

Māori Representation, Local Government and the Auckland Council

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Introduction

Māori have long been under-represented on local government councils. However, legislative changes passed in 2001 and 2002 provided local authorities with the means to improve the substantive representation of Māori in local government. They can do this by using a proportional electoral system and/or providing dedicated Māori wards or constituencies. A proportional electoral system has determined electoral outcomes in parliamentary elections since 1996, providing more equitable representation of minority groups than the simple plurality, first-past-the-post electoral system currently used by all but six of the 78 local authorities. Although, since 1867, there have been dedicated Māori electorates for Parliamentary elections, sub-nationally, by 2011 only one council had dedicated Māori wards¹.

In 2007 because of increasing concerns about the workability of local government arrangements in Auckland, central government established a Royal Commission on Auckland Governance (hereafter the Commission), to report on governance arrangements for Auckland that would provide for the current and future well-being of the region and its communities. The Commission's 2009 report recommended that the 2010 Auckland Council include three Māori members, two elected by voters on the parliamentary Māori Electoral Roll and one appointed mana whenua² representative (Royal Commission on Auckland Governance, 2009:33-34). The 2008-2011 National-led coalition government rejected the recommendation and the Local Government (Auckland Council) Act 2009 was passed without provision for dedicated Māori wards. Instead, the Local Government (Auckland Council) Amendment Act 2010 establishes a statutory Māori advisory board.

This chapter examines how 'official' Māori identity definitions exaggerate both the substantive representation of Māori in local government and the under-representation of Māori on the Auckland Council following the 2010 local government elections. Further, it discusses why the Commission recommended Māori representation on the Auckland Council be safeguarded and the role and functions of the statutory Māori Advisory Board that displaced dedicated Māori seats on council.

Māori Identity and Representation

Nearly 60 per cent of the Māori electoral population choose to be enrolled on the Māori electoral roll³ so they can elect representatives who are accountable to them as Māori. There are currently seven Māori electorates⁴ that provide the elected Members of Parliament with a mandate to represent Māori interests. This is substantive rather than descriptive representation because the seven representatives are elected by Māori voters to represent Māori interests⁵. In other words,

elected representatives 'act for' the interests of their constituents and so provide substantive representation. On the other hand, an elected representative that has similar characteristics to the constituency such as ethnicity, may descriptively and numerically reflect or 'stand for' their constituency or electorate, but they may not necessarily act in their electorate's interests (see Pitkin, 1967). According to Durie (2003:137), an elected Māori representative is not the same as an elected Māori member who represents a Māori electorate. Numeric and descriptive representation may lead to substantive representation but that is not assured (Summersby, 2009:38). Only the Bay of Plenty Regional Council has elected Māori councillors who have a mandate from their local Māori electorate to substantively represent Maori interests.

Māori are under-represented on elected local government councils but the level of under-representation is much greater than is currently acknowledged. The number of Māori elected to represent Māori on local government councils is much lower than reported by the Department of Internal Affairs⁶ (see Tables 1 and 2 below). The official data on 'Māori' candidates and elected 'Māori' councillors is limited and does not provide information on candidates or councillors who identify as Māori and have a mandate from the Māori electorate to represent their interests. Rather, the data provides information on candidates who have Māori ancestry or Māori descent if they can name at least one iwi to which they belong; and it provides data on candidates who identify themselves as belonging to one or more ethnic groups including Maori. These three categories do not reliably indicate Māori ethnicity for the purpose of substantive Māori representation which requires that candidates understand and reflect the ideals and aspirations of Māori electoral roll voters as opposed to merely having some ancestral connection but not an active cultural connection.

Māori ancestry as used by the Department of Internal Affairs is not a useful indicator of a person being able to represent Māori or Māori interests. While local government data uses Māori ancestry as a definition of Māori identity, ancestry is not a term used by Statistics New Zealand in its census data. Statistics New Zealand uses the terms 'descent' and 'ethnic group'. The Māori descent population⁷ at the 2006 census was 643,977 or 16 per cent of the total population. The Māori ethnic population⁸ was 565,329 or 14 per cent of the total population (Statistics New Zealand, 2006). The Department of Internal Affairs (2002, 2005, 2008) reports that about 12-13 per cent of all candidates contesting the 2001, 2004 and 2007 local government elections had some Māori ancestry (Table 1) but that figure decreases to 9-10 per cent based on ethnicity data (Table 2). Similarly, in 2007 elected Māori councillors were either 11 per cent (Table 1) or 8 per cent (Table 2) of all elected councillors depending whether ancestry or ethnicity is used to define Māori.

Table 1 Māori Ancestry

	2001		2004		2007	
	%	No	%	No	%	No
Māori Candidates	12	248	12	249	13	301
Elected Māori respondents	4	87	10	116	11	139
Total respondents		2170		2081		2389

Source: Department of Internal Affairs 2002, 2005, 2008.

Table 2 Māori Ethnicity

	2001		2004		2007	
	%	No	%	No	%	No
Māori Candidates	9	196	9	187	10	237
Elected Māori respondents	4	51	7	79	8	105
Total respondents		2170		2081		2389

Source: Department of Internal Affairs 2002, 2005, 2008.

However, the Department of Internal Affairs survey data arguably misrepresents the substantive representation of Māori in local government. A post-election survey (see Sullivan, 2010) of 18 local authorities⁹ following the 2010 local government elections found that 20 out of a total of 229 elected councillors have Māori ancestry, ethnicity or claim Māori identity. That is, the descriptive representation of Māori following the 2010 elections was around 9 per cent which is consistent with the 2004 and 2007 local government data. However, when the candidate information for that 9 per cent is analysed in terms of the substantive representation of Māori, then the numbers look very different. Summersby (2009) has identified a number of characteristics that are relevant to the substantive representation of Māori. To 'act for and in' the best interests of the Māori electorate, whakapapa is fundamental because it affects how elected Māori representatives see their role in political institutions, it carries expectations of providing a Māori perspective or voice, and it influences how the elected representatives practice politics (Summersby 2009:215). Substantive representation, Summersby (2009:220) argues, requires an understanding of tikanga Māori and a Māori worldview, and shared experiences, so that Māori representatives can act

competently and proficiently in the interests of Māori. Māori who choose to be enrolled on the Māori electoral roll seek to elect a representative that will represent their collective interests. It seems reasonable to expect that a candidate seeking to substantively rather than descriptively represent those interests will also be on the Māori electoral roll. Summersby (2009:125) found that 'Māori elected to Māori constituencies believe their role and responsibility in council is to represent Māori substantively'.

Only 12 of the elected 20 councillors (5 per cent) are enrolled on the Māori electoral roll. Five of those councillors are on the Chathams Council and three are elected to the Bay of Plenty Regional Council Māori constituencies. That means that, in terms of substantive Māori representation as defined above, on 16 of the 18 councils, the percentage of Māori representatives is under 2 per cent. Furthermore, four councillors who are on the Māori roll are on the Whakatane, Gisborne, Rotorua and Opotiki District Councils - all regions with atypically high Māori populations¹⁰. Twelve of the surveyed local authorities do not have elected councillors who identified themselves as Māori and none who are enrolled on the Māori Electoral Roll. The lack of substantive Māori representation on local government councils nationally is mirrored on the Auckland Council.

Māori Representation and the Auckland Council

Aside from a short period between 1986 and 1989 when the Auckland Regional Authority established two Māori Electoral Districts to provide substantive representation for Māori, few Māori have been elected to Auckland local government councils¹¹. Elections for the inaugural Auckland Council took place in 2010. Although Māori are approximately 11 per cent of the Auckland population (see Statistics New Zealand, 2007b) none of the 20 elected councillors (nor the mayor) specifically represent the interests of those Māori who are registered on the parliamentary Māori Electoral Roll. Three of the 2010 elected councillors have some Māori ancestry or Māori ethnicity but they do not identify themselves as Māori representing Māori. As noted above, ancestry does not identify a person as Māori, as representing Māori interests or as understanding, recognising or acknowledging Māori interests. People who seek election to public office and only identify themselves as having Māori ancestry are unlikely to have links into local Māori communities and are most unlikely to be registered on the Māori electoral roll. For example, one of the 2010 elected Auckland councillors (Des Morrison) on a 'Kiwiblog site'¹² declares he has 'Ngapuhi affiliations' He does not claim to identify as Māori nor represent Māori views, and he is registered on the General Electoral Roll, not the Māori Electoral Roll.

The term Maori 'descent' is a classification used by the Department of Internal Affairs if a candidate can name one or more iwi affiliations. However, a person naming an iwi they have ancestral links to, similar to ancestry, does not necessarily mean that they identify as Māori or represent the substantive interests of Maori. For example, one of the elected Auckland City councillors (Jami-Lee Ross), who resigned from office just a few months later because he got a 'better job offer', claims 'blood' ties to the iwi of Ngati Porou

(w)hilst I am an individual of Maori descent, I do consider myself a New Zealander first and foremost. I have Ngati Porou blood running through my veins, but I can assure the House [parliament] that I am a New Zealander who believes strongly in one standard of citizenship (Ross, 2011).

He has no hesitation speaking out on Māori issues but not with a Māori kaupapa (perspective). For example, he supported retaining his electorate name of 'Howick' rather than what he described as the "politically correct name te Iririrangi"¹³. He opposed the flying of the Māori tino rangatiratanga flag on municipal buildings and the Auckland harbour bridge (Tahana & Vaimoana, 2008). In an interview following his election to the Auckland council he strongly opposed dedicated Māori constituencies or Māori electorates (Radio New Zealand, 2010). He did so again in his maiden speech in parliament (Ross, 2011). Notably, he is not enrolled on the Māori electoral roll and is clearly not representing the interests of all those Māori who do choose to be enrolled on the Māori Electoral Roll.

Ethnic group identification is also used to define someone as 'Māori' even when an individual identifies multiple ethnicities. For example, another elected Auckland councillor (Alf Filipaina) identifies as part Māori part Samoan. He does not claim to represent Māori and he too, is not on the Māori electoral roll. The collected local government data on Māori representation therefore differs depending on the definition of Maori and of course the interpretation of the data is at variance with what Māori have always claimed –that official data and definitions conceal the reality of Māori representation. Following the 2010 local government elections, the Auckland Council lacks substantive Māori representation.

The Royal Commission on Auckland Governance

When the New Zealand electoral system was reviewed in 1986 the government was advised that guaranteeing Māori separate representation through dedicated Māori electorates (or wards or constituencies) did not violate or deny any fundamental human rights of the non-Māori population (Royal Commission on the Electoral System, 1986). In 2009 the Royal Commission on Auckland Governance recommended that government guarantee and safeguard Māori representation on the Auckland Council by providing one appointed mana whenua (local Māori) representative and two elected Māori ward councillors. The Commission felt strongly that because it is mana whenua who bear obligations of kaitiakitanga and manākitanga to care for and protect their tribal lands, waterways and other tāonga they should have one representative on council alongside two elected Māori.

The Commission (2009:481) contended Māori wards would meet some of the local government's Treaty of Waitangi responsibilities. It pointed out that the Local Government Act 2002 requires local authorities to act in ways that recognise and give effect to the Crown's Treaty obligations because 'Māori constitute a unique community of interest with special status as a partner under

the Treaty of Waitangi' (Royal Commission on Auckland Governance, 2009: 477). The Commission advised government that Treaty obligations were made explicit in both the Resource Management Act 1991 and the Hauraki Gulf Marine Park Act 2000. The former requires local authorities to take account of the principles of the Treaty of Waitangi when managing the use, development and protection of natural and physical resources (Royal Commission on Auckland Governance, 2009: 481). The latter requires the Auckland Council, because its territory abuts the Hauraki Marine Park, to have due regard for the principles of the Treaty of Waitangi when carrying out its functions relating to the marine park (Royal Commission on Auckland Governance, 2009:482). The Commission's 'primary' reason for safeguarding Māori representation on council was 'to give effect to obligations under the Treaty of Waitangi' (Royal Commission on Auckland Governance, 2009: 487). Those obligations include the necessity to be fair and equitable as far as possible. The Commission (2009:487) reasoned also, that because Māori are proportionally under-represented in Auckland, equity reasons make it important to guarantee that Māori are represented on council and it becomes even more important to safeguard seats for Māori should Māori as a proportion of the population decline over time.

According to the Commission (2009:487) the views of those opposing dedicated Māori seats on council can be summarised as follows: "...councils should be representative of all Auckland citizens and Māori should not be granted additional rights; that it would be racist and divisive and cause resentment; that the seats designated for Māori in parliament are a more appropriate mechanism for giving effect to Māori interests; that if there are special seats for Māori, then there need to be special seats for other ethnic groups". In response the Commission (2009: 487) deferred to the words of Judge Trapski who considered that the establishment of Māori wards for the Bay of Plenty Regional Council

... would deliver to Māori the same voting rights as others. Their electoral rights would be no greater than those afforded to any other voter in the Region and I can see no way in which the Proposal [Māori wards] would enable Māori to "outvote" the other members of the Regional Council as a block. The Proposal would in my view not disadvantage anyone (Trapski, 1998:11).

Royal Commissions are reserved for matters of very significant public interest and they are considered to be very effective because of their broad powers of enquiry (Department of Internal Affairs, 2011). Two Royal Commissions (1986 & 2009) have now inquired into the desirability of Māori being represented by Māori electorate representatives 'who are also members of the Māori community... democratically accountable to Māori electors, and able to serve their constituents in ways that correspond to Māori customs, traditions and expectations' (Royal Commission on the Electoral System, 1986:88). Both advised government that Māori must have fair and equitable representation. The 1986 Commission said that if a plurality electoral system is used then 'Māori seats should continue' (Royal Commission on the Electoral System, 1986:107) and the 2009 Commission said that Māori should have safeguarded seats on the Auckland Council (Royal Commission on Auckland Governance, 2009: 486). In 1998 an independent Commissioner, retired Chief Family Court Judge (Peter Trapski), concluded that guaranteed representation for local Māori

on the Bay of Plenty Regional Council is 'just', and that it mirrors the national example of Māori electorates which he argues is 'Parliament's declaration concerning the way democracy is to be delivered in New Zealand' (Trapski, 1998:9). The Race Relations Commissioner review of race relations in New Zealand identified having Māori represented on the decision making body of the Auckland Council as being among the top ten race relations priorities for 2010 and that 'the new Auckland Council should proceed to establish Māori seats without further ado' (de Bres, 2010:2-3). Safeguarding and guaranteeing Māori representation in Parliament and in local government is constitutionally sound. Yet capricious political accommodations of government have overridden independent, non-partisan advice of government appointed Royal Commissions, Judges and the Race Relations Commissioner.

Māori Advisory Board

A hikoi/march on 25 May 2009 in Auckland by several thousand Māori and large numbers of non-Māori demonstrated widespread condemnation of the Crown's refusal to acknowledge its Treaty obligations to actively protect Māori partnership rights of representation on the Auckland Council (see New Zealand Herald, 2009) in its response to the Royal Commission on Auckland Governance. The government subsequently sought to placate Auckland Māori by establishing a statutory Māori Advisory Board independent of the Auckland Council to promote cultural, economic, environmental, and social issues of significance for mana whenua and mataawaka¹⁴ of Tāmaki Makaurau¹⁵ and to ensure that the council acts in accordance with statutory provisions referring to the Treaty of Waitangi¹⁶. The Māori Party, a coalition partner of government, strongly supported establishing Māori wards on the Council and it described the advisory board as adjunct to the Auckland Council infrastructure and a marginalisation of Māori issues (Katene, 2010). However, Māori were left with no alternative but to reluctantly participate in establishing the Maori Advisory Board while continuing to advocate for direct representation on the Auckland Council.

The Māori Advisory Board membership is made up of nine Māori from the Auckland region, seven are mana whenua and two are mataawaka representatives. Mana whenua representatives are recognised as having ancestral occupancy links within the Auckland region and mataawaka members represent those Māori who do not identify with any of the mana whenua groups in the Auckland region, sometimes referred to as 'urban' Māori (Royal Commission on Auckland Governance, 2009:479). The board is appointed by an iwi selection body, comprising a member nominated by each of the mana whenua groupings within the council's district and the Minister of Māori Affairs and the Auckland Council are notified of the appointed members (Sharples, 2010).

The general function of the board is

to work with the Auckland Council on the design and execution of documents and processes to implement the Council's statutory responsibilities towards mana whenua groups and mataawaka of Tāmaki Makaurau (Local Government (Auckland Council) Act, 2009 s81(e)).

The Auckland Council is required to

consult the board on matters affecting mana whenua groups and mataawaka of Tāmaki Makaurau (and) take into account the board's advice on ensuring that the input of mana whenua groups and mataawaka of Tāmaki Makaurau is reflected in the Council's strategies, policies, and plans (ibid s88 (b)(c)).

A specific function of the advisory board is to appoint two members to sit as members on each of the Auckland Council's committees that deal with the management and stewardship of natural and physical resources (ibid s85(1), as well as any other council committees if requested by council (ibid s85(3)). The Council is required to provide the board with the funding it needs to carry out its purpose (ibid s88(e)).

These two functions generated considerable public debate within months of the board's establishment. According to a *New Zealand Herald* Report (15 February, 2011) the board will appoint two of its own members to 11 of the council's 18 committees. Because Māori Advisory Board members 'sit as members' of council committees, debate has taken place over their right to vote on the committees as they are not elected members of council. Presland (2011) rightly points out, however, that the appointees are not observers or advisors but 'members' and with voting rights as determined in the Local Government Act 2002 (s7). Presland goes on to say that if the voting rights of the board members were changed 'they would be in breach of among other things section 14 (1)(e) of the Local Government Act which provides that a local authority should provide opportunities for Māori to contribute to its decision-making processes'. He argues it would be 'clearly' wrong to lessen 'an opportunity for Māori representatives to contribute to the council's decision making processes'.

The Māori Advisory Board is independent of council and Presland (2011) explains 'this means they must have independent access to expert advice if they are to be expected to do their job properly. They must also have separate premises, an independent secretariat and other resources'. Since council is required to fund the board to carry out its duties, the amount of required funding is under dispute and in February 2011 the Māori Advisory Board was preparing legal action to get resolution on the disputed budget that the board presented to council (Donnell, 2011).

Some critics of the board now suggest that dedicated Māori wards are a more acceptable option for Māori representation than an appointed Māori advisory board (Rudman, 2011; Twyford, 2011). It is rather ironic that two Māori members on a committee can be seen as a major threat to the democratic processes of council committees. Māori do not have the numbers to outvote any of the council committees but they do have considerable knowledge and expertise that will better inform committees when making recommendations to council.

Conclusion

Māori representation on all councils would give practical effect to the Crown's Treaty obligations to local Maori, it would be consistent with national electoral arrangements and councils would better reflect the composition of the communities they are elected to represent. The Environment Bay of Plenty Regional Council experience of having Māori wards since 2002 provides sound empirical evidence of the partnership between Māori and local government working in practice. The Human Rights Commission (2010:7) reported both councillors and management of the Bay of Plenty Regional Council view dedicated Māori wards as very positive and 'good business practice',. This view is also held by a councillor who is 'opposed in principle to separate Māori representation but in practice it works very well...the council is now inclusive of iwi and that is a good thing' (Human Rights Commison, 2010:7). A democracy should be inclusive of all its citizens and elected representatives should reflect or mirror the communities they are chosen to represent.

The plurality electoral arrangements that nearly all local governments' prefer over a proportional electoral system have been shown, by the Royal Commission on the Electoral System 1986, to systematically discriminate against minorities. There is little incentive for Māori to participate in local government elections when councils refuse to recognise that Māori are most unlikely to be elected to council because non-Māori rarely vote for Māori candidates. Councils have the legislative means to establish Māori wards but they choose not to. The status quo denies Māori representation and is contrary to the principle of equal participation rights in Article 3 of the Treaty of Waitangi. Māori are an under-represented minority on local government councils and official data does not show the extent of that under-representation.

When central government decided a Māori advisory board would fulfil its obligation to provide Māori with the opportunity to contribute to decision-making processes as required by the Local Government Act 2002, local Māori were unenthusiastic participants but they have accepted involvement in this limited form of participation. The opportunity for the Māori advisory board to act as an independent, effective and efficient legal entity has been marred by considerable negative attention given to the legal requirements to a) adequately fund the board and b) have two members of the board on some council committees. The Māori Advisory Board is not a panacea for full Māori participation on the Auckland Council but it can inform council and committee members of significant issues for Māori in the Auckland region.

Independent bodies such as Royal Commissions and the Human Rights Commission recommend that Māori be able to elect Māori representatives who are able to respond to Māori customs, traditions and expectations at both the nation and sub-national levels of government. Direct representation on local government councils begins the process of building a Treaty relationship with local Māori (see Flavell, 2011). Making Māori wards mandatory and having Māori seats in parliament entrenched in electoral law would give effect to some of the Crown's Treaty obligations.

Glossary

Kaupapa. Understanding Māori culture, history, values.

Mana whenua. An iwi or hapu who have historic and ongoing territorial rights and possession to ancestral lands they have occupied over many generations .

Mataawaka. Māori who live within a region and are not mana whenua (Te Puni Kōkiri, June 2010).

Tāmaki Makaurau. The region within the Auckland Council boundaries (Te Puni Kōkiri, June 2010).

Whakapapa. Genealogy, identity

¹ The Bay of Plenty Regional Council has its own legislation which has provided the region with guaranteed Māori representation since 2001 - The Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001

² Mana whenua are an iwi or hapu who have historic and continuing ties in an area at least partly within the Auckland Council boundaries (Te Puni Kōkiri, June 2010).

³ Following the 2006 census the 417081 Māori electors were given the option to be enrolled on either the Māori or General electoral rolls.. 244,121 or 58.5% are enrolled on the Māori electoral roll. 178,139 are on the general electoral roll. See Statistics New Zealand, 2007a.

⁴ The number of Māori electorates can rise or fall depending on the number of Māori who choose to be registered on the Māori Electoral Roll (see Electoral Commission at <http://www.elections.org.nz/>).

⁵ See the indepth study on substantive and descriptive representation by Kim Summersby, 2009

⁶ The Department of Internal Affairs has conducted a survey of candidates for the 1992, 2001, 2004, 2007 and 2010 local authority elections.

⁷ Statistics New Zealand (2006) defines a person as having Māori descent if they are of the Māori race of New Zealand. This includes any descendant of such a person.

⁸ At the 2006 census the total population was 4,027,947. The number of people who stated Māori as their only ethnic group or as one of several ethnic groups was a total of 565,329 (see Statistics New Zealand 2007a).

⁹ Sixteen local governments were chosen because they have the highest Māori populations of the 78 Councils plus two other major city councils for comparative purposes. They were: Auckland Council (11% Māori); Bay of Plenty Regional Council (28% Māori); Christchurch City Council (8%); Far North District Council (43%); Gisborne District Council (48%); Hastings District Council (25%); Hamilton City Council (21%); Kaipara District Council (23%); Kapiti Coast District Council (13%); Lower Hutt City Council (18%); Otago District Council (58%); Rotorua District Council (37%); Tauranga City Council (17%); Chatham Islands Council (63%); Waikato District Council (26%); Wanganui District Council (, Wellington City Council (8%); Whakatane District Council (43%) - Māori population figures sourced from Statistics New Zealand 2009.

¹⁰ Whakatane District Council (43% Māori population), Gisborne District Council (48%), Rotorua District Council (37%) and Otago District Council (58%). The Chatham Islands Councils has 63% Māori population and Bay of Plenty Regional Council 28%.

¹¹ Michael Bassett (2009) was only able to name five Māori who had been elected to the Auckland City, Regional and North Shore Councils since 1970

¹² http://www.kiwiblog.co.nz/tag/des_morrison accessed 15 April 2010.

¹³ See <http://www.elections2010.co.nz/2010/candidates/%20jami-lee-ross>

¹⁴ Mataawaka are Māori who live within the Auckland Council boundaries and are not mana whenua (Te Puni Kokiri, June 2010).

¹⁵ Tāmaki Makaurau is the region within the Auckland Council boundaries (Te Puni Kokiri, June 2010).

¹⁶ S81 (a)(b) of Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

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