

2017

## A regional governance structure for the Kimberley? Twenty-five years on from Crocodile Hole

Kathryn Thorburn

*The University of Notre Dame Australia*, [kathryn.thorburn@nd.edu.au](mailto:kathryn.thorburn@nd.edu.au)

Follow this and additional works at: [https://researchonline.nd.edu.au/arts\\_article](https://researchonline.nd.edu.au/arts_article)



This article was originally published as:

Thorburn, K. (2017). A regional governance structure for the Kimberley? Twenty-five years on from Crocodile Hole. *Australian Aboriginal Studies*, 2017 (1), 86-98.

Original article available here:

<https://aiatsis.gov.au/publications/australian-aboriginal-studies-journal>

This article is posted on ResearchOnline@ND at [https://researchonline.nd.edu.au/arts\\_article/130](https://researchonline.nd.edu.au/arts_article/130). For more information, please contact [researchonline@nd.edu.au](mailto:researchonline@nd.edu.au).



This is the author's version of an article published in *Australian Aboriginal Studies*, June 2017, available online at <https://aiatsis.gov.au/publications/australian-aboriginal-studies-journal>

Thorburn, K. (2017) A regional governance structure for the Kimberley? Twenty-five years on from Crocodile Hole. *Australian Aboriginal Studies*, 2007(1), 86-98.

## **A regional governance structure for the Kimberley? Twenty-five years on from Crocodile Hole**

Kathryn Thorburn

The University of Notre Dame

***Abstract:** In 1991 a large bush meeting was held at Rugeley in the East Kimberley, organised by the Kimberley Land Council and attended by more than 500 Aboriginal people from across the Kimberley.<sup>1</sup> This meeting is looked upon as one of the most significant expressions of pan-Kimberley identity in the post-settlement era and generated considerable discussion at a regional level. This event, which has since become known as ‘Crocodile Hole’, occurred in the shadow of the failure of land rights to be passed in Western Australia in the mid-1980s, and the impending Mabo decision. This paper attempts to track the idea of a regional governance structure in the Kimberley since the time of Crocodile Hole and how this idea has articulated with wider political and policy trends in the region and beyond. It notes that principles identified by the Crocodile Hole meeting remain as core ideals for Aboriginal leadership within the Kimberley, yet the form and structure by which regional governance is being attempted has altered significantly over time. In a contemporary context, it concludes that such a structure would require particular characteristics to be deemed acceptable by Aboriginal groups across the Kimberley and to be engaged with by government.*

The potential for a regional governance structure that stretches from the East Kimberley to the West Kimberley has long been the subject of discussion among Aboriginal leadership and

observers (See Appendix One). From time to time, Western Australian state and/or federal governments have weighed into these discussions but, for the most part, they have been driven by Aboriginal leaders and organisations, notably the Kimberley Land Council (KLC) and, more recently, Aarnja Ltd (Aarnja) and Kimberley Futures.<sup>2</sup> The concept has gained favour at particular scales of political authority — local, regional, state and federal — depending on the coalescence of interests across these scales and on other dynamics around Indigenous policy directions and ideology, as well as the developments around native title.<sup>3</sup> This paper explores the ebb and flow of this conversation, the institutional drivers and the participants. It seeks to identify why, at certain times, the idea of regional governance structure has come to the fore and, at other times, has fallen off the regional agenda entirely. It also explores how this tension between localism and regionalism has been effected by the emergence of a new layer of governance in the Kimberley: that of Prescribed Bodies Corporate (PBCs) set up to hold the rights associated with native title determinations. It concludes that the relatively new entities of Aarnja and Kimberley Futures have the potential to contribute to the region by taking strategic advantage of emergent gaps, and points of leverage, in the post-native title landscape of the Kimberley.

## **Background**

The development of a pan-Kimberley political consciousness among Aboriginal people had been growing through the 1960s (Bolger and Rumley 1982), but was to become fully manifest as a result of the events on Noonkanbah Station<sup>4</sup> in the late '70s, which culminated in a blockade by the Yungngora people to stop oil drilling taking place on their country (Hawke and Gallagher 1989; Kolig 1987; Sullivan 1996). Aboriginal people came from across the

Kimberley to support the blockade, and in May 1978 the KLC was formed to take up the fight for land rights in the region.<sup>5</sup>

The decade of the 1980s is considered as an epoch of decolonisation for the Kimberley. It was a time when Indigenous organisations across the region began to gain considerable power and resources, and when many dozens of outstations were being set up and beginning to function. Elements of the narrative around being an Aboriginal person in the Kimberley were becoming increasingly coherent. This emergent regional consciousness was expressed in the establishment of a number of regional organisations: the KLC, the Kimberley Language Resource Centre (KLRC) and Kimberley Aboriginal Law and Culture Centre (KALACC). At a federal level, these new regional dynamics were responded to via entities such as the National Aboriginal Conference (abolished under Prime Minister Bob Hawke in 1985) and were reflected in the structure of the Aboriginal and Torres Strait Islander Commission (ATSIC), established in 1989.

### **Crocodile Hole**

In 1991 a meeting, which has since become known as the Crocodile Hole meeting, was held in the East Kimberley. This meeting was attended by more than 500 people (KLC and Warringarri Resource Centre 1991). The full name of the report produced as an outcome of the meeting was *Report of the Conference on Resource Development and Kimberley Aboriginal Control* (KLC and Warringarri Resource Centre 1991). It was the first meeting of its kind that brought together interests and groups from across the Kimberley to discuss the economic development of the region and Aboriginal people's role in it, and it did so in a pre-emptive rather than reactionary way.

The scale and scope of the Crocodile Hole meeting reflected a growing sense of the Kimberley as a coherent and potent region with a majority Aboriginal population keen to put into practice at a regional scale the control over development that people had sought out locally.

Most notably in the East Kimberley, Aboriginal people were faced with a kind of development boom, which began in 1979 with the development of the Argyle Diamond Mine, and a significant increase in tourist activities in the area following the ‘discovery’ of what was then called the Bungle Bungles, now known as Purnululu National Park. In response to these sudden challenges, and following unsuccessful attempts to request assistance from federal and state governments, an approach was made to the Centre for Resource and Environmental Studies at the Australian National University to develop a project that would enable Aboriginal people a greater degree of control. The East Kimberley Impact Assessment Project (EKIAP) was the result. It took place over four years, and produced 33 reports on subjects as varied as ethnobotany, tourism, health, economy and conservation. A summary of these reports was published in 1989 (Coombs et al. 1989). This final report — *Land of promises* — concluded that the way forward was to follow the example of negotiated regional agreements from Canadian Indigenous Cree and Inuvialuit peoples in the short to medium term, and that in the longer term (Coombs et al. 1989: 132–4) a treaty between the Commonwealth and Aboriginal peoples would emerge.

Part of the motivation for the Crocodile Hole meeting was to consider the recommendations of the EKIAP reports at a Kimberley-wide scale, and to provide an opportunity for a discussion around issues of resource development and control at a variety of scales, and in a way that was inclusive of the great diversity of groups and views across the Kimberley.

While HC ‘Nugget’ Coombs, in his keynote address at Crocodile Hole, did allude to an important legal decision reached in Queensland courts involving a group of Torres Strait Islander people, there was no sense yet of the enormity of what the *Mabo v Queensland [No. 2]* decision, handed down by the Australian High Court in June 1992, would mean for Aboriginal people in the Kimberley.

One of the five ‘academic’ papers presented at Crocodile Hole focused on Regional Agreements, or settlements, in Canada and argued for the applicability of this model in Australia. So, rather than considering the prospect of native title, the attendees at this meeting were instead looking towards regional agreement making and the push for autonomy among Indigenous people in Canada as a possible model for Kimberley Aboriginal people. The idea of a regional agreement — the notion of the Kimberley, as a whole, setting priorities for social and economic development in negotiation with various levels of government — continues to be pursued by Aboriginal leaders in the Kimberley.

### **Impact of *Mabo* on thinking around regional autonomy**

Very soon after the *Mabo* decision, however, the sense developed that native title would be the basis for a new kind of relationship between government and Aboriginal people. This view was being espoused both in the Kimberley and in Canberra. As Prime Minister Paul Keating stated in what later became known as the Redfern speech, ‘*Mabo* is an historic decision...we can make it an historic turning point, the basis of a new relationship between indigenous and non-Aboriginal Australians’ (Keating 1992).

Many observers at the time (Crough and Christophersen 1993; KLC and Warringarri Resource Centre 1991; Sullivan 1995) envisaged a new era for the Kimberley in which largely

uncontested native title rights would give people a seat at the negotiating table locally, and more broadly would result in significant regional agreements. In 1995, for example, Sullivan (1995:2) articulated three reasons why a ‘regional authority’ was necessary: first, the need for changes in development funding and in the delivery of services; second, the need to coordinate ‘local and sub-regional land use agreements between aboriginal groups, developers and governments’ and, third, ‘the more fundamental need for a change in the political relationship between whites and Aborigines that recognises Aboriginal rights and concedes a form of de-colonisation that meets international standards’.

In 2002, at an Indigenous governance conference in Canberra, Peter Yu (2002) noted that ‘the glue that holds this wider Aboriginal Kimberley region together is respect for each other’s traditional ownership, cultural responsibility and local autonomy’. He referred to the Kimberley Coalition of Aboriginal Organisations, created prior to Crocodile Hole, which involved the KLC, KALACC, KLRC, the seven Aboriginal resource agencies, medical services and broadcasters, as an exemplar of this model. The approach presented by Yu (2002) at this conference was to use the vehicle of the Coalition of Kimberley Aboriginal Organisations to engineer a tripartite agreement involving the state and federal governments to negotiate a regional framework agreement, ‘which could enable the orderly recognition of native title and the development of Aboriginal governance structures’.

The creation of a national body to administer Aboriginal affairs —ATSIC —overseen by a regionally elected Council of Aboriginal people, was one avenue by which such regional control could be executed.

### **ATSIC’s impact on conceptualisation of regionality**

ATSIC was created under the Hawke government in 1989; it was not abolished until late 2004, 15 years later. Via its regional councils, this national entity was to assume a crucial role in the decentralisation of the federal administration of Aboriginal affairs. Regional plans were to be developed for each of these 36 regional councils. Yet from the outset questions were asked about the authenticity of this form of ‘autonomy’ or ‘self-determination’ being delivered by what was essentially a government authority (Rowse 1996).

Finlayson and Dale (1996:86) noted that it ‘is ironic that ATSIC’s vision centres on Aboriginal and Torres Strait Islander political authority, but denies the instrument of this independence (namely the Regional Council) any financial or administrative support to operate with some independence’. In addition, while ATSIC was vociferous in promoting local decision making, its councillors and councils were bound to operate within the bureaucratic culture and accountabilities. In general, there was dissatisfaction at the gap between ATSIC’s initial promise to provide a mechanism nationally for the devolution of power from Canberra to the regions and the reality of a clunky and heavily monitored parallel bureaucracy (Rowse 1996; Sullivan 1996). As Wolfe (1993:11) observed, at around the halfway point of ATSIC’s life:

Establishment of national level Commissioners and regional level councils... [within ATSIC] sets up a potentially important counter-force (because of the money it has responsibility to allocate) to the Aboriginal land councils and the major Aboriginal legal, medical and other service organisations and resourcing centres which, powerful as they are, have to solicit and search for funds, often from regional (ATSIC) councils.

The potential of ATSIC to become a competitor with local Aboriginal organisations had been foreseen by its original proponents, including Nugget Coombs, who had suggested that

representation on an ATSIC board be drawn from community-based service organisations (O'Donoghue 1986).

In 1994 a coalition naming itself the Independent Aboriginal Organisations of the Kimberley put a submission entitled 'Towards regional autonomy' to the Chairman of the Council for Aboriginal Reconciliation. The submission was sharply critical of ATSIC (Sullivan 1995:4). In 2002 Yu suggested that ATSIC itself was threatened by the assertion of native title in the Kimberley, and that some Kimberley ATSIC officers, both elected and otherwise, had attempted to 'resist the regional proposals advocated by the Kimberley organisational coalition' (Yu 2002:4).

Similarly, Sullivan (1995:16) observed tussles in the Kimberley between ATSIC and its officers, and those connected with regional organisations and/or the land council, with the latter arguing for a regional body; he noted that '[p]roposals will continue to be put forward in the suspicion that one side or the other is trying to take control of the entire process'.

In 1998 the regional conversation was reconvened, again by the KLC, under the banner of 'Our place, our future', this time in Broome. Invitees included non-Aboriginal people from across the region, pastoralists, and Aboriginal dignitaries from the Northern Territory (Northern Land Council and Central Land Council) and from Canberra (ATSIC Chairperson); Kimberley regional ATSIC Commissioners, however, were not invited. Although many issues were canvassed at this conference, including those around native title and economic development, there were also repeated calls for a regional authority 'to represent all the people of the Kimberley and co-ordinate service delivery and regional agreements' (Dixon and Morris 1998:127). At this meeting, calls for regional autonomy were closely aligned to conversations about the inadequacy of ATSIC as a mechanism for political representation or effective service delivery.

Meeting delegates made reference to both the Torres Strait Regional Authority, which had been established in 1994, and to the Nunavut territory of Canada, which at that time was in the process of officially becoming autonomous. The model of regional autonomy, as put forward in the *Our place, our future* report, would manage the distribution of royalties, would be representative (via PBC representation and via Local Government Shires across the Kimberley and would be funded by the Commonwealth Grants Commission (Dixon and Morris 1998:27). This was a different model to that proposed by the Kimberley Coalition of Aboriginal Organisations, which was based on a coalition of all existing Aboriginal organisations across the Kimberley coming together to negotiate a tripartite agreement with the state and federal governments to form a regional agreement (Yu 2002).

### **Aboriginal community organisations — an endangered species?**

Other critical elements of the political landscape of the Kimberley in the 1980s and '90s were innumerable, small community-based organisations. By the early 2000s these organisations numbered in their hundreds and delivered programs ranging from Community Development and Employment Projects to housing and maintenance, arts development and youth projects. They formed networks of influence across the subregions of the Kimberley, and many were based upon authority systems that operated very close to the level of extended family. They were, in many respects, genuine expressions of Aboriginal political and economic agency, and they operated at a scale at which leadership could maintain grassroots legitimacy.

That such a myriad of entities existed could have been promising for on-the-ground program delivery (Wolfe 1993), but it did little to build the coherence of a regional political voice in the Kimberley. Nor did it allow much influence over the general direction of

Aboriginal affairs policy, which was largely developed in Canberra, or, until its demise in 2004/5, by ATSIC.

In the years since John Howard's election as Prime Minister in 1996, this political landscape, dominated by such a myriad of small organisations, themselves subject to very localised agendas, has been entirely eroded, to the point where it is largely unrecognisable. This erosion of organisational diversity occurred via a process of 'administrative rationalisation' (Taylor 2006:56–7), which saw Community Development and Employment Projects and other programs — which had formed the administrative base for many small entities — centralised to larger subregional organisations.

This grassroots organisational diversity has been replaced by a handful of monolithic entities, many of which started out as organisations established to resource the community-based ones: Marra Worra Worra in the Fitzroy Valley, Winun Ngari in Derby and Waringarri in the East Kimberley. No longer can such entities be described as simply community organisations; rather, in the competitive world of contracts for the delivery of services and programs to remote Aboriginal Australia, they are corporations and businesses, highly competitive and with rather complex accountabilities. As such, their claim to being representative has been compromised because they are forcefully held to account via the parameters of their commercial contracts. They are, nonetheless, major political forces at a subregional level.

### **PBCs — an emergent political strata**

With 26 successful native title determinations in the Kimberley by the end of 2015, and another 27 claims outstanding, it is likely that more than 90 per cent of the Kimberley will come under

native title within a decade. However, the widespread winning of determinations in the Kimberley has not resulted in greater political leverage at the regional level, or at state or Commonwealth levels. It has, of course, brought significant government and industry interests to many negotiating tables across the region, and enabled numerous and beneficial agreements with native title holding groups.

It is arguable that the effect of native title across a region such as the Kimberley will continue to see a kind of Balkanisation, or fracturing, of groups — in superficially political rather than cultural or familial ways — in line with people’s determinations (Wes Morris, KALACC Chief Executive Officer, personal communication, 2016). This reality contradicts the vision expressed by Kimberley Aboriginal leadership through the 1990s and into the 2000s: that native title ought to enable to a process of political settlement at a regional level (Sullivan 1999). Instead, the KLC was funded as a Native Title Representative Body to pursue separate native title determinations through the courts, and the process became heavily legalised.

In time, a further effect of native title across the region will become apparent — with a greater degree of economic differentiation between Kimberley groups and competition between them for scant resources. PBCs across the Kimberley can be characterised as a very diverse collection of entities — not so much in terms of the legal powers they hold in relation to their native title determinations, but in terms of their financial and administrative capacity to manage and enact these rights, and the mineral and development opportunities over which native title rights enable them to negotiate. Twelve years ago Justice North pointed out that a system that invests enormous sums of money in establishing whether native title can be recognised, while neglecting how those rights could be managed or utilised, would be absurd (Aboriginal and Torres Strait Islander Social Justice Commissioner 2004:38). But this is precisely what has occurred. Managing native title rights, and seeking to properly participate

in any negotiations around these, is already an enormous financial and administrative challenge for many post-native title groups in the Kimberley.

By 2016 three very significant Indigenous Land Use Agreements<sup>6</sup> had been signed off, including Yawuru (2010), the Ord Final Agreement (2006) and the three agreements signed around the Browse LNG Precinct north of Broome (2011). There are a number of others in various ongoing states of negotiation; some, such as that between Gooniyandi Aboriginal Corporation and Gogo Station near Fitzroy Crossing over broad-scale agricultural development, are potentially far reaching in their effect.

### **Kimberley Futures and Aarnja: the latest iteration**

The idea of a regional governance structure has been reinvigorated in recent years under the banner of Kimberley Futures. The concept of Kimberley Futures was first articulated at a meeting in May 2007, attended by around 30 people, and aligned closely with the political rhetoric of the Howard era's 'New Arrangements'<sup>7</sup>. A statement from the meeting identified two key roles for the structure — to allow Aboriginal people to 'take responsibility for fixing their own problems' and 'to make sure that Government [is] talk[ing] directly to Aboriginal people, not just about them' (Aarnja Ltd n.d.a). This meeting occurred two years after the formal abolition of ATSIC and at the beginning of Howard's neo-liberal policy approach, which was criticised by many for severely circumscribing the role of Aboriginal people in policy development and thinking at all levels, especially as it was expressed in the Northern Territory Emergency Response (the Intervention) (Altman and Hinkson 2007; Arabena 2005). Also, it was convened in the shadow of a multitude of discussions around the proposed

development of the Browse Basin, an enormous offshore gas deposit to the north-west of Broome that was being considered by a joint venture of petroleum and mining interests.

The Kimberley Futures narrative has parallels with the Crocodile Hole meeting in the sense that it was part of the response to a very large-scale development proposal — the Browse gas development — and Aboriginal people’s desire to have a mechanism in place to articulate priorities around the massive regional development that such an enterprise would trigger.

In 2008 — following a convoluted four-year process of consultation, which saw 41 potential sites for the development of a gas hub in the West Kimberley identified by the KLC in consultation with traditional owners — James Price Point was chosen by the Western Australian Government as the site, despite not being one of the 41 sites listed.

In this same year a second meeting of Kimberley Futures was organised, with discussion around regional benefit sharing from the James Price Point development as a key agenda item. Attendance at this meeting was triple that of the first meeting, but still only around one-third of the attendance at the Crocodile Hole meeting 17 years earlier. In light of the discussion around benefit sharing from the James Price Point gas development, Kimberley Futures had developed a regional governance model consisting of five cultural blocs — desert, Dampier, central, east and north.<sup>8</sup> Each cultural bloc was to put forward representatives from Registered Native Title Bodies Corporate, PBCs, community councils and local resource agencies. At this stage, the Kimberley Futures concept was reasonably sophisticated, requiring that each cultural bloc undertake baseline socio-economic data collection to underpin development targets that were locally relevant. Again, such an approach had parallels with the intensive research undertaken prior to Crocodile Hole by the Australian National University’s Centre for Resource and Environmental Studies. Each bloc was also to have a co-ordinating committee, tasked with zone planning, service co-ordination and program development. Such

cultural bloc-level data collection, however, did not eventuate, perhaps because of inadequate resourcing of the concept.

In mid-2011 the Browse LNG Precinct Regional Benefits Agreement was signed by the KLC, the company seeking to undertake this development (Woodside Energy Pty Ltd) and the Western Australian Government.<sup>9</sup> Naturally, the agreement addressed a myriad of community development and conservation concerns but critically, in this context, it also required the establishment of a regionally representative body to manage and distribute funds associated with the Browse development.

The Browse LNG Precinct Regional Benefits Agreement was very unusual in that it established rules to pay three groups of Aboriginal people — as opposed to the locally affected traditional owners, which is the norm for such developments and agreements (Lily O’Neil, Fellow, Melbourne Law School, The University of Melbourne, personal communication Nov 2015). The groups to receive benefits, on a sliding scale, were:

- The Goolarabooloo Jabirr Jabirr traditional owners
- Dampier Peninsula Native Title holding groups (that is, those in the immediate region)
- Kimberley Aboriginal people.

Wardi Ltd was set up to manage the benefits for the traditional owners of James Price Point, while Aarnja Ltd, a registered charity or ‘public benevolent institution’ under the Australian Charities and Not-for-profit Commission, was set up to manage the benefits that were to be distributed regionally.

In April 2013, with only preliminary work having been undertaken at the site at James Price Point, Woodside indicated that it was no longer in a position to proceed with the development, and withdrew from the process. Nonetheless, the commitment from the Western

Australian Government to financially support Aarnja with \$2 million per year for ten years had already been made (see Aarnja Ltd n.d.b).

Aarnja was set up to develop a regional governance structure to facilitate a proper and legitimate distribution of benefits from the Browse development. However, since the demise of the gas project, Aarnja has become a proponent of the regional governance structure — Kimberley Futures — as an end in itself.

### **The modelling and re-modelling of the Kimberley Futures proposal**

Compared to the version put forward at the 2008 meeting, based on five cultural blocks, the governance structure that Kimberley Futures put forward in 2013 had been drastically simplified and made no attempt at regional representation. Under a proposed Regional Benefits Agreement (2013) Kimberley Futures described itself as a ‘coalition of Aboriginal Service Providers — KLC, KALACC, KLRC, [Kimberley Aboriginal Medical Services Council] and [Kimberley Aboriginal Stolen Generation Council]’ (Bettney 2015). This model suggests a federal type of approach wherein the overarching regional body captures, via its organisational members, the grassroots and their traditional sources of authority. This is akin to the model suggested for the Kimberley back in 1989 by Coombs, although in that instance Coombs was envisaging a coalition of subregional resource agencies — which, back then, still had grassroots legitimacy — and the KLC (Coombs et al. 1989:121).

By March 2015, however, Aarnja and Kimberley Futures had repositioned themselves yet again, by becoming proponents of the Empowered Communities proposal.<sup>10</sup> This was reflected in a further simplification of the proposed regional structure. The 2015 version was to consist of West, Central and East Kimberley regional boards that would oversee those

organisations that chose to opt into the Empowered Communities model (Bettney 2015). These regional boards would consist of members who could ‘demonstrate how they can “walk the talk” of the norms and principles under Empowered Communities’ (Bettney 2015).

The exact mechanics of how Kimberley Futures could function, should Empowered Communities be fully rolled out by the Australian Government, are not well explored by the entity, either in public meetings or in material on the website (Aarnja Ltd n.d.c). Simply put, Kimberley Futures is described in an Empowered Communities context as providing ‘an interface for corporate supporters and investors in the Kimberley’, as setting (unspecified) strategic direction for the Kimberley, and as driving policy and legislative reforms at regional, state and national levels (Aarnja Ltd n.d.c).

[insert Figure 1 about here]

**Figure 1:** Empowered Communities proposed governance structure in the East and West Kimberley (Aarnja Ltd n.d.c). Note that the East Kimberley backbone organisation is a newly established organisation called Binarri-Binyja Yarrowoo Aboriginal Corporation; the Central and West Kimberley backbone — on the diagram’s left — is Aarnja

The basis for membership of Kimberley Futures — individuals presumably sorted into the three regions — did not originally allow for the exclusion of those people whose views were at odds with the approach to development expressed via Empowered Communities. Indeed, the latter requires organisations to opt in as members, while Kimberley Futures signs up individuals. The membership of Aarnja is similarly made up of individuals. The remit of Aarnja, however, as per the Regional Benefits Agreement, does not allow for the setting of

membership criteria on the basis of an individual's willingness to opt into the vision of Empowered Communities.

Indeed, Aarnja has a different structure dated 2015 on the website — five cultural blocs with two directors from each being on the board (Aarnja Ltd 2015). This accords with the organisation's constitution document.

### **Tracking the historical narrative**

In presentations by Aarnja staff about Kimberley Futures, which were occurring throughout 2015 at forums in Broome, Fitzroy Crossing, Derby and Kununurra, Kimberley Futures was presented as a being on a continuum of the struggle for a regional voice, and a form of regional autonomy, which began with the Crocodile Hole meeting.

That Aarnja — and by association, Kimberley Futures — have hitched themselves to the Empowered Communities agenda has raised questions in the minds of many, partly because the process by which Empowered Communities was developed was seen as lacking the necessary base of grassroots input or acknowledgment of the diversity of views held by leaders across a region such as the Kimberley — or indeed Australia (Klein 2015).

In 2016 it appeared that Aarnja began to identify a role for itself. The organisation has been building up crucial relationships with other regionally based organisations and their leaders, and more clearly identifying how it could be of utility — beyond dispersing benefits from a non-existent gas development or being a proponent of Empowered Communities. Aarnja's Chief Executive Officer (CEO), an ex-federal public servant, in June 2016 described the organisation's roles thus:

- Aarnja is working collaboratively with Kimberley Aboriginal people, leaders and partnering Aboriginal organisations to ensure they have a ‘voice’ in policy and program developments.
- Aarnja is not a direct service provider and does not compete for service provider funding for itself.
- Aarnja provides an interface, secretariat and facilitation role between governments and Aboriginal communities, service providers and leaders.
- Aarnja wants to move beyond developing good relationships into embedding structures that endure beyond relationships. (Aarnja Ltd 2016)<sup>11</sup>

This overview was presented at a two-day forum, hosted by Aarnja, to consider the over-representation of Aboriginal children in state care. More than 70 people attended, including the Director General of the Department of Child Protection and Family Support.

Aarnja’s capacity to act as an intermediary between state and federal government agencies, and Kimberley Aboriginal people and organisations, will be significantly bolstered by a \$2.4 million grant from the Commonwealth’s Indigenous Advancement Strategy, received in May 2016 under the ‘Culture and capability’ banner (DPMC 2016). The funding was granted for Aarnja to enact its role as an Empowered Communities ‘backbone organisation’. Seven of the eight other Empowered Communities regional organisations have also been funded in their capacity as ‘backbone organisations’. There is limited information on the Prime Minister and Cabinet website as to the extent of the current government’s commitment to the Empowered Communities model; however, answers to questions on notice provided to the Senate Finance and Public Administration Legislation Committee on 12 February 2016 include letters from

the Prime Minister and the Indigenous Affairs Minister to all eight regions committing to the model for three years in the first instance. The intent of this investment, however, remains unclear as it is not coupled with the kinds of structural reforms that were fundamental to the Empowered Communities concept.

The organisation has also received \$300,000 in funding from the Western Australian Government's Royalties for Regions program for Goolarri Media Enterprises to run a Fostering Generational Change project, which supports the development of young leaders.

### **Regionalism versus localism, or the growing strength of subregional solidarities**

The current political landscape of the Kimberley, and existing decision-making and representative structures relating to Aboriginal people, have evolved over the past 40 or so years. All these organisations started out as grassroots entities, with minimal resources or infrastructure. Over the past 20 years, there has been a rationalisation of organisations across the Kimberley, which has resulted in innumerable small entities becoming functionally (if not legally) non-existent, and a handful of other service delivery organisations consolidating interests across Kimberley subregions and gaining considerable economic and political power at those scales. The latter organisations have managed to reinvent themselves repeatedly, in order to articulate with the dominant policy doctrines emerging out of Canberra and Perth. It is not surprising that these entities are not willing to relinquish the political power, or economic leverage, that they have managed to generate in recent decades.

PBCs, apart from two exceptions where major Indigenous Land Use Agreements have been signed (Yawuru and Miriuwung Gajerrong), are a nascent force across the Kimberley. At present they remain necessarily localised and bounded, tied to particular claimant areas and

constrained by limited funds and resources. They will, nonetheless, become more powerful over time, as they successfully negotiate benefits from their native title rights.

There is evidence, then, that pan-Kimberley political consciousness, which emerged in the 1970s and allowed the establishment of three crucial organisations (the KLC, KALACC and KLRC), is beginning to wane. The reasons for this are complex, and relate in part to a wider policy environment that discourages expressions of Aboriginal corporate will, focusing not on communities or organisations but on smaller scale targets for service delivery — families and individuals. Such a policy approach has encouraged a very depoliticised, and more ‘manageable’, constituency of Aboriginal people.

Nonetheless, at present around half the land area of the Kimberley is covered by successful native title claims. The other half, or most of it, will be of a similar status in due course. The case has been made repeatedly, across all the forums arguing for a regional governance structure mentioned, for the need for an entity to allow the expression of Aboriginal political demands in the Kimberley. The establishment of a patchwork of PBCs across this region does not negate this need but, rather, is likely to act as a significant distraction from wider regional issues for years to come. This state of distraction will be compounded by the very limited resources available to most PBCs to manage the considerable demands they experience. Although there is every reason for PBCs to work collaboratively, the reality around limited financial and intellectual resources to support decision-making processes will be likely to facilitate a climate of competition, at least in the medium term.

In the longer term, and once PBCs have established financial and organisational foundations, opportunities for regional considerations may again come to the fore. They may also develop in response to large-scale resource development opportunities incorporating more than one claimant area.

More than 20 years ago, Sullivan (1995:15) made a series of pertinent observations relating to agreements for control over land occurring without any formal regional negotiating system or plan in place: he noted that there ‘is a danger that self-determination in the Kimberley will be undermined by these single purpose agreements at the local level lacking regional coordination. They may consist only of the conceding of rights for some form of conventional benefit devoid of real control.’ Such a danger was ever-more present in 2016, and at the time of writing there has been only one attempt to bring together a handful of PBCs to make a joint submission — on the subject of the proposed Land Administration Amendment Bill 2016. The potential for future similar collaboration across PBCs seems self-evident and potentially powerful.

## **Conclusion**

Back in 1989 Coombs noted that what had made Aboriginal organisations in the Kimberley effective up to that point, with the exception of the KLC, had been their small-scale, informal and flexible style and grounded management and relationships. This grassroots effectiveness in service delivery, however, he observed, had come at a cost of regional political effectiveness (Coombs et al. 1989:121; Thorburn 2007).

He then suggested that any regional mechanism must ‘respect the continuing role of the “grass roots” organisations which maintain continuity with traditional sources of authority’ (Coombs et al. 1989:121). His conclusion was that political effectiveness at a regional level could only be garnered by a loosely federated and coordinated kind of entity: ‘It could...with the KLC...provide the leadership and take the initiative to develop Aboriginal plans for a wider

federation of Aboriginal organisations at least potentially capable of meeting the need for planned and coordinated action.’ (Coombs et al. 1989:121).

More recently, Sanders (2008) similarly makes the point that only a federation (or a regionalism) that demonstrably respects the autonomy of its constituent parts is likely to experience engagement in the context of Aboriginal politics. This regional identity must not only be respectful of constituents, but also be able to demonstrate that it is useful and not a source of competition for resources. It must also demonstrate that it does not seek empowerment or resources for its own ends but, rather, to facilitate the progress — financial and otherwise — of its members. In the context of 2016 and of the frustrations expressed by Aboriginal groups across the Kimberley at their sense of exclusion from processes around policy development and implementation — particularly in relation to the 2015 Western Australian Government announcements of impending closure of communities, such an entity must also demonstrate a degree of articulation and influence at all levels of government, which its member groups cannot claim.

Kimberley Futures and its mothership, Aarnja, face significant challenges in balancing competing compulsions at both local and regional levels. Their lack of a historical narrative and a grassroots genealogy — emerging as they did from negotiations in the mid-2000s around the Browse development — is being overcome simply by association. That they both emerged out of KLC activities, and KLC executive minds, does give them a veneer of legitimacy. However, for both of these organisations to thrive, they will need to expand their power base beyond the traditional organisational triumvirate of regional organisations in the Kimberley — the KLC, KALACC and the KLRC — to include the subregional service providers and the emerging PBCs. To position themselves as a neutral space in which the competing organisational interests across the region — and, at times, government agencies — can come together and find common ground is arguably the best way forward; as long as they can hold

this space, without being perceived as competitors by existing interests, their role will be a valuable one. Nonetheless, they remain both poorly understood — and therefore somewhat threatening — in the minds of many people outside of a select group of Aboriginal leaders. In particular, greater transparency around how Aarnja plans to roll out the Empowered Communities model in the West Kimberley, and what this means for their current relationships with organisations in the region, will need to be clearly and openly articulated.

### **Acknowledgments**

Final drafts of the paper were circulated to a number of people to enable informal review and feedback, for which I am very grateful. These included both Indigenous and non-Indigenous staff at Aarnja Ltd who provided very useful input, and some corrections. Thanks also to Steve Kinnane, Indigenous researcher and member of the AIATSIS Research Advisory Committee, for very constructive feedback, and, similarly, to Professor Patrick Sullivan from the Australian National University. The paper is based largely on review of historical documentation around organisations in the Kimberley, as well as various publicly available documents such as organisational constitutions. There were no interviews carried out, nor was there any gathering of other primary data. Thanks also to anonymous reviewers for comments on an earlier draft.

### **Appendix 1: Chronology of Kimberley regional governance discussions and developments**

Early 1990s: coalition of Kimberley Aboriginal organisations formed

1991: Crocodile Hole meeting

1993: KLC commissions Crough and Christophersen study, *Aboriginal people in the economy of the Kimberley region*

1994: ATSIC Kimberley Zone Executive establish working party to promote partnership and regional autonomy

1995: Kimberley ATSIC Executive circulates draft terms of reference on regional autonomy

1995: Fitzroy Crossing meeting of working group of Coalition of Kimberley Aboriginal Organisations to discuss regional agreements

1998: Kimberley submission to Section 26 Review of ATSIC proposing a regional authority

1998: KLC Our Place Our Future Conference, Broome

2000: Kimberley ATSIC Executive discussions on regional autonomy

2000: ATSIC zone meeting approves consultations on regional autonomy concept

2001: Commissioner Bedford facilitates forming the Kimberley Indigenous Think Tank on Regional Agreement with State Government

2002: Kimberley ATSIC Executive discusses regional autonomy

2003: KLC Wuggubun meeting endorses regional autonomy concept

2004: June, Kimberley (ATSIC) Executive puts forward the *Building a future together: a proposal for a Kimberley Council and a three-tier model of regional governance* discussion paper as preferred model (Wunan Regional Council 2004:5)

2005: Kimberley Appropriate Economies Roundtable, Fitzroy Crossing

2007: First Kimberley Futures meeting

2012: Aarnja established

2013: Woodside withdraws as a proponent of the Browse LNG development

---

## Notes

1. See Sullivan (1996:106–13) for description of emergence of the ‘bush meeting’ in the Kimberley from the early 1970s on.
2. The impetus for this paper was a number of conversations I was involved in, with both Indigenous and non-Indigenous people, which began in late 2014. Many people were confused, myself included, as to the nature of Kimberley Futures, Aarnja and Empowered Communities and how these three interacted with other organisations and governance structures across the Kimberley. As a political scientist, I felt well placed to

---

attempt to bring clarity to the questions being put to me by a number of people, and to situate these questions in an historical context.

3. This discussion of scales of political authority, and regionalism versus localism, draws on the work of Rowse (1992) and Sanders (2005, 2008), both of whom wrote extensively about such issues in the Northern Territory.
4. In 1979–80 the Yungngora people (a Walmajarri/Nyikina group) on Noonkanbah Station attempted to stop oil drilling taking place on their country. Their blockade received wide media coverage, including internationally. However, this represented a pinnacle in ongoing struggles for this group, first with the station owner in the late 1960s and early '70s and then, once the station became theirs in 1976, with the Western Australian Government and various mining interests. For a full account, see Hawke and Gallagher (1989). While the majority of people at the blockade were Yungngora people, they were also joined by significant numbers of people from Fitzroy Crossing and from further afield (KALACC 2006: 93). McLeod (1984:134) wrote of meetings that occurred beyond the purview of the WA Department of Aboriginal Affairs or the anthropologists, which 'involved hundreds of blackfellows from all over the Kimberley, the Pilbara and the desert'. It therefore signified a major impetus to the growing 'pan-aboriginality' among Indigenous people across the Kimberley. See also Kolig (1987).
5. The KLC, unlike the land councils in the Northern Territory on which it was modelled, had no statutory base because there was no land rights legislation in Western Australia at its inauguration. Both the Kimberley Aboriginal Law and Culture Centre and the Kimberley Language Resource Centre, sister organisations to the KLC, were established in 1984.
6. An Indigenous Land Use Agreement is a voluntary agreement between a native title group and others about the use and management of land and waters.
7. See Arabena, K. (2005) *Not fit for modern Australian society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous Affairs*. AIATSIS: Canberra.
8. ATSIC originally had six regions in the Kimberley. Following a national review in 1999, this number was revised to three. There were 60 regions nationally, reduced during this process to 36.
9. Three agreements were signed in 2011: the Browse (Land) Agreement, the Browse LNG Precinct Project Agreement and the Browse LNG Precinct Regional Benefits Agreement.

---

Only the last of these is of relevance here because it concerned the disbursement of benefits regionally.

10. See the Empowered Communities website (<http://empoweredcommunities.org.au>). For a critique of the Empowered Communities model, see Klein (2015).
11. See also the CEO's testimony, 7 June 2016, to the Inquiry into Aboriginal Youth Suicides by the Education and Health Standing Committee (2016). More than half of the testimony responds to questions relating to the nature of Aarnja itself.

## References

- Aarnja Ltd 2015 'Aarnja cultural bloc map', <[www.aarnja.org.au/wp-content/uploads/2015/07/Aarnja-Cultural-Bloc-map-with-Directors-2015-2016.pdf](http://www.aarnja.org.au/wp-content/uploads/2015/07/Aarnja-Cultural-Bloc-map-with-Directors-2015-2016.pdf)> accessed 25 March 2017.
- 2016 'Kimberley Aboriginal Children in Care Forum: Aboriginal led forum addresses overrepresentation of kids in state care', <[www.aarnja.org.au/kimberley-aboriginal-children-care-forum](http://www.aarnja.org.au/kimberley-aboriginal-children-care-forum)> accessed 25 March 2017.
- n.d.a 'Who is Kimberley Futures', <[www.aarnja.org.au/who-is-kimberley-futures/](http://www.aarnja.org.au/who-is-kimberley-futures/)> accessed 10 November 2015.
- n.d.b 'History', <[www.aarnja.org.au/history](http://www.aarnja.org.au/history)> accessed 25 March 2017.
- n.d.c 'The proposed governance structure', <[www.aarnja.org.au/about-empowered-communities/empowered-communities-governance-structure-for-the-kimberley](http://www.aarnja.org.au/about-empowered-communities/empowered-communities-governance-structure-for-the-kimberley)> accessed 25 March 2017.
- Aboriginal and Torres Strait Islander Social Justice Commissioner 2004: 'Looking forward — a policy approach to native title' in *Native Title Report 2004*, Australian Human Rights Commission, Canberra.
- Altman, Jon and Melinda Hinkson 2007 *Coercive reconciliation: stabilise, normalise, exit Aboriginal Australia*, Arena Publications Australia, North Carlton, Vic.
- Arabena, Kerry 2005 *Not fit for modern Australian society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous affairs*, AIATSIS, Canberra (Research discussion paper no. 16).
- Bettney, Kaye 2015 *Towards a Kimberley Aboriginal regional governance structure*, Kimberley Land Council: Broome, WA.
- Bolger, Ann and Hilary Rumley 1982 'Political developments among Kimberley Aborigines, 1977–1980' in Elizabeth J Harman and Brian W Head (eds), *State, capital and resources in the north and north west of Australia*, University of Western Australia Press, Nedlands, WA, pp.299–326.

- Coombs, Herbert C, Helen McCann, Helen Ross and Nancy M Williams 1989 *Land of promises: Aborigines and development in the East Kimberley*, Centre for Resource and Environmental Studies, Australian National University and Aboriginal Studies Press, Canberra.
- Crough, Greg and Christine Christophersen 1993 *Aboriginal people in the economy of the Kimberley region*, North Australia Research Unit, Australian National University, Darwin.
- Dixon, Rod and Leon Morris (eds) 1998 *The Kimberley, our place our future: conference report*, Kimberley Land Council, Derby, WA.
- DPMC (Department of the Prime Minister and Cabinet) 2016 '2015–16 financial year Senate order on entity contracts', <[www.dPMC.gov.au/sites/default/files/publications/2015-16-senate-order-entity-contracts.pdf](http://www.dPMC.gov.au/sites/default/files/publications/2015-16-senate-order-entity-contracts.pdf)> accessed 25 March 2017.
- Education and Health Standing Committee 2016 'Inquiry into Aboriginal youth suicides: transcript of evidence taken at Broome Tuesday, 7 June 2016: session four', <[www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/4724D43775DFC97148257FE8001121EF/\\$file/edu160607.4.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/4724D43775DFC97148257FE8001121EF/$file/edu160607.4.pdf)> accessed 25 March 2017.
- Finlayson, Julie and Allan Dale 1996 'Negotiating Indigenous self-determination at the regional level: experiences with regional planning' in P Sullivan (ed.), *Shooting the banker: essays on ATSIC and self-determination*, North Australia Research Unit, Australian National University, Darwin, pp.42–69.
- Hawke, Steve and Micheal Gallagher 1989 *Noonkanbah*, Fremantle Arts Centre Press, Fremantle, WA.
- KALACC (Kimberley Aboriginal Law and Culture Centre) 2006 *New legend: a story of law and culture and the fight for self-determination in the Kimberley*, KALACC, Fitzroy Crossing, WA.
- Keating, Paul 1992 *Speech at the Australian Launch of the International Year of the World's Indigenous People* (Redfern, NSW), ATSIC, Canberra.
- KLC (Kimberley Land Council) and Warringarri Resource Centre 1991 *The Crocodile Hole report*, Derby, WA.
- Klein, Elise 2015 *Empowered Communities: review of the empowered communities design report*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra (CAEPR Topical Issue 1), <<http://caepr.anu.edu.au/Publications/topical/2015TI1.php>> accessed 25 March 2017.
- Kolig, Erich 1987 *The Noonkanbah story*, University of Otago Press, Dunedin, New Zealand.
- McLeod, Don 1984 *How the west was lost: the native question in the development of Western Australia*, DW McLeod, Port Hedland, WA.

- O'Donoghue, Lois 1986 *An Aboriginal and Islander consultative organisation: report of consultations*, Australian Government Publishing Service, Canberra.
- Rowse, Tim 1992 *Remote possibilities: the Aboriginal domain and the administrative imagination*, North Australia Research Unit, Australian National University, Darwin.
- 1996 'The political identity of regional councillors' in P Sullivan (ed.), *Shooting the banker: essays on ATSIC and self-determination*, North Australia Research Unit, Australian National University, Darwin, pp.42–69.
- Sanders, William 2005 'Dispersal, autonomy and scale in Indigenous community governance: some reflections on recent Northern Territory experience', *Australian Journal of Public Administration* 64 (4, December) pp.53–62.
- 2008 'Regionalism that respects localism: the Anmatjere Community Government Council and beyond' in J Hunt, D Smith, S Garling and W Sanders (eds), *Contested governance: culture, power and institutions in Indigenous Australia*, Centre for Aboriginal Economic Policy Research, ANU E Press, Canberra, pp.283–309 (Research monograph no. 29).
- Sullivan, Patrick 1995 *Beyond native title: multiple land use agreements and Aboriginal governance in the Kimberley*, ANU E Press, Canberra (CAEPR Discussion paper 89).
- 1996 *All free man now: culture, community and politics in the Kimberley region, North-West Australia*, AIATSIS, Canberra.
- 1999 'Claims, regions, agreements: the Kimberley' in M Edmunds (ed), *Regional agreements: key issues in Australia, vol. 2: case studies*, Native Title Research Unit, AIATSIS, Canberra, pp.287-318.
- Taylor, John 2006 *Indigenous people in the West Kimberley labour market*, Centre for Aboriginal Economic Policy Research, ANU, Canberra (Working paper no. 35).
- Thorburn, Kathryn 2007 'Managing dilemmas in Indigenous community-based organisations: viewing a spectrum of ways through the prism of accountability' in *Ngiya: talk the law, vol. 1: governance in Indigenous communities*, Jumbunna Indigenous House of Learning, University of Technology, Sydney, pp.2–23.
- Wolfe, Jacqueline 1993 *Regional planning by ATSIC councils: purpose, process, product and problems*, North Australia Research Unit, ANU, Darwin (Discussion paper no. 18).
- Wunan Regional Council 2004 *Submission to the Select Committee on the Administration of Indigenous Affairs*, Wunan Regional Council, Kununurra, WA.
- Yu, Peter 2002 'Aboriginal rights and governance: a Kimberley perspective', paper presented to the Indigenous Governance Conference, Reconciliation Australia, Canberra, 3 April.

**Kathryn Thorburn** is a Political Scientist and Research Fellow at the Nulungu Research Institute on the Broome Campus of The University of Notre Dame. She completed a PhD at

the Centre for Aboriginal Economic Policy Research at the Australian National University in 2011 as part of a nation-wide ARC Linkage 'Indigenous governance' project. She continues to be interested in how the organisational landscape of the Kimberley is changing, and how these shifts reflect diverse post-settlement histories of Aboriginal people in the Kimberley. She is currently leading a social history project into the Anne Street Reserve in Broome, gathering stories and archival material relating to dozens of families and their experience of the seismic shifts in Aboriginal affairs policy through the 1970s.

**Email: [Kathryn.thorburn@nd.edu.au](mailto:Kathryn.thorburn@nd.edu.au)**