

**ABORIGINAL REPRESENTATION:  
A BRIEF OVERVIEW**

## 2.1 INTRODUCTION

This Chapter provides background information on Aboriginal representation in Australian Parliaments and previous demands for dedicated seats in Australia. It also describes the role and function of the key indigenous representative bodies in NSW: Aboriginal Land Councils; the Aboriginal and Torres Strait Islander Commission and the NSW Aboriginal Reference Group. It begins with relevant statistical data on the number of Aboriginal people in NSW.

## 2.2 THE NUMBER OF ABORIGINAL PEOPLE IN NSW

According to the 1996 census, 93,996 people in NSW identified themselves as Aboriginal, 5,318 as Torres Strait Islander people and 2,171 as having both Aboriginal and Torres Strait Islander background. The proportion of the total NSW population who identify as Aboriginal is 1.6%, an increase of 0.4% since the last census (Australian Bureau of Statistics Census of Population and Housing, 1996).

As noted in Chapter One, Torres Strait Islanders are not included in the Terms of Reference for this Inquiry because, while they are indigenous to Australia, they are not indigenous to the geographic region of NSW.

### 2.2.1 THE NUMBER OF ABORIGINAL ELECTORS

The maximum number of Aboriginal voters in NSW is 49,739. This is a *maximum* figure because a proportion of these people may not be registered to vote or will not vote at election time.

This figure should be considered in conjunction with the enrolment in electorates for the forthcoming election in March 1999 (between 42,000 and 45,000 electors) and the quota for election to the Legislative Council in 1995 (153,600 votes) (Figures supplied by the Electoral Districts Commissioners, 4 June 1998). The electoral power of Aboriginal people in NSW is constrained by the small size of the population and its dispersed nature.

The electorates with the highest proportion of indigenous people are Barwon in the north west (12.98%), Dubbo (7.56%) and Murray-Darling (7.16%). There are only 13 electorates in NSW where indigenous people comprise more than 3% of the total population (ABS Census of Population and Housing, 1996).

## **2.3 ABORIGINAL REPRESENTATION IN AUSTRALIAN PARLIAMENTS**

### **2.3.1 THE NEW SOUTH WALES PARLIAMENT**

There has never been an Aboriginal member of either House of the New South Wales Parliament. In recent Legislative Council elections groups of Aboriginal candidates have sought election on a joint ticket. In 1988 a three-candidate Aboriginal Team headed by Millie Ingram gained 0.44% of the primary vote, or 0.07 of a quota. In 1995, two candidates stood for the Indigenous Peoples Party and gained 0.25% of the primary vote, or 0.06 of a quota. In the forthcoming election in March 1999, Pastor Peter Walker is the second candidate on the Christian Democrat's ticket for the Upper House. A number of Aboriginal candidates have sought election to the Legislative Assembly but were unsuccessful. They include:

- Burnum Burnum, who contested the seat of North Sydney for the Australian Democrats in the 1988 by-election, gaining 3.23% of the primary vote; and
- John Lester, who stood for the ALP in the seat of Clarence in the 1995 election and gained 34.18% of the primary vote and 41.71% of the two-party preferred vote.

### **2.3.2 THE FEDERAL PARLIAMENT**

The only indigenous Australians to serve in the Federal Parliament are Liberal Senator Neville Bonner, who represented Queensland in the Senate from 1971 to 1983 and Aden Ridgeway, who recently won a seat in the Senate on behalf of the Australian Democrats and will take up his seat in July 1999. A number of other prominent Aboriginal candidates have been unsuccessful in their bid to secure a seat in the Federal Parliament. They include:

- Burnum Burnum, who sought election as a NSW Senator in 1983 and 1984, gaining 4.22% of a quota and 1.11% of a quota in the respective elections (Bennett, 1989:121); and
- Pat Dixon and Vicky Greaves represented the ALP in the seats of New England and Lyne, respectively in the 1998 federal election.

### **2.3.3 PARLIAMENTS IN OTHER STATES AND TERRITORIES**

Queensland, Western Australia and the Northern Territory are the only states and territories where Aboriginal candidates have been elected to Parliament. At present, three members of the twenty-five member Northern Territory Legislative Assembly are Aboriginal: John Ah Kit, ALP member for Arnhem; Maurice Rioli, ALP Member for

Arafura and Tim Ladwin, CLP Member for Victoria River. Ernie Bridge, the first Aboriginal member elected to the Western Australian Legislative Assembly in 1980 for the ALP, now serves as the Independent Member for the Kimberley electorate.

Aboriginal candidates who were unsuccessful in their bid for election include:

- Galarrwuy Yunupingu, who contested the 1980 election as Independent candidate for a seat in the Northern Territory's House of Representatives, and polled 5.59% of the primary vote; and
- Michael Mansell, who stood as an Independent in the Tasmanian Senate election in 1987, gaining 5.14% of a quota (Bennett, 1989:121).

## 2.4 REPRESENTATION IN LOCAL GOVERNMENT

There are eleven Aboriginal people serving as councillors among the 1,807 elected councillors on the 177 local government authorities in NSW.

The Local Government Aboriginal Mentoring Scheme was introduced in 1997 to encourage Aboriginal people to contest local government elections. Under this scheme, members of the local Aboriginal community nominate a potential Aboriginal candidate for the forthcoming Council election. A serving councillor acts as a mentor to the Aboriginal candidate, to further his or her understanding of the functioning of the Council and to encourage the Aboriginal person to seek election.

The scheme, which is administered by the Department of Local Government was piloted in Kyogle and is currently operating in eight other local government areas: Maclean, Coonamble, Tumut, Moree Plains, Kempsey, Leichhardt, Severn and Gosford City. Marrickville, Randwick and Port Stephens Councils have endorsed the scheme and are in the process of selecting mentors and candidates (information provided by the Department of Local Government, October 1998).

## 2.5 CALLS FOR DEDICATED SEATS SINCE THE 1930s

Calls for dedicated seats for indigenous people have been made and rejected in Australia since the 1930s:

- **1937:** William Cooper of the Australian Aborigines' League in Victoria presented a petition to the King calling for guaranteed representation in the Commonwealth Parliament in the form of one seat in the House of Representatives (Bennett, 1989:4). The government, arguing such an appointment was a constitutional impossibility, did not forward the petition to the King;

- **1938:** The Aborigines' Progressive Association, in response to the celebrations of 150 years of white settlement, held a protest meeting in Sydney on Australia Day, which they called the Day of Mourning. Five days later, an Aboriginal delegation met with and presented Prime Minister Lyons with a ten-point program for Aboriginal equality. The petition specifically demanded representation in the federal Parliament for indigenous people as a means of empowering them to have control over their own destinies (Council for Aboriginal Reconciliation, 1995:42);

The Cabinet subsequently announced that, since Aborigines could not vote, and no Federal government was likely to sponsor a referendum addressing that situation, Cabinet was unlikely to accept the principle of giving Aborigines a guaranteed place in Parliament (Bennett, 1989:6);

- **1949:** Doug Nichols wrote to Prime Minister Chifley calling for one Aboriginal Member of the House of Representatives to be elected by voters on a single Aboriginal roll. This was also dismissed on the grounds that it was not permitted by the Constitution (Bennett, 1989:126);
- **1982:** The Western Australian Land Needs and Essential Services Committee made a similar call (Bennett 1989:126);
- **1983:** Frank Walker, the then NSW Minister for Aboriginal Affairs, proposed the reform of electoral laws to allow one Aboriginal Senator in the federal Parliament to be elected from each State by voters registered on a separate electoral roll. He also advocated the creation of four Aboriginal electorates in the NSW Legislative Assembly (Sydney Morning Herald, 1983:3);

In the same year, the then Special Minister of State in the Federal Parliament, the Hon Mick Young, called for the ALP to consider affirmative action for Aboriginal candidates (Bennett, 1983:8);

- **1987:** The Northern Territory Legislative Assembly Select Committee on Constitutional Development considered and rejected Aboriginal seats in the Territory, or any new State, Parliament. The Committee expressed a preference for a single member electorate system, with one person one vote and no distinction on the basis of race (1987:21);
- **1988:** Several submissions to the Constitutional Commission supported the concept of guaranteed representation. The National Aboriginal and Islander Legal Services Secretariat and the Public Interest Advocacy Centre argued that Aboriginal people should be represented in the Senate as an electorate, as if they constituted a state; and the Aboriginal Development Commission supported the designation of a number of seats in the Senate for Aboriginal representatives

to enable ready access to expert opinion on laws affecting Aboriginal people (1988:183);

- **1990:** Queensland's Fitzgerald Report recommended the establishment of a Commission to examine the electoral system in the Queensland Legislative Assembly. One of the issues considered by the Commission was the provision of dedicated seats for indigenous people but the idea was not supported:

*...the Commission does not believe that a case has been established for separate indigenous representation. The spread of ATSIC electors is such that any territorially based seat or seats continue malapportionment, however worthy might be the motive, at a time when efforts are being made to reduce its impact on the Legislative Assembly. Whilst a State wide seat may be possible for Aborigines (about 25,000) the number of Torres Strait Islanders (just under 7,000) would not justify such a seat. Further, separate representation would be a drastic departure from previous practice in the State and in Australia generally (EARC, 1990:82)*

- **1993:** An Aboriginal Constitutional Convention held at Tennant Creek agreed that, if the Northern Territory achieved statehood and had twelve seats in the Senate, seven of those seats should be allocated to Aboriginal representatives (Brown and Pearce, 1994:107);
- **1995:** The Report of the National Multicultural Advisory Council, *Multicultural Australia: The Next Steps Towards and Beyond 2000* (1995), recommended a Select Committee of the Commonwealth Parliament be established to consider options for achieving greater representation of Australia's indigenous peoples in Parliament;
- **1995:** Father Frank Brennan in *One Land, One Nation*, advocated reserving four seats for indigenous Australians in the Senate, including one for Torres Strait Islanders. People eligible to vote at ATSIC elections could have an additional vote for these Senate positions, or, alternatively, be able to choose whether to vote for these candidates or the general candidates from their state (Brennan, 1995:201);
- **1995:** ATSIC presented a report to the federal government entitled, *Recognition, Rights and Reform: a Report to the Government on Native Title Social Justice Measures*. The report includes the following recommendation for dedicated seats:

*While it is difficult to define what the appropriate level of indigenous representation should be in the Commonwealth,*

*State and Territory Parliaments and in Local Government, it is considered that measures should be taken now to institute political reform. These measures should include: reserved seats in Parliament for indigenous Australians at both Commonwealth and State level (ATSIC, 1995:49);*

- **1995:** The Council for Aboriginal Reconciliation conducted a national consultation to identify ways to promote social justice for indigenous people. Throughout the consultation proposals were repeatedly raised for reserved seats at all levels of government. However, the Council felt it would be better not to proceed with a referendum on this issue unless there was an extensive education campaign on the proposal and the government of the day was confident of broad community support for the idea (Council for Aboriginal Reconciliation, 1995); and
- **1997:** The NSW Attorney-General, the Hon Jeff Shaw MLC proposed to a ministerial meeting on Aboriginal Deaths in Custody that the dedication of parliamentary seats to indigenous people should be on the agenda for discussion in the 1990s in Australia (Shaw, 1997).

## **2.6 REPRESENTATIVE ORGANISATIONS FOR ABORIGINAL PEOPLE IN NSW**

### **2.6.1 THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION**

The Aboriginal and Torres Strait Islander Commission (ATSIC) is the peak indigenous representative agency in Australia. It develops policies and administers various programs for Aboriginal and Torres Strait Islander people. It also monitors the performance of other government agencies dealing with indigenous issues across Australia. There are two arms in ATSIC: an administrative arm and elected arm. The elected arm comprises Regional Councils and the Board.

- **Regional Councils**

Regional Councils are responsible for improving the social, economic and cultural life of indigenous people in their regions. There are 35 Regional Councils throughout Australia, six of which are in NSW. A maximum of 12 councillors are elected to each of the Regional Councils every three years. Each Council elects a full time, salaried Chairman from among its councillors.

- **The ATSIC Board**

The ATSIC Board makes national funding and policy decisions and is the principal source of advice to government on indigenous issues. The Board is made up of 19 Commissioners, 17 of whom are elected by the Regional Councillors. The Minister for

Aboriginal Affairs appoints a further two Commissioners. Commissioners occupy full time, salaried positions.

The Chairman of the ATSIC Board is currently appointed by the Minister from among the 19 Commissioners. The current Chairman is Mr Gatjil Djerrkura, OAM. In future, the Chairman will be elected by the Commissioners.

- **ATSIC Elections**

Elections for ATSIC Regional Councils are conducted by the Australian Electoral Commission. A person may only vote at a Regional Council ward election if that person is an Aboriginal or Torres Strait Islander person and their name is registered on the Commonwealth Electoral Roll for that particular ward.

Participation in ATSIC elections is generally low, although in the 1996 election NSW recorded the highest participation rate of any state: 42%, an increase of almost 18% since the last election (Submission 23).

Aboriginal or Torres Strait Islander Liaison Officers are appointed in each Regional Council. If this officer believes that a voter at a Regional Council election is not an Aboriginal or Torres Strait Islander person, they can object to the vote. This decision can be appealed to a Senior Liaison Officer within seven days (Australian Electoral Commission, 1996:9).

In 1996, two people lodged a petition in the Federal Court challenging the qualification of eleven candidates to stand for election to the Tasmanian ATSIC Regional Council on the ground that the candidates were not Aboriginal people.

The Federal Court handed down a decision in April 1998. Of the eleven candidates petitioned against, the petitioners were able to disprove the Aboriginality of only two. The Court concluded that the process by which an Aboriginal person acquires and develops Aboriginal identity is, inherently, a process personal to each individual, involving interaction between descent, self-identification and communal identification (Goodrick correspondence, Legal Branch, ATSIC, Canberra, 3 November 1998).

## **2.6.2 ABORIGINAL LAND COUNCILS**

One of the aims of the NSW *Aboriginal Land Rights Act* (1983) was to compensate Aboriginal people for the past dispossession of their land. The Act established Aboriginal land councils to acquire, manage and develop land to meet the social, spiritual and economic needs of Aboriginal people in NSW. Land Councils are organised into three tiers: the NSW Aboriginal Land Council; 11 Regional Aboriginal Land Councils and 118 Local Aboriginal Land Councils (Correspondence, Lester, NSW Aboriginal Land Council, 22 November 1998)



- **The NSW Aboriginal Land Council**

The NSW Aboriginal Land Council is the head office of the organisation, based in Sydney. Its primary function is to oversee the running of all Aboriginal land councils in NSW. It comprises 13 councillors who are elected by members of local Aboriginal land councils across NSW.

The Act also established the NSW Aboriginal Land Council Account into which is paid an equivalent to 7.5% of the NSW land tax each year. Fifty per cent of this money is invested while the remaining funds are used to run the Aboriginal land councils. The Act included a sunset clause which states that government funding for the NSW Aboriginal Land Council will cease at the end of 1998.

- **Regional Aboriginal Land Councils**

Regional Aboriginal Land Councils are designed to play an advisory role in the management of the land council network and do not have authority over any Local Land Councils. Each Regional Council is made up of representatives elected by the Local Aboriginal Land Councils in a particular region.

- **Local Aboriginal Land Councils**

Local Aboriginal Land Councils work for their members and the wider Aboriginal community in their local area. Some of the matters they work on include housing, legal and employment issues. The number of Local Land Councils within a region varies, depending on the size of the regional area and ranges from 3 to 16. There are currently 120 Local Aboriginal Land Councils.

- **The Electoral Process**

Each Local Aboriginal Land Council maintains a roll of adult members. Membership of Local Councils is open to all adult Aboriginal people who resides in the area or are accepted as having an association with that area.

Members of Local Land Councils elect their own office bearers and their regional representatives. Every four years they also elect a councillor to the NSW Aboriginal Land Council. These elections are conducted by the NSW Electoral Commission.

The Independent Commission against Corruption conducted an inquiry into Aboriginal Land Councils in NSW between 1994 to 1998. A significant number of complaints to the Commission related to concerns about the integrity of the electoral rolls kept by Local Land Councils and the election of office bearers. The Commission made several recommendations to revise the procedure for membership applications and the keeping of electoral rolls by Local Land Councils (ICAC, 1998:9).

### **2.6.3 NSW ABORIGINAL REFERENCE GROUP**

The Aboriginal Reference Group was established in 1997 to provide a permanent forum for advice between Government and Aboriginal people on policies and programs which affect them. Membership of the Group includes representatives of State-wide Aboriginal consultative and representative bodies including: the NSW Aboriginal Land Council, ATSIC, the Aboriginal Health Resources Committee, Aboriginal Education Consultative Group and the Aboriginal Justice Advisory Committee. The current Chair is Mr Sol Bellear (Scott evidence, 26 September 1997).