ATSIC Elections and Democracy: Administration, Self-Identification, Participation and Representation

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Introduction
Settler majority societies have for many years experimented with electoral mechanisms for the specific representation of their minority Indigenous interests. New Zealand has had Maori seats in its parliament since the 1860s and Norway, Finland and Sweden have, since the late 1980s, had Saami parliaments operating alongside the general ones. In Australia, while there have not been separate parliaments or parliamentary representation for Indigenous people, there have been three attempts since the 1970s to provide Indigenous people with an elected, non-parliamentary national representative structure.

The National Aboriginal Consultative Committee (1973-1977) and the National Aboriginal Conference (1977-1985) were administrative creations of the Commonwealth Government of the day, with rather limited advisory roles. However, the Aboriginal and Torres Strait Islander Commission (1990- ) is a statutory creation of the Commonwealth Parliament with real, though limited, executive decision-making powers. ATSIC is statutorily empowered to advise the Commonwealth on Indigenous policy matters and to develop and deliver Commonwealth programs for Indigenous people; though these powers are shared with, and overseen by, a Commonwealth minister. ATSIC's elections, held every three years since 1990, raise questions relating to democracy which are similar to those asked of parliamentary elections.

ATSIC comprises both directly elected regional councils and an indirectly elected national Board of Commissioners. Its five rounds of elections, in 1990, 1993, 1996, 1999 and 2002, have all been administered by the Australian Electoral Commission (AEC) using the Commonwealth Electoral Roll (CER) as a large under-specified list of potential participants. This way of administering ATSIC elections has reflected the Commonwealth's community- and self-identification approach to Indigenous identity, adopted since the 1970s. However, administration of these Indigenous identification aspects of ATSIC elections has become something of an issue among Indigenous people of recent years, particularly in Australia's southern most and second longest colonial-

1 Originally there were 60 regional councils with in total almost 800 members. This was reduced in 1993 to 36 regional councils with around 600 members and in 1996 to around 400 members. Regions are grouped into 17 zones and each zone selects one national commissioner from among its elected regional councillors. Until 1999 the chair of the ATSIC Board of Commissioners was a Commonwealth Government appointee, but since then the position has been elected by the Commissioners from among themselves. The Torres Strait region and zone has, since 1990, had slightly different electoral arrangements and has since 1994 been designated as a separate Torres Strait Regional Authority, though still under the ATSIC Act and with a commissioner on the national ATSIC board.
settled state, Tasmania. Because ATSIC elections are voluntary, participation and representation in them have also been seen as important topics for judgment about the democratic nature of these elections. Each of these three issues is discussed briefly below.

**Administration and Self-Identification**
Because the CER does not identify Aboriginal or Torres Strait Islander enrollees, all voting in ATSIC elections up to 1999 was 'declaration' voting; with voters declaring their Indigeneity, and hence right to vote, at the same time as voting. Candidates too declare their Indigeneity on nomination forms. Both sorts of declarations are open to challenge, either in the courts after the elections in relation to candidates or through AEC-employed Indigenous Liaison Officers at the time of the elections in relation to voters. Dissatisfaction among Indigenous people with this system of declaration voting and post hoc candidate challenges has led to the administration of ATSIC elections being an issue of significant debate. The persistent request has been for 'normal' voting, where intending voters get their names marked off a definitive roll and then place their votes, anonymously, in a ballot box. A definitive roll would also allow challenges to candidates' Indigeneity to be dealt with before elections.

The highest level of disputation over the administration of ATSIC elections has been in Tasmania, where a core group within the Indigenous community associated with the Tasmanian Aboriginal Centre (TAC) has disputed the Indigenous self-identification of numerous participants in ATSIC elections. A Federal Court challenge was launched after the 1996 elections calling into question the Indigenous self-identification of 11 candidates. Two were found not to have convincing evidence of Aboriginal descent, on the balance of probabilities, and hence not to be Aboriginal for the purposes of the ATSIC Act. But the other nine candidates withstood the challenge. Following on from that case, pressure mounted for the development of an Indigenous-specific electoral roll for ATSIC elections in Tasmania. This was instituted on a trial basis in 2002 by asking people on the CER who wanted to be able to vote in the 2002 Tasmanian ATSIC election, to apply for enrolment and submit to having their Indigenous self-identification tested before the election. Those pushing for the trial hoped that it would considerably restrict the numbers of people voting in the 2002 Tasmanian ATSIC elections in comparison with previous years. To a significant extent it did, but not as much as the protagonists for the trial would have liked. One hundred and thirty applicants struck off the roll by the Independent Indigenous Advisory Committee were reinstated by the Administrative Appeals Tribunal. This administrative mechanism could not, in the end, resolve a larger debate about the nature of Tasmanian colonial history and the contemporary self-identifying Indigenous community which arises from it (see Sanders 2003). Where the administration of ATSIC elections in Tasmania, and elsewhere, will go from here is an open question.

**Participation**
ATSIC elections are unlike Australian national, state and territory general elections in that voting is not compulsory. Because of this, participation in ATSIC elections has been seen as an important issue for democratic judgment in itself, with high levels of
participation being seen as indicating ATSIC's legitimacy and support among Indigenous people and low levels the opposite. However commentators have differed markedly in their interpretations of actual participation levels (see Sanders and Taylor forthcoming, Sanders, Taylor and Ross 2000).

While arguing that participation levels in ATSIC have been quite good, for voluntary elections (e.g., voter turnouts against estimated eligible population in the low to mid 20 percents), my colleagues and I have also noted that there is a distinctive geography of participation. Interest and turnout in ATSIC elections is greater in sparsely settled northern and central Australia and less in more densely settled southern areas. This we have related to ATSIC's role as an important funder of basic services and employment opportunities in sparsely settled areas and its lesser role, in comparison with other providers, in more densely settled areas. We have also noted that the denominators for participation measures are census counts of people self-identifying as of Indigenous 'origin' and that this may have a different social meaning in sparsely and densely settled areas of Australia. In northern Australia people who identify themselves as of Indigenous origin are far more likely to see themselves as actively involved in contemporary Indigenous issues than people who make the same self-identification in southern Australia. It may be unreasonable, therefore, to expect as high a level of participation in ATSIC elections in more densely settled southern areas as in the north and centre of Australia.

Representation
Representation of diverse Indigenous people among elected ATSIC office holders has been another issue of concern in ATSIC elections, with interest primarily focussing on women, but also to a lesser extent on the representation of Torres Strait Islanders.

Women have fairly consistently constituted about a third of candidates for ATSIC elections and between 25 and 30 per cent of those elected as regional councillors. However, they have been less numerous among those elected from among regional councillors for the 54 full-time salaried positions for elected Indigenous people within ATSIC since 1993; the 35 regional council chairpersons, the Torres Strait Regional Authority chair and the 18 national commissioners. After the 2002 elections, there was only one woman commissioner and three women regional council chairs.

Torres Strait Islanders have separate representation within ATSIC, through the Torres Strait Regional Authority, if they live in Torres Strait (see Sanders 1995, Sanders and Arthur 2001). However, for the three in every four Torres Strait Islanders who now live outside Torres Strait, representation must be competed for in ATSIC regional councils in the areas in which they reside. This is a source of dissatisfaction for Torres Strait Islanders living outside the Strait who sometimes portray themselves as a 'minority within a minority' in such circumstances. Nine Torres Strait Islanders were elected as

2 Although there are only 17 zones, there are 18 national commissioners as the zone from which the chair is elected then gets another commissioner.
regional councillors in Queensland, outside Torres Strait, in 2002 and one elsewhere.\(^3\) There is, however, also an appointed Torres Strait Islander Advisory Board within ATSIC and there have been suggestions made, at times, that members of it too could be elected.

**Democracy**

Judging the extent to which elections, and institutions, are democratic is no easy task. While the administration of ATSIC elections is unusual by Australian standards, having no definitive electoral roll, it would be hard to argue that it is undemocratic. Indeed, current arrangements are a quite natty and innovative solution to some rather difficult problems surrounding the community- and self-identification of an Indigenous electorate. Adequate levels of participation and representation in elections and institutions are also measures of democracy and for ATSIC, my colleagues and I have argued, that these levels are not too bad. Currently ATSIC is under review and being criticised as undemocratic on somewhat different grounds relating to its decision-making processes for the allocation of public funds. These too are important aspects of democracy, examination of which would take another paper. However on grounds relating to electoral administration, participation and representation, ATSIC does, I believe, deserves some support, as a reasonably democratic attempt to develop an elected national Indigenous representative structure. ATSIC elections do seem to be fairly 'full, free and fair' (Sawer ed 2001).

**References**


\(^3\) The total number of regional councillors elected in Queensland outside Torres Strait in 2002 was 82.