

INDIGENOUS WOMEN'S REPRESENTATION AND THE PROPOSAL FOR A NEW NATIONAL REPRESENTATIVE BODY

by Megan Davis

INTRODUCTION

There is renewed momentum toward the establishment of a national representative body for Indigenous Australia, in part as a response to an election promise of the Federal Labor Government. A fundamental lesson in public law is that for any governance system to operate effectively it needs the trust of the people. To this effect, in modern democracies, 'top down' institutional governance has long been discarded in favour of 'bottom up' approaches, where people have a say in the decisions made about their lives by deciding who represents their ideas and beliefs.

There is much to be learnt from past mechanisms when conceiving of a sustainable and representative national body that can engender the faith of Aboriginal and Torres Strait Islander peoples in Australia. Indigenous Law Centre research reveals that there is an important argument to be made for Indigenous women's representation in any new national representative body.¹ A similar argument can be made for greater youth representation. If self-determination means being able to participate in the decisions that affect your own life, then women – who make up 50.21 per cent of the Aboriginal and Torres Strait Islander population² – and young people – who constitute 56.6 per cent of the Aboriginal and Torres Strait Islander population³ – should be afforded a voice. It is not enough to let their voices be filtered through adapted mainstream electoral devices that are inherently patriarchal and are proven globally to limit women's success of being elected and render the voices of youth invisible.⁴

This paper proposes improved gender representation in any new representative structure. It focuses on the findings of the former Aboriginal and Torres Strait Islander Commission ('ATSIC') Office of Evaluation and Audit's evaluation of the effectiveness of ATSIC programs in meeting the needs of Aboriginal and Torres Strait Islander women. This evaluation found that while 'communities that have strong and active women's groups appeared to fare better than others',⁵ it also found that 'ATSIC programs and services have limited effectiveness in meeting the needs of indigenous women'.⁶

ATSIC: MEETING THE NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN

ATSIC was a statutory authority established in 1990 as an expression of the Federal Government's self-determination policy for Aboriginal and Torres Strait Islander peoples in Australia.⁷ ATSIC is the most recent example of an extra-parliamentary representative body in Australia and consequently this section examines how it responded to the needs of Aboriginal and Torres Strait Islander women.

The ATSIC Review – the catalyst to ATSIC's abolition in 2005 – found that 'the lack of gender balance in ATSIC is a significant issue' and that

the failure to recognise the role played by Indigenous women is accompanied by inadequate leadership development and insufficient recognition of, and a reluctance to talk about, issues related to families and women.⁸

It is evident that the institutional design of ATSIC failed to give due account to the exigency of gender equality in political representation and the consequences of that for distorted and flawed policy design, policy decisions and political representation to the detriment of Indigenous women. This arguably contributed to ATSIC's decline manifest in its inability to prioritise earlier serious human rights violations against Aboriginal and Torres Strait Islander women and children in communities.

At ATSIC's inception, its Chairperson was a woman (Lowitja O'Donoghue), and the idea that women should have 50 per cent mandated representation had been considered in its construction. Yet as ATSIC evolved, women became merely a 'special interest' group, or were rendered invisible within the notion of 'family'. Indigenous women's issues were rendered obsolete by an excessively discursive rights agenda and the construction of Indigenous peoples as representing a homogenous political voice. While women fared better in representation at the regional level than the national level, research confirmed that women did not, '[s]eem to be successful in being elected ... nor in attaining higher elected ATSIC office'.⁹

The evaluation of ATSIC's effectiveness in meeting the needs of women was conducted by the ATSIC Office of Evaluation and Audit which interviewed 555 Aboriginal and Torres Strait Islander women across Australia. All interviewees were asked the question: Do you think that ATSIC programs are meeting your needs and those of other indigenous women whom you know? Of the 555 respondents, only five per cent answered 'yes'.¹⁰

POLICY AND PROGRAM DESIGN

In the evaluation, the design of ATSIC programs was cited as a concern for women because in their words 'we have very little input into funding'.¹¹ In terms of policy design, of the 555 women consulted, 10.6 per cent had been consulted in the design of a project; 5.8 per cent were consulted in the running of a project; and 4.7 per cent were consulted on the end results of a project.¹² The women interviewed made the following statements about ATSIC: programs are planned by men for men;¹³ women need to be involved in policy development;¹⁴ '[t]hey don't talk to us'; 'ATSIC don't talk with us women'; there is not enough support by Regional Council for women's programs; ATSIC's understanding of women's needs is lacking;¹⁵ 'if there is no benefit for women in certain programs, then program aims must be changed to take into account the needs of women and children'.¹⁶

These observations are extremely important when considering the institutional design of a new representative body. Since the Intervention into Northern Territory Aboriginal communities, Indigenous commentators and leaders have strived to convince federal and state governments of the salutary influence of consultation on outcomes for Indigenous communities, particularly since fostering a sense of ownership over solutions often results in real improvements. It is important to apply this to our own representative mechanism. Evidence-based research shows that Indigenous peoples must be included in formulating solutions to the complex problems in their communities, and best practice reveals that very few policies and laws are effective if Indigenous people are not consulted from the outset. Consultation fosters a sense of ownership and that feeling of ownership has been incontrovertible in the success of the economic development of indigenous communities globally. It manifests in a sense of control over one's own destiny and life. The principle is the same for governance as it relates to indigenous women. The evidence from ATSIC's own evaluation highlights a lack of consultation and involvement of Aboriginal and Torres Strait Islander women in the design and running of projects and programs aimed at their benefit or the community's benefit. This

must be taken into account in the institutional design of any new representative body.

LEADERSHIP AND GETTING ELECTED

The Indigenous women interviewed had strong views on leadership in ATSIC. In particular they were critical of the chasm between male-dominated leadership and Indigenous women's needs:

Women consulted considered that some community government councils did not acknowledge women's needs – most are male dominated. When women complained about injustices, they were intimidated and could lose their homes, etc.¹⁷

A theme emerging from the report was that women felt they had no voice in local communities, as well as at state and national levels.¹⁸ Even so, according to the report,

knowledge about indigenous women's eligibility for election was better than might have been anticipated given their limited contact with ATSIC's elected and bureaucratic arms on women's issues.¹⁹

Of the women interviewed, 66.7 per cent knew how to get elected to Regional Council and 44.6 per cent said they would consider nominating for Regional Council. However there were some considerable barriers to Indigenous women seeking office, including that they were 'too scared to sit with a table of men, to speak out and [because of a] lack of English [skills]'. Others said: 'I don't feel as though I am educated enough' or '[w]e have tried to nominate but I feel people are not resourced enough and given enough back up and support'.²⁰ Many of the reasons women gave for not running for office were related to family issues, community issues and travel away from family and community. These kinds of responses raise important considerations for a future representative mechanism.

THE FINDINGS

The report concluded that ATSIC programs and services had limited effectiveness in meeting the needs of Indigenous women and, as a consequence, there was limited Indigenous women's participation in many ATSIC programs. The report encountered evidence that Indigenous women had little involvement in formal ATSIC decision-making processes and that few Indigenous women were familiar with or had access to ATSIC's programs and services. It highlighted many aspects of ATSIC's operations that were not helpful to its Indigenous women client group.²¹ The report concluded that:

All in all, what lay at the heart of their concerns was that decisions that affected them, their communities and families

were invariably made with limited input from the women these decisions would most affect.²²

The recommendations of the final report included a task force to redress gender disadvantage; possible amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth); development of strategy with the Australian Electoral Commission to increase the representation of Aboriginal and Torres Strait Islander women on Regional Councils and Commonwealth Electoral Rolls; and high priority given to measures to address family violence.²³

THE ATSI REVIEW

The ATSI Review Discussion Paper included the following questions:

Should there be a mandated level of representation for women – for example, through creation of designated female positions on the Regional Councils/Authorities and the Board? If so, what should be the level of representation – 50-50, designated positions or a minimum proportion?²⁴

In submissions to the ATSI Review and in response to the Discussion Paper, the ATSI Board of Commissioners submitted that while it was keen to see women play a greater role in regional councils, there was no place for designated positions or mandated levels of representation for women:

ATSI is keen to see women play a greater role in Regional Councils and the Board but it does not support designated positions or mandated levels of representation for women.²⁵

Contrary to the position of the national Board, the ATSI women's committee, *Kungkala Wakai – Our Women's Voice*, postulated about the impact of under-representation on Indigenous women. It submitted that the result of under-representation is

that less attention has been given to issues related to families and women, including the needs of youth, the homeless and itinerants, substance misuse and family violence. In our view, a key objective of any new arrangements should be equal representation of women in terms of membership of regional councils, the proportion of regional council chairs, and in the proportion of commissions on the ATSI board. That is, 50 per cent of these officials should be women. Putting in place a mechanism to achieve this may or may not have broad community acceptance, but it is nevertheless one way of addressing the marginalisation of women in Indigenous affairs.²⁶

The ATSI Review Discussion Paper agreed with this correlation between the lack of women's representation and ATSI's failure to deal with Indigenous women's issues:

This failure to recognise the role played by Indigenous women is accompanied by inadequate leadership development and insufficient recognition of, and a reluctance to talk about, issues related to families and women.²⁷

CONCLUSION

The argument for institutional design that improves the representation of Indigenous women in any representative structure cannot be simplified with the insipid description of affirmative action or allegations that women are being given special treatment simply because they are women. This is an issue of justice and equality. We know as Indigenous peoples that women and men experience the law and public institutions differently. We know that our life experiences are different. This is not about being combative and adversarial but about acknowledging the truth about the different roles men and women play. This is deeply grained in our culture, our songs and our language.

The evidence from ATSI's own evaluation confirms what many women know, that men can never adequately and effectively represent the unique and diverse interests and needs of women. As the ATSI Review observed:

Indigenous women have an irreplaceable perspective to contribute and if that perspective is missing or seriously diminished in the leadership levels of ATSI for whatever reason, then the cause of the advancement of Indigenous Australians through ATSI is poorer as a consequence.²⁸

As shown in other jurisdictions such as the Sami Parliament, if there is greater attention given to the problem of gender inequality in representative structures, and to how that manifests in decision making and policy formation, then there is a greater likelihood that the community will correct that distortion by voting for more women. Alternatively an appropriate electoral design may be that every voter has to elect one Aboriginal man and one Aboriginal woman for each electorate or there is provision for 50 per cent mandated positions as supported by *Kungkala Wakai*.

A representative body that gives due representation to the diverse voices in our community will be more sustainable than earlier models. It will be innovative and possibly controversial but it will also be courageous and more democratic than most mainstream representative structures. A more deliberative democratic process is not inimical to indigenous culture and this is emphasised in the United Nations *Declaration on the Rights of Indigenous Peoples* that all indigenous peoples have the right to self-determination: by virtue of that right they freely determine

their political status and freely pursue their economic, social and cultural development.²⁹

Megan Davis is a Senior Lecturer and the Director of the Indigenous Law Centre, Faculty of Law, University of New South Wales. This article contains excerpts from a peer reviewed paper 'ATSIC and Indigenous Women: Lessons for the future' to be published in full in Balayi: Culture, Law and Colonialism Journal of Law.

- 1 This research is being conducted as part of the author's doctoral thesis in Law at the Regulatory Institutions Network, Australian National University; see also, (forthcoming) M Davis, 'ATSIC and Indigenous Women: Lessons for the Future' (2007) *Balayi: Culture, Law and Colonialism Journal of Law*.
- 2 Productivity Commission, *Report on Government Services 2008 – Indigenous Compendium: Statistical Appendix* (2008) Table AA.3.
- 3 Ibid. For the purposes of this paper, young people are considered as those under 25 years of age.
- 4 See generally, Sarah Maddison and Emma Partridge, 'How well does Australian democracy serve Australian women?' *The Democratic Audit of Australia* (2007).
- 5 Aboriginal and Torres Strait Islander Commission ('ATSIC') - Office of Evaluation and Audit, *Evaluation of the Effectiveness of ATSIC Programs in Meeting the Needs of Aboriginal Women and Torres Strait Islander Women: Final Report* (1995) 2.
- 6 Ibid 104.
- 7 *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth).
- 8 Hon John Hannaford, Hon Bob Collins, Jackie Huggins AM, *Review of the Aboriginal and Torres Strait Islander Commission: Public Discussion Paper* (2003) [4.22].
- 9 Will Sanders, John Taylor and Kate Ross, 'Participation and representation in ATSIC elections: a ten-year perspective' (CAEPR Research Paper No 198/2000, 2000) 16-17.
- 10 ATSIC, above n 5, 39.
- 11 Ibid 28.
- 12 Ibid 44.
- 13 Ibid 40.
- 14 Ibid 40.
- 15 Ibid 41.
- 16 Ibid 25.
- 17 Ibid 4.
- 18 Ibid 21.
- 19 Ibid 43.
- 20 Ibid.
- 21 Ibid 104.
- 22 Ibid 81.
- 23 Ibid 5-6.
- 24 Hannaford, Collins and Huggins, above n 8, [8.19].
- 25 Submission to Review of the Aboriginal and Torres Strait Islander Commission, (2003) 15 (Aboriginal and Torres Strait Islander Commission).
- 26 Submission to Review of the Aboriginal and Torres Strait Islander Commission, (2003) 38 (Kungala Wakai ATSIC Committee on Women's Issues).
- 27 Hannaford, Collins and Huggins, above n 8, [4.23].
- 28 Hannaford, Collins and Huggins, above n 8, [4.26].
- 29 Article 3, United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/47/1 (2007).