standing in the wards to which they had traditional links, people were instead standing in wards that they thought they had the best chance of winning. As a regional representative structure, the Noongar Land Council thus had no explicit organisational linkage to traditional Noongar linkages to land. However, in their voting, Noongar family ties did play an important part in the success or failure of candidates. Explicit family support in the manner of votes was a key aspect in the success of Noongar individuals wanting to be voted on to the Noongar Land Council council.

The full council of the Noongar Land Council was composed of four Noongar people from each electoral ward, who were voted in by Noongar Land Council members. The 12 electoral wards were: Albany, Brookton, Bunbury, Gnowangerup, Manjimup, Merredin, Moora, Narrogin, Northam, Perth North, Perth South and Pinjarra. The Noongar Land Council executive committee was then elected from the 48 Noongar Land Council full council members, who would decide amongst themselves who would sit on the executive. At its establishment in 1995, Glen Colbung was elected as the first chair while Merv Kelly was appointed as the first Chief Executive Officer (CEO).

The Noongar Land Council was initially based at Narrogin, but various issues including difficulties sourcing staff eventually saw the Noongar Land Council move to Perth. The initial organisation was very small with a staff of two. However, right from the very beginning the new land council was beset by governance problems, many of which were a direct result of a lack of capacity within the organisation. This lack of administrative and management skills within the organisation saw ATSIC step in within a few months of the land council opening after claims emerged of financial mismanagement within the council.

Threatening to shut the Noongar Land Council down because of the mismanagement of funds, ATSIC appointed Dewesbury (a Perth law firm) to act as grant controllers and administrators of the council. In response to this, a special general meeting was held in Narrogin for Noongar concerned about the fate of the land council. At the meeting, people discussed whether or not the land council should just be wound up, but John Hayden argued that there was a need for it to stay in place as otherwise Noongar would have to start from scratch if they wanted their own NTRB for the southwest. Working with Dewesbury and the regional ATSIC Councils, the Noongar Land Council members decided to suspend the Noongar Land Council executive, and a four member

management committee was put in place to manage the land council in order to bring it back to shape.

This management committee was composed of four Noongar— Geri Hayden, Mark Ugle, Brett Collard and Glen Kelly—who were mandated to work with Helen Griffith from ATSIC in order to oversee the running of the Noongar Land Council until new structures were put in place. Part of the problem in the running of the Noongar Land Council had been its constitution, which placed an inordinate amount of control in the hands of committee members. One of the key tasks of the committee was therefore to draw up a new constitution. Other tasks included putting in place robust financial management systems and dealing with the Office of the Registrar of Aboriginal Corporations in relation to the financial irregularities that had led to the initial intervention by ATSIC.

Another of the key tasks for the new management committee was the appointment of a new CEO. The job was advertised a number of times, but only two Indigenous Australians applied. In the end, John Hoare, an Indigenous man from Mount Isa in Queensland, was appointed to the position on a six-month initial contract. His primary task in his new role was to work with the management committee to rework the council and the constitution, in order to improve the internal governance systems. During this period, while an executive committee existed (comprising members from the Noongar Land Council council), final sign-off for any decision was required from the management committee.

At the end of his initial contract, John Hoare was signed on for another six-month term. In this second period, the management committee continued to have final say on any management decisions within the council. However, at the end of his second term Hoare called a meeting of the council executive in Albany, with no involvement of the management committee. At this meeting the council executive decided that Hoare's contract would become permanent and he became the full time CEO of the Noongar Land Council. After this event the management committee was no longer consulted on decision making processes and the executive council took on full decision making power.³

Problems continued under the new structure, however, with people claiming that the executive still had too much power and influence in the day-to-day running of the organisation, and that there was no real movement in terms of who sat on the executive. Some began to argue that there was no clear division of power under the Noongar Land Council's constitution between the governance and management functions of the organisation. In elections, there were accusations of vote stacking and candidates switching wards merely to maximise their vote. For some Noongar, this acted to reinforce the view held by some

³ Subsequently, the management committee disbanded. An interesting point to note is that at the next election a number of members of the management committee became members of the executive council.

outsiders that Noongar as a group of people were more concerned with fighting each other than acting as a team. Meanwhile, the problems within the executive arm were being mirrored within the elected arm. Many of the same issues, such as favouritism and vote-stacking, began to arise in terms of the groups set up within the Noongar Land Council to manage the land claims process. Noongar were becoming increasingly concerned that not all Noongar interests were being represented in this process. This feeling, that the structures of the Noongar Land Council were not representative of all Noongar interests, was to set off a cascade of change within the organisation.

Native title claims in the southwest under the Noongar Land Council

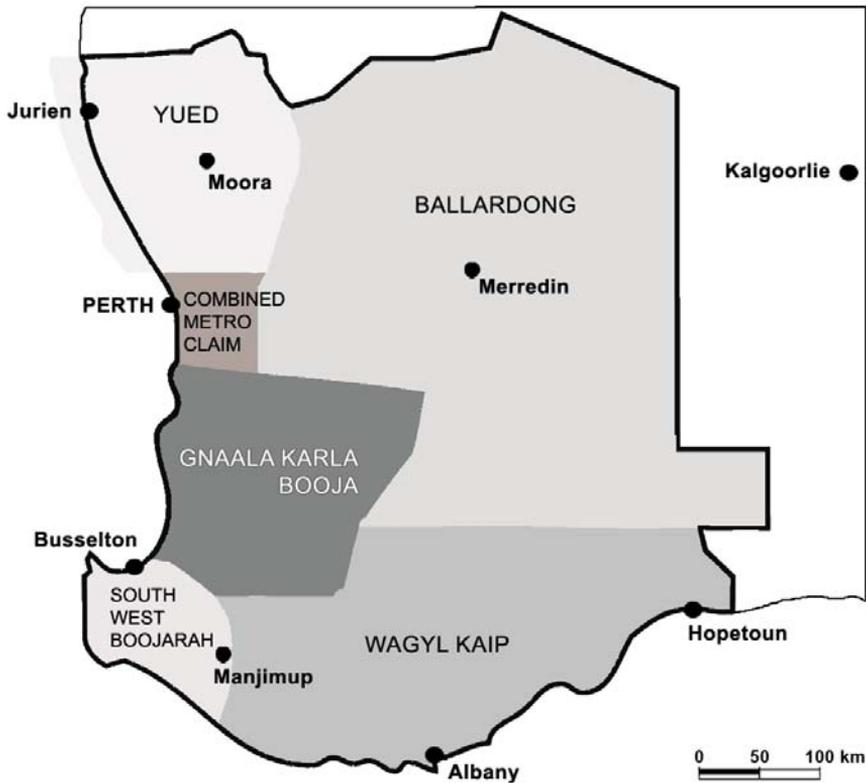
Despite the existence of the 78 claims by Noongar over various sections of the southwest, limited capacity within the Noongar Land Council meant that they would only ever be able to fund a limited number of these claims. Because of this, the land council was forced to tell the various claimants that, as they would not be able to support all claims, they would need to choose certain claims to support over others. The distinction between which claims were to be supported was to be decided in terms of which would be seen as being most likely to achieve native title. This caused an outcry amongst many Noongar, who felt that their particular claims would thus be overlooked. A possible answer to this lack of capacity, so Noongar Land Council argued, was for these claims to be all folded into a single claim for the southwest as a whole.

Indeed, there had long been a desire amongst many in the Noongar leadership for the creation of a Single Noongar Claim. In the course of my research, a number of Noongar individuals told me that the reason that there was a general consensus among Noongar in this period towards this, was the belief by many that Noongar constituted a single group—a Noongar Nation.⁴ This desire, when coupled with the Noongar Land Council's inability to fully support all 78 existing claims, meant that early in 1998 the Noongar Land Council began a process to consolidate the various claims. In order to confirm this though, the Noongar Land Council undertook a period of consultation, going out into the communities to ensure that Noongar actually wanted to consolidate the claims. And, while there were some individuals and families who for various reasons opposed the consolidation process, the general consensus was that it should go ahead. However, despite this, it was decided by the Noongar Land Council executive that the move from 78 claims to a single claim would, for pragmatic reasons, be too risky, with the possibility that it could fail registration. Therefore, it was decided to undergo

⁴ In talking with various Noongar individuals it appeared that the term 'Noongar Nation' began to be used by the Noongar leadership more often in the 1990s. Its roots may be older, however, and might be traced back to the impact of North American forms of activism— especially the idea of Native Nations—on Indigenous activism in Australia in the 1960s and 1970s.

an intermediate step whereby the 78 claims would be reduced to six, and from there the six remaining claims would then be consolidated into a single claim. And so, with this long-term goal in mind, in 1998 the 78 original claims were withdrawn and replaced by six larger claims covering the same total area (Noongar Land Council 1999: 3) (Fig. 10.1).

Fig. 10.1 Six Noongar claims



Source: SWALSC

In withdrawing their claims, the named applicants of the original claims were transferred over to become the named applicants on the six new claims. In addition, these individuals also became the initial members of the working parties for each of the claims. 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'.

Problems with the working party system

After the initial working parties had been formed, a number of Noongar began to express interest in joining them. And, as working party meetings⁵ began to be held, Noongar individuals would attend and be voted on to the working party. As would be expected, this process meant that working parties began to grow exponentially in size. This had a number of important ramifications, the most important being the negative effect it had on the achievement of quorums at any meeting, given that attendance by members was often sporadic. In addition, people felt as though power blocs, centred on certain families, were emerging within the working parties. People were concerned that meetings were being stacked by individuals and families to ensure advantageous results for either their families or for themselves. These issues led to the growth of a general feeling of dissatisfaction with the working party system, as it then existed, by the wider Noongar community. Many Noongar felt that the working parties were not representative of all Noongar interests within the community, and they were concerned that many families were not being consulted or informed about the ongoing processes of the claims.

Combined, these problems in the working parties and in the executive arm of the organisation, led to a rising feeling of discontent within the broader Noongar electorate in the southwest, which was to come to a head over issues to do with the registration of the Noongar Land Council as the NTRB for the southwest.

The Noongar Land Council and the Aboriginal Legal Service of Western Australia

As new representative bodies came into being in WA, some, but not all of them, were granted NTRB status. But the ALSWA continued to overlap them all and act as the major NTRB in the state. This overlapping system worked well initially, as the nascent councils were generally small and possessed low levels of capacity to deal with their new role as NTRBs. As a result, the ALSWA acted in a tutelary role to help the new councils create appropriate procedures and structures. A simple division of labour also sprung up between these land councils during this period, with the new councils dealing primarily with future acts while the ALSWA dealt with the actual native title litigation. However, the ongoing scarcity of resources in the native title field in the 1990s meant that a rivalry

⁵ This of course had other impacts, such as increased need for funding. The funding for this process came from the monies provided to SWALSC by the Federal Government as the NTRB for the southwest.

began to develop between the various land councils, and particularly between the regional land councils and the ALSWA.

Things came to a head with the release of the Parker Report in 1995 (ATSIC 1995) and the native title amendments of 1998 under the Howard Government. One of the key recommendations of this report was that there should be only one representative body per region and that these bodies should be land councils. The Parker Report also recommended that the role of the ALSWA should be to act as a central agency through which land councils could contract native title services. The amendments to the *Native Title Act 1993* (Cth) also meant, among other things, that all NTRBs would have to reapply to retain their status. In the southwest region, both the Noongar Land Council and the ALSWA applied for NTRB status. Both were declined. Both, nonetheless, continued to function despite not receiving official recognition as a NTRB. However, a lack of funds for the ALSWA in the native title area meant that by 2000 the Noongar Land Council was the only remaining *de facto* NTRB in the southwest.⁶ Its status was *de facto* because while the Noongar Land Council failed its re-registration, it was granted provisional NTRB status by the Federal Government.

Problems of infighting within the executive and governance and administration issues within the organisation, due largely to problems with the constitution, meant that the Government threatened to withdraw the Noongar Land Council's provisional NTRB status unless they amended their constitution. As a result of these processes, a new CEO was appointed in October 2000. Tasked with overhauling the governance structure of the organisation was the new CEO, Daryl Pearce, an Arrente man with extensive experience in the land rights field in the Northern Territory. One of the key points behind his appointment was that, as a non-Noongar Aboriginal man, he could bring cultural awareness to the position without himself being tied into Noongar family politics. One of the key tasks assigned to him was thus to restructure the organisation so as to make it more representative of as wide a range of Noongar interests as possible. However, changing the constitution of the council was, as the next few years were to show, going to be a mammoth task.

The emergence of the South West Aboriginal Land and Sea Council

As explained above, from 2000 the Noongar Land Council was the sole NTRB for the southwest. However, the Wik decision and the 1998 amendments to the *Native Title Act 1993* (Cth) meant, amongst other things, that the Noongar Land Council had to continue to reapply to maintain its status as a NTRB. As a result

⁶ Unfortunately, ALSWA's lack of funding for native title work, as a result of its application being turned down, meant that the Parker Report's recommendation that the ALSWA act as a resource for the land councils never came to fruition. It also meant that ALSWA had to either make redundant, or re-deploy to new positions within its organisation, those people with native title experience.

of these legislative changes, the Noongar Land Council executive began moves in 1999 to change the council's constitution in order to pave the way for its reapplication for NTRB status; this appeared to be the major stumbling block to its recognition as the official NTRB for the southwest.

Over the next three years, the executive attempted to change the constitution seven times. Each attempt, however, was met by defeat.⁷ Yet, as these attempts continued, albeit unsuccessfully, the Noongar Land Council nonetheless continued to attempt re-registration with the constitution as it stood. And, just as before, each attempt met with refusal. It should be noted again though, that even though the Noongar Land Council continued to fail the registration test, it nonetheless kept being granted provisional NTRB status and hence funding from the Federal Government, as the representative body for the southwest. This is an important point to make, as the only real income flow of sizable proportions available for the Noongar Land Council at this time was the money allocated to it as an NTRB.

The reason that the Noongar Land Council kept failing its re-registration was a perceived lack of good governance. This was in turn seen as flowing largely from a number of issues to do with a loosely defined constitution (Noongar Land Council 2000: 3). Poor management and ongoing Noongar factionalism also contributed to this deleterious state of affairs. However, as discussed above, these problems of governance were only the latest in a long line of governance and mismanagement issues for the Noongar Land Council.

Concerned that their provisional status would not continue to be granted indefinitely, the executive decided that the only way out of its predicament would be through the creation of a new peak body to act as a NTRB for Noongar. The SWALSC was thus created by the Noongar Land Council executive in an attempt to overcome the deadlock amongst Noongar that threatened to derail its re-registration yet again. In 2002, both the Noongar Land Council and SWALSC were submitted to the Minister for registration as the NTRB for the southwest. The only substantive difference between the two submissions, names aside, was the submission of a new constitution with the SWALSC bid. Once again, the Noongar Land Council failed the test but, with their new constitution, SWALSC passed, and so became the recognised NTRB for the southwest.⁸

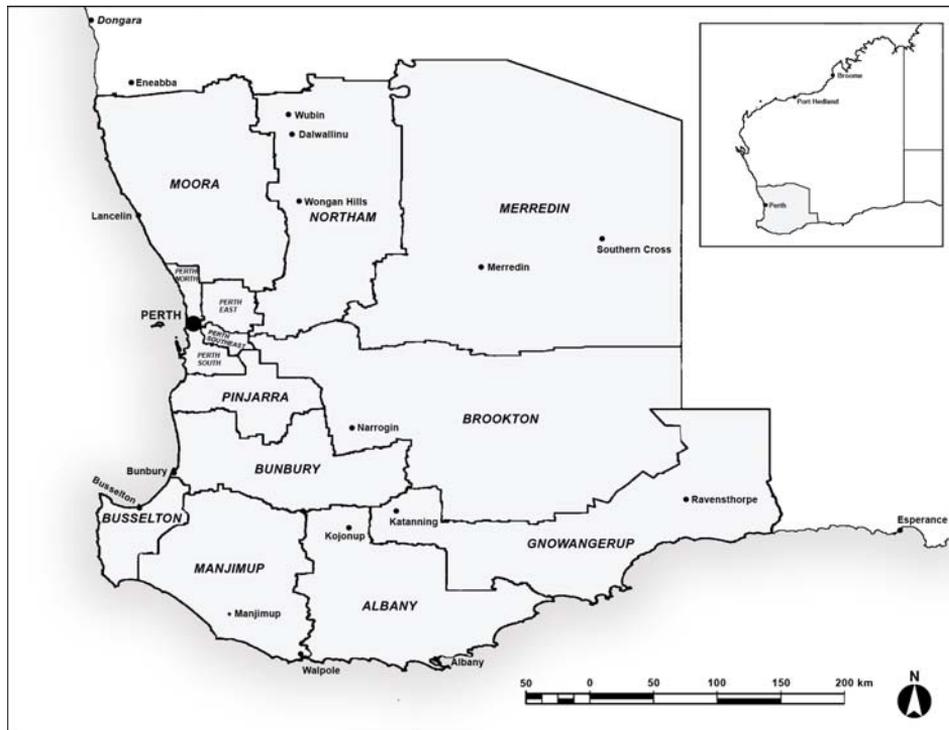
SWALSC, the organisation, is made up of an executive and an elected arm. The executive arm operates under the CEO who controls the day-to-day running of

⁷ Under the rules of the then Noongar Land Council there was a need for 75 per cent agreement amongst the full council for changes to the constitution to occur.

⁸ The Noongar Land Council was never officially wound up and continues to exist to this day in a shadowy form of half-life. Certain families claim it is the 'legitimate' NTRB for the southwest, but it has no real legitimacy with either the majority of Noongar or government.

the operation, while the elected arm operates through a council system. In the SWALSC system Noongar country was initially split into 14 wards (see Fig. 10.2).

Fig. 10.2 SWALSC wards (Source: SWALSC)



Each ward elected four members to full council, with the full SWALSC council thus comprising 56 individuals. These four members were 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 sat on full council, they also sat on their respective sub-committees. The key task facing the newly recognised land council, as they came together for the first time in 2002, was the continued prosecution of their native title claims.

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 carry on with the process begun by the Noongar Land Council and proceed with the creation of a single claim. Given the status of native title in Australia in that period—especially in the wake of the negative Ward and Yorta Yorta decisions⁹—and the degree of native title extinguishment asserted in the southwest, a

⁹ See, *State of Western Australia v Ward* (2000) 170 ALR 159, (2000) FCA 191; and *Members of the Yorta Yorta Aboriginal Community v Victoria* (2001) 180 ALR 655.

single native title claim was seen by many Noongar as providing a much stronger position to argue from and as having the greatest potential for securing a negotiated outcome. In addition, the other reason for moving from six claims to a single claim, as discussed above, was partly to do with capacity—or more precisely a lack of it. Despite being reduced to six claims, SWALSC still did not possess the capacity to fund all of them simultaneously. As discussed above, the intention had always been to reduce the 78 claims to one single claim but, for pragmatic reasons, it was decided that this process would be best achieved through an intermediate step—in this case a transition from 78 to six claims, and then from there down to a single claim (Lynette Lund, pers. comm., 25 November 2004).

However, while it was decided that SWALSC would move towards a single claim, they decided as an organisation that they would continue to retain the existing structure of six working parties. But, concerned with the negative feedback they had been receiving about the working party system, SWALSC presented an alternative working party structure to Noongar at the claimant meetings they held across the southwest. In this new system, the old working party arrangements would be completely overhauled and each family who had interests in the region would choose two family members to represent them on their regional working party. These representatives could be named applicants on the original claim or on the new single claim but this need not necessarily be the case. The only criterion was that they needed to be appointed by their families, although the exact selection process used was to be determined by each family. 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.

In order to go forward with this restructuring of the working party system, the original applicants needed to agree. Not all applicants agreed to this though, as despite assurances by SWALSC and other Noongar that removal as an applicant did not remove applicants from the group or from their standing in traditional lore and custom, they nonetheless felt that there was more risk involved in them going with this new structure. While this small group did not prevent the transfer and creation of a new working group structure, it did present problems that at a later date were to come back to haunt SWALSC and the creation of the Single Noongar Claim.

Family meetings and the Single Noongar Claim

From February 2003, SWALSC began restructuring the working party system and developing the single claim. SWALSC researchers began to compile lists of genealogies and family names associated with various regions across the

southwest, linked back to lists of 99 identified 'apical' ancestors.¹⁰ Once these lists were compiled, a meeting would be called in the respective regions and the lists of 400 identified Noongar family names would be put up in the room; Noongar present at the meeting would add or subtract names until agreement was reached that only families who had 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 meeting with each of the Noongar families to confirm genealogies and connections to country. In some meetings, family runs were also mapped out, but research capacity issues prevented this being achieved for all families.

In addition, it was at these meetings that each family nominated two members who would become its representatives on the new regional working parties. As mentioned above, the method by which each family selected their representatives was left up to them to decide. 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.¹¹ During these meetings and the ensuing decision making process, weight was given to the opinion of the elders of each family.¹² These meetings also gave SWALSC an opportunity to explain how the single claim process would run, including the relationship between the working parties and the named applicants and how decisions would be made and then acted on.

While this process was underway, SWALSC began to restructure the boundaries of the six working groups. Whereas previously the boundaries of these groups had matched those of the original six claims, SWALSC began to restructure them so as to fit more neatly alongside the WA shire boundaries. The reason behind this move was a desire to facilitate the eventual 'fit' of the six working groups with the 14 electoral wards of SWALSC, which were developed from within the geographic confines of the state's shire boundaries. Ultimately, however, the working group boundaries emerged from the consolidation of the various native title claims in the southwest. What this meant was that there was no relation between the working group regions and SWALSC's electoral wards. By redefining the working groups' boundaries along the electoral ward's boundaries the hope was to create a 'neater' administrative structure for SWALSC.

After much work, the Single Noongar Claim was lodged in the Federal Court in September 2003. In this structure, the working parties were seen by many Noongar as being the true decision making bodies for Noongar. There was

¹⁰ Some overlap, between not only families but also apical ancestors, naturally occurred across regions.

¹¹ 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.

¹² 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).

widespread support for this, as the regional working groups comprised over 240 endorsed family representatives, with each Noongar family represented in the areas in which they held land interests. The working groups are the sites where Noongar social structures connect with the modern organisational form of the NTRB—to present a united voice in the prosecution of native title claims and other issues. Noongar have argued that the new working party structure is much more representative of Noongar society and has brought new faces to the table and stopped old power plays.

Promise and problems with the Single Noongar Claim

However, all was not to stay so positive. As noted above, some legal issues with the six claims remained, as a small minority of original claimants refused to allow their names to be taken off the applications (and thereby lose their individual right to negotiate). Taking this into consideration, on Tuesday 15 June 2004 Justice French dismissed the Noongar attempt to combine the remaining claims into a Single Noongar Claim.

Disappointing as this was to many Noongar, SWALSC pushed on with the process of combining the six claims into a single claim, despite the Federal Court continuing with proceedings for the underlying claims. Things looked even more grim for the Single Noongar Claim as initial support for it in the WA Office of Native Title began to wane. The Office of the State Solicitor and the Federal Government were pressing for one of the six underlying claims, the Combined Metro claim, to go to trial. And, despite SWALSC's opposition to the hearing of this claim area (they would rather have proceeded with the single claim), the Metro case went to court in October 2005. The decision on this claim came down on 19 September 2006 (*Bennell v Western Australia* [2006] FCA 1243).

In making his determination, the presiding judge, Justice Wilcox, was primarily interested in establishing two issues: that in the Metro area there was a single community with shared law and customs through which they were connected to land and waters for native title purposes at the time sovereignty was asserted in 1829; and that this same community continued to exist and continued to acknowledge those same laws and customs in the present day. In making his decision, Justice Wilcox found that the evidence did indeed show that at 1829 the laws and customs governing land and water throughout the whole claim area were those of a single Noongar community. In contrast to the claims made by the state, that Noongar could not be seen as constituting a single society as they were not aware of each other and there was no overarching central authority in the region, the judge noted that the normative system derived its force through observance and not through a central authority. That is, he found that the existence of a right was not necessarily dependent on a formalised system of enforcement and sanction. In his ruling, the judge also concluded that this same

community continued to exist and continued to acknowledge those same laws and customs in the present day.

Despite being appealed by the State and Federal Governments, this ruling effectively confirms what many Noongar have argued for a number of years. That is, they constitute a single Noongar people, a Noongar nation, which continues to exercise traditional laws and customs in the southwest.

Where to from here?

The ruling on the Metro claim area was pivotal for Noongar land claims in that it was seen by many—both Noongar and non-Noongar—as being probably the most difficult to prove ongoing connection to in native title terms. However, now that they have had this positive ruling, the remaining claims—which many feel are much stronger cases—should be easier to prosecute. The Metro case has shown that not only do Noongar exist as a discrete community across the southwest, but that even in a place with as long a direct contact history as metropolitan Perth they have maintained their traditional laws and customs.

While this ruling is important for Noongar, it is also important for other Aboriginal groups living in settled Australia. For too long, and especially in the wake of the Yorta Yorta decision, native title rulings in settled Australia have appeared to depend on socio-cultural forms abstracted from remote areas of Australia such as the Western Desert and the Kimberley. However, to do this is to enact yet another form of violence on peoples who have already endured two hundred years of oppression. With its very different ecology, southern Australia was home to very different Aboriginal social forms to those found in the north. Evidence such as that presented in the Metro claim shows that Aboriginal groups in the southwest came together in much larger socio-cultural groupings than those found in much of the north. The successful Metro claim is an important case, therefore, in that it provides a valuable corrective to this flawed form of inferential reasoning.

That said, in many cases the hard work has only just started. After the appeal the other remaining cases will need to be heard, although as noted above, the success of the Metro case makes the prosecution of the other cases simpler in many respects. But a flow-on point from this is that as rulings are made on these cases, then funding for SWALSC as the NTRB for the southwest will begin to disappear. Will SWALSC be able to source money from other areas to remain as the peak body for the Noongar Nation? This chapter has shown that SWALSC and the Noongar Land Council have played a pivotal role in making concrete the notion of a Noongar Nation. Questions need to be asked about how the aims and desires of this nation can be articulated without a single peak Noongar body to provide coherence to the multitude of voices that make it up; and about the relationship of the Prescribed Bodies Corporate, which will need to be established

in the wake of the successful native title determinations, to SWALSC or other Noongar bodies.

As I have noted elsewhere (Barcham 2006), in the post-ATSIC environment there has been a push to create regional governance organisations. The existence of the Noongar Nation as a large ‘natural’ grouping provides an ideal opportunity for the creation of a Noongar Regional Authority. Two problems, however, need to be considered before this could come into effect. The first is the issue of funding. Under current government policy there is no opportunity for regional authorities to obtain recurrent budget funding, and as the Noongar native title cases are settled, funding for SWALSC will cease. Opportunities for funding do exist, such as through service delivery arrangements for government organisations or through Shared Responsibility Agreements. However, none of these options is ideal as they do not necessarily provide long term funding opportunities. The other question that needs to be asked concerns the issue of historic peoples. The southwest is home to many non-Noongar Aboriginal people. Under current policy, any regional governance authority would be expected to work for all Indigenous people in its jurisdiction—not just traditional land owners. If SWALSC or some other Noongar body was to become the regional authority for the southwest, then there would be a need to explore how historic peoples could be fitted within the structures of the organisation.

Conclusion

Despite the formidable amount of work that remains to be done, Noongar have every reason to be happy with the major victory they have achieved with the positive determination made in the Metro claim. In his judgment, Justice Wilcox has reaffirmed what Noongar already knew—they are a single people, a Noongar Nation.¹³ This notion of a Noongar Nation has played out in the revamped organisational structure of SWALSC. The restructured working party system offers a much more representative structure for Noongar interests in the southwest and, so far, has a relatively high degree of support by Noongar. As this chapter has shown, despite a long history of European contact and government interference, Noongar have been able to maintain their identity as a Noongar community—a Noongar Nation. Using the native title process, Noongar society has been able to successfully create an organisation that is not only representative, but which is able to articulate its aims and desires. While

¹³ On 23 April 2008 the full bench of the Federal Court upheld a West Australian and Australian Government appeal against the 2006 ruling by Justice Murray Wilcox on the grounds that Justice Wilcox had made two errors in law in his ruling. The decision was set aside and referred to a new hearing. However, the judges did not agree to rule that there was no native title over Perth. WA Deputy Premier, Mr Eric Ripper, subsequently stated that the WA Government recognised the Noongar people’s traditional connection to the southwest of WA and hoped the matter would be settled by negotiations. The Federal Attorney-General also indicated that he would consider the detail of the decision, including opportunities it might present for negotiation.

problems remain, and many issues will need to be confronted in the upcoming years, the future indeed looks bright for the Noongar Nation.

References

- Aboriginal and Torres Strait Islander Commission (ATSIC) 1995. *Review of Native Title Representative Bodies*, ATSIC, Canberra.
- Barcham, M. 2006. 'Regional governance structures in Indigenous Australia: Western Australian examples', *CIGAD Working Paper Series No. 1*, Centre for Indigenous Governance and Development, Massey University, Palmerston North.
- Berndt, R. 1979. 'Aborigines of the south-west', in R. Berndt and C. Berndt (eds), *Aborigines of the West: Their Past and Present*, University of Western Australia Press, Nedlands, WA.
- Birdsall, C. 1988. 'All one family', in I. Keen (ed.), *Being Black: Aboriginal Culture in 'Settled' Australia*, Aboriginal Studies Press, Canberra.
- Howard, M. 1981. *Aboriginal Politics in Southwestern Australia*, University of Western Australia Press, Nedlands, WA.
- Noongar Land Council 1999. *Annual Report 1998/1999*, Noongar Land Council, Perth.
- 2000. *Annual Report 1999/2000*, Noongar Land Council, Perth.