The issue of the allocation of designated parliamentary seats for indigenous groups is one that is being increasingly canvassed at a time when reconciliation has risen to national prominence. Support amongst Aboriginal leaders is high but not universal and the current Federal government has indicated that it does not support the concept. This paper explores the current position in Australia and overseas.

Brian Stevenson and Wayne Jarred

Research Brief 13/01
June 2001
1 INTRODUCTION

Reconciliation between Aboriginal and non-Aboriginal Australians is a significant issue that is currently being debated. Adjacent to the reconciliation issue is the desire of the Aboriginal and Torres Strait Islander Commission (ATSIC) for parliamentary representation for Aborigines through specifically dedicated seats. Dedicated seats are parliamentary seats that are reserved for a particular group of people.

Countries such as the United States, Canada and New Zealand are examples of jurisdictions that have allocated designated parliamentary seats for indigenous minority groups. There is no Australian jurisdiction that has instigated specific measures to provide for the election to Parliament of Aboriginal or Torres Strait Islander candidates or any other minority group.

The concept does, however, raise certain questions related to the fundamental rights of minorities to be represented, the best form that this representation should take, and how the rights of majorities may be simultaneously safeguarded.

2 ABORIGINALS AND TORRES STRAIT ISLANDERS AS THE INDIGENOUS MINORITY GROUPS IN AUSTRALIA

The estimated Aboriginal population, State by State, as of June 1996 was:

<table>
<thead>
<tr>
<th>State</th>
<th>% of State’s population</th>
<th>% of Australia’s Indigenous Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>1.77</td>
<td>28.47</td>
</tr>
<tr>
<td>Victoria</td>
<td>0.49</td>
<td>5.85</td>
</tr>
<tr>
<td>Queensland</td>
<td>3.13</td>
<td>27.15</td>
</tr>
<tr>
<td>South Australia</td>
<td>1.49</td>
<td>5.71</td>
</tr>
<tr>
<td>Western Australia</td>
<td>3.18</td>
<td>14.55</td>
</tr>
<tr>
<td>Tasmania</td>
<td>3.22</td>
<td>3.96</td>
</tr>
<tr>
<td>Northern Australia</td>
<td>28.52</td>
<td>13.43</td>
</tr>
<tr>
<td>Aust. Capital Territory</td>
<td>0.99</td>
<td>0.79</td>
</tr>
<tr>
<td>Australia</td>
<td>2.10</td>
<td>100.00</td>
</tr>
</tbody>
</table>

The 1996 Census\(^2\) count for people of Torres Strait Islander Origin was recorded as:

<table>
<thead>
<tr>
<th>Place of Usual Residence</th>
<th>Number</th>
<th>% of National TSI Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>7,501</td>
<td>19.3</td>
</tr>
<tr>
<td>Victoria</td>
<td>3,102</td>
<td>8.0</td>
</tr>
<tr>
<td>Queensland</td>
<td>21,132</td>
<td>54.4</td>
</tr>
<tr>
<td>South Australia</td>
<td>1,508</td>
<td>3.9</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1,788</td>
<td>4.6</td>
</tr>
<tr>
<td>Tasmania</td>
<td>1,850</td>
<td>4.8</td>
</tr>
<tr>
<td>Northern Australia</td>
<td>1,769</td>
<td>4.6</td>
</tr>
<tr>
<td>Aust. Capital Territory</td>
<td>180</td>
<td>0.5</td>
</tr>
<tr>
<td>Australia</td>
<td>38,850</td>
<td>100.00</td>
</tr>
</tbody>
</table>

3 THE ISSUE OF REPRESENTATION FOR INDIGENOUS MINORITY GROUPS

It has been argued that there are nine major social movements in contemporary Australian society, of which Aborigines and ethnic interest groups are but two. Such social movements create new patterns of political differentiation.\(^3\)

Equality between groups requires firstly, the implementation of measures that ensure that members of minorities are placed in a position of equality with other citizens and secondly, that those measures result in the preservation of their particular characteristics and traditions.\(^4\)

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In 1995 the Human Rights Committee of the United Nations charged with overseeing the implementation of the *International Covenant on Civil and Political Rights* commented on Article 27 of the *Covenant* in the following way:

> Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples … The enjoyment of those rights may require positive legal means of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.  

As with any reform issue, there must be an underlying rationale for its adoption or introduction. Basically, the rationale for the creation of designated seats for minority groups is that such groups cannot achieve meaningful representation within a system that solely relies on majority support. The more there is a perceived distinction between a minority group and other social groups, the more difficult it will be for the minority group to win representation.

A member of the Ethnic Affairs Commission of New South Wales perceived the minority / majority relationship in the following terms:

> If the decision-making bodies do not reflect the demography of our society, then obviously the political power which is supposed to be the driving force to reflect the needs and aspirations of the ethnic communities has another step to take and that is to make sure that members of ethnic communities are where it counts, where the decisions are made and not relegated to a secondary position or monitoring what comes out of the system.

> Real political power is exercised when you are in there making the decisions and not at the receiving end expressing continued gratitude for what is coming to you. If ethnic communities are to realise their full potential power to influence politics in Australia, these are the areas into which they must move.

At the federal level there have only ever been two Aborigines elected to the Australian parliament. The first Aborigine was Neville Bonner, a Queensland Liberal Senator between 1971 and 1983. Standing as an independent Senate candidate in 1983, he was not re-elected.

Currently, Aden Ridgeway (Australian Democrats) is a sitting Senator for the Australian Capital Territory, having been elected in 1998. In Queensland the first and only Aborigine to be elected to the State Legislature was Eric Deeral who represented the seat of Cook from 1974 to 1977.

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5 quoted in Merkel, p 939.

The 2001 State election for Western Australia has resulted in the election of the first ever female Aborigine to be elected to a parliament in Australia. Carol Martin has been elected as the member for Kimberley in the Lower House, standing as a candidate for the ALP. Ms Martin won the Kimberley seat vacated by a male Aborigine Ernie Bridge who had represented the seat as an ALP member and then as an Independent.

The small number of Aborigines who have been elected to Parliaments in Australia reinforces the world-wide tendency for minorities to struggle for representation at the political level. One reason has been identified and expressed in the following way:

…it is undeniable that in most political systems minorities tend to find their votes ‘diluted.’ Especially if they are not territorially concentrated, the number of elected officials who are members of a linguistic, ethnic or religious minority tends to be much lower than the actual percentage of the population which a minority constitute.

The allocation of parliamentary seats for minority groups within a political system that had not previously allowed for such a thing can only occur as part of a process of sociopolitical change; a process that encompasses more than just the political dimension in contemporary society and is part of the maintenance of a just society in all its dimensions. The allocation of reserved seats for indigenous minority groups as part of sociopolitical change is an acknowledgment or recognition of minority groups at the political level.

At the Australian Reconciliation Convention, the basis upon which dedicated seats could be proposed for Aborigines was stated as:

…indigenous peoples have the right to control their own destinies under conditions of equality. This does not mean that indigenous peoples have a free-standing right to form their own states or to any one particular form of political arrangement. Rather, self-determination means that indigenous peoples, along with all other peoples, are entitled to participate equally in the constitution and development of the governing institutional order under which they live…

…self-determination entails a process through which indigenous peoples are able to join with all other peoples that make up the State on mutually agreed upon and just terms…


9 Anaya, p 18.
4 PERCEIVED ADVANTAGES ATTACHING TO REPRESENTATION THROUGH DESIGNATED SEATS

Generally, the argument in favour of specific representation for indigenous minority groups is premised on the belief that minority group members cannot be adequately represented by existing parliamentary representatives; this being specifically stated in the case of Aborigines in evidence before a Standing Committee of the Legislative Assembly of the Legislative Council of New South Wales.10

Specific representation of ethnic and cultural groups would allow parliamentary debate to occur with minority group members being involved. The presence of minority group members would ensure that specific issues relating to such groups would be more readily raised and more appropriately debated. Media coverage issues concerning minority groups would subsequently contain greater in-depth analysis.

The existence of dedicated seats could lead to real political power for indigenous minority groups. The New South Wales Standing Committee heard evidence from Senator Aden Ridgeway from the Australian Capital Territory who is the only Aborigine in the current federal parliament. Senator Ridgeway stated that Aboriginal participation in government could lead to some possible changes in the quality of life for Aborigines and that the presence of indigenous members could 'allow closer scrutiny … of services being delivered by government agencies.' 11

The New South Wales Department of Aboriginal Affairs submitted to the Standing Committee that designated seats for Aborigines in the New South Wales Parliament would result in 'a shift in the perception and understanding in non-Aboriginal communities about Aboriginal peoples and cultures.' 12

This sentiment had been stated years earlier by a New Zealand Royal Commission:

*The existence of the seats guarantees there will be members of Parliament who directly represent the Maori people in a national forum where their voices can be heard on matters of particular importance to those they represent …While the seats may have been established for reasons of expediency, they have nevertheless been of


The participation of minority cultural groups in politics is low, with Aboriginal participation as an ethnic group even lower. Dedicated seats have the potential to make ethnic and cultural minority groups feel that they are being listened to, thereby giving them greater faith in the parliamentary system. The existence of dedicated seats for minority ethnic and cultural groups would provide leadership role models, encouraging members of such groups to become more politically involved.

5 PERCEIVED DISADVANTAGES ATTACHING TO REPRESENTATION THROUGH DESIGNATED SEATS

It is arguable that the provision of designated seats for any minority group is a contravention of the democratic principle of ‘one vote one value’. If the holder of dedicated seats has a balance of power, and those seats were awarded contrary to the ‘one vote, one value principle’, an undesirable situation could arise. The setting aside of seats for Aborigines may cause resentment from other minority groups, more numerous than the Aborigines, who will feel that they too are entitled to dedicated representation. If other groups expect seats to be reserved for them as well, and this expectation cannot be fulfilled, there is potential for the creation of division in the community.

Former Senator, the late Neville Bonner, raised the issue of Torres Strait Islanders who are a separate, and much smaller, indigenous group than Aborigines. He felt the differences between these two ethnic groups to be sufficiently strong enough for it to be argued that ‘An Aborigine cannot represent the Torres Strait Island people, nor can a Torres Strait Islander represent the Aboriginal people.’


Neville Bonner expressed concern that the setting aside of a single designated seat for Aboriginal representation in Queensland would contain inherent problems:

… the Aboriginal population is scattered throughout Queensland … how does he or she [the parliamentary representative] meet the people in Cape York Peninsula, or the people in the Gulf Country? How will they represent the people in Central Queensland? How do they represent all the people in the Brisbane [area], and in Toowoomba?  

If there are only a few designated seats, the electorates will most likely be too large to allow the interests of the constituents to be served effectively, because of the diversity of social and economic interests contained within the electorate. Further, if the number of designated seats is small, it is unlikely that those parliamentary members will be able to affect parliamentary votes on key issues unless they hold the balance of power.

It is arguable that reserved seats for Aborigines might result in non-Aboriginal members of parliament failing to take an interest in Aboriginal issues, and that mainstream political parties will not encourage Aborigines to join their party as members and candidates. The existence of dedicated seats could make the mainstream parties feel that they have no obligation to support Aboriginal candidates for parliamentary nominations.

The provision of reserved seats might lead governments to believe that the concerns of ethnic and cultural groups are being fully met by the measure, thereby making the government less likely or inclined to bring in changes in other areas.

One Aboriginal member of the Northern Territory Legislative Assembly gave evidence to the New South Wales Standing Committee:

Under my imaginable and realisable scenario, the number of dedicated seats could never be any more than a minority rump.

It would be a form of tokenism that would permanently lock indigenous people into a minority and would be perceived –however unfairly- as a form of “special treatment” for indigenous people that would do little to legitimise our role in the political process.

No matter how many reserved seats there might be- and realistically there would only ever be a token number- it would never be possible to elect people who could

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speak for all the indigenous nations of a particular state, let alone the whole country.

…this leads to the most crucial flaw in the argument for reserved seats: the way in which it breaches the independence and sovereignty of indigenous Australian nations.

In my situation, as the Member for the seat of Arnhem…I try to represent and advance the interests of my constituents, most of whom are Aboriginal- or that of indigenous Territorians generally. However, I cannot ‘speak for country’. I cannot usurp this role for the traditional owners and elders of the country. Nor am I able to subvert the sovereign right of those indigenous groups to maintain their cultures and religions or, for that matter, interfere with groups such as those moving towards economic independence…

Such reserved or dedicated seats would become an excuse for not negotiating directly with the indigenous nations of Australia.

The line would be: “look you have your representatives in parliament to speak for you, why should we negotiate directly with you as traditional owners? They speak for you and your country- take your troubles elsewhere.”

I am calling not for dedicated or reserved access to the legislatures of the country, but to a profound and lasting change to the political parties of Australia in their approach to indigenous representation.

It is also possible that guaranteed representation could be seen as a panacea for problems that exist, when a much more desirable scenario would be to have the implementation of good policies across portfolios in the areas where Aborigines are affected.

This final sentiment was echoed by another speaker at the 1997 Reconciliation Convention:

Setting up separate representation within the Parliament, as in the New Zealand situation, would require passage of a referendum. I would think it had virtually no chance of success and I am not convinced that it is the way to go.

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The Aboriginal and Torres Strait Islander community has produced, and will continue to produce, some outstanding leaders and they should be encouraged to offer themselves in mainstream politics.

6 WAYS IN WHICH MINORITIES CAN BE REPRESENTED

The territorial concentration of minority groups may result in those groups being represented at the parliamentary level without there being any need for alteration to the elected franchise, electoral boundaries. For instance, this is the case in the Canadian Province of Quebec where French speaking Canadians comprise the majority of the population in that Province even though they are a cultural group that is a minority group nationally.

Sometimes arrangements are made for territorial autonomy for regions in which minorities are territorially concentrated and in sufficiently large numbers. Varying degrees of territorial autonomy apply in the Autonomous Regions of Spain, Greenland (a dependency of Denmark), Northern Ireland, New Caledonia (a dependency of France) and other regions around the world.

The representation of minorities can also be enhanced by States reserving a minimum number of seats for their representatives. New Zealand has had seats set aside for the Maori people since the Electoral Act of 1867.

An International Conference was conducted in 1999 which led to Recommendations on the effective participation of national minorities in public

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life. Recommendation number 6 dealt with the number of ways in which minority groups could be included in decision making:

- Special representation of national minorities through reserved seats in one or both chambers of parliament or in parliamentary committees;
- Formal undertakings for allocation to members of national minorities cabinet positions, seats on constitutional courts, positions on nominated advisory bodies;
- Mechanisms to ensure that minority interests are considered within relevant portfolios;
- Special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.23

Single member electorates do invariably result in parliamentary representation being concentrated in the hands of members of the dominant culture. The creation of multi-member constituencies is another mechanism by which the imbalance may be addressed.24

The Standing Committee on Social Issues of the New South Wales Parliament canvassed the issue of whether Aborigines as members of a minority group should have a right of one vote or two votes: the first option being a single vote for a designated seat. The second option being a vote for a designated seat and one for the general ballot of the Legislative Assembly and the Legislative Council.25

Where there is a significant indigenous presence, then multi-member electorates can increase the possibility for such groups to be represented in the legislatures.

7 HISTORY OF SUPPORT FOR DESIGNATED SEATS IN AUSTRALIA

The Council for Aboriginal Reconciliation acknowledges that the creation of designated seats for the specific representation of the indigenous population has


been part of the formal indigenous agenda for some 60 years. In 1933 the newly formed Australian Aborigines League circulated a petition seeking direct representation of Aborigines in Parliament. The secretary of the League, William Cooper, had collected 1,814 signatures from Aborigines by October 1937 but in March 1938 the Commonwealth declined to forward the petition to King George VI or to seek the constitutional amendment necessary for legislation to form an Aboriginal constituency.

On 1 February 1938 an Aboriginal delegation met with Prime Minister J A Lyons and presented him with a 10-point program for Aboriginal equality. This petition also sought representation in the Federal Parliament for indigenous people. Prime Minister Lyons gave the delegation a sympathetic hearing, but announced shortly afterward that, because Aborigines were not included on the electoral rolls, the Federal Government would not sponsor a referendum on the subject to amend the Constitution to give Aborigines a guaranteed place in Parliament.

In 1949 Aboriginal activist Pastor Doug Nicholls, later Governor of South Australia, wrote to Prime Minister Ben Chifley calling for one Aboriginal member of the House of Representatives to be elected by voters on a single Aboriginal electoral roll. As with the previous request, this proposal was dismissed because the Constitution would need to be amended.

After the rejection of this proposal, the idea was not discernibly canvassed in the public arena for several decades. However, in 1982, the Western Australian Land Needs and Essential Services Committee called for designated seats for Aborigines. Four years later, the Aboriginal Development Commission presented a submission to the Constitutional Commission which called for the Constitution to be amended so that four seats in the Senate could be reserved for Aborigines.

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Downloaded 11 January 2001.


29 Bennett, p 126.

30 Bennett, p 126.
8 CONTEMPORARY PROPOSALS

In 1995 the Council for Aboriginal Reconciliation and the Aboriginal and Torres Strait Islander Commission (ATSIC) expressed an opinion that designated seats should be set aside in the Federal Parliament. Senator Aden Ridgeway has proposed that up to 4 seats in the federal parliament should be set aside for Aborigines but on behalf of the government this was rejected by Prime Minister John Howard.

In 1997 the New South Wales Attorney-General called on the Federal Government and all other States to consider creating special parliamentary seats for Indigenous Australians. However, the Council for Aboriginal Reconciliation did not support the idea, but did support educational strategies on the issue.

ATSIC, in a report to the Prime Minister in February 1995, made a number of recommendations concerning the political representation of Aborigines:

- Recommendation 25: That the Commonwealth government investigate the possibility of reserved seats in the Australian parliament.
- Recommendation 26: That the Commonwealth government, as an interim measure, introduce legislation to provide the Chairperson of ATSIC with the following rights:
  - Status of observer in the parliament;
  - Right to speak to either House on Bills affecting indigenous interests; and
  - To make an annual report to the nation on indigenous affairs.
- Recommendation 27: That the Commonwealth government provide financial assistance to local government to encourage greater indigenous political representation at that level.
- Recommendation 28: The Commonwealth government reaffirm full membership of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs for the Chairperson ATSIC.

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Recommendation 29: That the Commonwealth government ensure full voting membership of the Council of Australian Governments (COAG) be extended to the Chairperson of ATSIC.

The substance of this last recommendation had earlier been proposed at a two day conference in Townsville in August of 1993, the International Year for the World’s Indigenous People.

In its National Strategy to Advance Reconciliation, the Council for Aboriginal Reconciliation called on all Australian parliaments and political parties to address the low level of indigenous representation within the political system.

In July 2000 the Chairman of ATSIC appeared before a United Nations Working Group on Indigenous Populations and reiterated that ATSIC wanted the federal government to allocate designated seats for Aborigines in the federal parliament.

9 LEGAL ISSUES CONCERNING THE CREATION OF DESIGNATED SEATS

9.1 COMMONWEALTH

Until the Constitution was amended as a consequence of the passing of the May 1967 referendum question, it was regarded as a document that excluded Aborigines and Torres Strait Islanders from participating in government. Since 1967 the Constitution is a document that has been described as being indifferent toward the indigenous population.


Aborigines and Torres Strait Islanders took no part in the constitutional deliberations between the former colonies prior to federation and the Constitution makes no reference to these two indigenous communities. The push for greater recognition of indigenous Australians has included a call for those communities to be specifically mentioned in a revised preamble to the Constitution.

For minority groups to be specifically represented in the federal parliament, constitutional amendments will have to be put to a referendum. Sections of the Constitution that would need to be amended are:

- Section 7 dealing with the method of electing the number of Senators from each State;
- Section 8 dealing with the qualification of electors for the Senate;
- Section 9 dealing with the uniform method of electing Senators;
- Section 24 dealing with the method of electing the number of members of the House of Representatives;
- Section 29 that deals with the Commonwealth parliament’s power to designate the number of members per division in each State;
- Section 30 dealing with the qualification of electors for the House of Representatives;
- Section 34 dealing with the qualifications to be a member of the House of Representatives; and
- Section 122 dealing with the representation in the Senate and House of Representatives of any territory surrendered by any State to the Commonwealth.

However, it has been cautioned that the inclusion of provisions into the Australian Constitution that result in unintended and unwelcome legal consequences should be avoided.

There would also need to be amendments made to the Commonwealth Electoral Act 1918 and the Aboriginal and Torres Strait Islander Commission Act 1989.

The indigenous perception of the Australian Constitution is that it does not acknowledge their special place in Australian society:

*I want to suggest that Australians of non-English speaking background seek to develop contacts with the indigenous Australians for the purpose of discussing the kind of provisions in an Australian Constitution that would reflect the cultural*

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40 Sutherland and Russell, p 13.

composition of the contemporary Australian society and the special position of the indigenous Australians.  

Constitutional reform that allows for an inclusive sense of belonging is a critical part of renewal and reconciliation.  

... most, if not all, indigenous peoples themselves do not wish to be considered a priority detached from the larger or other social and political structures that have a bearing upon them. Rather, indigenous peoples are appropriately viewed as simultaneously distinct from, yet parts of, larger units of social and political interaction...  

There is a general issue of how members of a minority group can be identified and defined legally. For instance, the deputy chairman of ATSIC has indicated that there could be up to 15% of those claiming Aboriginal descent (for the purpose of receive financial benefits) who do not have Aboriginal or Torres Strait Islander blood. Senator Aden Ridgeway concurred that there is a difficulty with defining Aboriginality: 

There needs to be a tightening of the acceptable definition of Aboriginality; ...  

It has to be looked at on the bases of self-identification as well as community identification and acceptance.  

This problem of identification is not peculiar to Australia. In the United States of America, for example, there is no single criteria that establishes a person’s identity as an Indian as even the various tribes have differing criteria for membership.  


44 Anaya, p 15.  


As an alternative to constitutional amendment it has been argued that amendments could be made to the *Commonwealth Electoral Act 1918* that would facilitate the redistribution of electoral boundaries with greater emphasis being placed on the ethnic, cultural and racial make-up of the constituents instead of numbers. Such changes would increase the chances of members of minority groups being elected to parliament. Such changes would not require constitutional amendment as the principle of one-vote one-value is not contained in that document.

The crux of the legal problem surrounding changes to the Australian Constitution has been stated as:

> The underlying issue is where and how the balance should be struck between legal equality and actual diversity in a Constitution for a community such as ours.

The Final Report of the Constitutional Commission contained a recommendation that the Australian Constitution should be amended to include a provision that everyone has a right to freedom of discrimination on the ground of race, colour, ethnic or national origin, sex, etc. However, the recommendation also contained the proviso that measures taken to overcome disadvantages arising from discrimination would not infringe the principle of freedom from discrimination.

In support of its recommendation, the Commission reported:

> It is manifestly the case that some Australians do suffer disadvantages which prevent them from enjoying the rights which permit an individual to live in full dignity and to participate freely in every sphere of social and political life. Our recommendation is both a recognition of this fact and a statement of the right of all members of society...

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51 Australia. Constitutional Commission, p 545.
9.2 QUEENSLAND

In November 1964, proposals to give voting rights to Torres Strait Islanders and Aborigines went before a joint Country – Liberal Party meeting. Two of the proposals taken to that meeting were that Torres Strait Islanders be allowed to elect their own member to State Parliament, and that Aborigines be given the right to elect their own member with voting rights on Aboriginal problems.52

In introducing the Elections Acts Amendment Bill 1965, the Premier Frank Nicklin said:

_This Bill follows the accepted principle of voluntary enrolment on the general rolls for the electoral district in which the indigene lives. There will not be a separate roll for any racial group, as racial discrimination of any kind has no place in any truly progressive country._

_Under the proposed legislation it is considered that these indigenous people will be well represented on the same basis as all other sections of the community by the elected members for the districts within which they reside._53

October 1974 saw the registering of the Australian Advancement Party (AAP), the first political party to be formed in Queensland by Aborigines.54 The new party only contested the seats of Cook and Hinchinbrook in the 1974 State election. The Cook seat was won by Eric Deeral, an Aborigine representing the National Party. At the 1977 State election, the AAP contested the seat of Cook and the seat of Mt. Isa but failed to win either. A founding member of the AAP stood as a candidate for Cook in 1980 as a representative of the Liberal Party when the AAP did not endorse a candidate for that seat or any other seat.

In 1991 a report of the Electoral and Administrative Review Commission (EARC) recommended against the establishment of special seats for Aborigines and Torres Strait Islanders in the Queensland parliament.55 The Parliamentary Committee concurred with the Commission’s view in this regard.

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52 ‘Aboriginals will gain more civil rights’, _Courier-Mail_, 10 November 1964.


In its submission to EARC, the Proportional Representation Society of Australia argued that multi-member constituencies placed greater pressure on the established parties to include candidates from significant minority groups in order that such groups not be offended by being ignored. The Society further argued that minority groups could run and elect their own candidates under the multi-member system. Under the proportional voting system that operates for the Australian Senate, two Victorian candidates representing the Aboriginal Independent Party polled 0.25% of the State wide vote in 1974 but this percentage was insufficient to secure Senate positions.

In 1995 the Foundation for Aboriginal and Islander Research Action (FAIRA) called for up to four seats to be set aside in the Queensland Parliament to specifically represent Aborigines and Torres Strait Islander people.

More recently, a Constitutional Convention examining the consolidation of the Queensland Constitution was held in Gladstone 17-18 June 1999. During the plenary session of 17 June, the inclusion of a preamble to any consolidation was discussed. A number of delegates indicated their support for a preamble that acknowledged the position of the indigenous population as the custodians of the land. However, there was no clear agreement as to how a preamble could be best worded in order to achieve this.

In response to an Issues Paper published by the Constitutional Review Commission, the Aboriginal Co-ordinating Council submitted that the indigenous population in Queensland be represented in the Parliament by indigenous members beyond a level that could be regarded as token. This would necessitate the allocation of a certain number of seats in the State parliament.

Unlike the New South Wales constitution, where dedicated seats for minority groups would require the support of a majority of that State’s voters at a

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referendum, the Queensland constitution would not require a referendum for this to be achieved. The *Electoral Act 1992* could be amended to achieve specific representation for minority groups.

10 CONTEMPORARY EXAMPLES OF RESERVED SEATS IN OTHER COUNTRIES

10.1 NEW ZEALAND

The English presence in New Zealand began in 1769 with the arrival of James Cook. From the 1790s onwards, English influence and presence in the Colony increased. Resistance to the English presence from Maori tribes resulted in a Declaration of Independence by 34 Tribal Chiefs and in 1840 the Treaty of Waitangi was signed between 500 Maori Chiefs and a representative of the British Crown. Significantly, British sovereignty was also proclaimed as a consequence of the signing. Representative government was granted in 1852 with the passing of the *New Zealand Constitution Act*.

New Zealand first reserved seats for the Maori people over 100 years ago in 1867 with the passing of the *Native Representation Act*. This particular Act was initially only meant to be temporary as the Maori roll was to be discontinued with the Maoris to be included on the general roll. This process was to commence with the intended breaking up of tribal landholdings to individual landholdings. However, the intended breaking up of the tribal holdings did not proceed due to inherent difficulties associated with the change of ownership from a tribal system to an individual system. As a consequence, the *Native Representation Act* was made permanent in 1876. The Act allowed for universal male Maori suffrage some 12 years before it was granted to the colonists in 1879.\(^{61}\)

The four Maori electorates were supposed to last for inly five years but persisted until 1993, despot changes in the Maori population and number of voter in those electorates. The number of reserved seats was set at four between 1867 and 1993. The number of Maori electorates has grown steadily to 5 in 1996 and 6 in the 1999 elections respectively. This is because of the increasing number of Maoris choosing the Maori Roll during the Maori Electoral Options or when they first enrolled.

The Maori Electoral Option system was introduced when the Mixed Member Proportional System (MMP) became the new electoral system in 1993. The law

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was changed so that the number of Maori Electorates depended in part on the choices made by the Maori in the Electoral Option. In effect, Maori voters themselves now decide how many Maori electorates there will be. At the time, MMP representation was described as having the potential of lessening the power imbalance between Maoris and non-Maoris to a point where they could be represented at a level commensurate with their proportion of the national population which is about 13%. In fact this is what happened.

10.1.1 Electoral boundaries and the Maori roll

With MMP, every New Zealander (Maori and white) has the right to two votes - a Party vote and a vote for a member representing an electorate. However all persons of Maori descent have a choice between whether they wish to vote for a person representing one of the Maori electorates or for a member of Parliament representing a general electorate.

A separate Maori electoral roll was established in 1949 but Maori were not legally required to enrol until 1956. Since 1975 Maori have been able to choose to enrol on either the Maori roll or the General roll. To qualify for enrolment on the Maori roll, self-identification as Maori is all that is required.

Prior to 1975, adult children having at least one full-blood parent were obliged to enrol on the Maori roll. Those with a lower proportion of Maori blood could choose to enrol on either the General or Maori roll.

The number of designated Maori electorates is dependent on the level of enrolments on the Maori electoral roll.

The process commences with the Maori Electoral Option where Maori people are asked to register on either the Maori electoral roll or the General Electoral roll. The Maori Electoral Option is held very five years. Once a person has made a choice for one roll or the other, that person cannot change the type of roll they are registered on until the next Maori Electoral Option is held in five years time. The seat allocation is determined by the same population quota used in the determination of the number of general seats.

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Electoral boundaries are examined and re-drawn where necessary after the results of the five yearly population census have been recorded. The boundaries of the Maori electoral districts are drawn by a panel of three officials, two of whom are Maoris who are non-public sector employees. Officially, these two officials are nominated by the Parliament to represent the Government and the Opposition.64

The current six electorates have between 15 000 and 18 000 Maori voters enrolled.

10.1.2 How well represented are the Maoris?

It is arguable that up to 19993 the Maori population has in fact been under represented in comparison to the level of non-Maori representation and that this, combined with an electoral system that maintains a non-Maori majority, tended not to give effect to Maori concerns.65

It has also been argued that since the introduction of proportional representation in the 1996 election the case for designated Maori seats has been weakened. The 1996 election resulted in twice as many Maoris being elected to the House of Representatives from the General Roll than from the Maori roll.66 In 1999, 15 of the 120 seats of the NZ House of Representatives were won by Maoris including the 6 designated seats.

However during the 1990s more and more Maoris have chosen to go onto the Maori Roll either at Maori Electoral Option times in 1996 and 2001 or when they first enrol. This has increased the number of dedicated seats for Maoris from four 1993 to six in 1999.

10.1.3 The Number of Maori seats in the next general Election

The current Maori Electoral Option is being held from 2 April to 1 August 2001

As of February 2001, 51.25% of Maoris had elected to go on the Maori Roll and 48.75% on the General Roll. The number of designated Maori electorates has now increased to seven (7), as a result of an advertising campaign advising the


Maori population that they have the right of choice as to which roll they register on and that only a small increase in electors on the Maori Roll would increase the number of dedicated electorates from six to seven.

10.1.4 Limitations

There are some perceived limitations to the effectiveness of the system of Maori representation. The small number of Maori MPs makes scrutiny of all legislation difficult. Also, the constraints of party allegiance have made it difficult for the members to speak out forcefully on Maori issues for fear of alienating non-Maori supporters of their party.

The 1996 Royal Commission on Electoral Reform recommended the abolition of the Maori seats, but the Maori, to whom the seats have great symbolic significance, successfully argued against abolition. One of the Select Committees to the Royal Commission reported:

There is virtual unanimity in Maoridom regarding the need to retain… Maori seats.

10.2 NORWAY

The Sami people of Norway, formerly known as the Lapps, are an indigenous minority group. They are concentrated in the north of the country. There is no official census of the Sami, but they are estimated to comprise approximately 1 percent of the population of Norway. In 1987 the Norwegian Parliament passed the Sami Act which provided for the structure, responsibilities and powers of the Sami Assembly. The Sami Assembly was officially opened in 1989. The Sami electoral register consists of those who sign a declaration that they consider themselves Sami and either use the Sami language at home or have a parent or grandparent who does or has done so. The Sami Assembly is separate from the Norwegian parliament and those electors registered on the Sami electoral roll are also eligible to vote in the elections for the general Norwegian parliament, called the Storting.

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The mainstream political parties are represented in the Sami Assembly, but the largest party is the Association of Norwegian Sami. The Assembly meets 4 times a year, for one week at a time. The Storting allocates the budget for the Sami Assembly and its programs. It is felt that this dependence limits the freedom of the Sami Assembly to develop new initiatives. The Sami Assembly manages its programs through four Councils within the Assembly respectively covering issues of heritage, language, culture and development.

The Assembly reports annually to the Storting. The provision of a report enables the formulation of a fully developed Sami policy on major issues affecting the Sami people. While the Storting discusses the report and may respond to its recommendations with legislation or the allocation of resources, there is no obligation on them to do so.

While the Sami Assembly is relatively new, most commentators suggest that its existence has contributed to the unification of the Sami community as well as ensuring that the interests of the Sami are no longer neglected in Norway.

10.3 SWEDEN

Like Norway and Finland, Sweden has a Sami parliament that had its first sitting in October 1989. The Sami parliament deals with matters considered to be of special importance to the Sami indigenous population. Those elected to this parliament are chosen by direct ballot of electors registered in the Sami electoral register. The Sami Indigenous parliament is not part of the Swedish parliament that consists of the Sveriges and Riksdag chambers.

The Sami population constitute an estimated 0.2 percent of the total population of Sweden. The first elections for the Sami parliament were held in 1993. The main function of the parliament is to promote Sami culture and economic development, and to allocate resources from the Sami Fund to support the indigenous minority’s culture and organisations.


71 Dow and Gardiner-Garden.
10.4 CANADA

It has been said that in Canada there is a powerful synergy between law and politics with respect to the constitutional position of indigenous Canadians. The indigenous population of Canada represents approximately 5% of the total national population and consist of three recognised categories called Indians, Inuit people (Eskimos), and Metis people (of mixed Indian and European blood). They each obtained full voting rights during the 1960s, thereby gaining full Canadian citizenship. Section 35 of the Constitution Act 1982 acknowledges the Indian, Inuit and Metis peoples as the Aborigines of Canada.

In 1991 the Working Group of the Royal Commission on Aboriginal Peoples recommended a guaranteed process for Aboriginal representation in the Canadian House of Commons. This recommendation was supplemented by the recommendation, in the Royal Commission’s final report, for the creation of an Aboriginal parliament that would have the power to review or veto legislation affecting the Aboriginal people.

In recent years, the creation of electorates that have small and predominantly indigenous populations has increased the chances of indigenous persons becoming MPs. The electorate of Nunatsiaq in the former Northwest Territories, for example, guarantees the election of an Inuit representative.

10.5 UNITED STATES OF AMERICA

There are over 300 recognised Indian tribes in the United States which at the 1990 Census accounted for the 1.8 million Indian population. As in the case of New

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74 Dow and Gardiner-Garden.

Zealand, treaties have been signed between Indian tribes and the Federal Government that respect the sovereignty of the Native Indians. Since 1831 the sovereign status of Indian tribes as ‘domestic dependent nations’ has been recognised. Under the Constitution, Indian treaties are listed among the supreme law of the land. Currently, there are approximately 560 recognised Indian tribes in America. Whilst there has never been an indigenous Indian elected President of the United States, the position of Vice President was held by a member of the Kaw tribe between 1929 and 1933.

As there are no specifically designated indigenous seats in Congress or the House of Representatives, the number of Indians who have served in either of those chambers is low. The same can be said of legislatures at the State level.

The State of Maine currently has representatives of its two largest native Indian tribes in its legislature. These representatives, however, do not have voting rights and do not receive a salary, although they receive an allowance for attending the House as well as the same allowances as the other members for meals, housing, constituent services and travel.

Critics of the tribal seats concept in Maine argue that the sovereignty of indigenous people is compromised by participation in the State legislature, and that this non-voting participation is a half-way measure towards representation. However, tribal representatives have been able to gain experience in politics and leadership and draw attention to issues affecting the native population through participation in the legislature.

It has been argued that if the Indian tribes are to achieve effective solutions to the myriad of problems confronting them, State and federal authorities must recognise that the tribes are not part of the United States federal system until such time as the members of the tribes decide otherwise.


11 CONCLUSION

The allocation of designated seats for minority indigenous or ethnic groups has been raised on different occasions. Any such proposal has not met with the approval of any Australian government either at the State or federal level. With respect to the indigenous population, the creation of ATSIC in 1990 as an elected representative body which also acts as a national policymaking body and service delivery agency for Aboriginal people has probably minimised the broader public appeal of designated parliamentary seats.
This Publication:

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