PARLIAMENT OF NEW SOUTH WALES LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

ENHANCING ABORIGINAL POLITICAL REPRESENTATION

INQUIRY INTO

DEDICATED SEATS IN THE NEW SOUTH WALES PARLIAMENT

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TERMS OF REFERENCE

That the Standing Committee on Social Issues inquire into, and report on, the provision of legislation for dedicated Aboriginal seats in the Parliament of New South Wales.

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CHAIR'S FOREWORD

The New South Wales Parliament has yet to have an Aboriginal member. This situation and the broader issue of Aboriginal representation in the political process has been examined by the Standing Committee on Social Issues and this Report represents our findings. As Chair of the Social Issues Committee there are a number of people I would like to thank for the contribution they made to this Inquiry.

From the outset Committee Members have been committed to ensuring that consultation with members of the Aboriginal and wider communities would be a key element in the inquiry process. Therefore, in addition to inviting written submissions and calling witnesses, the Committee decided to conduct a series of consultation meetings in nine regional centres across the State. This was the first time the Social Issues Committee has taken such an approach as part of an Inquiry and it proved to be most successful. I am especially grateful to all members of the public who presented their views at these consultation meetings, made written submissions to the Committee or presented formal evidence. Their ideas and suggestions are an integral part of this Report.

In March 1998, the Committee launched an information brochure used extensively throughout the consultation process at the Eora Centre for Aboriginal Studies in Redfern. We are grateful to the people who assisted on this day: the Hon Jeff Shaw, MLC, Attorney General and Minister for Industrial Relations; Ms Millie Ingram from the Wiradjuri NSW Land Council and musician and activist Mr Peter Garrett. I would also like to thank Mr Peter Moss and Ms Alison Utley from *Campaign City* who were responsible for the design and production of the consultation brochure.

The Committee engaged consultants Ms Shelley Reys, from Arrilla Aboriginal Training and Development, and Mr John Telford, from Glencoe Consulting, to assist in conducting the community consultations. Their advice and assistance in planning and facilitating the meetings was invaluable. The Committee would like to thank them for sharing their knowledge and extensive experience. Mr Bill Norris had the daunting task of recording the community meetings. He provided full and accurate transcripts of the diverse views expressed at these meetings and we appreciated the care he took in this task.

There was considerable change in the Committee's membership during the Inquiry. The Hon Ann Symonds, MLC, one of the Committee's original Members and Chair for the past three years, retired and I assumed the chair. At the same time, the Hon Dorothy Isaksen, MLC was replaced by the Hon Carmel Tebbutt, MLC. The Hon Elisabeth Kirkby, MLC, another longstanding member of this Committee, also retired. Her place was taken by the Hon Dr Arthur Chesterfield-Evans, MLC. I would like to thank all Committee Members, both past and present, for the commitment they demonstrated throughout this Inquiry.

A number of officers of the Legislative Council provided advice to the Committee and the Secretariat during the course of this Inquiry and I would like to acknowledge their input: Mr John Evans, Clerk of the Parliaments, provided constructive feedback on the consultation brochure and on the chapter in the Report dealing with the legal and constitutional implications of dedicated seats; Ms Velia Mignacca also made significant editorial comments on the legal chapter; Mr Warren Cahill, Usher of the Black Rod and Clerk Assistant - Committees, gave the Committee procedural advice regarding the conduct and status of the consultation meetings and secured an advice from the NSW Crown Solicitor on relevant legal issues; and Ms Fiona Pacey and Ms Rosa Lozusic acted as facilitators at the rural community meetings.

Finally, I would like to thank the Committee's Secretariat staff: Dr Jenny Knight, the Committee Director, provided executive support to the Committee, participated in the consultation meetings and edited and proof-read the final Report; Mr Glen Baird undertook background research and prepared the Issues Paper which has been a valuable resource throughout the Inquiry; Ms Anita Tang, a Senior Project Officer seconded to work with the Committee on a separate Inquiry, helped to facilitate at two community meetings; and Ms Gro Frølund, a student volunteer, assisted at several workshops and provided research assistance on the final Report.

Special thanks are due to the Secretariat's Committee Officer, Ms Heather Crichton. Heather was primarily responsible for coordinating the community consultation meetings in nine different locations across NSW. The smooth running of each consultation was a direct result of her attention to detail and organisational abilities. Ms Crichton also processed submissions, arranged hearings and prepared the final Report for printing.

Senior Project Officers, Ms Beverly Duffy and Ms Julie Langsworth, were jointly responsible for the day-to-day management of this Inquiry as well as providing the overall direction. Their tasks included producing the consultation brochure, organising the hearings and facilitating at the community meetings, undertaking research and writing the final Report. Throughout the Inquiry, both displayed sound judgement, articulate and intelligent direction and a sensitivity towards Aboriginal issues. Ms Duffy was initially responsible for the Inquiry and her clear focus on the issues gave the Inquiry process the structure it needed including the concept of community consultations and the brochure.

I commend this Report to the Government.

JAN BURNSWOODS, MLC

CHAIR

EXECUTIVE SUMMARY

There has never been an Aboriginal person elected to the NSW Parliament.

The Committee asserts that a just and equitable society requires the involvement and active participation of all sectors in the decision-making processes which affect their individual lives and communities. The Committee also recognises the special status that Aboriginal people hold in our society as the descendants of the original inhabitants and that special measures are warranted to ensure that they are able to fulfil their democratic expectations and exercise their rights without inhibition.

The Legislative Council directed the Standing Committee on Social Issues to investigate the desirability of enacting legislation to introduce dedicated Aboriginal seats to the NSW Parliament.

In the first phase of the Inquiry, the Committee investigated how certain other jurisdictions provide parliamentary representation for indigenous or ethnic groups. During 1996, two Members of the Committee and a representative of the Secretariat conducted a study tour of Norway, Canada, the United States and New Zealand. In April 1997, the Committee published an Issues Paper which summarised the information gathered during the study tour.

This final Report, *Enhancing Aboriginal Political Representation*, is the result of the Committee's full Inquiry and it includes information from the study tour, submissions, oral evidence, and the community consultations. The Report has two parts: Part One (Chapters 1-3) includes background material relevant to the Committee's Inquiry; Part Two (Chapters 4-10) distills and discusses the feedback received by the Committee about aspects of Aboriginal representation.

During the course of the Inquiry, the Committee took evidence from 19 witnesses on the legal, constitutional and political implications of dedicated Aboriginal seats. Evidence was taken from the key indigenous organisations including representatives from the Aboriginal and Torres Strait Islander Commission (ATSIC) and the NSW Aboriginal Land Council. In addition, Committee Members heard from authorities on the law and the NSW Constitution, a political scientist, an Aboriginal member of local government, the Australian Electoral Commission and representatives from five NSW political parties.

In all, the Committee received 40 submissions. Eight were from representative Aboriginal organisations and other relevant agencies or groups interested in Aboriginal affairs. The majority of the other submissions came from individuals.

In an attempt to facilitate public participation in the Inquiry, the Committee conducted a series of consultation meetings across the State. Approximately 415 people attended these meetings which were held in Redfern, Parramatta, Armidale, Moree, Wagga Wagga, Lismore, Batemans Bay, Coffs Harbour and Dubbo. At each meeting participants were asked to consider the arguments for and against dedicated seats, how dedicated seats could work in practice and other options to improve Aboriginal representation.

This is the first time the Standing Committee on Social Issues has conducted such a consultation process. The consultations enabled Committee Members to hear directly from members of Aboriginal and non-Aboriginal communities and provided an opportunity for indigenous and non-indigenous people to debate the issues of Aboriginal political participation and reconciliation. Many Aboriginal participants expressed a strong desire to play a more active role in the political process in this State.

The Committee found significant support and enthusiasm for the concept of dedicated seats among the Aboriginal and non-Aboriginal people who attended the consultation meetings and from the key representative Aboriginal organisations in NSW. However, there was little agreement on the mechanics of dedicated seats, such as the appropriate number of seats, how candidates should be elected and in which House they should be located. The lack of a clearly defined proposal for dedicated seats made it difficult for some people who participated to declare their support for the concept.

The details of implementing dedicated seats for Aboriginal people are not widely appreciated and the processes for election together with the political implications involve complex issues. Sufficient time could not be made available to fully explain and discuss these issues during the consultative meetings and the Committee recognises that consensus was unlikely to be reached in these circumstances. On many occasions Aboriginal people suggested that they should have been involved in formulating the proposals before consultations were undertaken.

The evidence presented to this Inquiry clearly demonstrates that Aboriginal people are under-represented at all levels of government, notwithstanding the election of several NSW Aboriginal people to local government in recent years and the election of a NSW Aboriginal person to the federal Senate in 1998. The conclusions to this Inquiry seek to provide ways to enhance Aboriginal participation in the political process, both as political representatives and as voters. The Committee believes that a just and equitable society requires the representation of indigenous people in the NSW Parliament.

CONCLUSIONS

CONCLUSION ONE

The Committee considers that the following steps must be taken before dedicated seats could be introduced:

- further consultation with Aboriginal people about how dedicated seats would operate;
- the conduct of an education campaign about dedicated Aboriginal seats, which involves individual Members of Parliament, political parties and the community;
- an assessment of the level of support for dedicated seats in the existing political parties and the community; and
- the development of a proposal for dedicated seats and its adoption by the people of NSW at a referendum.

These steps pose formidable challenges to the advocates of dedicated seats. The Committee is firmly convinced that Aboriginal people should formulate the initiatives to improve Aboriginal representation and believes that the establishment of an Aboriginal Assembly should be considered, as an interim measure, by the Aboriginal community.

CONCLUSION TWO

The Government Members of the Committee believe that an Aboriginal Assembly to meet in the NSW Parliament should be established as an interim measure to further Aboriginal representation at all levels of government. The Assembly should be guided by a formal Charter and be adequately resourced. The Assembly should only be established if it has significant support from the Aboriginal community in NSW.

Other Members of the Committee do not support the establishment of an Aboriginal Assembly at this stage.

CONCLUSION THREE

A majority of Members of the Committee concluded that every political party represented in the NSW Parliament should be asked to develop an action plan by March 2000. This plan could detail the steps the party might take to encourage Aboriginal participation, including the methods to encourage Aboriginal people to join their party, participate in committees and policy development, stand as candidates for winnable seats and gain employment as support staff to sitting members of Parliament.

Each party could be invited to make an annual report to the NSW Parliament on the progress of their action plan.

The other Members of the Committee believe that the political parties could do more to encourage Aboriginal participation and seek their commitment to improve this situation.

CONCLUSION FOUR

The Committee supports the Local Government Aboriginal Mentoring program and considers that, if the foreshadowed evaluation shows that mentoring is effective in encouraging Aboriginal people to serve in Local Government, the program should be extended to the elections in 2003.

CONCLUSION FIVE

The Committee urges the Minister for Aboriginal Affairs to request the federal Special Minister of State to reconsider funding an information and education program for indigenous people about the electoral system.

Part One
BACKGROUND TO THE INQUIRY

CHAPTER ONE
INTRODUCTION

1.1 THE TERMS OF REFERENCE

On 20 September 1995, the Hon Franca Arena, MLC, moved in the Legislative Council

That this House:

- Being the oldest Parliament in Australia and in the State which saw the landing of Captain Cook, notes that as we approach the 21st century there has never been an indigenous member of the Parliament.
- 2. Notes that the New Zealand Parliament has had a number of dedicated Maori seats since the 19th century.
- 3. Requests the State Government to consider legislation to ensure that a number of dedicated Aboriginal seats be set aside so that the voice of the first Australians can be heard in this Parliament, the mother of all Parliaments in Australia.
- 4. Considers this action essential:
 - (a) to address the injustices suffered by the indigenous people over the last 200 years and as a method of empowering Aboriginal Australians to influence and have control over their own destinies; and
 - (b) given the indifference of all political parties in preselecting candidates of Aboriginal background for election to the Legislative Council and Legislative Assembly.
- 5. Calls for this legislation to be introduced as soon as possible after this important issue is debated in this House.

The Hon James Samios, MLC subsequently moved that the question be amended by omitting paragraph 5 and inserting instead:

5. Refers the provision of legislation for dedicated Aboriginal seats in the Parliament of New South Wales to the Standing Committee on Social Issues for inquiry and report.

The amended motion was agreed to by the House. The insertion of the new paragraph five provides the Committee with its Terms of Reference, which are:

That the Standing Committee on Social Issues inquire into and report on the provision of legislation for dedicated Aboriginal seats in the Parliament of New South Wales.

1.2 **DEFINITIONS**

For the purposes of this Inquiry, the Committee defines dedicated seats as: one or more seats reserved in either House of the NSW Parliament for a particular group of people.

The Terms of Reference for this Inquiry do not include Torres Strait Islanders because, while they are indigenous to Australia, they are not indigenous to the geographic region of NSW.

1.3 THE ISSUES PAPER AND STUDY TOUR

In April 1997 the Committee published an Issues Paper titled *Aboriginal Representation in Parliament.* Most of the material in the paper was collected by the Committee during a study tour conducted in 1996 to examine indigenous representation in Norway, Canada, the United States and New Zealand. A small amount of the information in the Issues Paper is reproduced in the first part of this Report.

1.4 STRUCTURE OF THE REPORT

This Report has two parts, Part One: Background to the Inquiry and Part Two: The Inquiry Process. The first part of the Report, as the title implies, includes background material relevant to the Committee's Inquiry. **Chapter Two** includes a brief account of Aboriginal representation in Australian Parliaments and previous calls for dedicated Aboriginal seats. **Chapter Three** looks briefly at how other jurisdictions provide for the representation of indigenous people, including dedicated seats in New Zealand and the state of Maine in the United States and an indigenous assembly to represent the Sami people in Norway. This Chapter draws extensively on the the Issues Paper.

Part Two distills and discusses the feedback received by the Committee about aspects of Aboriginal representation during the Inquiry. **Chapter Four** describes the methods employed by the Committee to consult members of the Aboriginal and wider communities about indigenous representation, including formal evidence, written submissions and community meetings. **Chapter Five** is an overview of the evidence and submissions and **Chapter Six** summarises the main arguments for and against dedicated seats.

Chapter Seven examines some of the suggestions made in the evidence, submissions and community meetings about how dedicated seats could work in practice. For instance, how many seats, where they should be located and how the candidates should be elected. During its Inquiry the Committee sought feedback on ways to

improve Aboriginal representation, other than dedicated seats, for example, the establishment of an Aboriginal Assembly, non-voting seats and better representation in political parties. These options are discussed in **Chapter Eight. Chapter Nine** looks at legal and constitutional issues, including whether a referendum would be required to introduce dedicated seats. The Committee's conclusions are contained in **Chapter Ten.**

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).

INDIGENOUS REPRESENTATION:

A COMPARATIVE PERSPECTIVE

3.1 Introduction

Dedicated seats have been established for particular ethnic or indigenous groups in several countries including Lebanon, Fiji, Zimbabwe, Singapore and New Zealand. The state of Maine in the United States has also established dedicated seats for two Indian tribes, although the representatives in these seats do not have the right to vote. This Chapter briefly describes dedicated seats in New Zealand and Maine because electoral arrangements in these places are similar to those in NSW.

The establishment of indigenous parliaments, either as part of the existing political structure or as advisory bodies with control over certain areas is another way to enhance political representation for indigenous people. This Chapter also looks at how one country, Norway, has provided for representation for indigenous people at a national level through the establishment of an indigenous parliament. A participant at the consultation meeting in Redfern asked the Committee to investigate indigenous representation in Canada. A brief summary of the Committee's research on this issue is provided at Appendix One.

The material in this Chapter is a very brief summary of the information in the Issues Paper produced in 1997 for this Inquiry entitled, *Aboriginal Representation in Parliament*. Copies of the Issues Paper are available from the Committee Secretariat. Updated information about the Sami Assembly was obtained from the Norwegian Government's Internet site (www.ODIN.DEP.NO).

3.2 DEDICATED SEATS IN NEW ZEALAND

Dedicated Maori seats have existed in the New Zealand Parliament since 1867. The New Zealand Parliament is comprised of one House: the House of Representatives, which has approximately 120 members. There are currently fifteen Maori Members in the New Zealand Parliament, five of whom have been elected to dedicated seats.

The number of Maori seats was fixed at four from 1867 to 1996, regardless of the size of the Maori population. The number of dedicated seats increased to five after the introduction of the Mixed Member Proportional Representation electoral system when it was decided to base the number of seats on the size of the Maori electoral population.

3.2.1 THE MAORI ELECTORAL OPTION

Persons of Maori descent can choose whether they wish to vote for a member of Parliament elected to represent one of the Maori electorates or whether they wish to vote for a member of Parliament representing a general electorate. They can make this choice during a two-month period shortly after each five-yearly population census. This process is known as the Maori Electoral Option. A Maori Option card is sent to every

person who indicated they were of Maori descent when they registered to vote, allowing them to elect to change from one roll to the other. If the card is not returned, the voter remains on the roll on which they were last registered.

3.2.2 AN EVALUATION OF THE MAORI SEATS

Some commentators question the extent to which Maori interests have been furthered by the provision of dedicated seats. The 1986 Royal Commission into the New Zealand electoral system concluded that Maori seats had rarely given full effect to Maori concerns and that they may even reinforce their political dependence. Other limitations of the seats include:

- the small number of Maori MPs makes it difficult for them to scrutinise all relevant legislation resulting in some laws being passed which disadvantage Maori (Dibley, 1993:77);
- difficulties for Maori members representing their constituents due to the large size of their electorates; and
- the constraints of party allegiance, making it difficult to speak out strongly on Maori issues for fear of alienating the Pakeha (non-Maori) supporters of their party.

Despite the above limitations, Maori seats ensure a Maori voice is heard. Maori members in the dedicated seats can afford to devote themselves wholeheartedly to Maori issues, unlike Maori members who represent general electorates who have to be sensitive to the interests of the Pakeha majority.

In 1996 the Royal Commission on Electoral Reform recommended the abolition of the four Maori seats but Maori were successful in arguing against their abolition. These seats were found to have significant symbolic importance to many Maori and were widely supported, as one of the Select Committees to the Royal Commission discovered:

There is virtual unanimity in Maoridom regarding the need to retain the present four Maori seats (Electoral Reform Project Steering Committee, 1993:22).

3.3 DEDICATED REPRESENTATION IN MAINE, USA

The state of Maine in the United States provides representation for two of its largest tribes, the Penobscot and the Passamaquoddy. Each of these two tribes has a representative in the state legislature but the representatives do not have voting rights. These seats have existed in Maine in various forms since early last century.

The tribal delegates share many of the other privileges enjoyed by the 151 members of the state legislature. While they do not receive a salary, they are paid a daily rate for attending the House and they also receive the same allowances for meals, housing, constituent services and travel expenses as other members.

3.3.1 AN EVALUATION OF THE TRIBAL SEATS

There are mixed feelings about the effectiveness of the tribal seats in Maine. Some tribes and nations in the United States feel that participation in state legislatures by indigenous people compromises their sovereignty. It can be frustrating for the representatives to sit in the House and contribute to debate, but not be able to vote. Critics argue that non-voting is a way to keep the tribal representatives "in their place", making representation a half-way measure.

On a more positive note, tribal representatives have been able to educate other members and the community about tribal issues and have been able to incorporate aspects of tribal culture into the parliamentary process. Non-voting members have gained invaluable experience in politics and leadership. It is also argued that these representatives have been able to draw attention to important native issues through their work on committees.

3.4 THE SAMI ASSEMBLY IN NORWAY

3.4.1 THE SAMI

The Sami, formerly called the Lapps, are an indigenous minority group in Norway, Sweden, Finland and Russia. They have their own settlement areas, languages, culture and history. Today, approximately 70% (40,000 - 45,000) of the Sami people live in Norway, and are largely concentrated in Finnmark in the north of the country.

3.4.2 THE SAMI ASSEMBLY

In 1984, the Sami Rights Commission proposed that a Sami Assembly (the Sameting) be created. The *Sami Act* was subsequently passed in the Norwegian Parliament (the Storting) in 1987, and the structure, responsibilities and powers of the Sami Assembly were established. It was officially opened in 1989.

The Assembly consists of 39 members, with three members elected from each of the 13 constituencies which the country is divided into. Members are elected for a term of four years by direct ballot by Sami people registered on the Sami electoral register. Those entitled to register must 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. Eligible voters for the Sami Assembly also vote in elections for the Storting which are held on the same day. In other cases, election is by majority vote.

On average 75% of eligible Sami vote in elections, which is comparable to the turn-out for national elections but Sami organisations have conducted several education campaigns to ensure all eligible voters will participate in elections. In the recent 1997 elections, 72% (approximately 6,200 people) of the 8,600 enrolled Sami voted.

While mainstream political parties are represented in the Sami Assembly, the largest party is the Association of Norwegian Sami. The Sami Parliamentary Council – the "cabinet" of the Assembly – consists of the President, the Vice-President (the only full-time Assembly members) and three other members. Although these members have no official portfolios, issues such as education, fisheries, and reindeer husbandry are allocated informally.

The role of the Sami Assembly is two-fold. In addition to its role as a political institution, it is responsible for a number of cultural, linguistic and educational programs which are managed through four councils within the Assembly: the Sami Heritage Council, the Sami Language Council, the Sami Cultural Council and the Sami Development Fund. A Sami Educational Council is also planned.

The Assembly meets four times a year for one week at a time. The budget for the Assembly and its activities is allocated each year by the Norwegian government which grants most of the funds for specific programs. This dependence limits the freedom of the Assembly to develop new initiatives and gain appropriate funding.

The Assembly reports each year to the Storting. The reports cover different issues of importance and recommends action. The Storting discuss the report, and may respond by introducing legislation, allocating resources or through other political action, but there is no obligation on the government to respond. In addition, every four years the government publishes a White Paper on Sami policy, which is discussed in both the Storting and Sami Assembly, and the views of members of the Sami Assembly may be taken into account.

3.4.3 AN EVALUATION OF THE SAMI ASSEMBLY

The achievements of the Sami Assembly are difficult to assess as it is a relatively new institution. However, commentators suggest the Assembly has contributed towards the unification of the Sami community as well as raising the political profile of the Sami in the broader community.

The provision of an annual report from the Assembly to the Norwegian Parliament enables the formulation of a fully developed Sami policy on major issues affecting the Sami people. While the government is not required to respond to the report, the issues raised have often created the impetus for action – particularly in relation to cultural and linguistic preservation. The Assembly has had less impact on issues such as land and water rights, and self-determination in health and education. In short, the existence of

the Sami Assembly means that Sami interests can no longer be ignored or dismissed in Norway.

3.5 CONCLUSION

The Committee recognises that it is difficult to make direct comparisons between the indigenous peoples or governmental systems of various nations. Nevertheless, overseas examples provide a useful basis from which to explore the question of dedicated representation in the Australian context.

Part Two
THE INQUIRY PROCESS

CHAPTER FOUR
METHODOLOGY

4.1 Introduction

This Chapter describes the methods employed by the Committee to consult members of the Aboriginal and wider communities about dedicated seats for Aboriginal people.

The usual way for a parliamentary committee to canvass community opinion is to call for written submissions and to invite individuals to provide oral evidence at public hearings. Both methods were employed by the Committee for this Inquiry. In addition, because it wanted to hear a wide range of views on this issue, the Committee conducted a series of consultation meetings across the State. This allowed members to hear the views of people in a familiar and non-threatening environment and to ensure the voices of people in rural communities, including members of grassroots Aboriginal communities, were heard. More than 400 people attended the community meetings.

The information generated by the call for submissions, public hearings and community consultation meetings are reported in Chapters Five to Nine.

4.2 CALL FOR SUBMISSIONS AND THE ISSUES PAPER

In April 1997 the Committee published an Issues Paper titled *Aboriginal Representation in Parliament*. The paper includes information about measures to allow for, or improve, indigenous representation in Norway, Canada, the United States and New Zealand and gives an historical overview of Aboriginal representation in Australia.

The paper was sent to more than 600 indigenous and non-indigenous organisations and individuals, to generate interest in the Inquiry and to assist people to make a written submission. In April 1997, the Inquiry's Terms of Reference were advertised in the major metropolitan newspapers and the *Koori Mail*, with an invitation to make a written submission to the Committee.

The Committee received a total of 40 submissions. More than two-thirds of the submissions were from individuals and less than one-third from organisations and agencies, including the NSW Department of Aboriginal Affairs, the Aboriginal and Torres Strait Islander Commission and the Council for Aboriginal Reconciliation. A list of people and organisations who provided submissions is included in Appendix Two. Chapter Five includes a summary of the views on dedicated seats presented in the submissions and evidence.

4.3 Public Hearings

During the course of the Inquiry the Committee heard formal evidence from 19 witnesses, including academics and representatives of Aboriginal organisations and political parties Appendix Three is a list of witnesses who appeared before the Committee.

4.4 THE CONSULTATION MEETINGS

Nine consultation meetings were held between March and September 1998 in Redfern, Parramatta, Armidale, Moree, Lismore, Wagga Wagga, Batemans Bay, Coffs Harbour and Dubbo. These areas were selected to ensure that as many people as possible would have an opportunity to express their views to the Committee. Due to the lack of a quorum in Wagga Wagga, the meeting was considered to be a "briefing", rather than a formally constituted meeting of the Committee.

The meetings were held in well known and convenient locations, usually the local services club or community centre. Participants were invited to join the Committee members for lunch and morning and afternoon tea.

Approximately 415 people attended the consultation meetings, an average of 46 people per location. There were three participants at the smallest meeting and 65 at the largest meeting (some people did not stay for the whole day, while others joined the meeting at different times throughout the day). The proportion of Aboriginal people in attendance at the meetings comprised approximately one-half to three-quarters of the total number of participants. A list of the locations, venues and dates for each of the consultation meetings is provided at Appendix Four.

4.4.1 THE LAUNCH

The first consultation meeting in Redfern in March 1998 was also the formal "launch" of the consultation process and the consultation brochure (see below). The official guests at the launch included the Attorney General, the Hon Jeff Shaw, MLC, Ms Millie Ingram, Councillor for the Wiradjuri NSW Land Council and musician and activist, Mr Peter Garrett. This event received considerable electronic and print media coverage.

4.4.2 THE PROJECT CONSULTANTS

The Committee contracted two consultants to help plan and conduct the consultation meetings: Shelley Reys from Arrilla Aboriginal Training and Development and Mr John Telford of Glencoe Consulting. The consultants were selected because of their extensive project experience in indigenous affairs and community consultation.

4.4.3 THE CONSULTATION BROCHURE

To assist with the consultation process, the Committee produced an eight-page information brochure with details on the workings of the NSW Parliament, arguments for and against dedicated seats, how dedicated seats could work in practice and other options to increase Aboriginal representation. The purpose of the brochure was to guide discussion at the consultation meetings. The brochure was designed by *Campaign City*. A copy is included at Appendix Five.

4.4.4 Invitations to Attend the Meetings

The following steps were taken before each consultation meeting to encourage participation:

Direct Mail Campaign

An invitation to attend the meeting was sent to a selection of individuals and organisations listed in the relevant community services directory produced by the local council or shire. Invitations were also sent to a proportion of people on the project consultants' mailing list. Between 150 to 200 invitations were sent at least three weeks before each consultation. Invitees were encouraged to tell their friends and colleagues about the meeting and to display a flier about the meeting in an appropriate location. The local State and Federal Members of Parliament were also invited to attend.

Personal Contact before the Meetings

For every meeting, except Lismore and Moree, the project consultants arrived the day before to encourage members of the Aboriginal community to attend the consultation. This was not possible in Lismore because a public holiday preceded the consultation and so the consultants made contact with key people by telephone and fax a few days earlier.

Using the Media

All of the consultation meetings were advertised in the *Koori Mail* and local newspapers approximately two weeks before the scheduled date and a media release was sent to the local print and electronic media outlets approximately one week before each meeting.

4.4.5 THE MEETING FORMAT

Steps to Keep the Meetings Informal

The Committee was keen to make the meetings as informal as possible to encourage participants to express their opinions freely and openly. It was felt that some of the formal procedures required at public hearings should be avoided, such as serving witnesses with a summons and requiring them to swear an oath or affirmation.

The Committee was concerned that, by dispensing with such procedures, participants may not enjoy the same "parliamentary privilege" afforded to individual witnesses sworn under an oath. Parliamentary privilege means that no one can take legal action against a witness in relation to anything they may say during the course of a public hearing.

The Committee sought clarification of this issue from the Clerk Assistant-Committees and Usher of the Black Rod, Legislative Council, NSW Parliament. He advised that:

To ensure that participants at the community consultations...enjoy the same legal protection afforded to individual witnesses sworn and under oath the committee should ensure that it is at all times properly constituted and treats the procedural rules for committee meetings with strict compliance (Cahill correspondence, 24 February 1998).

The Meeting Structure

Most of the consultation meetings commenced at approximately 10.00 am and finished at 5.00 pm. The meeting in Parramatta was held in the evening to make it easier for people who work during the day to attend. Where possible, each meeting started with a "welcome to the land" presented by a representative of the local Aboriginal community. The meetings at Armidale and Moree included a separate one-hour information session the night before the consultation meeting. The aim of this session was to give participants an opportunity to meet Committee members and find out more about the Inquiry. In the final five meetings, this session was held at the beginning of each meeting, rather than as a separate session so that participants did not have to attend two separate events.

At each meeting the participants were divided into groups of approximately equal numbers on three different occasions to discuss the following issues: the advantages and disadvantages of dedicated seats; the "mechanics" of dedicated seats; and other options to increase Aboriginal representation. A plenary session was held after each of the three "workshops" to allow a representative of each group to report the outcomes of their discussion and for participants to comment on some of the issues raised by other groups.

At the Armidale and Moree consultations separate meetings were held for Aboriginal and non-Aboriginal participants. This was because the Committee was advised by the project consultants that this would be more conducive to frank and open discussion. It would also make it possible to delineate between indigenous and non-indigenous responses in the report of the consultation meetings.

This approach was revised after the Armidale and Moree meetings when some participants expressed their opposition to separate groups. It was felt that, in the spirit of reconciliation, it was important for Aboriginal and non-Aboriginal people to listen to each other's viewpoints on such an important issue. Subsequent meetings were open to Aboriginal and non-Aboriginal people, although participants could opt to have separate small group discussions.

4.4.6 RECORDING THE PROCEEDINGS

Given the discussion-style format of the consultation meetings, making an accurate record of the proceedings was a particular challenge. Rather than attempting to record every word said during the day, Hansard recorded the plenary sessions that followed each workshop. It was felt that this would give a reasonable indication of the views expressed during the day.

One of the major challenges posed by the combined consultation meetings was whether to record if a particular speaker was indigenous. Participants were asked if they wanted Hansard to record whether they were Aboriginal or non-Aboriginal. In some instances they did not want this information recorded. For this reason, the Committee decided not to identify whether a person was Aboriginal or non-Aboriginal in the final Report. The summaries of each community consultation can be found at Appendix Six. The progress reports from Arrilla, the projects consultants are found at Appendix Seven.

4.5 OBSERVATIONS ABOUT THE CONSULTATION MEETINGS

Several participants at the meetings were critical of aspects of the consultation process for this Inquiry. Concern was expressed that Aboriginal people were not more closely involved in the consultation process:

the process needs to be driven by the Aboriginal people. We don't want the government saying this is what is going to be done; we want the Aboriginal people coming forward and saying, "This is our preferred option. How can we process this through?" (Stride evidence, Coffs Harbour).

Other participants were frustrated by the limited amount of time available to debate such complex issues and the lack of opportunity to take the issues back to their communities for more discussion:

An important part of working these things through is to be able to talk about the issues, go away, come back again another time, give people some time to chew the thoughts over in their heads, and then come back and talk it over again. It does not happen in the space of a one-day workshop (Layton evidence, Coffs Harbour);

we are only a small number of locals from our community. So this is not viewed as the opinion of the 7,000 people here in Dubbo. It would not be right if it were viewed as full consultation involving the Koori community when there is such a small number of people here (Lancaster evidence, Dubbo).

Others were frustrated by the tendency for Aboriginal communities to be "overconsulted", especially when this consultation does not lead to any positive outcomes:

...at the community end we receive so many requests to give feedback and input to one inquiry after another (Layton evidence, Coffs Harbour);

I am sick of seeing meeting after meeting where it just ends up nowhere (Kennedy evidence, Batemans Bay).

Despite the above concerns, many participants were pleased to have an opportunity to participate in the Inquiry as demonstrated in Wagga Wagga:

on behalf of the people here we really do appreciate the fact that you took the time and trouble to come and visit Wagga Wagga...because from my experience anyway it was really worthwhile. I have been a bit critical of politicians and political parties but this is part of the political process too and it clearly has worked very well (Matthews briefing, Wagga Wagga).

4.6 CONCLUSION

The Committee acknowledges there were limitations in the conduct of the community consultation meetings as noted by some of the participants quoted above. Nevertheless, it considers that the consultations provided valuable feedback from the Aboriginal and wider communities about ways to enhance indigenous political representation. This feedback is an integral part of the Inquiry's final Report.

AN OVERVIEW OF THE EVIDENCE AND SUBMISSIONS

5.1 Introduction

The following Chapter summarises the position on dedicated seats taken by individuals and organisations in the submissions, evidence and consultation meetings.

5.2 THE SUBMISSIONS

The Committee received a total of 40 submissions. The majority of these were from individuals. Eight submissions were from Aboriginal representative organisations or groups interested in Aboriginal affairs.

5.2.1 SUPPORT FOR DEDICATED SEATS

Of the 40 submissions received, seven supported the establishment of dedicated seats. In its submission, the NSW Aboriginal Reference Group suggested that dedicated seats would give Aboriginal people an opportunity to play a more inclusive role in state politics and would also demonstrate a clear commitment by the State Government to the notion of self-determination for Aboriginal people in NSW (Submission 23).

in her submission, Ms Shirley Prout argued that it is a "critical part of equity and reconciliation that Australian Aborigines have representatives in all three tiers of government in all states and territories (Submission 5). The NSW Aboriginal Land Council noted that:

Rather than reducing the status and power of existing Indigenous organisations... Aboriginal representatives in Parliaments could enhance and expand the influence and powers of these organisations (Submission 22).

Mr Ray Leslie's support for dedicated seats stems from his understanding of the barriers Aboriginal people confront in seeking election through mainstream processes. These barriers include the difficulties of being endorsed by a major political party, the cost of running a good campaign and negative media coverage (Submission 12).

In their submission, the elected representatives of ATSIC and the Land Councils in NSW indicated:

general support for the concept of dedicated seats in Parliament, but is not able, at this stage, to be specific about numbers, boundaries or which House(s) (Submission 17).

5.2.2 THE MECHANICS OF DEDICATED SEATS

Only four of the seven submissions that supported dedicated seats offered

suggestions as to how the seats could be established. These include the NSW Aboriginal Reference Group, NSW Aboriginal Land Council, the elected representatives of ATSIC and the Land Councils in NSW and Australians Against Racism. While these submissions discussed the possible "mechanics" of dedicated seats, their authors stress that the specific details should be developed in consultation with Aboriginal people.

5.2.3 OPPOSITION TO DEDICATED SEATS

Twenty of the 40 submissions opposed dedicated seats. Most of these submissions were from individuals and their opposition was based on a perception that dedicated seats are undemocratic:

As we all know, Western parliamentary democracy means one man one vote...The system of guaranteed seats will open the floodgate of unfairness, especially to every other minority populations in NSW...but not be able to compensate the Aboriginals who have been suffering from the European colonisation and its impact (Submission 9).

A smaller number of people were opposed because they consider dedicated seats may be patronising to Aboriginal people or because they think it would be better for Aboriginal people to be elected to Parliament through the usual processes. John Ah Kit, an Aboriginal Member of the Northern Territory Legislative Assembly, argued that dedicated seats were:

a form of tokenism that would permanently lock indigenous people into a minority and would be perceived as a form of "special treatment" for indigenous people that would do little to legitimise our role in the political process (Submission 10).

5.2.4 No Position on Dedicated Seats

Thirteen of the submissions either did not include a stated position on dedicated seats or their position was unclear.

In his submission to the Inquiry, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, said he did not want to endorse a particular resolution to the "narrow question" of whether there should be separate seats for Aboriginal people in the NSW Parliament. He suggested that a "package of measures" may be the only way to acknowledge and protect the rights of Aboriginal peoples and that "it is unlikely that any one solution will be workable or provide adequate protection". He urged the Committee to ensure that guaranteed representation was not seen as a substitute for other mechanisms to increase self determination for indigenous people (Submission 24).

While Mr Dodson did not declare his support for dedicated seats in his submission, he suggested several "propositions" in the event that dedicated seats were introduced and these are mentioned to in Chapter Seven.

The NSW Department of Aboriginal Affairs sees its role as facilitating community consultation rather than taking a stance on the issue of dedicated seats. Nevertheless, the Department's submission outlined several options and issues to be considered if dedicated seats were introduced (Submission 21).

The Council for Aboriginal Reconciliation argued that dedicated seats should only proceed with the support of the majority of the Aboriginal and Torres Strait Islander community and the wider community in NSW and that:

...this support should be based upon an understanding of all the relevant issues gained from a public educational campaign run and funded by the New South Wales Government (Submission 25).

David Pross, Chairperson of the Ngaimpe Aboriginal Corporation and Sally Jope, Service Development Officer from the Information, Training Action Centre in Wyong, questioned the likely effectiveness of a small number of dedicated indigenous seats in a majority non-indigenous Parliament, given the diversity of interests of indigenous people across the State (Submission 16).

While sympathetic to the idea of dedicated Aboriginal seats, Professor Garth Nettheim, did not indicate support for, or opposition to, dedicated seats in his submission because he felt "answers should best come from indigenous peoples" (Submission 26).

While there may be some possible advantages in having dedicated Aboriginal seat, Michael Mansell from the Australian Provisional Government, argues there are more effective ways for Aboriginal people to gain access to political power, such as empowering Aboriginal people at the community level (Submission 40).

5.3 THE EVIDENCE

Nineteen witnesses appeared before the Committee to give formal evidence, including legal academics, a political scientist, an Aboriginal member of local government as well as representatives of indigenous organisations, the major political parties and the Australian Electoral Commission. Only three of these witnesses made a formal submission to the Inquiry: Professor Nettheim, the NSW Department of Aboriginal Affairs and the NSW Aboriginal Land Council.

Not all of the witnesses who appeared before the Committee were asked if they support dedicated seats. Certain witnesses were called to provide background information only to the Committee. However, this question was directed to Pat Dixon, the Deputy Mayor

of Armidale City Council, as well as the representatives of the major political parties in the NSW Parliament.

Pat Dixon supported the provision of dedicated seats but said she would like to see Aboriginal candidates being elected in the usual way (Dixon evidence, 13 October 1998). Ms Dixon also told the Committee that, while ATSIC and the Aboriginal Land Councils generally support dedicated seats, many Aboriginal people are not aware of the option and need to be consulted.

5.3.1 THE POLITICAL PARTIES

There was little support from the major political parties in the NSW Parliament for the introduction of dedicated seats. None of the parties have a formal policy regarding dedicated seats, but all, with the exception of the NSW Division of the Australian Democrats, indicated their party was unlikely to support such an initiative.

David Mendelssohn, President of the NSW Division of the Australian Democrats, said his party would support dedicated seats if it could be shown that this would further selfdetermination for indigenous people, but:

whether it promotes these objectives would depend to some extent on how it is done (Mendelssohn evidence, 19 August 1998).

5.4 THE CONSULTATION MEETINGS

The majority of participants at the consultation meetings supported the introduction of dedicated Aboriginal seats. The Committee heard in Lismore, for example, that:

It is only through decent, informed debate that you will realise, as a member of the NSW community, that the advantages of this far outweigh the disadvantages...All I am saying is that...the arguments for far outweigh the arguments against. The time is right. (Hegadus evidence, Lismore).

For some participants, their support was conditional on the involvement of Aboriginal people in the development of the particular model adopted. Support was generally greater in the rural and regional areas than the Sydney metropolitan region. This is not to say that participants were unaware of the possible limitations of dedicated seats, especially if there are only one or two of them:

can you imagine the pressure, not only from the Aboriginal community but the wider community, for that person to deliver all for all people? (McPherson briefing, Wagga Wagga).

THE ARGUMENTS FOR AND AGAINST DEDICATED SEATS

6.1 Introduction

This Chapter examines some of the arguments for and against the establishment of dedicated seats in the NSW Parliament.

The Inquiry was presented with a range of views on the benefits of dedicated seats for Aboriginal people and for the wider community. Some people pointed to the symbolic significance of dedicated seats. It was suggested that the initiative would be a recognition of Aboriginal people as the original owners of Australia. Other evidence suggested that dedicated seats could allow Aboriginal people to influence and contribute to legislation and policy on issues affecting Aboriginal people.

There were also a range of views presented on the arguments against the establishment of dedicated seats. These arguments included the lack of power of an Aboriginal dedicated seat and the pressure on candidates to represent the diversity of Aboriginal issues. This Chapter also discusses the suggestion that dedicated seats are undemocratic and may create a backlash and potential division between Aboriginal and non-Aboriginal people.

6.2 ARGUMENTS FOR DEDICATED SEATS

6.2.1 RECOGNITION OF ABORIGINAL PEOPLE AS THE ORIGINAL OWNERS OF AUSTRALIA

For many people giving evidence to the Inquiry, dedicated seats would have significant symbolic value. The majority of people at the community consultations suggested that dedicated seats would be an acknowledgment of Aboriginal people as the original owners of Australia. Many participants felt that political representation of Aboriginal people was a moral issue. One group at Lismore argued that "morally and ethically, this is a positive initiative" (Reys evidence, Lismore). At Armidale, Dr Dan Naidoo said:

It is for the Australian population to be convinced morally that years of colonialism have placed our indigenous people at a great disadvantage (Naidoo evidence, Armidale).

Mr Roy Kennedy made a similar point at the Batemans Bay meeting, suggesting that dedicated seats "could be a way of demonstrating compassion to Aboriginal people" (Kennedy evidence, Batemans Bay).

In evidence to the Committee, John Waugh, Lecturer in Law, suggested that if the Parliament moved to create dedicated seats for Aboriginal people, arguments in support of the initiatives at a referendum would be to "stress the unique historical position of indigenous people, the effect of colonialisation (and) the absence of a treaty" (Waugh evidence, 27 October 1998).

The Committee also received some evidence in support of dedicated seats as an appropriate measure in response to the reconciliation process. The NSW Aboriginal Land Council considered that Australia's Aboriginal people possess sovereign rights as "First Nation Peoples" and argued that dedicated seats would not only include Aboriginal people in decision-making processes, but also contribute to "the ongoing education processes necessary for reconciliation" (Submission 22). Several participants at the Coffs Harbour meeting suggested that dedicated seats would "represent a true measure of reconciliation" (Lovelock evidence, Coffs Harbour).

6.2.2 INDIGENOUS PEOPLE HAVE DISTINCT RIGHTS OVER OTHER GROUPS

The Committee was told that the claims of Aboriginal people to dedicated seats could not be compared to other ethnic and minority groups in the New South Wales community. Some of the evidence suggested that, while sections of the community may argue against dedicated seats on the basis that other groups would demand seats, Aboriginal people have a unique status as the original owners of Australia.

The NSW Aboriginal Land Council believed that as the original owners of Australia, Aboriginal people have distinct rights compared to those possessed by other "minority groups":

This distinction has been recognised within the structure of the United Nations for decades, leading to the creation of different institutional structures for Indigenous Peoples, as well as negotiation of different legal instruments for them ... (Submission 22).

Dr James Jupp, Director of the Centre for Immigration and Multicultural Studies at the ANU, told the Committee that Aboriginal people have always been treated both legally and administratively as a "distinct entity". Dr Jupp also explained that other ethnic groups are not treated as a "distinct entity" and said,

I have never heard the view expressed that they wish to be treated as a legally distinct entity, nor that they wish to have separate representation in Parliament (Jupp evidence, 19 August 1998).

Some participants at the community consultations also argued in support of Aboriginal dedicated seats over other groups in the community. Pauline Gordon, at the Lismore meeting, said that Australian Aboriginal people, the indigenous people of this country, are "nowhere near on a level with immigrant groups, ethnic groups, or non-Aboriginal groups" (Gordon evidence, Lismore). Another participant at the Armidale meeting commented on the unique status of Aboriginal people and their claim to dedicated seats over other ethnic groups:

I, as an Indian Australian, do not think I am a traditional owner. You are talking about traditional owners, people from this country, and I think they

have the right to say "I belong here, and I do not wish to be alienated; I very much wish to be part of the decision-making process" (Sivaraman evidence, Armidale).

6.2.3 Providing A Voice for Aboriginal People

One of the strongest arguments for dedicated seats at the community consultations was the importance of having an Aboriginal voice in Parliament to ensure Aboriginal issues are raised and debated. One group of Moree participants argued that there would be an "Aboriginal perspective on the issues being discussed - for example, the environment, mining, use of resources and so on" (Telford evidence, Moree). At Wagga Wagga, participants felt the an Aboriginal Member would "give a voice to the indigenous community ... and create a level playing field" (Bilney briefing, Wagga Wagga). At Lismore, Jenny Dowell said that the initiative would give Aboriginal people a voice "particularly in such issues as health, education, social issues, and corrective services" (Dowell evidence, Lismore).

At other meetings, participants argued the importance of an Aboriginal voice to ensure the broader community are exposed to Aboriginal issues and provide a presence and dignity for Aboriginal people.

In evidence to the Committee, Ossie Cruse, Chairman of the NSW Aboriginal Land Council said that designated seats need to be introduced so that "the voice of the people (can) then be heard" (Cruse evidence, 26 September 1997). The NSW Department of Aboriginal Affairs suggested that dedicated seats would provide "the opportunity for Aboriginal people to play a more inclusive role in state politics" (Submission 21).

Geoffrey Scott, Director-General of the NSW Department of Aboriginal Affairs told the Committee that Aboriginal representatives are best placed to represent Aboriginal people and that "existing politicians do not or cannot perform this role adequately" (Scott evidence, 26 September 1997).

6.2.4 ABORIGINAL CONTRIBUTION TO DECISION-MAKING PROCESSES

A small number of submissions and witnesses commented on the potential for Aboriginal dedicated seats to influence and contribute to the decision-making processes of the NSW Parliament. The NSW Aboriginal Land Council said that an Aboriginal Member of the NSW Parliament could:

- chair and/or serve on Aboriginal Committees and influence legislative and policy proposals relating to the needs and rights of Aboriginal people;
- inform the Parliament and guide them towards real outcomes for the benefit of Aboriginal communities;

- avoid the present party political polarisation of Aboriginal issues;
- produce Private Member's Bills; and
- participate in the scrutiny of expenditure review process in relation to Aboriginal matters (Submission 22).

Aden Ridgeway, recently elected Federal Senator for the Australian Democrats, and former Executive Director of the NSW Aboriginal Land Council felt that Aboriginal participation in government could lead to some possible changes in the quality of life for Aboriginal peoples. He explained to the Committee that indigenous Members could chair Aboriginal Committees and "allow closer scrutiny ... of services being delivered by government agencies" (Ridgeway evidence, 26 September 1997).

Many participants at the community consultations felt that a major advantage of dedicated seats was that Aboriginal people would be able to provide Parliament with the expertise to devise and implement policies for Aboriginal people. Participants at Parramatta said that dedicated seats would give Aboriginal people "some actual, real political power" and the opportunity to influence debate (Frøland evidence, Parramatta). One member of the Armidale meeting explained the importance of Aboriginal participation in "law-making":

A lot of the laws that we are dealing with are really set out in a destructive way for Aboriginal people; they are not taking into account what the culture of the Aboriginal people is, and what is happening in Aboriginal communities. ... A dedicated seat would mean more power to the Aboriginal people in New South Wales (Libbs evidence, Armidale).

Dubbo participants argued that dedicated seats "would lead to self-management of Aboriginal affairs" (Lancaster evidence, Dubbo). The NSW Department of Aboriginal Affairs suggested that dedicated seats could demonstrate a commitment by the State government to the notion of self-determination for Aboriginal people in NSW (Submission 21).

6.2.5 OVERCOMING EXISTING BARRIERS TO REPRESENTATION IN PARLIAMENT

Several people suggested that dedicated seats were the only way to secure a seat in Parliament for Aboriginal people as the usual processes had failed to achieve this. Michael Clancy, Assistant Director of Electoral Education with the Australian Electoral Commission, told the Committee that a dedicated seat could be one way to ensure Aboriginal people have political representation:

I think it is positive because I do not see any way, unless an Aboriginal person is preselected by a major political party, that they would be able to get anybody into Parliament (Clancy evidence, 27 October 1997).

Mr Ray Leslie, a 1990 candidate for the Labor Party for the seat of Parkes, suggested one advantage is that dedicated seats might provide the opportunity to bypass the existing barriers to an Aboriginal person seeking seats in Parliament. Mr Leslie said these barriers include "difficulties in being endorsed for a major political party" and "lack of opportunity to stand for a safe seat" (Submission 12). Mr Leslie argued that, if an Aboriginal person cannot access a seat in Parliament in the usual manner, then intervention such as "reserved seats" may be necessary (Submission 12).

At the Parramatta community consultation, some participants supported Mr Leslie's claim (who was in attendance) and suggested that party politics and party structure did little to encourage Aboriginal participation. One group of participants felt that one advantage to dedicated seats would "make it possible for (Aboriginal) candidates to come through, despite racism" (Frøland evidence, Parramatta).

In evidence to the Inquiry Pat Dixon, Deputy Mayor of Armidale and a recent candidate for the Labor Party in the Federal seat of New England, suggested that political parties "put up an Aboriginal candidate when they know they are not going to win a seat" and that a dedicated seat would be one positive way to ensure Aboriginal representation (Dixon evidence, 13 October 1997). Philip Donnelly, State Manager of ATSIC, also said there was little sign of the willingness of political parties to pre-select minority groups and that Aboriginal people are suspicious of mainstream political life. He argued that dedicated seats might be one way to ensure Aboriginal representation until such time as there is greater acceptance of political processes and structures by Aboriginal people (Donnelly evidence, 26 September 1997).

6.2.6 IMPROVED AWARENESS OF ABORIGINAL CULTURE

The Committee heard some evidence from individuals and organisations that a dedicated seat could improve general community awareness of Aboriginal culture, as well as educate non-Aboriginal Parliamentarians about Aboriginal values and culture.

The NSW Department of Aboriginal Affairs suggested that dedicated seats could lead to a shift in perception and understanding in non-Aboriginal communities about Aboriginal peoples and cultures in NSW, resulting in "better relationships" (Submission 21).

The potential for dedicated seats to improve broad community awareness of Aboriginal culture was also raised at the consultation meetings. At the Lismore meeting, one group suggested that having an Aboriginal presence in Parliament would mean that:

Those people who would not normally have contact with Aboriginal people would have an opportunity to hear another point of view (Reys evidence, Lismore).

The Wagga Wagga briefing also presented some ideas on the possible educative value of dedicated seats. Con Bilney argued that there would be a "cultural awareness and sensitivity to some of the issues that are facing the Aboriginal community" (Bilney briefing, Wagga Wagga).

Some participants also argued that a dedicated seat could help to dispel misinformation and racist attitudes in community about "Aboriginal abilities to speak on and represent the views of their communities on a range of issues" (Telford evidence, Batemans Bay).

Several Moree participants felt that, in addition to educating the wider community, dedicated seat could "enhance" the cultural awareness of non-Aboriginal Members of Parliament (Telford evidence, Moree). Michael Dodson suggested that dedicated seats could have educative value for other Members of Parliament and result in a better understanding of Indigenous issues (Submission 24).

6.2.7 Provide Role Models and Encourage Aboriginal Political Participation

It was suggested to the Committee that dedicated seats would provide Aboriginal communities with leadership and role models which could encourage Aboriginal people to become more politically involved.

The low levels of political participation by Aboriginal people was identified as a problem in submissions and evidence to the Committee, with some suggestions that dedicated seats could have a positive impact on Aboriginal people. Michael Dodson said the existence of Aboriginal Members of Parliament would provide much needed role models and mentors for Aboriginal people (Submission 24). Mr Dodson also suggested that a dedicated seat may result in an increase in interest of Aboriginal peoples in standing for election. Aden Ridgeway said that Aboriginal representation would raise the confidence levels of Aboriginal communities, and that the creation of dedicated seats "if properly designed and implemented" would help make government and the Parliament more relevant to Aboriginal people (Ridgeway evidence, 26 September 1997).

Many participants at the community consultations believed that dedicated seats have the potential to make Aboriginal people feel they are being listened to and to give indigenous communities "greater faith in the parliamentary system" (Dowell evidence, 9 June 1998). One group in Lismore argued that an Aboriginal dedicated seat could provide a:

role model for younger people, to realise that their vote has value and they have a voice, and that their opinions ... can be represented in Parliament (Dowell evidence, Lismore).

Participants in Armidale suggested that dedicated seats could raise the "self-profile or the self worth of Aboriginal people" (Hassett evidence, Armidale), while one group at Batemans Bay suggested that "an Aboriginal Member of Parliament would provide leadership for Aboriginal communities" (Horey evidence, Batemans Bay). Another group at Batemans Bay felt that an Aboriginal dedicated seat would encourage more Aboriginal people to enrol and vote in elections (Telford evidence, Batemans Bay).

6.3 ARGUMENTS AGAINST DEDICATED SEATS

6.3.1 DEDICATED SEATS MAY BE SEEN AS UNDEMOCRATIC

A large number of the submissions from individuals who opposed dedicated seats for Aboriginal people argued that they would be undemocratic. For some people, the initiative would contravene the principles underlying the Westminster system of government - particularly if the Aboriginal Member in a dedicated seat had the balance of power.

Mr George Smith, Q. C. said the provision of dedicated seats "for ANY specified group offends the democratic principle of 'one vote, one value" (Submission 14). Mr N.S. Stewart argued that the introduction of fixed seats for a "special interest group" is a distortion of the Westminster system; a distortion that may have "unexpected and major drawbacks" (Submission 13).

While Michael Dodson does not suggest that dedicated seats would be undemocratic he does say:

the creation of more Aboriginal seats than would be representative of the number of Aboriginal people in the electorate must not contravene international or domestic law (Submission 24).

Jenny Dowell, a participant at the Lismore meeting said "it could be seen that dedicated seats for Aborigines could contradict the one vote one value tenet of our electoral system" (Dowell evidence, Lismore).

There was some concern in both submissions and in evidence at the community consultations that one or two Aboriginal representatives could end up with the balance of power. Some people felt that "it would be wrong for such a minority to hold so much power" (Submission 30).

6.3.2 OTHER MINORITY GROUPS WILL DEMAND DEDICATED SEATS

While most individuals and organisations commenting on the demands of other groups for dedicated seats suggested that Aboriginal people had a special claim to be treated as a "separate entity" (see Section 6.2.2), a considerable number of participants at the community consultations felt that "ethnic and other special interest groups could also demand dedicated seats" (Dowell evidence, Lismore).

Participants at both the Dubbo and Coffs Harbour meetings felt that other groups may expect dedicated seats, and there was the potential for this to create division within the community (Lancaster evidence, Dubbo; Eakins evidence, Coffs Harbour). Another group of participants at Armidale said that dedicated seats may create:

a perception of special treatment, with injustice for the other groups. We brought up that the Greek population, and the Italian population and the Asian population have got enough people now to (have) their own members of Parliament, so they might think having a dedicated seat could be an injustice (Hassett evidence, Armidale).

6.3.3 LIMITED POWER TO THE ABORIGINAL COMMUNITY AND PRESSURE ON THEIR REPRESENTATIVES

In evidence to the Committee witnesses and submissions identified two aspects to the potential failure of dedicated seats to deliver real power to Aboriginal people: that a small number of seats would provide limited power to Aboriginal communities; and that, in the case of only one or two seats, the Aboriginal representatives could not adequately address the diversity of indigenous interests. Some evidence to the Committee also said that the Aboriginal Members would be under extreme pressure to represent Aboriginal people, particularly if the representative had the balance of power.

A number of participants at the community meetings questioned whether an Aboriginal Member would have any real power if there was only a small number of dedicated seats. A group of participants at Armidale suggested that a limited number of seats would be "window-dressing" and that "their power would be very limited" (Davis evidence, Armidale).

Michael Dodson felt that the capacity of the Aboriginal representative to effect change may be limited as the Member would be reliant on the votes of other non-Aboriginal Members for legislative change.

Several individuals and organisations expressed concern about the effectiveness of a small number of dedicated seats in a majority, non-indigenous Parliament. David Pross, Chairperson of the Ngaimpe Aboriginal Corporation said some areas of NSW such as the Central Coast region do not have a strong representation of the original people, and are made up of a variety of peoples from all over Australia:

They have many different needs and are often in conflict over the limited resources available to them. This lack of cohesiveness is only exacerbated by the high mobility of the population, many members of which are transient (Submission 16).

Mr Pross doubted the ability of a small number of dedicated seats to represent the diversity of issues confronting them. Mr Dodson also suggested it would be difficult for

one person to represent the diversity of views of Aboriginal people in New South Wales (Submission 24).

At Armidale, Byron Davis was also concerned about the possible impact of a small number of dedicated seats:

There are 60 nations in New South Wales, and if there are four in there how ... can they represent everyone in New South Wales? (Davis evidence, Armidale).

A considerable number of participants at the community meetings commented on the pressures an Aboriginal Member would be under, especially if there was only one or two seats. A group of Armidale participants were concerned that there would be "unrealistic expectations" on the Aboriginal Member and they would be swamped with work (Davis evidence, Armidale). Participants at Redfern felt that, if there was only one or two dedicated seats, the Aboriginal Member would be isolated (Maybury evidence, Redfern). The Batemans Bay meeting suggested that:

There could be unbearable pressure on the Aboriginal Members, not just from their own people, through unrealistic expectations, but through pressure from the main political parties to get their vote on things (Telford evidence, Batemans Bay).

There was also some concern at the consultations that dedicated seats may give Aboriginal people the balance of power and expose them to pressure from the major parties. At Armidale one group of participants suggested that, in the case of Aboriginal Members having the balance of power, the representative "would be the focal point of people pointing the finger" (Hassett evidence, Armidale).

6.3.4 TOKENISTIC AND PATRONISING TO ABORIGINAL PEOPLE

One of the strongest arguments against dedicated seats was that the initiative would be patronising and would be seen by the Aboriginal people, and the broader community, as a form of tokenism.

At many of the community consultation meetings participants acknowledged that the existence of dedicated seats in the NSW Parliament might imply that Aboriginal people could not gain seats on their own merit. Some participants, such as Don Dodd, felt passionately that "politicians are only being tokenistic and patronising by having dedicated seats within the Parliament" (Dodd evidence, Parramatta).

Jenny Eakins argued that dedicated seats could be "seen as a hand-out. It could be seen as demeaning, and it could be seen as tokenistic" (Eakins evidence, Coffs Harbour).

John Ah Kit, Member for Arnhem, Northern Territory Legislative Assembly felt that the notion of reserving parliamentary seats had a number of "fundamental flaws":

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 (Submission 10).

Mr Clancy told the Committee that dedicated seats could become tokenistic and ineffectual, particularly if the Aboriginal Member is part of a major political party. Mr Clancy said that if the Aboriginal Member was a member of a political party, "their real voice is lost because they get involved in party politics" and they would risk "alienating a certain number of the electorate" (Clancy evidence, 27 October 1998).

Aden Ridgeway told the Committee that the issue of the dedicated seats as tokenistic was dependent on the mechanics of the seats. Mr Ridgeway said that if Aboriginal dedicated seats were not given the same rights, duties and privileges as other Members of Parliament, the initiative would be regarded by the Aboriginal community, as well as the broader community, as being a token gesture, "rather than something of real significance within Parliament" (Ridgeway evidence, 26 September 1997).

6.3.5 Marginalise Aboriginal Issues and Political Representation

Evidence to the Inquiry suggested there were two possible outcomes which are arguments against dedicated seats. First, that Aboriginal issues would be marginalised, and that a dedicated seat might result in non-Aboriginal Members of Parliament failing to take an interest in Aboriginal issues; and second, that mainstream political parties will not act to ensure Aboriginal people are recruited to their party as members and candidates.

Geoffrey Scott told the Committee that designated seats may marginalise Aboriginal issues as "the rest of Parliament would not actually focus on those issues as a whole" (Scott evidence, 26 September 1997).

The Submission by the Elected NSW Chairpersons and Commissioners of ATSIC and the NSW Aboriginal Land Council emphasised that the provision of seats should not reduce support for a "whole of government" approach to issues concerning Aboriginal people:

Representation must not be seen to be the panacea for everything. Political representation rightly implemented, will be a giant step forward, but it will not be a substitute for action and good policy across portfolios (Submission 17).

Some participants at the community meetings were worried that dedicated seats may remove the responsibility from other Members of Parliament to deal with issues that concern Aboriginal people. Joyce Clague told the Inquiry that non-Aboriginal Members may feel that:

Oh well, that's all black fellows issues, and things are going to be sorted out there, and we don't need to concern ourselves about issues related to Aboriginal people (Claque evidence, Redfern).

A participant told the Armidale meeting that a likely scenario was that the Aboriginal representative would be told "Here you are, this is to do with Aboriginal issues. It's up to you" (Davis evidence, Armidale).

There was also concern at the Redfern meeting that a dedicated seat would imply that the Aboriginal Member was to talk and act on issues only to do with Aboriginal people, and not a whole range of issues concerning the wider community.

There was limited discussion at several community meetings that dedicated seats might disadvantage Aboriginal people in their pursuit of preselection to safe seats for the major political parties. Some participants felt that this could continue to keep Aboriginal people and Aboriginal issues "in the margins". Linda Burney, a participant at Redfern, said it was critical for the government not to "rush down the path" to dedicated seats without first thinking of the implications. Ms Burney said:

If there are dedicated seats, then the mainstream political parties will feel that they have no obligation at all to support Aboriginal candidates (Burney evidence, Redfern).

6.3.6 BACKLASH AND DIVISION IN THE COMMUNITY

There was genuine concern that any proposal to establish dedicated seats for Aboriginal people may invite a backlash from the wider community. Many Aboriginal participants at the community consultations were worried about the possibility of increased racism directed at Aboriginal people as a result of the introduction of dedicated seats. Both Aboriginal and non-Aboriginal people felt that such an initiative could create further division in the community and cause great harm to the process of reconciliation.

Many participants at the community meetings felt that dedicated seats would be perceived as "special treatment" for Aboriginal people and that this perception would lead to division in the community. At Wagga Wagga one group of participants felt that the introduction of the seats "may be seen as divisive in our current political climate" (Bilney briefing, Wagga Wagga). Mr Bilney explained that certain sections of the media would take up the issue and cause greater division between Aboriginal and non-Aboriginal people (Bilney briefing, Wagga Wagga). One Dubbo participant also argued

that dedicated seats could cause division "within Aboriginal communities" particularly regarding the representation of indigenous issues (Lancaster evidence, Dubbo).

Mr David Pross said the Committee should contemplate a possible "backlash from uninformed non-indigenous Australians, who already feel disadvantaged due to the economic environment" (Submission 16).

There was some concern that the NSW community was not ready for an initiative such as dedicated seats, and that without extensive education, further division could occur in the community. While Aden Ridgeway declared support for dedicated seats, he did suggest that there was potential for a backlash response from parts of the community and certain sections of the media that believe Aboriginal people are "being treated specially". Mr Ridgeway placed strong emphasis on the need for education to overcome community concerns (Ridgeway evidence, 26 September 1997).

Professor Garth Nettheim, Visiting Professor of Law and Chair of the Indigenous Law Centre at the University of New South Wales told the Committee that he had some problems with the idea of designated seats and "thought it would probably be difficult to persuade the people of New South Wales at this stage to accept it". He suggested that if Aboriginal people felt it was the best option to improve representation in Parliament, then a lot of work would need to be done "to persuade the state electorate why this should be done and how it might be done" (Nettheim evidence, 26 September 1997).

The Committee heard only limited reference to the possible negative impact of dedicated seats on reconciliation in general between Aboriginal people and the wider community, and the formal steps being taken to achieve this mutual reconciliation. The Council for Aboriginal Reconciliation told the Committee that the initiative could be counterproductive to the process of reconciliation between the Aboriginal and non-Aboriginal communities if there was not a considerable education campaign leading up to a referendum (Submission 25).

6.4 Conclusion

The Committee heard a wide range of arguments both for and against the establishment of dedicated seats in the NSW Parliament. The variety of issues discussed in submissions, and those raised by witnesses and in evidence indicates the complex nature of the proposal and the serious difficulties in adjudicating over the contradictory views.

One of the key arguments for dedicated seats was their symbolic value to Aboriginal people, as the original owners of Australia and the potential for the initiative to assist the processes of reconciliation. A number of submissions and witnesses to the Inquiry outlined other practical advantages such as providing Aboriginal people with the opportunity to contribute to legislative change and policy decisions on issues

concerning Aboriginal people. For others, an Aboriginal Parliamentary Member could have a positive impact on Aboriginal communities by providing leadership and role models and encouragement to participate in the political process.

A strong argument against dedicated seats is that they would be seen to be undemocratic by the wider community and tokenistic and patronising by Aboriginal people. Both Aboriginal and non-Aboriginal people expressed their concern that dedicated seats may contravene the democratic principle of 'one vote one value' and that other unrepresented groups may think they deserve seats in Parliament. Another issue that concerned many people at the consultation meetings was the potential for the initiative to invite a backlash and increase racism within some sections of the NSW community.

While a majority of people at the community consultations supported the introduction of seats, many acknowledged there were a number of potential problems inherent to the proposal. For most people, an extensive education campaign would be necessary to inform the Aboriginal and non-Aboriginal communities as to the issues involved, before the introduction of seats.

The Committee concludes that there is some way to go before there is consensus in the New South Wales community on whether there should be dedicated seats in the NSW Parliament. However, the Committee supports continued and informed debate in both Aboriginal and non-Aboriginal communities about the advantages and disadvantages of the introduction of dedicated seats to the NSW Parliament.

CHAPTER SEVEN

THE MECHANICS OF DEDICATED SEATS

7.1 Introduction

This Chapter examines some of the issues to be considered if dedicated Aboriginal seats were established in the NSW Parliament. These matters include the possible number of seats, where they could be located and how candidates might be elected. The introduction of dedicated seats to the New South Wales Parliament would depend on a successful referendum result. This Chapter also explores evidence presented to the Committee which suggested the need for an extensive education campaign prior to holding a referendum. The Chapter draws on information provided in written submissions, formal evidence and the consultation meetings.

As mentioned in Chapter Five, some people were willing to comment on how dedicated seats could be established but consider that the details of dedicated seats can only be decided after further consultation with Aboriginal people.

It should also be noted that some individuals and organisations who made suggestions about the introduction of dedicated seats have not declared their support for this initiative, including the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, and the NSW Department of Aboriginal Affairs (see Chapter Five for a summary of the submissions and formal evidence).

7.2 How Many Seats and in Which House?

The number of dedicated seats and their appropriate location were key issues raised in the submissions, evidence and consultation meetings.

7.2.1 SUBMISSIONS AND EVIDENCE

Several submissions and witnesses proposed the introduction of between one and two dedicated seats, in either or both Houses of Parliament.

the NSW Aboriginal Land Council recommended the establishment of at least two dedicated seats in the Legislative Council, with the possibility of increasing this number by legislation. The Land Council also supported dedicated seats in the Assembly, but did not propose a specific number of seats (Submission 22).

While not indicating a formal preference for the Upper House, the NSW Department of Aboriginal Affairs argued there are certain advantages in having dedicated seats in the Council because:

representatives elected to the Council have a responsibility to represent people across the State, all Aboriginal people. In the Assembly, depending on how you divide your electorates up, you have a relatively small constituent base to actually focus on those issues...(Scott evidence, 26 September 1998).

The Department also suggested that representation in the Legislative Council may also overcome the regional politics of ATSIC and Aboriginal Land Councils (Submission 21).

David Mendelssohn, President of the NSW Division of the Australian Democrats, proposed two dedicated seats, but did not suggest where they should be located (Mendelssohn evidence, 19 August 1998).

Dr James Jupp, a political scientist, said it would be desirable to have at least one and possibly two dedicated seats for Aboriginal people. This number, he suggested, could be justified given the number of Aboriginal people as a proportion of the total population in NSW. He believes the seat(s) should be in the Legislative Council:

My reason for that is that governments are decided in the Assembly and I think it would be contentious in the case of a balance, which is happening more and more frequently, for someone elected on a different basis to be able to decide whether a government should fall or not fall (Jupp evidence, 19 August 1998).

Michael Dodson also argued that the number of representatives elected to dedicated seats should not be "grossly disproportionate to the number of indigenous electors". He suggested that two "guaranteed seats" in the Legislative Assembly would be "reasonably proportionate to the Indigenous population" (Submission 24). Australians Against Racism supported the creation of an additional five dedicated seats in the Legislative Council, and ten in the Legislative Assembly (Submission 15).

7.2.2 Consultation Meetings

Most participants at the consultation meetings agreed there should be more than one seat in each House of Parliament in order to reduce the isolation and pressure a single Aboriginal representative may experience. The number of seats nominated at the meetings was wide ranging, with one group in Coffs Harbour suggesting the total number of dedicated Parliamentary seats should be as high as 25% of the existing seats. The majority of participants felt that it was realistic to suggest between two and six seats. Most participants also said that the dedicated seats should be *in addition* to the existing number of seats.

There was strong support for dedicated seats to be located in both the Legislative Assembly and the Legislative Council. Participants at the Redfern meeting explained that representation in the Upper House, with an eight year term:

would give the community a feeling of self-empowerment because they could see these people in Parliament over a long period of time (Olsen evidence, Redfern).

Locating a dedicated seat in the Lower House was also important, the participant continued, because "this is where the day to day decisions are made".

7.3 Which Electoral Roll?

The Committee heard a range of views on the advantages and disadvantages of creating a new Aboriginal electoral roll or modifying existing rolls used by Aboriginal representative organisations such as ATSIC in NSW and the NSW Aboriginal Land Council.

7.3.1 SUBMISSIONS AND EVIDENCE

James Jupp suggested that the electoral roll for ATSIC elections would be the most appropriate roll to elect Aboriginal seats because "you do not want to go through reinventing the wheel all over again" (Jupp evidence, 19 August 1998). This view was shared by Phillip Donnelly, the State Manager of ATSIC NSW who said:

in order to avoid duplication, I would see that the ATSIC electoral structure would be the appropriate one in which to look to provide those members with those seats (Donnelly evidence, 26 September 1997).

The NSW Aboriginal Land Council argued that a special Aboriginal roll should be developed in close consultation with Aboriginal communities, but that the rolls used for Local Aboriginal Land Council elections "would be a useful starting point" (Submission 22).

David Pross, Chairperson of the Ngaimpe Aboriginal Corporation, and Sally Jope, from the Information, Training Action Centre at Wyong also suggested the Aboriginal candidates could be elected by "voters already on the ATSIC roll" (Submission 16).

However, the NSW Department of Aboriginal Affairs informed the Committee that the integrity of the rolls used for NSW Aboriginal Land Council elections has been questioned:

Secretaries of Local Aboriginal Land Councils are responsible for maintaining the electoral rolls...The State Electoral Commissioner has raised concerns about the "gatekeeper" function of the Secretary. It has been alleged that some Secretaries have failed to register some people who were entitled to be members, or have removed their names from the roll. In some cases, names of people who have died remain on the roll, and a vote has been exercised in their name ... (Submission 21).

The Department also raised concerns about the roll used for ATSIC elections:

Each voter, at the time of voting, must sign a declaration that he or she is either of Torres Strait Islander descent or an Aboriginal person. This method of identification is currently under question in Tasmania, where a court challenge has been made to the Aboriginality of 11 candidates in the 1996 elections (Submission 21).

7.3.2 Consultation Meetings

Many participants at the consultation meetings suggested that the rolls used for ATSIC and Land Council elections, or a combination of the two, could be used to elect a person to a dedicated seat. However, several participants expressed concern about the integrity of these rolls. Patrick Lock, for example, said that when he contested a State seat for the Land Council he found 150 mistakes on the roll, including the listing of his dead sister (Lock evidence, Parramatta).

Participants at two different consultations suggested the creation of a new roll to elect dedicated seats. However, there was no consensus regarding who should manage the roll or in what ways it would differ from the existing roll for ATSIC elections managed by the Australian Electoral Commission.

Another key concern raised at the meetings was how to ensure that only indigenous people were registered to vote on existing rolls or a new roll. One participant suggested this problem could be overcome if each language area had its own roll and the elders were responsible for verifying Aboriginality.

7.4 ABORIGINAL ELECTORATES IN THE LEGISLATIVE ASSEMBLY

The composition and location of Aboriginal electorates would be a key issue if dedicated seats were introduced in the Legislative Assembly. This matter was not specifically addressed at the consultation meetings or in evidence, but was raised in some submissions.

While the NSW Aboriginal Land Council supported the creation of Aboriginal electorates to elect a dedicated seat in the Assembly, it considers that the details of these electorates should be determined by "real negotiations with the affected Aboriginal peoples". Nevertheless, the Land Council suggested several options for discussion, including using the boundaries for Regional Aboriginal Land Councils or ATSIC Regions as a basis for Aboriginal electorates. It also canvassed the possibility of combining existing Legislative Assembly seats to create the required number of dedicated seats (Submission 22).

The Department of Aboriginal Affairs suggested that the boundaries for ATSIC Regional Councils and/or Aboriginal Land Councils could determine the boundaries for "Aboriginal electorates" for designated seats in the Assembly. However, the

Department drew attention to the possible limitations of this approach:

Regional Aboriginal Land Councils do not cover the entire geography of the State, but are bounded by areas designated as Local Aboriginal Land Council areas (Submission 23).

While the six ATSIC Regional Councils and three zones do cover the whole State, the cultural boundaries of some communities do not map exactly with State boundaries:

This creates the anomalous situation where representatives in designated seats may be elected by only some of the members of that community, ie. those who reside within the NSW state boundary (Submission 23).

Australians Against Racism proposed that candidates for seats in the Lower House would be elected by Aboriginal people across the State, advised by an Advisory Council representing each tribal and community grouping in NSW (Submission 15).

7.5 SELECTION OF CANDIDATES

The appropriate way to select candidates to stand for election to a dedicated seat was another key issue raised during the Inquiry. Of particular interest was whether the candidate should be independent or aligned to a political party.

7.5.1 SUBMISSIONS AND EVIDENCE

The elected representatives of ATSIC in NSW and the NSW Aboriginal Land Council stressed the importance of the candidate's independence from political parties:

Candidates for election should be endorsed by Indigenous people outside the present political party system (Submission 17).

David Mendelssohn supported the introduction of two dedicated seats, one held by a person nominated by the Labor Party and the other by the Coalition. He suggested that nominations should be made after appropriate consultation with indigenous people:

I find some attraction to that sort of proposal because it would not make dedicated seats the gift of one party or the other. Therefore it would not affect the numbers in Parliament. It would ensure an Aboriginal voice within each major party ... To some extent it would help depoliticise how Aboriginal affairs are dealt with in the NSW Parliament (Mendelssohn evidence, 19 August 1998).

While Mendelssohn acknowledged that many Aboriginal people see themselves as "outside the normal party system" he did not think they would be able to avoid getting

involved in party politics if they desire dedicated seats:

The history of independents being elected is not all that promising ... unfortunately, it is simply not realistic for Aboriginal people to opt out of the party system but still get effective representation in Parliament (Mendelssohn evidence, 19 August 1998).

7.5.2 CONSULTATION MEETINGS

The majority of participants expressed a strong desire to ensure that a candidate for a dedicated seat should be drawn from the "grassroots" and that the selection of candidates should be controlled by the Aboriginal community.

The majority of participants said the candidate for a dedicated seat should be independent. It should be noted that while some participants favoured independent candidates they acknowledged it would be difficult to avoid interference from the political parties.

There was some discussion on selecting candidates from existing organisations such as the Land Councils and ATSIC. At Batemans Bay one group proposed candidates could be drawn from each Land Council and those candidates could compete against one another for the dedicated seat(s). One group at Armidale thought the Land Councils should play a more general role in the selection of candidates, although this suggestion was not supported by everyone:

we should make a clean break from land councils and let the candidates come from the Aboriginal community (Naidoo evidence, Armidale).

7.6 WHO CAN VOTE?

During the course of the consultation meetings it became apparent that many participants thought non-Aboriginal people should be eligible to vote for a dedicated seat. Another related issue raised at the meetings was whether Aboriginal people who were not indigenous to NSW should be eligible to vote for a candidate in a dedicated seat. Neither issue was raised in the submissions or evidence.

At the majority of consultation meetings, participants were divided as to whether non-indigenous people should be eligible to vote for the candidate in a dedicated seat. Some participants, including Aboriginal participants, argued that it would be undemocratic and discriminatory to restrict the right to vote for a dedicated seat to Aboriginal people. It was also suggested that:

if everybody voted it would give everybody responsibility for what happened, so the whole community could have input into it as well as the Aboriginal people (Simpson briefing, Wagga Wagga).

Several other participants argued that, given the person in a dedicated seat would represent Aboriginal people, the right to vote should be restricted to Aboriginal people.

At the Armidale meeting, participants discussed whether voting should be restricted to Aboriginal people who are indigenous to NSW. Lorna Hague felt that proven commitment to the community should determine eligibility:

I think that is how it should be worked out, on your time and my time working in the community before I can be eligible as a candidate (Hague evidence, Armidale).

A group at Wagga Wagga suggested another method to deal with this dilemma:

we thought the best way to do that would be for that person to get endorsement from his local community in the State where he previously resided. That could be sent across the local community where he now resides and that would be the endorsement he needed to go onto the electoral roll (Mullins briefing, Wagga Wagga).

7.7 ONE VOTE OR TWO?

The Committee heard a range of views on whether Aboriginal voters should be restricted to voting for the Aboriginal member in a dedicated seat, be able to choose which vote to exercise, or exercise two votes - one for the general candidate and one for the Aboriginal candidate. This was an issue of most interest in the consultation meetings rather than in submissions and evidence.

7.7.1 SUBMISSIONS AND EVIDENCE

Michael Dodson argued that if dedicated seats were established indigenous people should be able to choose to vote for either the candidate in the dedicated seat or for their general candidate, but electors should not be able to vote twice in the same election (Submission 24).

The NSW Aboriginal Land Council does not consider that the principle of 'one person one vote' is necessarily a fundamental tenet of a political system for it to be properly and legitimately regarded as "democratic". However, it does not address the issue of whether Aboriginal electors should have more than one vote (Submission 22).

The NSW Department of Aboriginal Affairs argues that Aboriginal people should be able to choose whether to vote for the Aboriginal candidate or the general candidate. (Submission 21).

James Jupp told the Committee:

I would not think it justifiable to give one section of the population two votes. After all, we have had a long history of moving away from plural voting (Jupp evidence, 19 August 1998).

7.7.2 CONSULTATION MEETINGS

There was broad support among participants to allow Aboriginal people to have two votes: one for the candidate in the dedicated seat and one for the general candidate. At the Redfern meeting Terry Olsen argued in support of two votes because Aboriginal people, by voting for the general candidate are "still voting for people that are going to contribute to decisions on the running of this State that affects their lives" (Olsen evidence, Redfern).

Several participants at Wagga Wagga argued that allowing Aboriginal people to have two votes was undemocratic:

Any suggestion to give them more than one vote ... would raise a storm of objection from the general community (Mullins briefing, Wagga Wagga).

One participant at the Dubbo meeting pointed out that it would be very difficult to get approval at a referendum for dedicated seats if Aboriginal people had more than one vote (Evans evidence Dubbo).

7.8 Who is Represented by the Dedicated Seat?

None of the witnesses and only one submission commented on whether the person in the dedicated seat should be restricted to represent Aboriginal people and "Aboriginal issues" only or should participate in decisions affecting non-Aboriginal people.

7.8.1 SUBMISSIONS

The NSW Department of Aboriginal Affairs did not consider that an Aboriginal representative should only work on what may be viewed in narrow terms as "indigenous issues":

Aboriginal people have just as much right to be heard on issues of tax

reform, and economic policy as on issues of native title and the preservation of cultural heritage (Submission 21).

7.8.2 Consultation Meetings

Participants at the consultation meetings also felt that a person in a dedicated seat should not be restricted in who and what they represent:

There is no such thing as Aboriginal issues in isolation (Bilney briefing, Wagga Wagga);

One thing we did agree on ... was that the representative in the dedicated seat should represent the broad range of issues, and not just the Aboriginal issues (Stein evidence, Batemans Bay); and

If they were going to put an expressway through Batemans Bay... it involves Aboriginal people. So I think that person should have the right to talk on everything and anything, plus the Aboriginal issues too (Davidson evidence, Parramatta).

7.9 A REFERENDUM ON DEDICATED SEATS

There was overwhelming support in the submissions, evidence and at the consultation meetings for a wide ranging eduction campaign to precede or accompany the introduction of dedicated seats, particularly if a referendum is required to introduce the seats.

7.9.1 SUBMISSIONS AND EVIDENCE

Michael Dodson anticipates that any proposal for dedicated seats would be likely to result in "considerable and difficult community debate". He argued that widespread community education on the effects and rationale of such an initiative would be required in an effort to:

ensure that public debate is not divisive and is not used (as) a vehicle for racism (Submission 24).

The NSW Aboriginal Land Council suggested that an effective education process conducted in partnership with Aboriginal communities should precede a referendum and should be directed at both the Aboriginal and non-Aboriginal communities (Submission 22). This view was shared by Garth Nettheim, Professor of Law at the University of NSW:

...I think it would probably be difficult to persuade the people of NSW to accept it [dedicated seats]. If that is what is ultimately desired by the Aboriginal people of this state then I think a lot of work needs to be done to persuade the state electorate why this should be done and how it should be done (Submission 26).

7.9.2 Consultation Meetings

There were mixed views on the likely success of a referendum on dedicated seats. Some participants were very confident about the likely success of a referendum:

I don't think we should be worried about a referendum, because 31 years ago we had a referendum for Aboriginal rights and over 90 per cent of the community in Australia voted for Aboriginal rights (Cameron evidence, Batemans Bay).

Others were less sure:

So anybody who thinks that it is going be an easy task to get dedicated seats for Aboriginals in this country will have think again. ... The big job will not be to convince the Parliament, it will be to convince the people that we must have those seats (McMurtrie evidence, Lismore).

Some participants felt that non-voting seats were more likely to get approval than voting seats and many participants commented on the need to educate the community before holding a referendum.

There was general support at the consultation meetings for broad education campaigns in the lead up to a referendum on dedicated seats. Some people at Batemans Bay argued there would need to be an extensive education campaign aimed at the non-Aboriginal community because, as one participant said, "they are the ones who are going to carry the vote" (Cairney evidence, Batemans Bay). The need for education was supported by others in the group:

It is common practice to advertise the issues to be answered in a referendum prior to a referendum. It would seem it needs to be bolstered in this case, with a much earlier presentation of issues for and against. The machinery is there. It just should be used this time (Myssonski evidence, Batemans Bay).

7.10 CONCLUSION

While there was no overall consensus about a particular model for dedicated Aboriginal seats, several trends did emerge from the consultation meetings, formal evidence and submissions about the way dedicated seats could work in practice.

The evidence presented to the Committee indicated majority support for between two and six dedicated seats in both Houses of Parliament, in addition to the existing number of seats. There was strong support at the consultation meetings that candidates for dedicated seats should be drawn from the "grassroots" and be independent of a political party. While opinion was divided on the likely success of a referendum, there was overwhelming support for an extensive education and information campaign on dedicated seats in the lead up to a referendum. The Committee believes that if a referendum were to be held, an education campaign should be targeted to the Aboriginal community, as well as the wider community.

There was less agreement in the evidence about the elements of a voting system for the election of candidates for dedicated seats, including the selection of candidates. Other areas where a consensus was not reached include the appropriate boundaries for electorates to elect a dedicated seat in the Legislative Assembly and the creation or adaptation of an electoral roll. The Committee believes there needs to be more extensive consultation with Aboriginal people on these particular issues.

The Committee heard a range of views on other aspects of the voting process, including voter eligibility, whether Aboriginal voters should be restricted to voting for the dedicated seats and the role and function of the dedicated seat. While these issues were debated at the consultation meetings, there was little evidence presented to the Committee in formal evidence and submissions.

There was considerable support at the community consultations for more time to discuss the complex issues surrounding the mechanics of dedicated seats. For this reason, the Committee believes there is a need for a more extensive community debate on these issues before any conclusions can be drawn about an appropriate model.

CHAPTER EIGHT

OTHER WAYS TO IMPROVE ABORIGINAL REPRESENTATION

8.1 Introduction

This Chapter considers ways to improve Aboriginal representation in the NSW Parliament, other than dedicated seats. These options include: the establishment of an Aboriginal Assembly; non-voting Aboriginal seats; the right to make formal reports to Parliament; better Aboriginal representation in the major political parties; improved participation by Aboriginal people in elections; and Aboriginal participation in local government.

While there was general support for various options at the consultation meetings, there was no overall support for any one particular alternative. The majority of participants felt that dedicated seats was the preferred option and that other strategies to improve Aboriginal representation in the NSW Parliament should be employed *in addition* to dedicated seats.

A variety of opinion was expressed in formal evidence and submissions concerning alternative ways to improve Aboriginal representation, but no clear preference to dedicated seats emerged.

8.2 AN ABORIGINAL ASSEMBLY

One of the options described in the consultation brochure was the establishment of an Aboriginal Assembly in the NSW Parliament. It is proposed that this Assembly could meet several times a year to discuss current issues and legislation relevant to Aboriginal people. This Assembly would have an advisory role and would not have the power to draft or enact legislation. The brochure also suggested that this Assembly could build on the inaugural "Black Parliament", a meeting of NSW Aboriginal Land Council and ATSIC representatives in the Legislative Assembly in June 1997. A second Black Parliament was held in the Assembly in September 1998.

8.2.1 SUBMISSIONS AND EVIDENCE

The former Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, recognised the potential advantages of a separate Parliament or Assembly for Aboriginal people. Unlike dedicated seats, he argued, a separate Parliament would allow a broader diversity of indigenous peoples to be represented. However, for it to be effective, it would need to have some authority or political power rather than be a purely advisory body (Submission 24).

Professor Garth Nettheim tentatively proposed the establishment of an Aboriginal Assembly or "convocation", because he thinks that such proposals should come from indigenous people (Nettheim evidence, 26 September 1997).

The membership of the proposed convocation would comprise representatives of the NSW Land Council and ATSIC in NSW. It could meet four times per year, perhaps for one week when Parliament is not sitting, to deliberate on current issues and legislation which relate to indigenous people. Nettheim suggested the convocation should be a transitional arrangement for a period of approximately four years. During this time, one of the tasks of the Assembly could be to deliberate on a longer lasting arrangement for Aboriginal participation in the NSW Parliament, including dedicated seats (Nettheim evidence, 26 September 1997).

8.2.2 Consultation Meetings

There was little support among most participants for an Aboriginal Assembly unless such a body was established "alongside" dedicated seats or as an interim measure.

The Benefits of an Assembly

Participants were able to identify several possible benefits if an Assembly was introduced in addition to dedicated seats or in the interim. An Assembly could provide: a forum for Aboriginal people to meet; a training ground for Aboriginal people interested in politics; and access to Parliamentarians. It was also suggested that an Assembly could provide important back-up to a person in a dedicated seat.

The Need for a Charter

Participants at Lismore were concerned that if established, the Assembly should be guided by a Charter. This Charter, which should be enshrined in legislation, would outline the role of the Assembly and its relationship to Parliament and the government. It would also include a mechanism to ensure the government would respond to the Assembly and its recommendations.

Membership

Most participants agreed that the members of an Assembly should be elected from "grassroots Aboriginal communities" rather than appointed, but there was no agreement on the method of election. However, a group of participants in Wagga Wagga thought that members could be appointed from existing Aboriginal organisations or nations and suggested three possible alternatives for their nomination:

- a representative drawn from each ward of the ATSIC regional councils, in six regions (approximately 20 people);
- a combination of current Land Council representatives; or
- one representative from the various Aboriginal nations.

Limitations of an Assembly

Participants' concerns about an Assembly were two-fold. First, that an Assembly would lack real political power:

if you have an Assembly that actually does not give them any power, you are perpetuating an injustice...While ever we keep them outside the decision-making process, it remains unjust (Devitt evidence, Dubbo);

To me, an Aboriginal Assembly, if it has not voting rights and cannot address the Parliament, is very paternalistic (Parkinson evidence, Coffs Harbour).

Second, an Assembly may overlap with existing representative Aboriginal organisations:

I cannot see the point of a group of Koori people meeting in Parliament to discuss legislation or policies when we have already got structures set up to do that now. What does the Department of Aboriginal Affairs do? They advise the Minister and talk to him about relevant polices and procedures. We have the NSW Aboriginal Land Council, which is the principal adviser for Kooris to State governments (Amatto evidence, Dubbo).

8.3 Non-Voting Seats

The Issues Paper and consultation brochure also proposed non-voting Aboriginal seats as a possible way to improve Aboriginal representation. Representatives in these seats would be able to speak on issues relevant to Aboriginal people and serve on Parliamentary Committees but they would not be entitled to vote. Both documents describe how non-voting tribal seats operate in the state of Maine in the United States to allow representation for two of its Indian tribes (see Section 3.3).

The consultation brochure stated that the establishment of non-voting seats would not need to be approved at a referendum. However, subsequent to the publication of the brochure, the Committee was informed this may not be the case. Please see Section 9.7 for further discussion of this issue.

8.3.1 SUBMISSIONS AND EVIDENCE

While the NSW Department of Aboriginal Affairs does not have a formal position on dedicated seats, one of the "options" it considered in its submission is the appointment of two or three non-voting Aboriginal members to either House of Parliament to trial the

concept of dedicated seats. These appointments could be drawn from the ATSIC Commissioners for NSW and NSW Land Council representatives. Alternatively, these delegates could be appointed from a list of 20 people elected by peak Aboriginal organisations (Submission 21).

The NSW Aboriginal Reference Group strongly opposed non-voting seats because it considers that indigenous representatives should be afforded full voting rights, even during a trial period (Submission 23). The NSW Aboriginal Land Council opposed non-voting seats in the Upper House because it would be seen as creating a "second class MLC" (Submission 22). Michael Dodson said he "would not give this option a high priority" (Submission 24). He argued that non-voting seats would lack much of the symbolic value of a representative with full voting rights. However, Mr Dodson acknowledged that non-voting seats may "more easily accord with public expectations of democratic representation..." (Submission 24). He also noted that the benefits of parliamentary privilege and administrative resources could help ensure indigenous issues are heard in the political domain (Submission 24).

Professor Nettheim suggested a slight variation on the idea of non-voting seats. He proposed that two Aboriginal people nominated by ATSIC and the NSW Aboriginal Land Council be available on invitation to address either House or Committees on issues of particular concern to Aboriginal people:

This way, Aboriginal people...would have a voice and the NSW Parliament would have the benefit of hearing directly from Aboriginal people...(Nettheim evidence, 26 September 1997).

He suggested that, unlike dedicated seats with full voting rights, the introduction of non-voting seats would probably not need to be approved at a referendum (Nettheim evidence, 26 September 1997).

8.3.2 Consultation Meetings

Participants were generally opposed to the establishment of non-voting seats as an interim measure or as an alternative to dedicated seats. They felt it was imperative that Aboriginal Members should have the same rights and responsibilities as non-indigenous Members of Parliament. Anything less was tokenism:

There is no way the Aboriginal community of New South Wales will embrace representatives who couldn't vote. It would just be tokenistic and another symbolic gesture...We should have representatives in Parliament the same as everyone else with voting rights (Carroll briefing, Wagga Wagga).

One participant was more positive about the potential benefits of non-voting seats. He argued that because it would probably be easier to get approval at a referendum for a

non-voting seat, their introduction could pave the way for dedicated seats with full voting rights. In the meanwhile, the non-voting Members would perform an important monitoring role in Parliament (Matthews briefing, Wagga Wagga).

8.4 REPORT TO PARLIAMENT BY NSW ATSIC REPRESENTATIVES

Participants at three of the consultation meetings suggested that representatives of ATSIC in NSW should be allowed to report to Parliament:

as the Ombudsman does, at least maybe once or twice a year on matters that the Parliament needs to address (Mackay evidence, Armidale).

A participant in Moree felt this report should be made by NSW ATSIC representatives because they are:

representatives of the Aboriginal people, so we could at least feel we were part of that process through electing people to ATSIC in the first place (McGray evidence, Moree).

Participants' main concern about this proposal was finding a way to ensure the government would respond to the proposed reports within a set time frame.

8.5 ABORIGINAL REPRESENTATION IN POLITICAL PARTIES

The role of political parties to facilitate Aboriginal representation in Parliament was an important theme at most of the consultation meetings and in some submissions and formal evidence. It was generally felt that the major political parties should do much more to enhance Aboriginal political participation. Given these expectations, the Committee invited representatives from several political parties in the NSW Parliament to give evidence about what they were doing to encourage Aboriginal participation in their organisations.

8.5.1 EVIDENCE - THE POLITICAL PARTIES

A representative from each of the state branches or divisions of the major parties in the NSW Parliament was invited to give evidence to the Committee about Aboriginal representation in their party structure. The witnesses were Eric Roozendaal from the Australian Labor Party (ALP), David Mendelssohn from the Australian Democrats, Remo Nogarotto from the Liberal Party of NSW and Paul Davey from the National Party. The Committee also invited the Reverend Fred Nile and Pastor Peter Walker from the Christian Democrats to appear because Pastor Walker is an Aboriginal candidate for the NSW Legislative Council at the forthcoming election in 1999. Each of the witnesses was asked the same questions.

Data on Aboriginal membership and participation

None of the parties collect details on the Aboriginality or ethnicity of their members and were therefore unable to give accurate figures on Aboriginal membership or participation. Reverend Nile told the Committee, "We have not asked for race or cultural background. If it did it might indicate a racist attitude" (Nile evidence, 19 August 1998). Most of the witnesses admitted that the number of Aboriginal members was very low, except in some parts of the State where there are fairly large Aboriginal communities. Aboriginal participation as office holders and in branches was also estimated to be low.

• Preselection of an Aboriginal person to state or federal seats

The ALP, Christian Democrats and the Australian Democrats have pre-selected an Aboriginal person to a state or federal seat. However, only one of these endorsements could be considered to be for a "winnable" seat, and that is the Senate seat won by Aden Ridgeway in the recent federal election on behalf of the Australian Democrats.

According to the Reverend Fred Nile, Pastor Peter Walker, who is number two on the Christian Democrat's ticket for the Upper House for the 1999 election, "is in reach of a winnable seat" (Nile evidence, 19 August 1998). The National Party has not preselected an Aboriginal person to a federal or state seat, but Paul Davey did not think there were any barriers to their preselection:

There is no barrier within the structure of the National Party that would prevent an Aboriginal person from coming forward for preselection, winning preselection and going on to win a seat...you could argue that we do not actively encourage them, but we do not actively encourage it among anyone else either (Davey evidence, 19 August 1998).

Eric Roozendaal acknowledged that the "robust" nature of ALP preselection could make it difficult for an indigenous person to participate in this process. He also said that the introduction of positive discrimination to facilitate the preselection of an Aboriginal candidate would require a reassessment of the party rules (Roozendaal evidence, 19 August 1998).

Concern about the level of Aboriginal participation

The witnesses were asked if they were concerned about the level of Aboriginal participation in their parties. David Mendelssohn said:

I think it would be putting it too highly to say concern but we would welcome more involvement (Mendelssohn evidence, 19 August 1998).

Eric Roozendaal also questioned the use of the word "concern":

I do not know whether the word "concern" is the right word. As a broadly based membership party we are interested in encouraging all ethnic and indigenous groups to participate in the party... (Roozendaal evidence, 19 August 1998).

Remo Nogarotto told the Committee that the short answer to this question was "yes" - they would like to see a more heightened involvement from that important segment of the community (Nogarotto evidence, 27 August 1998). The Reverend Fred Nile said his party has always been anxious "...to encourage Aboriginal candidates to stand for Parliament" (Nile evidence, 19 August 1998).

Paul Davey said the National Party was interested in encouraging participation from the whole community, rather than particular sections (Davey evidence, 19 August 1998).

Steps to encourage Aboriginal participation

Party representatives were asked if their parties had taken specific steps to encourage Aboriginal involvement in their structures. Eric Roozendaal said the Party had produced a recruitment brochure targeted to Aboriginal people and that Aboriginal candidates received the full support of the ALP office. He also said there had been talk in the party that the 20 per cent loading for female candidates in preselections could be extended to indigenous candidates, but this idea had not progressed very far (Roozendaal evidence, 19 August 1998).

The Australian Democrats have not taken any special initiatives to encourage Aboriginal participation:

If we are talking about steps specifically to encourage Aboriginal involvement in the party I would have to say no. We have a fairly open party structure. Anybody can join and get involved. But we do not actually target particular groups to try and recruit them (Mendelssohn evidence, 19 August 1998).

Several witnesses commented that the most important thing their party could do to encourage membership was to make their structures accessible to everyone, as Remo Nogarotto suggests:

From our end, from a formal party end, we need to make sure that the structure, the symbolism and the forums within our structures are accommodating to indigenous people. Beyond that, I am not quite sure what we can do (Nogarotto evidence, 27 August 1998).

However, he had some concerns about encouraging certain sections of the community to join a political party:

There are some dangers in a political party seeking out - for want of a better term - better representation from some segment within the community and not allowing the process to work in reverse, that is, allowing people of a like philosophical mind to naturally gravitate towards activism within that political party (Nogarotto evidence, 27 August 1998).

Paul Davey also thinks political parties should encourage participation, but not necessarily from specific groups:

I think parties can always do more to encourage greater interest in the parliamentary processes and the political processes ...across the whole community (Davey evidence, 19 August 1998).

It was suggested to Mr Davey that the National Party has strategies in place to encourage participation by particular groups, such as women and young people. Paul Davey responded that women in the party have not received special treatment:

Those women have achieved on an equal basis with anyone else, not because the party has done anything specific to push women forward. It is evolutionary (Davey evidence, 19 August 1998).

None of the parties indicated how they could make their structures more appealing to Aboriginal people nor if they had plans to consider this issue in the near future.

A stance on dedicated seats

None of the parties has a formal policy on dedicated Aboriginal seats.

The Christian Democrats were concerned that dedicated seats may be perceived as tokenistic and could undermine these Members' contribution to Parliament. While the party is formally opposed to dedicated seats at present, it would be prepared to revisit the issue if Aboriginal candidates fail to be elected in the usual way.

The National Party is formally opposed to dedicated seats. The Liberal Party does not have a formal position on the question but "would be uncomfortable with dedicated seats" (Nogarotto evidence, 27 August 1998).

While the Australian Democrats do not have a policy on dedicated seats, Mr Mendellsohn said his party is very supportive of indigenous self determination and reconciliation and the party may support dedicated seats if it could be shown that such a step would advance these goals. Their support would also depend on how the dedicated seats were established. Mendelssohn said he was attracted to a proposal for two dedicated seats, one nominated by the ALP and the other by the Coalition, after consultation with the Aboriginal community. The key advantages of this model is that

it would not affect the numbers in Parliament and could depoliticise Aboriginal affairs in the Parliament (Mendelssohn evidence, 19 August 1998).

Eric Roozendaal told the Committee that while the ALP does not have policy on dedicated seats, "quite rightly, we will be debating that" (Roozendaal evidence, 19 August 1998). However, he envisaged some difficulties with the concept of dedicated seats under present party rules:

Because we have a system of democratic election of candidates to the rank and file preselection system, it is a bit difficult for us to accommodate these sorts of issues within our present rules as they stand. For us to consider some positive discrimination...would require an reassessment of the party rules (Roozendaal evidence, 19 August 1998).

Other ways to improve Aboriginal participation

Witnesses were asked to comment on other ways to improve Aboriginal representation in Parliament. David Mendelssohn suggested that a proposal to improve women's involvement in Parliament which had been discussed recently in his party could be extended to Aboriginal people. Under this proposal, if parties fail within a certain time to put up a reasonable number of Aboriginal candidates in winnable seats, their electoral funding could be reduced (Mendelssohn evidence, 19 August 1998).

Eric Roozendaal suggested that any steps taken by the Australian Electoral Commission or the NSW State Electoral Commission to encourage Aboriginal people to participate in federal and state elections would be welcome (Roozendaal evidence, 19 August 1998).

Remo Nogarotto suggested that improving the education and economic standing of Aboriginal people would facilitate Aboriginal representation (Nogarotto evidence, 27 August 1998). Paul Davey commented on the need to encourage more people, including Aboriginal people, to pursue a political career:

when one looks at the overall community...a parliamentary career is becoming increasingly less popular..We have to do something about that (Davey evidence, 19 August 1998).

8.5.2 SUBMISSIONS AND OTHER EVIDENCE

John Ah Kit, an Aboriginal Member of the Northern Territory Legislative Assembly, does not support dedicated seats but seeks:

a profound and lasting change to the political parties of Australia in their approach to indigenous representation...(Submission 10).

He argued in his submission that virtually none of the major political parties in Australia had taken any real steps towards getting indigenous representation in their parties - "let alone" safe seats for candidates.

The machine bosses regard the process as belonging to them, and certainly not to the indigenous people who are expected to vote for them come election time...Aboriginal people have, at best, been preselected to fight hopeless causes in seats they have no chance of winning (Submission 10).

John Ah Kit calls on the "party machines" to ensure skilled indigenous Australians are not locked out of the political process (Submission 10). Garth Nettheim also argued that the political parties should assist Aboriginal people to obtain representation in Parliament:

one way to achieve this would be for the political parties to seek to encourage Aboriginal membership and Aboriginal candidates and for Aboriginal people themselves to seek through one or other of the various political parties to go for office. They have not done so in the past and probably the numbers are such that they would need active encouragement and active endorsement from the political parties for this to occur (Nettheim evidence, 26 September 1997).

Political scientist Dr James Jupp told the Committee that while political parties should play a key role in improving Aboriginal representation in the NSW Parliament, "they have done very little about it". Aboriginal people, like many other minority groups, are disinclined to join political parties because:

Parties have problems recruiting anybody, but they particularly appear to newcomers, whether it is immigrants, Aborigines, women or new members - to be very cliquey and self-contained. ..Most political parties in Australia are very narrow. They have their own language, practices and rules, and they often seem hostile to outsiders (Jupp evidence,19 August 1998).

According to Jupp, one way to overcome the barrier to Aboriginal participation in political parties, is to establish Aboriginal branches within parties, as in the Northern Territory:

I know some people think it is branch stacking but it seems the way to go. People from the various minority groups are more comfortable with each other than they are coming into the often very hostile atmosphere of party politics (Jupp evidence, 19 August 1998).

Jupp acknowledges that the Aboriginal population is much higher in the Northern Territory but suggests such branches may be relevant in parts of NSW with a significant number of Aboriginal people, such as Blacktown, Redfern or Bourke. He also told the Committee that the Northern Territory Labor Party is the only Australian political party with an affirmative action policy for Aboriginal people.

8.5.3 Consultation Meetings

A consistent theme at the consultation meetings was that political parties should do more to encourage Aboriginal representation in Parliament. The following suggestions were offered: Political parties could recruit Aboriginal people as members; select Aboriginal candidates for winnable seats; and introduce mentoring programs and quotas for indigenous people. Ted Lancaster thought it was important to convince the political parties that Aboriginal people:

...can play a big role in winning or losing seats in particular areas...(Lancaster evidence, Dubbo).

Not everyone felt that Aboriginal representation would be furthered by political parties. A participant in Moree thought it would not be possible to require the political parties to improve Aboriginal representation. Others were sceptical about the willingness of the major political parties to pre-select Aboriginal candidates:

If Aboriginal people are going to wait for the political parties to show equal representation for males and females, and likewise for Aboriginal and non-Aboriginal people, they will be waiting a long time (Mathews briefing, Wagga Wagga).

Some people commented that many Aboriginal people were disillusioned with politics and did not want to join political parties.

8.6 IMPROVING ABORIGINAL PARTICIPATION IN ELECTIONS

One way to improve the political influence of Aboriginal people is to maximise the number of Aboriginal people who vote in elections. Concern about the low rates of registration and voting in Aboriginal communities was expressed by participants at the community meetings and in evidence and submissions.

8.6.1 SUBMISSIONS AND EVIDENCE

The NSW Department of Aboriginal Affairs notes that while the number of people who voted at the ATSIC election in NSW in 1996 increased by 17.8% from 1993, a significant number do not participate in elections. The Department cites several reasons for this tendency and expressed concern over the recent withdrawal of funding

for electoral education in Aboriginal communities provided by the Australian Electoral Commission and the fact that the NSW State Electoral Office only provides electoral education on an ad hoc basis (Submission 23). Between 1992 and 1996, the Australian Electoral Commission provided electoral education to Aboriginal communities across NSW through ATSEIS, the Aboriginal and Torres Strait Islander Electoral Information Service. The service ceased in 1996 because of a budget cut to the Electoral Commission (Clancy evidence, 27 October 1997).

In her evidence to the Committee, Ms Pat Dixon also criticised the withdrawal of funding for the Australian Electoral Commission's Aboriginal voter education program (Dixon evidence, 26 September 1997).

Dr James Jupp told the Committee that Aboriginal voter turnout is even lower for ATSIC elections than for Commonwealth or State elections for which registration and voting is compulsory (Jupp evidence, 19 August 1998).

8.6.2 Consultation Meetings

Concern about Aboriginal participation in elections was a common theme at the consultation meetings:

In all Aboriginal elections there is a very small proportion of the people on the electoral roll who actually vote and we have got to try and overcome that problem (Matthews briefing, Wagga Wagga).

Participants at the Parramatta meeting noted with concern the demise of the electoral education program previously provided by the Australian Electoral Commission:

The Electoral Commission, I believe, has let us down...we need people going around all the time to each group of people. Even if they sat down with an organisation for one day in a medical centre and said, "Excuse me, are you on the roll?" and say "I want to show you some of the posters, and why you should vote, and where your vote will count" (Leslie Snr evidence, Parramatta).

A participant from Moree suggested that the lack of political education in schools was one of the reasons for the small number of Aboriginal people who vote in elections. Several participants across the consultation meetings commented on the need for education about the political system in Aboriginal communities. Mr Warren Mundine said the strategies in local government, particularly in places like Armidale, could improve voter registration and turnout (Mundine evidence, Redfern).

8.7 ABORIGINAL REPRESENTATION IN LOCAL GOVERNMENT

There has been an increasing awareness of the importance of Aboriginal representation in local government and as a possible "stepping stone" to participation

in state politics.

On many occasions throughout the Inquiry, the Committee was told about the Local Government Aboriginal Mentoring Program which is sponsored by the Department of Local Government. The aim of the program is to enable Aboriginal community members to gain a greater insight into local government, and to encourage more Aboriginal people to run for office at the local government elections in 1999. Under the program, a currently serving councillor acts as a mentor to a representative of the Aboriginal community. The scheme was piloted in Kyogle and is currently operating in eight other Local Council 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 (Personal communication, Department of Local Government).

8.7.1 SUBMISSIONS AND EVIDENCE

Michael Dodson believes that while local government is not a substitute for the involvement of Aboriginal people in State Parliament, it is an extremely important level of government for Aboriginal people. He suggests that Aboriginal participation in local government could be facilitated by making areas with sufficient numbers of indigenous residents separate local government areas and making areas with a high concentration of Aboriginal residents a separate ward, effectively guaranteeing the election of an aboriginal candidate.

Ms Pat Dixon, Deputy Mayor of Armidale, told the Committee that Aboriginal involvement in local government was crucial to the well being of Aboriginal communities. Ms Dixon, who has spent the past 17 years in local government, suggests that participation in local government allows Aboriginal people to become involved "in all sorts of areas from employment to dealing with political procedures" (Dixon evidence, 13 October 1997). She also informed the Committee of the importance of the network of Aboriginal councillors across NSW established by the Department of Local Government (Dixon evidence, 13 October 1997).

Mentoring

Dr James Jupp suggested that one of the reasons for the under-representation of Aboriginal people in politics is the generally poor levels of education in Aboriginal communities. He feels that a mentoring program for Aboriginal people may be a valuable way to encourage Aboriginal people to get involved in politics.

Michael Dodson also supports the objectives of the local government mentoring scheme which he believes should be monitored and given additional resources if shown to be effective (Submission 24).

8.7.2 Consultation Meetings

Mentoring

Several participants commented favourably on the role of the Local Government Aboriginal Mentoring Program and a few suggested it could be extended to State Parliament.

Mick Coombes believes there is broad support for mentoring in the Aboriginal community. He said that delegates to the 1997 national reconciliation convention resolved that other states should adopt the program at the local level and that the program should also be adopted by State *and* Federal governments (Coombes evidence, Parramatta).

While there was considerable support for mentoring, a few participants thought such programs were "patronising" to Aboriginal people. Another participant at Moree suggested it would be very difficult to introduce such a program at the state level. A participant at Wagga suggested a mentoring program in reverse whereby parliamentarians learn from Aboriginal people.

8.8 FURTHER OPTIONS

Several other suggestions to improve Aboriginal representation in the NSW Parliament were raised at the consultation meetings and in evidence and submissions. In most cases, very little detail was provided. The Committee has included these options to indicate the variety of ideas suggested at the meetings to enhance representation for Aboriginal people and does not consider they are of less value than other options discuss. The other options include:

- a treaty between black and white Australia;
- amendment of the NSW and Australian Constitution to recognise Aboriginal custom and law;
- creation of a Sovereign Black Parliament, to operate parallel to the NSW Parliament with full voting rights and powers;
- adaption of aspects of Canada's approach to indigenous representation;
- establishment of an Aboriginal political party;
- local and regional agreements; and
- electoral reform.

8.9 Conclusion

While the primary objective of this Inquiry was to consider the introduction of dedicated Aboriginal seats in the NSW Parliament, the Committee also received submissions and evidence on other ways to improve Aboriginal representation. Indeed, several witnesses and submissions called on the Committee to consider dedicated seats as only one element in a package of measures to improve Aboriginal representation.

The Committee found conditional support for the establishment of an Aboriginal Assembly and non-voting seats in the submissions and evidence. Supporters of these strategies felt an Assembly might be an effective way to represent the diverse views of Aboriginal communities. Others suggested that non-voting seats would enable Aboriginal people to have access to Parliament and an opportunity to gain valuable parliamentary experience. However, it was generally felt that an Assembly and non-voting seats were "second best" options to dedicated seats with full voting rights and that these initiatives would only be supported in the interim or in addition to dedicated seats. The views of the Committee on the establishment of an Assembly are discussed in Chapter Ten.

During the Inquiry concern was expressed over the lack of encouragement by political parties in NSW for Aboriginal participation as members and candidates. As will be discussed in Chapter Ten, Committee Members were not able to agree on the obligations of political parties to provide this encouragement.

DEDICATED ABORIGINAL SEATS:

LEGAL AND CONSTITUTIONAL ISSUES

9.1 Introduction

This Chapter examines some of the legal and constitutional issues to be considered if dedicated seats for Aboriginal people were introduced in the NSW Parliament.

There are many different ways dedicated Aboriginal seats could be established in either or both Houses of Parliament. Each model or approach would require distinct legal and constitutional reform. The Chapter does not attempt to identify the myriad potential changes that would be required by different approaches. Rather, it demonstrates that, regardless of the particular model adopted, the introduction of dedicated seats would require approval by a majority of voters at a referendum.

This Chapter also looks at whether dedicated seats may contravene discrimination laws or be viewed as undemocratic. The Chapter draws on expert evidence provided to the Committee by two academic lawyers and the NSW Crown Solicitor. Correspondence from Professor Anthony Blackshield from the School of Law at Macquarie University is included at Appendix Eight and an advice from the NSW Crown Solicitor at Appendix Nine.

9.2 THE LEGISLATIVE AND CONSTITUTIONAL FRAMEWORK OF THE NSW PARLIAMENT

The function and composition of the NSW Parliament, including the election of Members, is governed by two pieces of legislation: the *Constitution Act, 1902* and the *Parliamentary Electorates and Elections Act 1912*.

While the *Constitution Act* sets out the general parameters of the electoral system in NSW, much of the detail is contained in the *Parliamentary Electorates and Elections Act*. For example, according to s. 28 of the Constitution, each Assembly electorate is required to have an equal number of electors, plus or minus ten per cent. However, the general requirement for "equal electorates" is further refined by s. 17A of the *Parliamentary Electorates and Elections Act* which stipulates the margin to be no more or less than three per cent.

9.3 FEDERAL LAWS MAY OVERRIDE THE NSW CONSTITUTION

The Australian Constitution determines the issues which the Australian Parliament can make laws about. All other issues are left to State Parliaments. These include public health, education, local government and law enforcement. Generally speaking, the Federal Constitution does not inhibit changes to the state Constitution. However, if a state law is inconsistent with the federal constitution or a federal law such as the *Racial Discrimination Act*, the state law will be invalid to the extent of that inconsistency (s.109, *Constitution Act 1900* (Clth).

9.4 WHAT ARE ENTRENCHED PROVISIONS?

The Parliamentary Electorates and Elections Act and some parts of the Constitution Act can be changed in the usual way, that is, by passing an Act of Parliament. However, certain parts of the Constitution Act can only be changed if they are approved by a majority of voters at a referendum. The sections that can only be changed by a referendum are referred to as "entrenched provisions".

Professor Blackshield informed the Committee that a referendum is required if an Act of Parliament is introduced which "expressly" or "impliedly" affects the entrenched provisions of the *Constitution Act* (Blackshield correspondence, 29 July 1998). The entrenched provisions in the *Constitution Act* are set out in ss.7A and 7B. Section 7A deals primarily with the Legislative Council and s. 7B with the Legislative Assembly (Blackshield correspondence, 29 July 1998). These sections of the *Constitution Act* are included at Appendix Ten.

9.5 THE INTERPRETATION OF THE NSW CONSTITUTION

Acts of Parliament, such as the *Constitution Act*, are often complex and sometimes unclear. Where the meaning or intention of a particular provision is not readily apparent, it may be interpreted by a court. In NSW, the Supreme Court is responsible for interpreting the NSW Constitution. Therefore, the Supreme Court would rule on any challenge to the introduction of dedicated Aboriginal seats. The final avenue of appeal against a decision by the NSW Supreme Court is the High Court of Australia.

9.6 Would Dedicated Aboriginal Seats Require Constitutional Change?

The Committee was told that, legally speaking, it is not strictly necessary to amend the *Constitution Act* in order to introduce dedicated Aboriginal seats:

...leaving aside the entrenched provisions, the Constitution Act is not a superior enactment overriding and limiting the powers of the NSW Parliament, but is itself an enactment made by that Parliament, and freely subject to amendment by it. Any subsequent legislation expressed as a formal amendment to the unentrenched provisions of the Constitution Act will therefore simply take effect according to its terms (Blackshield correspondence, 29 July 1998).

For example, provided that the entrenched provisions were not affected, the introduction of dedicated seats to the Assembly could be achieved by amending the *Parliamentary Elections and Electorates Act* (Waugh evidence, 27 October 1997).

However, both Waugh and Blackshield argued that, even if it were *legally* possible to introduce dedicated Aboriginal seats without changing the NSW Constitution, this would not be *appropriate:*

The spirit of the amendments that have been made to the Constitution Act in the past is that the key features of the electoral system are set out in the Constitution Act. It would be consistent with the spirit of the act...if the amendments were made in the Constitution Act itself, rather than trying to avoid that and put them somewhere else (Waugh evidence, 27 October 1997).

Blackshield argued that any proposal for dedicated Aboriginal seats should be framed as a formal amendment to the *Constitution Act*, for two reasons:

.....such an approach would be consistent with the general spirit of the Constitution Act, 1902, and with the particular combination of representative and direct democracy which the Constitution Act embodies..... equally, such an approach would be appropriate to both the symbolic and the practical significance of any system of dedicated Aboriginal representation (Blackshield correspondence, 29 July 1998).

9.7 IS A REFERENDUM REQUIRED TO APPROVE DEDICATED SEATS?

As mentioned above, certain parts of the *Constitution Act* can only be changed by referendum. The following section discusses some of the amendments to the *Constitution Act* that would almost certainly be required to allow for dedicated seats in either House of Parliament and that would require a referendum.

It is the view of the NSW Crown Solicitor that, regardless of the model adopted, a referendum would be required to introduce dedicated Aboriginal seats to either House of Parliament. While Professor Blackshield and Mr Waugh generally concurred with this view, it should be noted that both were keen to acknowledge the possibility, albeit slight, that a court may take a different view.

9.7.1 DEDICATED SEATS IN THE LEGISLATIVE COUNCIL

According to John Waugh the introduction of dedicated seats in the Legislative Council would require significant amendments to the Sixth Schedule of the *Constitution Act* (a schedule is an appendix to an Act). The Sixth Schedule includes a description of the method of election to the Legislative Council: proportional representation (also referred to as optional preferential proportional representation). Under this system there is one electorate-the State of NSW-and candidates have to receive a quota, or proportion of the total votes, to win a seat. There is a total of 42 members in the Council, but only half of the Members (21) are elected at each election. The quota is 4.55% of the total vote. The quota for the 1995 election was 153,600 votes and it is unlikely this figure will

vary significantly at the forthcoming State election in March 1999.

The maximum number of Aboriginal voters in NSW is 49,739¹, well below the quota required to elect a Member of the Legislative Council (MLC). As Waugh argued, the voting system would probably have to be modified to facilitate the election of an Aboriginal member to the Upper House. For example, the quota could be reduced for the Aboriginal candidate. This would require amending the Sixth Schedule of the *Constitution Act*, an entrenched provision which can only be changed by holding a referendum.

Waugh also pointed out that a referendum would be required if the dedicated seat(s) varied the size of the Council (currently 42 Members). This is because the part of the *Constitution Act* which regulates the size of the Council (section 17(2)) is also an entrenched provision (Waugh evidence, 27 October 1997).

Professor Blackshield also argued that the introduction of dedicated Aboriginal seats would "most likely" involve a formal amendment of the Sixth Schedule. He suggested that even if it did not involve an *express* amendment of the Sixth Schedule, it would "almost certainly" involve an *implied* amendment, thus requiring approval at a referendum.

The Crown Solicitor was also of the view that the introduction of dedicated seats in the Council would require amendment of the Sixth Schedule, as well as ss. 22 and 22A:

The provisions in question provide for a single constituency for Legislative Council elections undivided by question of race. Any measure which created multiple electoral districts for the Legislative Council or which provided for the election of an aborigine or aborigines [sic] as a member or members of the Legislative Council; by aborigines in a single electoral district comprising the whole State would be inconsistent with the system established by ss 22, 22A and the Sixth Schedule of the Constitution Act (NSW Crown Solicitor correspondence, 20 October 1998).

9.7.2 DEDICATED SEATS IN THE LEGISLATIVE ASSEMBLY

Unlike the Legislative Council, a referendum is not required to vary the number of Members in the Legislative Assembly. The recent electoral redistribution which will

¹1996 Census of Population and Housing, Australian Bureau of Statistics. This is the number of Aboriginal people in NSW 18 years and over. It represents the <u>maximum</u> number of Aboriginal voters in NSW because a proportion of these people may not be registered to vote or will not vote at election time. This number would be reduced further if Aboriginal voters were required to choose to vote for either the Aboriginal candidate or the general candidate, but not for both, as is the case for Maori voters in New Zealand.

reduce the number of seats in the Lower House from 99 to 93 at the next State election was accomplished by passing an ordinary Act of Parliament. Nevertheless, the Committee heard convincing evidence that a referendum would also be required to introduce dedicated seats to the Legislative Assembly.

Waugh told the Committee that, while it may be *possible* to avoid changing the *Constitution Act* to establish a dedicated seat in the Lower House, it would not be *desirable*:

One possibility is to try to confine the amendments to the Parliamentary Electorates and Elections Act...It might be attempted to change only that Act and not the Constitution Act if the seat were added to the Assembly. However, I see several problems with that (Waugh evidence, 27 October 1997).

One of the problems identified by Waugh is the requirement for "equal electorates" contained in s. 28 of the *Constitution Act*. This section requires that each electorate must have an equal number of electors, plus or minus ten per cent. The principle behind this provision is that each person's vote should have the same value, regardless of where they live.

At the forthcoming State election in March 1999 it is estimated that each of the 93 electorates will have between approximately 42,000 and 45,000 electors (information supplied by the Electoral Districts Commissioners, 4 June 1998).

Given the maximum number of Aboriginal voters in NSW is estimated to be 49,739, no single electorate would hold enough Aboriginal voters to secure a seat for an Aboriginal candidate. One way around this requirement could be to amend s. 28 so that Aboriginal electorates did not have to satisfy the equal enrolment requirement. As Waugh pointed out to the Committee, s. 28 is an entrenched provision and could only be changed by referendum.

Another response to the restrictions imposed by s. 28 would be for an Aboriginal electorate to encompass the whole State. There are at least three potential problems with this proposal. Firstly, if Aboriginal people were required to choose to vote for the Aboriginal candidate in the dedicated seat or the general candidate, but not both, and a significant number of Aboriginal people opted to vote for the general rather than the Aboriginal candidate, there may not be enough Aboriginal electors across the entire state to satisfy the requirement for equal enrolments.

Secondly, even if an Aboriginal electorate did meet the requirement for equal enrolments at a particular point in time, the seat would have to be abolished if enrolments fell more than ten per cent below the target enrolment, unless s. 28 was amended (Waugh evidence, 27 October 1997). A population increase would also pose a problem if the increase was not large enough to justify the creation of an additional

seat.

The third obstacle identified by Waugh is that ss. 26-28 of the *Constitution Act* were written on the assumption that electoral districts for the Assembly would not overlap whereas an Aboriginal electorate which spanned the whole State would overlap with every other electorate in the State:

It might be possible to reconcile that with the precise wording of sections 26-28, but it would not be consistent with the assumptions behind those sections and it would be safer to avoid problems of that kind and simply amend sections 26-28 to make it clear that the changes fit in with what is in the Constitution Act (Waugh evidence, 27 October 1997).

As noted above, s. 28 is an entrenched provision which can only be amended by referendum. The Crown Solicitor suggests that ss. 26-28 would need to be amended to allow dedicated Aboriginal seats in the Legislative Assembly:

The provisions in question appear to establish a system in which the State is divided into multiple electoral districts and each member is elected to represent one district only ie a member represents an electoral district and not merely so many of the voters in it as consist of the people of one race. Any measure which created an electoral district for the Legislative Assembly consisting of the entire State or which provided for the election of an aborigine by aborigines in one or more of a number of multiple electoral districts would be inconsistent with the provisions in question (NSW Crown Solicitor correspondence, 20 October 1998).

9.8 ARE DEDICATED SEATS UNDEMOCRATIC?

One of the issues considered during the course of this Inquiry is whether Aboriginal voters, in an election where there was one or more dedicated Aboriginal seats, would be restricted to voting for an Aboriginal Member; be able to choose which vote to exercise; or be able to exercise two votes.

A fundamental principle of a democratic system of government is equality of voting power, often referred to as "one vote, one value" or "equal suffrage". This principle requires that all electors are able to cast the same number of votes and that all votes cast in an election are of equal value.

Given the relatively small number of Aboriginal electors in NSW, the introduction of dedicated seats to either House of Parliament would most likely require departure from a strict interpretation of the principle of equal suffrage, even if Aboriginal voters only had one vote. As discussed above, the number of Aboriginal voters is insufficient to allow for the election of an Aboriginal candidate without significant changes to the

voting system of either House of Parliament.

In evidence and submissions to the Inquiry it was argued that exceptions to this rule could be justified:

...equality of voting value should not be the only criterion when the choice of options is made. The principles that would lie behind the creation of a dedicated seat would give some justification for departing from strict equality of voting (Waugh evidence, 27 October 1997).

The former Social Justice Commissioner, Michael Dodson, argued that an apparently unequal voting system could be justified under certain circumstances:

In finalising the International Covenant on Civil and Political Rights (ICCPR), the United Nation's General Assembly acknowledged that the preferred preference was an electoral system which guaranteed that all votes were of equal value. However, it acknowledged that there may be an exception to this rule where there was a reasonable basis for the inequality. One example of what might be considered a reasonable basis for an unequal voting system would be the need to guarantee the political representation of regional interests....Distinct Indigenous representation need not, in fact, contravene the requirement of strict equality (Submission 24).

Dodson also argued that a recent High Court Case, *McGinty v State of Western Australia* (1996)186 CLR 140, suggests that the NSW Parliament has the constitutional ability to create an electoral system which gives some electors greater voting power because there is no guarantee of equal suffrage in the federal Constitution and the states are not bound by such a principle (Submission 24).

Waugh suggested that it might be easier to preserve "rough equality in the value of votes" for the dedicated and non-dedicated seats if they were introduced to the Assembly rather than the Council:

The number of voters on the roll for a dedicated seat in the Assembly is more likely to be roughly the same as the other seats. In the Council the creation of a dedicated seat would probably mean a much smaller number of people voting for that Member than for each of the other Members of the Council, in other words the value of the votes for the holder of a dedicated seat in the Council is likely to be much greater than the value of the votes for most of the Members of the Council (Waugh evidence, 27 October 1997).

According to Waugh, there are no real legal obstacles to allowing Aboriginal people to have two votes. However, he envisaged significant political problems:

Of course it would be possible to create a dedicated seat and give the indigenous people a second vote which they could exercise for the indigenous seat at the same time as they exercise a vote for the other seats in the House. I can imagine that the argument about that would be furious if that dedicated seat carried a vote in the House, because that would mean the reintroduction of plural voting, which was bitterly fought in the past...I can see strong objections to that (Waugh evidence, 27 October 1998).

9.9 ARE DEDICATED SEATS DISCRIMINATORY?

The Racial Discrimination Act, 1975 (Commonwealth) (RDA) embodies some of the protections guaranteed in international treaties, such as the International Covenant on Civil and Political Rights. It prohibits discrimination on the basis of race and it cannot be amended or repealed by state laws. However, the RDA recognises that, in certain circumstances, it may be necessary to take "special measures" which may appear to be discriminatory, in order to achieve equality.

A concern was expressed in several submissions to the Inquiry that the provision of dedicated Aboriginal seats would constitute racial discrimination. Therefore, the Committee asked the Human Rights and Equal Opportunity Commission to provide advice on whether dedicated Aboriginal seats in the NSW Parliament would breach the provisions of the RDA.

In providing this advice, the Commission stressed that it was not giving an opinion regarding the merits or otherwise of dedicated seats. It also noted that the answer to this question would depend on the exact provisions of any proposal. Nevertheless it concluded that "it is possible that such a measure would qualify as a special measure" and therefore not constitute unlawful racial discrimination. A copy of the advice is located at Appendix Eleven. The Crown Solicitor also suggested that dedicated seats could constitute a "special measure" as defined by the *Racial Discrimination Act*. He argued that while dedicated seats would appear to contravene certain sections of the International Covenant on Civil and Political Rights:

the Commonwealth does not appear to have implemented the Covenant in such a way as to give legal force to the rights contained therein or to render invalid any State law which is inconsistent with the Covenant (NSW Crown Solicitor correspondence, 20 October 1998).

He also suggested that dedicated seats would be unlikely to contravene the NSW *Anti-Discrimination Act 1977* because this Act does not make it unlawful to discriminate in the area of Parliamentary representation.

9.10 Non-Voting Seats May Also Require A Referendum

One of the options to improve Aboriginal participation in Parliament considered by the Inquiry was non-voting indigenous seats, as exist in the state of Maine in the United States. Maine has provided representation for two of the state's largest Indian tribes since early last century. These representatives are not entitled to vote (for further details see Chapter Three).

The Committee asked the NSW Crown Solicitor whether the introduction of a dedicated Aboriginal seat in either House of Parliament would require approval at a referendum, if the person in the dedicated seat was not entitled to vote. He advised:

even if the aboriginal [sic] representatives do not have the right to vote, I assume the intention is that they would be members of the House and would occupy a seat in the House; they would not be strangers who by arrangement address the House or participate in other ways in some proceedings of the House. If that is so, the measure would still expressly repeal or amend the entrenched provisions...and for that reason would have to be approved by the electors (NSW Crown Solicitor correspondence, 20 October 1998).

John Waugh suggested that, while it might be possible to establish non-voting seats without changing the *Constitution Act*, it would be *safer* to admit a non-voting member by legislation:

Certainly, if the indigenous representative were merely admitted to proceedings and allowed to speak, without having a vote, that could be done without an amendment to the Constitution. If the indigenous representative is said to hold a seat as such, there would be more problems with that. The closer the representative is assimilated to an ordinary member of the House, the greater the problems with inconsistency with the Constitution (Waugh evidence, 27 October 1998).

9.11 CONCLUSION

It is very difficult to map with certainty, the multitude of legal and constitutional issues that may be generated by the introduction of dedicated Aboriginal seats. As noted in the Introduction, this would depend on the features of a particular "model" of dedicated seats and the Committee was not asked to consider a specific model or approach.

The expert legal advice received by the Committee was that the introduction of dedicated Aboriginal seats to either House of Parliament would require approval, by a majority of voters at an election, regardless of the particular model adopted. The only caveat to this is that the NSW Supreme Court and the High Court have the final say on this question.

As Blackshield and Waugh suggested, regardless of the legal requirements, there are compelling reasons to suggest any proposal to introduce dedicated Aboriginal seats should be framed as a formal amendment to the *Constitution Act* and put to the people of NSW at a referendum. This would be in keeping with the general spirit of the Constitution of NSW, which embodies many elements of our system of government. It would also serve to underline the significance of such an initiative.

CHAPTER TEN
Conclusions

10.1 Introduction

The Committee believes that a just and equitable Australian society requires that indigenous people are able to participate in the decisions that affect their lives and communities. The evidence presented to this Inquiry clearly demonstrates that Aboriginal people are under-represented at all levels of government. Indeed, there is not, and has never been, an Aboriginal Member of the NSW Parliament.

This Chapter presents the Committee's conclusions about ways to enhance Aboriginal political representation, particularly in the NSW Parliament. It is divided into three sections. The first section includes the Committee's conclusions on the introduction of dedicated seats and the possible establishment of an Aboriginal Assembly to further the political aspirations of Aboriginal people in NSW. The second section sets out the Committee's views about what political parties can do to improve Aboriginal representation and the third section comprises suggestions designed to maximise Aboriginal participation in local government and elections.

10.2 THE COMMITTEE'S VIEW ON DEDICATED SEATS IN THE NSW PARLIAMENT

Under its Terms of Reference, the Committee was required to investigate whether legislation should be introduced to establish dedicated seats for Aboriginal people in the NSW Parliament. The Committee also sought evidence on other ways to enhance Aboriginal representation.

The Committee found significant support for the concept of dedicated seats among the people who attended the consultation meetings and the key Aboriginal representative organisations in NSW. However, there was little agreement on how dedicated seats would work in practice. There was a variety of views regarding the number of seats, in which House they should be located and how they should be elected. There was, however, considerable agreement that Aboriginal people should be actively involved in deciding these issues.

The Committee recognises the enthusiasm for dedicated seats among those members of the Aboriginal community who participated in this Inquiry and some members of the wider community who contributed to the Inquiry. It also acknowledges that dedicated seats could be an important step towards furthering indigenous representation, particularly as the mainstream political process has failed to achieve this goal so far.

However the Committee is acutely aware of the significant obstacles to the creation of dedicated seats. In particular, this initiative could not proceed without the support of the NSW Parliament and the approval of a majority of voters at a referendum. Neither of the two main political parties support dedicated seats at present and the Committee

believes that a referendum on dedicated seats would not be successful in the near future. The Council for Aboriginal Reconciliation suggested to the Committee that a premature and therefore unsuccessful referendum proposal may in fact be counterproductive to the reconciliation process.

In 1995 the Council for Aboriginal Reconciliation conducted a national consultation to identify ways to promote social justice for indigenous people. During these consultations, proposals were often 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 (Submission 25).

CONCLUSION ONE

The Committee considers that the following steps must be taken before dedicated seats could be introduced:

- further consultation with Aboriginal people about how dedicated seats would operate
- the conduct of an education campaign about dedicated Aboriginal seats, which involves individual Members of Parliament, political parties and the community
- an assessment of the level of support for dedicated seats in the existing political parties and the community
- the development of a proposal for dedicated seats and its adoption by the people of NSW at a referendum.

These steps pose formidable challenges to the advocates of dedicated seats. The Committee is firmly convinced that Aboriginal people should formulate the initiatives to improve Aboriginal representation and believes that the establishment of an Aboriginal Assembly should be considered, as an interim measure, by the Aboriginal community.

10.3 AN ABORIGINAL ASSEMBLY AS AN INTERIM MEASURE

The Committee does not recommend the introduction of dedicated seats at present. However, it recognises that initiatives to establish dedicated seats may be taken in the future, particularly if Aboriginal people do not gain representation through the existing

processes. An Aboriginal Assembly could be established to further the goal of Aboriginal representation and to improve the possibility of subsequent adoption of dedicated seats.

This Assembly could be an extension of the Black Parliament which has been held in the Legislative Assembly over the past two years. The primary goal of such an Assembly would be to further Aboriginal representation in all levels of government, particularly State Parliament. One of its key tasks could be to ascertain community and political support for dedicated seats, and devise an appropriate model in consultation with the Aboriginal community. In the interim, the Assembly could work to raise the profile of Aboriginal issues in Parliament and the community.

While the details of the role, function and membership of this body should be developed through consultation with Aboriginal people, the Committee offers the following suggestions based on submissions and evidence received during the course of the Inquiry.

The Assembly should be guided by a Charter which would be laid down in enabling legislation. The Charter would confer rights and duties, including the right of the Assembly to report to Parliament on a regular basis, monitoring the progress of political parties to improve Aboriginal representation within their ranks (see Section10.4) and a duty devolving on the government to respond to recommendations made by the Assembly. The Assembly should be adequately resourced.

While a voting system to elect members to an Assembly would need to be developed, the Assembly could possibly commence with representatives of the NSW Aboriginal Land Councils and ATSIC in NSW, as well as other Aboriginal community leaders and members, ensuring fair representation of women and young people.

The potential benefits of an Aboriginal Assembly were presented in evidence and submissions to the Inquiry. It was suggested that an Assembly could allow for a broader diversity of indigenous people to be represented than if there were only one or two dedicated seats. As Michael Dodson, the former Social Justice Commissioner, said:

Unlike the creation of dedicated seats, a separate parliament is likely to be sufficiently large to allow a broader diversity of Indigenous peoples to be represented in it. It is therefore likely that a separate Parliament would be closer to the people than one or two Legislative Assembly representatives (Submission 24).

It was also suggested to the Committee that an Assembly could raise the profile of Aboriginal issues in the community, provide a training ground for Aboriginal people interested in politics and give access to Parliamentarians. As one participant at the consultation meeting in Wagga Wagga said:

[An Assembly would] give the Aboriginal community a place to go to take their issues and then possibly from there they could put a recommendation to the Parliament (Murray briefing, Wagga Wagga).

However, it should be said that support for an Assembly among participants at the consultation meetings was conditional. Some people would only support an Assembly if it was established as an interim step to the achievement of Aboriginal representation in Parliament. Other people would only support an Assembly if it was established "alongside" dedicated seats.

Several participants were concerned that an Assembly may overlap with existing representative organisations for Aboriginal people while others thought an Assembly would lack real political power:

...if you have an Assembly that actually does not give them any power, you are perpetuating an injustice...While ever we keep them outside the decision-making process, it remains unjust (Devitt evidence, Dubbo).

The Committee notes the reservations about an Aboriginal Assembly raised in the evidence and submissions, but given the difficult steps that must be taken to achieve dedicated seats, considers it appropriate to suggest that the establishment of an Aboriginal Assembly be given serious consideration to encourage Aboriginal people to play an active and effective role in the political process. An Assembly could go a considerable way towards genuinely involving Aboriginal people in the operation of the NSW Parliament.

Conclusion Two

The Government Members of the Committee believe that an Aboriginal Assembly to meet in the NSW Parliament should be established as an interim measure to further Aboriginal representation at all levels of government. The Assembly should be guided by a formal charter and be adequately resourced. The Assembly should only be established if it has significant support from the Aboriginal community in NSW.

Other Members of the Committee do not support the establishment of an Aboriginal Assembly at this stage.

10.4 THE ROLE OF POLITICAL PARTIES

The following conclusions can be drawn from a review of the evidence of the representatives of political parties in the NSW Parliament:

- none of the major parties have adopted a policy to promote dedicated seats, or to ensure the preselection of a representative number of Aboriginal people. Aboriginal people have failed to win pre-selection for a winnable seat in NSW;
- the lack of Aboriginal participation is not a pressing concern to any of the parties;
- none of the parties have developed a comprehensive strategy to seek greater participation from Aboriginal people (in 1994, the ALP distributed a recruitment brochure targeted to Aboriginal people). In fact, the Liberal Party and National Party prefer to encourage participation from the whole community, rather than target a specific group; and
- some parties said that one of the most important ways to encourage Aboriginal
 people to join their organisation was to make sure their structures were as
 accessible and inclusive as possible. However, none of them said how this
 could be achieved nor if and when they intended to address this issue.

The Committee believes that political parties in NSW could exercise a role in improving Aboriginal participation as members and candidates but few are taking steps to ensure this happens.

CONCLUSION THREE

A majority of Members of the Committee concluded that every political party represented in the NSW Parliament should be asked to develop an action plan by March 2000. This plan could detail the steps the party might take to encourage Aboriginal participation, including the methods to encourage Aboriginal people to join their party, participate in committees and policy development, stand as candidates for winnable seats and gain employment as support staff to sitting Members of Parliament.

Each party could be invited to make an annual report to the NSW Parliament on the progress of their action plan.

The other Members of the Committee believe that the political parties could do more to encourage Aboriginal participation and seek their commitment to improve this situation.

10.5 ABORIGINAL PARTICIPATION IN LOCAL GOVERNMENT

Throughout the Inquiry, many people strongly supported the Local Government Aboriginal Mentoring Program (see Section 8.7). At present, the program is only expected to operate until the forthcoming local government election in 1999. Participating councils must meet the costs incurred in sponsoring a mentor: approximately \$1500 for each six month period (Information supplied by the Department of Local Government, November 1998). For some Councils, this cost may be a disincentive to participate.

The Committee recognises the potential of this program to enhance Aboriginal representation in local government and thereby provide a "stepping stone" to State politics and considers that the program should be evaluated following the 1999 local government elections. The evaluation would assess the success of the program in encouraging Aboriginal participation in local government and consider funding arrangements. If the outcome of this evaluation is positive, the program should be extended to the elections in 2003.

CONCLUSION FOUR

The Committee supports the Local Government Aboriginal Mentoring program and considers that if the foreshadowed evaluation shows that mentoring is effective in encouraging Aboriginal people to serve in local government, the program should be extended to the elections in 2003.

10.6 ENCOURAGING ABORIGINAL PARTICIPATION IN ELECTIONS

During the Inquiry, many people commented on the low voter participation rate among Aboriginal people. The lack of political education available to Aboriginal people was often cited as an explanation for this situation. Several people drew attention to the cessation of the indigenous voter education campaign run by the Australian Electoral Commission between 1992 and 1996 and urged that it be reinstated. One of the most popular aspects of this program was the employment of Aboriginal Liaison Officers to conduct face-to face voter education in Aboriginal communities across the State.

Participation in elections is a primary and basic form of political participation and high levels of participation are vital to a democracy. The Committee is keen to ensure that particular groups in our community are not deterred from participation through lack of information and education.

CONCLUSION FIVE

The Committee urges the Minister for Aboriginal Affairs to request the federal Special Minister of State to reconsider funding an information and education program for indigenous people about the electoral system.

10.7 CONCLUSION

This Chapter presents the Committee's conclusions on ways to enhance Aboriginal participation in the political process, both as political representatives and as voters. The conclusions seek to address the evidence presented to this Inquiry which clearly demonstrated that Aboriginal people are under-represented at all levels of government. The Committee believes that a just and equitable Australian society requires that indigenous people are able to participate in the decisions that affect their lives and communities.

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INDIGENOUS REPRESENTATION

IN CANADA: AN OVERVIEW

In 1996 the Canadian Royal Commission on Aboriginal People (RCAP) established that:

The rights of self-determination is vested in all the Aboriginal peoples of Canada, including First Nations, Inuit and Metis peoples. ... By virtue of this right, Aboriginal peoples are entitled to negotiate freely the terms of their relationship with Canada and to establish governmental structures that they consider appropriate for their needs.

The Aboriginal population of Canada consists of three groups: Indians (now frequently referred to as First Nations), the Métis and the Inuit. They make up 4.4% of the total population. Although Aboriginal rights negotiated with the provincial and/or federal Governments of Canada may apply to all three groups, agreements are typically negotiated with reference to each of these separately due to the vastly different historical and cultural developments of the groups. For example, the Inuit will receive their own separate land base in 1999 - the *Nunavut* territory - as a result of a land claim, while the Métis, who for the most part have no cultural link to a land base, negotiate the terms of their self-determination with the Canadian Government in non-territorial terms. However, the federal government is at present focused primarily on negotiations with First Nations.

Historically, the inherent right of self-determination is seen to be based on the *Royal Proclamation of 1763* which - unlike the situation in the early years of Australian colonisation - explicitly recognises the existence and land rights of the Aboriginal peoples of Canada:

... it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them ... as their Hunting Grounds.

Treaty negotiations between Indians and the colonisers became the established way of resolving land issues, a form of problem-solving still used today. Although some communities have benefited from negotiations, they have proven extremely problematic for Aboriginal people over the years for a number of reasons. Firstly, Treaties are *sui generis* ("unique in law") and thus a volatile and unprotected process relying heavily on interpretation of the specific treaty. Many conflicts over the method of interpretation have arisen in recent years ('letter' versus 'spirit and intent' models) and has lent itself to abuse of cultural differences and understandings. Secondly, Aboriginal people have

had little or no power to enforce agreements resulting in a number of broken Treaty promises. As a result, Indian reserves were greatly diminished in size in many areas.

Along with the reserves, the concept of 'status' Indians was developed in the middle of the 19th century and finally brought into legislation in the Indian Act. In essence, the Act was developed to distinguish between those who were entitled to reside on reserves (including the rights and responsibilities which it entailed) and those who were not. In short, the Act set out to cement the ideas of the Royal Proclamation. However, as some commentators have pointed out, although the Act evolved to protect the land base of the Aboriginal peoples, it became a two-edged sword. Through a number of amendments to the Act, status Indians were excluded from basic rights such as voting and other civic duties while a number of activities ranging from alcohol consumption to 'uncivilised' cultural activities were banned or heavily penalised. Furthermore, as in Australia, thousands of Indian children were taken from their homes for re-education (see annotated *Indian Act* listed below).

Today the Act remains controversial, although recent amendments (1985) have resulted in marked improvements in Indians' rights. For example, the present Act has eliminated gender and racial discrimination while restoring status to a large number of Indians who had been disenfranchised involuntarily. It has also given First Nations the option of assuming control of their own membership.

The last 15 years have seen dramatic improvements to the rights and recognition of Aboriginal peoples in Canada. Firstly, the *Constitution Act* of 1982 (s. 35) provided legal protection for the otherwise perilous Treaty negotiations. It also confirmed that self-government is an inherent right, thus inviting renewed negotiations with First Nations about concrete self-government arrangements. As stated in a federal policy quide (1995):

... the Aboriginal Peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationships to their land and their resources.

The challenges for Aboriginal people and the various levels of government (federal, provincial/territorial and local) is to work out an arrangement in each area which takes into account all levels of jurisdiction, and which divides the rights and responsibilities in a way acceptable to all parts. This process has already started in some areas but is deemed slow and difficult.

In order to aid this renewal of relationships, the above-cited Royal Commission on Aboriginal People inquired into current and past legal, political and cultural practices involving the Aboriginal people of Canada and produced 440 far-reaching and comprehensive recommendations, including:

- formal apology for past abuses, including a recognition of discrimination on a number of levels;
- inquiry into the forced removal of Aboriginal children and a start to 'remedial action' (healing);
- addition to the Royal Proclamation concerning Treaty negotiations (including the introduction of Treaty legislation in federal and provincial/territorial parliaments);
- establishment of independent Treaty bodies;
- recognition of the "unique form of dual citizenship" of Aboriginal Canadians;
- establishment of the Department of Indian and Northern Affairs (to be replaced by a Department of Aboriginal Relations and a Department of Indian and Inuit Services);
- establishment of an Aboriginal parliament to provide advice to Parliament in relation to legislation on Aboriginal people. (A national assembly of elected First Nation heads - the Assembly of First Nations - has in fact existed since 1982. Their missions statement, among other things, includes parliamentary liaising);
- clear definition of Aboriginal land rights, fishing quotas and access to resources;
- health, housing and education strategy development;
- arts and heritage legislation, including language preservation. Funding made available for a large-scale 20 year research project into Aboriginal cultures and languages; and
- extensive public education campaigns on these issues with particular attention given to new citizens.

The government's response in January 1998 included a \$350 million commitment to support the development of community-based healing and an official apology for the forced removal of Aboriginal children. It nevertheless disregarded the more extensive recommendations and many people were disappointed with this result.

Sources and information of interest:

1. Acts and legal documents:

- The Royal Proclamation (1763): www.bloorstreet.com/200block/rp1763.htm
- The Constitution Act (1982): www.bloorstreet.com/200block/sconst82.htm
- The Canadian Charter of Rights and Freedoms (1982): www.bloorstreet.com/sconst82.htm#4
- The Indian Act (1985 amendment): www.bloorstreet.com/200block/sindact.htm
- The Royal Commission on Aboriginal People (1997): www.inac.gc.ca/rcap/

2. Policy guides and critical debate:

- Aboriginal Law and Legislation Online (Canada, United States, Australia and New Zealand): www.bloorstreet.com/300block/ablawleg.htm
- Assembly of First Nations: www.afn.ca
- Department of Indian and Northern Affairs: www.inac.gc.ca
- The First Perspective Online, (Aboriginal newspaper): www.mbnet.mb.ca/firsper/society

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SUBMISSIONS RECEIVED

THE COMMITTEE RECEIVED 40 PUBLIC SUBMISSIONS

No.	Name:	Position:	ORGANISATION:
01	Mr W R Sinclair		
02	Mr Keith Rex		
03	Mr Len Wakeman		
04	Mr David Feeney		
05	Ms Shirley Prout		
06	Mr Rob Shaw		
07	Mrs Peta Simmons		
08	Mr Jack Glenn		
09	Mr Bob Fung		
10	Mr John Ah Kit, MP	Member for Arnhem	Northern Territory Legislative Assembly
11	Ms Marie V Heaney		
12	Mr Ray Leslie		
13	Mr S M O'Doherty		
14	Mr George Smith, Q.C.		
15	Mr Peter Cronau	Chairperson	Australians Against Racism
16	Mr David Pross and	Chairperson	Ngaimpe Aboriginal Corporation
	Ms Sally Jope	Service Development Officer	ITRAC Wyong Shire Inc
17		Elected NSW Chairpersons and Commissioners	Aboriginal and Torres Strait Islander Commission (ATSIC)
		Elected Chairperson and Members	New South Wales Aboriginal Land Council
18	Dr Margaret Sargent		
19	J L Wauchope	Director	Office of Aboriginal and Torres Strait Islander Affairs, Department of Families, Youth and Community Care, Queensland
20	Mr Ron Clifton		
21	Mr Geoff Scott	Director-General	Department of Aboriginal Affairs

No.	Name:	Position:	ORGANISATION:
22	Mr Aden Ridgeway	Executive Director	New South Wales Aboriginal Land Council
23	Mr Sol Bellear	Chairperson	Aboriginal Reference Group
24	Mr Michael Dodson	Aboriginal and Torres Strait Islander Social Justice Commissioner	Human Rights and Equal Opportunity Commission, Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner
25	Mr Fred Leftwich	Secretariat Adviser	Council for Aboriginal Reconciliation
26	Professor Garth Nettheim	Visiting Professor of Law and Chair of the Indigenous Law Centre	University of New South Wales
27	I S Doig		
28	D Jensen		
29	Ms Tania Goswell		
30	Mr Rob Shaw		
31	Mr Neville Peck		
32	John C Rusbourne		
33	Jon M Axtens		
34	Reverend Harry J Herbert	Executive Director Board for Social Responsibility	Uniting Church in Australia, NSW Synod
35	Ms Jennifer Callow		
36	Mr Jack Mason		
37	A. Mills-Thom		
38	Mr Ron Hurst		
39	Mr B Pope		
40	Mr Michael Mansell	National Secretary	Aboriginal Provisional Government

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WITNESSES AT HEARINGS

THE COMMITTEE HEARD EVIDENCE FROM 19 WITNESSES

FRIDAY, 26 SEPTEMBER 1997

Mr Geoffrey Scott Director-General

Department of Aboriginal Affairs

Mr John Telford Joint Co-Ordinator

Australians for Reconciliation (NSW)

Mr Phillip Donnelly State Manager

ATSIC New South Wales

Mr Aden Ridgeway Executive Director

NSW Aboriginal Land Council

Mr Ivern Ardler Secretary

NSW Aboriginal Land Council

Mr Anthony Simpson Legal and Policy Researcher

NSW Aboriginal Land Council

Professor Garth Nettheim Visiting Professor of Law and

Chair of the Indigenous Law Centre University of New South Wales

MONDAY, 13 OCTOBER 1997

Ms Patricia Dixon Chief Executive Officer

Armidale District Service (Aboriginal Medical

Centre) and

Deputy Mayor

Armidale City Council

Ms Shelley Reys Joint Co-Ordinator

Australians for Reconciliation (NSW)

and

Managing Director

Arrilla Aboriginal Training and Development

MONDAY, 27 OCTOBER 1997

Mr Michael Clancy Assistant Director, Electoral Education

Australian Electoral Commission

Mr John Waugh Lecturer, Faculty of Law

University of Melbourne

WEDNESDAY, 19 AUGUST 1998

Mr Eric Roozendaal Assistant General Secretary, NSW Branch

Australian Labor Party

Mr Paul Davey General Secretary

New South Wales National Party

Dr James Jupp Director

Centre for Immigration & Multicultural Studies

Australian National University

Mr David Mendelssohn New South Wales Divisional President

Australian Democrats

Reverend Fredrick Nile, MLC Member of the New South Wales Legislative Council

and

National President of the Christian Democratic Party

Pastor Peter Walker Minister of Religion

and

Aboriginal Candidate for the New South Wales Legislative Council representing the Christian

Democratic Party

THURSDAY, 27 AUGUST 1998

Mr Remo Nogarotto State Director

Liberal Party of Australia, NSW Division

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COMMUNITY CONSULTATIONS:

DATES AND VENUES

Standing Committee on Social Issues Inquiry into Dedicated Seats for Aboriginal People in the NSW Parliament

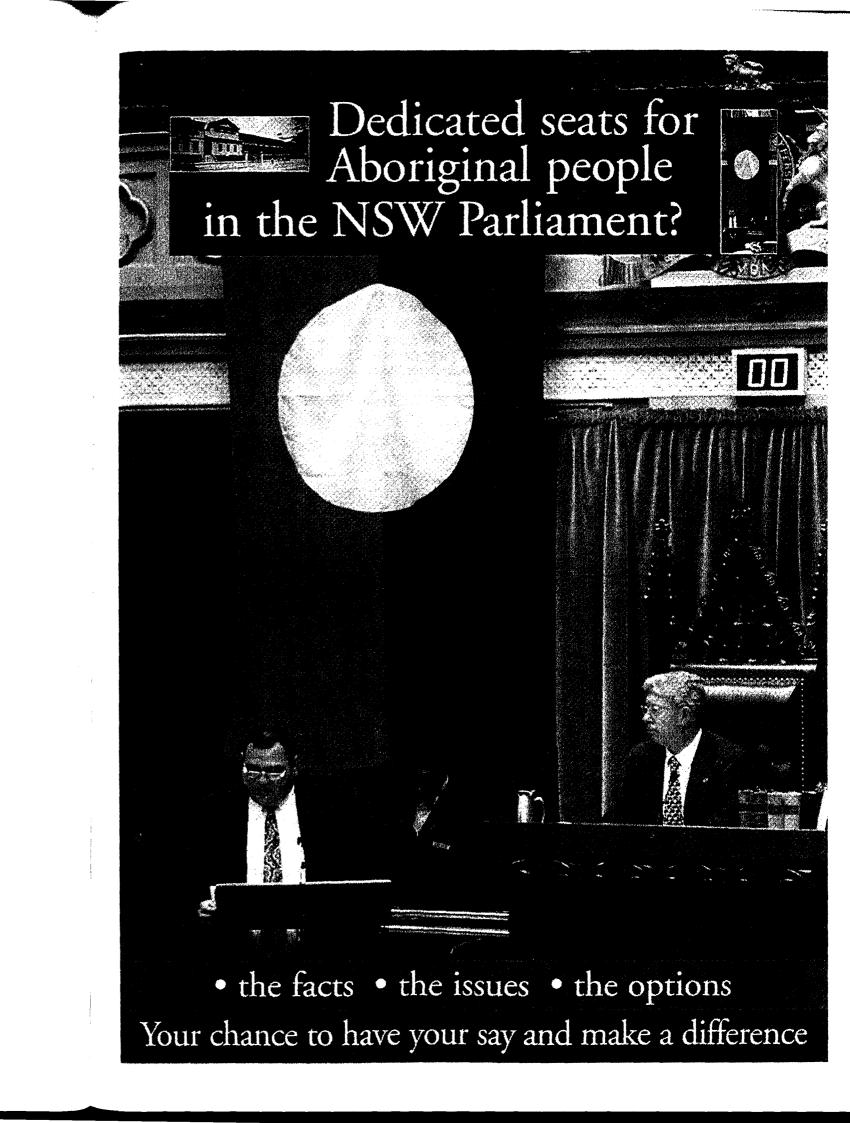
COMMUNITY CONSULTATIONS

Town:	DAY:	DATE:	TIME:	VENUE:
SYDNEY	Tuesday	3 March 1998	1.00 pm - 4.00 pm	Eora Centre for Aboriginal Studies 333 Abercrombie Street, Chippendale
PARRAMATTA	Wednesday	11 March 1998	5.30 pm - 8.30 pm	Parramatta Riverside Theatre cnr. Church & Market Streets, Parramatta
ARMIDALE	Tuesday Wednesday	12 May 1998 13 May 1998	5.30 pm - 7.00 pm 10.00 am - 4.00 pm	Aboriginal Cultural Centre & Keeping Place 108 Kentucky Street, Armidale
MOREE	Thursday	14 May 1998	10.00 am - 4.00 pm	Spa Village Motor Inn, Moree 300 Warialda Street, Moree
LISMORE	Tuesday	9 June 1998	9.00 am - 5.00 pm	Lismore & District Workers Club Ltd 225-231 Keen Street, Lismore
WAGGA WAGGA	Wednesday	22 July 1998	10.00 am - 5.00 pm	Wagga Wagga Education Centre Co-Operative Ltd 102 Peter Street, Wagga Wagga
BATEMANS BAY	Thursday	6 August 1998	10.00 am - 5.00 pm	Country Comfort Inn, Batemans Bay cnr. Princes Highway & Canberra Road, Batemans Bay
COFFS HARBOUR	Thursday	20 August 1998	10.00 am - 5.00 pm	Coffs Ex-Services Club Vernon Street, Coffs Harbour
DUBBO	Thursday	3 September 1998	10.00 am - 5.00 pm	Dubbo RSL Memorial Club cnr. Wingewarra and Brisbane Streets, Dubbo

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COMMUNITY CONSULTATIONS:

CONSULTATION BROCHURE





Dedicated seats on the agenda



Ann Symonds MLC



Neville Bonner, Federal Senator for Queensland from 1971 to 1983.



William Cooper (photograph Norman collection, courtesy Nancy Cato and Alick Jackomos collection. AIATSIS).

Front Cover: ATSIC Commissioner Steve Gordon in the Legislative Assembly with the Hon. John Murray, Speaker. (courtesy Fairfax) The Social Issues Committee is conducting an Inquiry into whether dedicated seats for Aboriginal people should be introduced in the NSW Parliament.

During 1998 the Committee will consult the Aboriginal and wider communities throughout NSW about this issue. This brochure aims to guide our consultations. It discusses some of the arguments for and against dedicated seats and raises questions about how they could be established.

This Inquiry invites people across the State to add to the discussion about Aboriginal people in politics.

I hope you take this important opportunity to share your views with us.

Am Synow.

Ann Symonds MLC

Chair, Standing Committee on Social Issues

About the Social Issues Committee

The Social Issues Committee is made up of seven Members of the Legislative Council of the NSW Parliament. The Committee investigates social issues affecting people in NSW. Committee members include representatives from the Australian Labor Party, Liberal Party, National Party and Australian Democrats. The Legislative Council asked the Committee to investigate the issue of dedicated seats for Aboriginal people.

What is a dedicated seat?

A dedicated seat is one or more seats reserved in Parliament for a particular group of people. In NSW dedicated seats could be in either or both of the two Houses of Parliament.

The demand for dedicated seats

There has never been an Aboriginal member of either House of the NSW Parliament. The only State or Territory Parliaments which have had an Aboriginal member are Queensland, Western Australia and the Northern Territory. Neville Bonner is the only Aboriginal Australian who has been elected to the Commonwealth Parliament. He was a Senator for Queensland from 1971 to 1983.

There have been calls to introduce dedicated seats for Aborigines in the state and federal parliament since the 1930s, from both indigenous and non-indigenous people. William Cooper was one of the first Aboriginal activists to call for a designated seat for Aboriginal people in the Federal Parliament. Recently, the Aboriginal and Torres Strait Islander Commission declared its support for dedicated seats. The Council for Aboriginal Reconciliation recommended further community consultation and education on the issue and approximately 10,000 Australians called for action on designated seats in the consultations leading to the Reconciliation Convention in 1997.

How the NSW Parliament works

Two Houses of Parliament

When thinking about the issue of dedicated seats, it is important to consider if these seats should be located in either or both Houses of Parliament.

The NSW Parliament is made up of two Houses — an Upper House called the Legislative Council and a Lower House called the Legislative Assembly. Elections for both Houses of Parliament are held on the fourth Saturday in March every four years.

The Legislative Council

There are 42 members in the Legislative Council. Members of the Legislative Council represent the entire State. These members are elected for a term of eight years. Twenty-one members are elected at the time of each general election. This means that only one half of the Council face re-election at each election.

The Legislative Assembly

There are currently 99 members in the Legislative Assembly (from March 1999 there will be 93 members). Each member represents a particular electorate or geographical area of the State. All members of the Assembly face re-election at each election.

The Government

The Government is formed from the party or group which wins a majority of seats in the Lower House at an election. The Opposition is the party or group which holds the second largest number of seats in the Lower House. Members of Parliament who are not Members of either the Government or the Opposition are often referred to as Independents or cross-bench Members.

The NSW Constitution

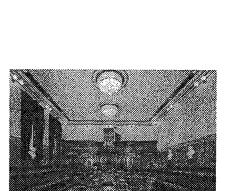
Each State has its own Constitution. The NSW Constitution gives law-making power to the Parliament in this State. The Federal Constitution determines the issues which the Federal Parliament can make laws about. All other issues are left to the State Parliaments. These issues include public health, education, local government and law enforcement.

The NSW Constitution also governs the way elections are conducted. It must be considered in any discussion about dedicated seats.

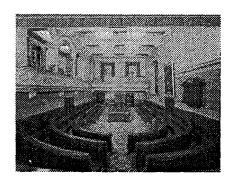
Referendum needed for change

Parts of the NSW Constitution may be changed by passing an Act of Parliament. Other changes require approval by a majority of voters in a referendum.

The introduction of dedicated seats for Aboriginal people would need to be supported by a majority of NSW voters in a referendum.



NSW Legislative Council (The Upper House)



NSW Legislative Assembly (The Lower House)





The main arguments for and against dedicated seats

Talking Points

- What are some of the other arguments for and against dedicated seats?
- Do you think the benefits of dedicated seats are greater than the disadvantages?

Aboriginal people. There are of course many more than we have listed. We expect to hear more ideas during our community meetings.

For

• Aboriginal people are the original owners of Australia. To recognise this, we should consider measures such as dedicated seats

Below are some of the key arguments for and against dedicated seats for

- It is difficult for Aboriginal people to gain seats in Parliament in the usual way because there are not enough Aboriginal voters in a single electorate in NSW to elect an Aboriginal candidate
- Dedicated seats recognise clearly the importance of Aboriginal participation in the political process
- Greater participation by Aboriginal people in Parliament would lead to a better understanding of Aboriginal culture and issues
- Dedicated seats would provide an important opportunity for Aboriginal people to make political decisions about the policies and laws that affect them.

Against

- Dedicated seats may be seen as undemocratic because a candidate could be elected by fewer voters than is usually the case
- Other minority groups and the non-Aboriginal community may oppose the idea of dedicated seats
- Aboriginal concerns should be the responsibility of all Members of Parliament, not just Aboriginal representatives
- If there are only one or two Aboriginal seats, Aboriginal representatives may lack real political power. It may be difficult for them to represent the diverse interests of Aboriginal people across NSW.

The New Zealand experience Several countries have reserved seats in their parliamen

Several countries have reserved seats in their parliaments for indigenous or particular groups, including India, Zimbabwe, Singapore and New Zealand.

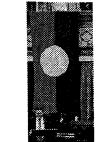
Maori seats in New Zealand

Dedicated seats for Maori people have existed in the New Zealand Parliament for over 125 years. There are currently five dedicated seats for Maori.

For more information about dedicated Maori seats see the Issues Paper produced for this Inquiry. Copies are available from the Committee Secretariat, phone (02) 9230 3078.



Maori representatives elected to dedicated parliamentary seats in 1996



Dedicated seats in NSW – how could it work?

In this section we list the issues that need to be considered if dedicated seats were introduced in either or both Houses of the NSW Parliament.

Voting options

Should Aboriginal people have two votes — one on an Aboriginal ballot paper for the Aboriginal member and one on the general ballot for the Council or the Assembly; or should they be required to choose between the two?

Which electoral roll is best?

Aboriginal Land Councils maintain their own electoral rolls for the election of Chairperson and Members. Elections for ATSIC Chairpersons and Commissioners are conducted by the Australian Electoral Commission.

A person who is registered to vote with the Electoral Commission may vote in the ATSIC elections for a candidate in the region in which they are enrolled.

Which electoral roll should be used in elections to fill dedicated seats in the Council or the Assembly?

In the Legislative Council....

How many seats should be dedicated? Should the dedicated seats be drawn from the existing 42 seats or should extra seats be created?

In the Legislative Assembly....

How many seats should be dedicated?

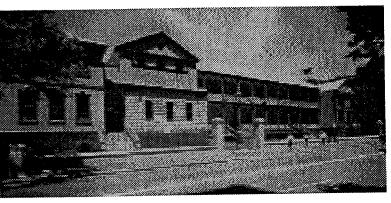
Should the dedicated seats be drawn from the existing 99 seats (93 after the next election) in the Assembly or should additional seats be created?

How many Aboriginal electorates should there be? Should they be based on:

- · Regional Land Council boundaries,
- · ATSIC regional boundaries, or
- existing boundaries for the Legislative Assembly?

Talking Points

- Would you support dedicated seats for Aborigines?
- A dedicated seat in the Council or the Assembly would need to be approved in a referendum. If a referendum were held today, do you think a majority of voters in NSW would support dedicated seats?



Parliament House, Macquarie Street, where decisions that affect NSW citizens are made. No Aboriginal person has ever been elected to our State Parliament.







Talking Points

- What are some of the possible advantages and disadvantages of establishing nonvoting Aboriginal seats?
- Do you think non-voting seats for Aboriginal representatives should be introduced in NSW?
- Should non-voting seats be introduced instead of dedicated seats or as an interim measure?
- Should non-voting representatives be elected or appointed? If elected, how should this occur? If appointed, how should this occur?
- Should non-voting representatives be restricted to speaking on Aboriginal issues only?

Donna Loring, a tribal representative from the Penobscot nation in the Maine House of Representatives, United States



Other options to increase Aboriginal representation

There are many other ways to provide for the political participation of Aboriginal people in NSW in addition to dedicated seats. These include:

- establishing non-voting Aboriginal seats and
- the formation of an Aboriginal Assembly.

Some of the submissions to our Inquiry suggest these measures could be introduced instead of dedicated seats. Others suggest they could be a stepping stone to the eventual election of Aboriginal people through the mainstream political process.

Non-voting Aboriginal members of Parliament

Aboriginal representatives in either House of Parliament would be able to speak on issues relevant to Aboriginal people and serve on parliamentary committees. However, they would not be entitled to vote. A referendum would not be required to introduce non-voting seats.

Case study: non-voting tribal seats in Maine

The State of Maine in the United States uses the term 'tribal seats' to describe its indigenous representation in Parliament. Maine has provided representation for two of the largest Indian tribes since early last century.

Tribal representatives are not entitled to vote. They are paid a daily allowance rather than a salary. However, they enjoy similar conditions to voting members, such as travel and housing allowance.

Representatives are chosen during elections for Tribal Councils. They serve a four year term. Indigenous members can sponsor bills of concern to their tribes.

Mixed feelings in Maine

There are mixed feelings about the benefits of non-voting seats in Maine. Some people argue that non-voting members in the parliament and on parliamentary committees have improved decisions and laws about indigenous affairs. They also think that their presence helps educate other members and the community on tribal issues.

Others think that non-voting representation is a way of keeping tribal representatives 'in their place' and that non-voting representation is only a half-way measure. They also feel that the lack of voting power means tribal representatives are unable to negotiate on issues. They can sit in the House and contribute to the debate but are frustrated because they cannot vote.



Traditional dancers perform in the Legislative Assembly during the Black Parliament. (courtesy Fairfax Photo Library)

An Aboriginal Assembly?

In June 1997, representatives of the NSW Aboriginal Land Council and ATSIC in NSW were invited to meet in the Legislative Assembly. This historic event has been described as the first 'Black Parliament'.

Some Aboriginal organisations have called for the establishment of an Aboriginal Assembly in the NSW Parliament. This Assembly would meet several times per year to discuss current issues and legislation relevant to Aboriginal people but would not have the power to pass legislation. A referendum would not be required to establish an Aboriginal Assembly.

Case study: the Sami Assembly

The Sami, formerly called the Lapps by the Scandinavians, are an indigenous minority group in Norway, Sweden, Finland and Russia. Approximately 70%



(40-50,000) of the Sami live in Norway. In 1984, the Norwegian Parliament passed an Act to create a Sami Assembly. The Assembly has 39 members. Representatives are elected by direct ballot by Sami people registered on the Sami electoral register. Assembly elections are held on the same day as elections to the Norwegian Parliament. The Assembly meets four times a year for one week at a time and reports yearly to the Norwegian Parliament. The Assembly is generally considered to be a very effective forum for protecting the interests of Sami people.

Indigenous Scandinavian people, the Sami, in national dress. (Photo courtesy of the Department of Sami Affairs)

Talking Points

- What are some of the possible advantages and disadvantages of establishing an Aboriginal Assembly?
- Do you think such an Assembly should be introduced in NSW?
- Should an Assembly be established instead of dedicated seats or as a temporary measure?
- Who should be on the Assembly and should they be appointed or elected? If elected, how should this occur? If appointed, how should this occur?
- ATSIC and the Land Councils already provide a representative structure for indigenous people in NSW. Would an Aboriginal Assembly duplicate or undermine these structures?









The Inquiry process

What's happened so far....

Two Members of the Committee completed a study tour to find out about indigenous political representation in Norway, Canada and the United States.

The Committee released an Issues Paper which was distributed widely to Aboriginal organisations and the broader community. The paper includes information about indigenous political representation collected during the Committee's overseas study tour. It also discusses the current political status of Aboriginal people in Australia. Copies of the Issues Paper are available from the Committee Secretariat. Contact details are at the bottom of this page.

The Committee has taken formal evidence from representatives of Aboriginal organisations and several experts on constitutional law. It has also received 23 submissions.

The next steps....

Community consultation: February 1998-September 1998
 The Committee will conduct eight community meetings to explore what the Aboriginal and wider communities think about designated seats for Aboriginal people. The workshops will be held at:

Redfern: 3 March
Parramatta:11 March
Armidale: 12-13 May
Lismore: 9-10 June

Wagga Wagga: 22-23 July
Batemans Bay: 5-6 August
Coffs Harbour: 19-20 August
Dubbo: 2-3 September

The NSW managers of Australians for Reconciliation will assist the Committee to organise the community meetings. These managers are Shelley Reys of Arrilla – Aboriginal Training and Development, and Mr John Telford of Glencoe Consulting.

• The Final Report: December 1998

The Committee will complete its final report and it will be tabled in the Legislative Council in December 1998. The report will include recommendations to the Government based on the submissions and evidence received by the Committee and the information gathered during the community consultations.

• Response from the Government

The Government is required to respond formally to the Committee's conclusions and recommendations six months after the report is tabled.

Submissions to the Inquiry are welcome
Send your submission to:
The Secretariat,
Legislative Council, Standing Committee on Social Issues
Parliament House
Macquarie Street, Sydney, NSW 2000

To find out more.

... about this Inquiry or the work of the Social Issues Committee

Phone:
02 9230 3078
Fax:
02 9230 2981
E-mail:
sociss@parliament.nsw.gov.au

APPENDIX SIX

COMMUNITY CONSULTATIONS:

SUMMARIES

REDFERN CONSULTATION

Venue:

Eora Centre for Aboriginal Studies

333 Abercrombie Street, Chippendale

Date:

Tuesday 3 March 1998

Time:

1pm - 4pm

No. Participants: 60

The Redfern consultation was a combined meeting with Aboriginal and non-Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- be a recognition that Aboriginal people are the original owners of Australia and provide an opportunity to amend the Constitution
- provide Aboriginal people with a Parliamentary representative with full and equal voting rights
- provide Parliament with the expertise to devise and implement policies for Aboriginal people.

Arguments against

Dedicated seats may:

- create divisions between groups in the broader community
- put pressure on the Aboriginal member to deal with the diversity of Aboriginal issues
- lead to isolation of the Aboriginal representative, particularly if there are only one or two seats
- remove the responsibility from other members of Parliament to deal with Aboriginal issues
- marginalise Aboriginal members to talk only on Aboriginal issues, and not the whole range of issues concerning New South Wales citizens
- allow mainstream political parties to avoid endorsing Aboriginal candidates
- suggest that Aboriginal people cannot enter Parliament on their own merits.

Plenary discussion

There was overall support for dedicated seats from the three workshop groups, with some participants giving conditional support, dependent upon the model put forward.

One participant suggested that:

Dedicated seats would lead to empowerment of Aboriginal people as well as compensating them for historical suppression (Evidence, Redfern).

On whether dedicated seats may result in non-Aboriginal members avoiding Aboriginal issues, Mrs Joyce Clague said that the mainstream may well say,

Oh well, that's all black fellows' issues, and things are going to be sorted out there, and we don't need to concern ourselves about issues related to Aboriginal people (Clague evidence, Redfern).

Strong support for this argument was expressed in a number of the groups. Ms Linda Burney said,

It is really critical that we don't rush down the path without thinking of the implications of that, and part of that is the attitude of most people in this State: that is, that if there are dedicated seats, then the mainstream political parties will feel that they have no obligation at all to support Aboriginal candidates (Burney evidence, Redfern).

One participant said there needed to be a gender balance in the selection of candidates for dedicated seats. Another participant was keen to see identity as an important factor in political representation in New South Wales. The participant said that Aboriginal people should only be eligible for a dedicated seat if they are from traditional "mobs" in New South Wales. There was considerable debate on this issues, with a range of opinion put forward and no consensus reached.

WORKSHOP 2 Dedicated seats - how could it work?

Number of seats

One group argued there should be at least two seats, with the possibility of using the New Zealand model of five seats. Another group suggested an odd number of seats, "perhaps 5", to ensure that in the event of disagreement on an issue it could be put to a democratic vote and return a verdict. There was general agreement that the numbers in each House of Parliament should be proportionate to the number of Members in each House: five in the Assembly, and two or three in the Council.

Which House?

Most participants agreed there should be representation in both Houses. Representation in the Upper House, with the eight year term:

would give the community a feeling of self-empowerment because they could see these people in Parliament over a long period of time (Olsen evidence, Redfern).

Representation in the Lower House was considered important because "this is where the day to day decisions are made".

Electoral roll

While there was little discussion on the electoral roll, most participants agreed that a new roll should be established afresh by Aboriginal people.

One vote or two?

There was a strong preference for Aboriginal people having two votes, one for the Aboriginal member and one for the general ballot. In support of two votes, Terry Olsen said his group felt that Aboriginal people are,

still voting for people that are going to contribute to decisions on the running of this State that affects their lives (Olsen evidence, Redfern).

Who can vote?

All groups felt that non-Aboriginal people should not be eligible to vote for the Aboriginal representative in the dedicated seat.

Independent or party aligned?

Some participants suggested that the Aboriginal representative should not be a member of one of the main political parties, and should remain independent from the political party process.

Education campaigns

There was general support for an education and awareness campaign to promote the electoral system, with some participants arguing there should be Aboriginal representation on the Electoral Commission. Other participants added that there should be specific education programs for schools.

One group suggested that the strategies employed by ATSIC to improve Aboriginal voter turnout should be examined and, in particular, the use of videos and alternative information media.

Mr Warren Mundine said the strategies in local government, particularly in places such as Armidale, could also assist with registration and voting.

If we are going to look at strategies or educational means to get people registered and voting, it might be a good idea to look at areas where it has been successful. One of those models that I suggested we have a look at was in Armidale (Mundine evidence, Redfern).

WORKSHOP 3 Other options to increase Aboriginal representation

The Canadian model

Some participants had some knowledge of a system of representation that had been developed for the indigenous people of Canada. One group recommended that the Committee research the Canadian model and asked that the Committee consider the appropriateness of the model for the indigenous people of New South Wales. For a brief overview of the indigenous representation in Canada, see Appendix One.

Aboriginal Provisional Government in Australia

Several participants suggested the Committee also investigate the model promoted by the Aboriginal Provisional Government in Australia.

Legislation to recognise Aboriginality

The third suggestion was that the Committee consider a recommendation to the New South Wales Parliament that a law be passed to recognise Aboriginality with respect to land, language, family, totem, traditional law; and the establishment of a regional Aboriginal Assembly to counsel local Aboriginal people.

PARRAMATTA CONSULTATION

Venue:

Parramatta Riverside Theatre

crn. Church & Market Streets, Parramatta

Date:

Wednesday 11 March 1998

Time:

5.30pm - 8.30pm

No Participants: 22

The Parramatta consultation was a combined meeting with Aboriginal and non-Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- remove the racist barrier to Aboriginal people seeking political representation
- provide a political voice for indigenous people
- provide Aboriginal people with "some actual, real political power" and the opportunity to influence debate
- provide a prominent and consistent voice in Parliament on Aboriginal issues
- ensure the Aboriginal member was free from party politics
- be a public acknowledgement of Aboriginal people as the original owners of Australia.

Argument against

Dedicated seats may:

- be tokenistic and patronising to Aboriginal people
- imply Aboriginal people are unable to gain seats on their own merit
- mean that the major political parties may no longer promote indigenous issues and Aboriginal people as members of their party
- marginalise Aboriginal issues and Aboriginal Parliamentary members
- in the event of one or two seats, place enormous pressure on those Aboriginal members to represent the diversity of issues

- mean other political parties lobby the Aboriginal member for support
- encourage other minority groups to demand dedicated seats
- be perceived as an erosion of democratic rights.

Plenary discussion

There was general support for dedicated seats, although there was concern that the focus should remain on the political parties to promote indigenous rights and seek Aboriginal people for preselection and as voters. While most people agreed that dedicated seats were one way to improve representation, some participants passionately objected because the seats might be viewed as patronising and undemocratic. There was general consensus that if dedicated seats were accepted by the wider community, the actual model should be developed in close collaboration with Aboriginal people.

Sections of the group felt strongly about the need for dedicated seats because of problems such as racism. Several participants said that Aboriginal representation in the major political parties was difficult because of racist attitudes in society. Mr Ray Leslie Snr, a 1990 Labor party candidate for the seat of Parkes said:

it was the greatest experience of my life, but I think I got entangled, you might say, with racism. I was surprised at the votes I got actually.

I come out straight away and say, yes, we should have reserve seats, for many reasons, because of the obstacles that I was up against, because even in the Parliament when people used to come up and support me they were even called racist for being with me. Even our own party people would not support me, and they had millions of dollars (Leslie Snr evidence, Parramatta).

The group felt that party politics and party structure did little to encourage Aboriginal participation. Several participants expressed concern about the failure of the major parties to preselect Aboriginal candidates for safe seats.

One participant suggested that gender equity should be an important factor in the selection of candidate for dedicated seats.

WORKSHOP 2 Dedicated seat - how could it work?

Number of seats

Some participants suggested that there needed to be at least two, but preferably more, dedicated seats so as to ensure consensus on issues. Other participants said that to have less than two seats would leave that member vulnerable and powerless.

One vote or two?

There was consensus in the plenary that Aboriginal people be given two votes, one for the dedicated seat and one for the general candidate.

Electoral roll

Several participants questioned the adequacy of the Aboriginal Land Council electoral roll. One participant told the Committee that he contested a State seat for the Land Council and found 150 mistakes on the roll, including the listing of his dead sister.

If you look at the voting average, if you look at the land council roll, in each land council they vote for 500 or 600 members. That is, 1,500 members in the Campbelltown, Mt Druitt and Liverpool areas. We know there are a lot more people in that area. But, when you get to the poll you are lucky to get 400. I mean, these are questions you have got to ask (Lock evidence, Parramatta).

One group argued that the solution may be to create a new indigenous roll. The verification of Aboriginality was debated at this point. Some participants felt there should be some way to ensure that non-Aboriginal people were not included on the roll. Carol Hammond suggested that each language area, such as Dunghutti and Wiradjuri, should have its own electoral roll, and that the elders be responsible for verifying the Aboriginality of people on the roll.

Registration and voting

Some participants suggested that the Australian Electoral Commission employ Aboriginal officers to visit local communities to encourage Aboriginal people to register and participate in voting. This should be done alongside a comprehensive education campaign organised and conducted for and by indigenous people. Mick Coombes told the group that two positions did exist for Aboriginal officers however the current Federal government had removed these positions. Ray Leslie Snr said:

The Electoral Commission, I believe, has let us down. It is no good putting one on for a little bit, or one to do the whole State. That is no good. We need people going around all the time to each group of people. Even if they sat down with an organisation for one day in a medical centre and said "Excuse me, are you on the roll?" and say "I want to show you some of the posters, and why you should vote, and where your vote will count." Tell people about it. A lot of them don't know.

In our area, the Western Districts Foundation, there are people coming in all the time. We have had them sitting there. But nobody has ever told them about it. There are heaps of our people not on the roll. So I think, before the country areas, they should target the city areas, because they are hidden. People who are out in Brewarrina, Bourke, and other places, because they want to get into the ATSIC Council, have actually done the

surveys. They have done counts. They have been around each person, house to house. But that is very difficult in the city areas. So I think you could have one person just going round in Sydney all the time (Leslie Snr evidence, Parramatta).

Who can vote?

Several participants questioned whether those Aboriginal people not indigenous to the area would be eligible to vote. There was no consensus on the matter but most people felt that it would need to be determined at the local level and on a case by case basis. Ray Leslie Jnr proposed that the person could vote if they were on the Aboriginal roll, but they would not have the right to be nominated as the representative.

Selection of candidates

There was considerable debate on ways to ensure that the best Aboriginal candidates are put forward for the dedicated seats. Ray Leslie Snr told the gathering that he could suggest those people who would get in and that these people are not necessarily representative of New South Wales Aboriginal people. Dominici Wykande supported this claim and suggested there should be some way to access the grass-roots and local community representatives.

WORKSHOP 3 Other options to increase Aboriginal representation

There were several alternatives put forward by this group but no overall agreement on one particular option.

Constitutional recognition of Aboriginality

There was a strong argument put by Don Dodd that there was a real need to recognise Aboriginality and that the New South Wales Constitution should be amended to reflect the significance of Aboriginal people in this State.

Non-voting seats

This option was discussed by the group and it was generally not supported. Participants felt that the seat would not be permanent and would therefore lack security. One participant suggested that a newly elected government could simply disband the seat if they were not in favour of the initiative. Other participants argued that non-voting seats could be considered tokenistic.

Aboriginal representation in political parties

The group considered the option of encouraging the major political parties to run Aboriginal candidate in safe seats. For more discussion on this issue, see above.

Mentoring

Participants discussed the Local Government Mentoring Program and its role in promoting Aboriginal leaders and providing training in aspects of government. There was some support for the expansion of the Mentoring Program to State government level. Mick Coombes explains the mentoring program as:

something that has been running in local government to address Aboriginal representative in local government. At last year's national reconciliation convention one of the resolutions that was put up was for all other States to adopt the program of local government, and also for the State and Federal governments to adopt the mentoring program within their systems as well (Coombes evidence, Parramatta).

Native title debate and the Commonwealth constitution

One member of the plenary suggested that the Commonwealth constitution should be rewritten to accommodate the changes on native title. As a result there would also need to be changes made to the New South Wales Constitution and this could provide an opportunity to recognise land ownership and Aboriginal custom and law.

Dedicated seat as an interim measure

One option put forward towards the end of the plenary was that the dedicated seats operate as an interim measure until Aboriginal people filter though into the mainstream political parties. Carol Hammond explains:

What about the option of having a system set in place for a set period? In the meantime, we have a system there and we have dedicated seats, but you also have Aboriginal people becoming much more informed about the political process and getting into local government, State government, and Federal government. What I am saying, you can have your seat for a certain length of time (Hammond evidence, Parramatta).

ARMIDALE CONSULTATION WITH NON-ABORIGINAL PEOPLE

Venue:

Aboriginal Cultural Centre and Keeping Place

108 Kentucky Street, Armidale

Date:

Wednesday 13 May 1998

Time:

10am - 1.30pm

No. Participants: 50

At Armidale two separate meetings were held, one for Aboriginal people and one for non-Aboriginal people. The information presented below is a summary of the meeting with non-Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- provide a voice, presence and dignity for Aboriginal people
- raise the "self-profile or the self-worth of Aboriginal people"
- allow Aboriginal people to participate in government and policy making
- provide an interim step towards acceptance of Aboriginal people in Parliament
- ensure that a minority group is represented in Parliament
- support moves to gain representation at other levels of government
- be a recognition of Aboriginal people as the traditional owners of Australia
- empower Aboriginal people
- be the start to a level playing ground.

Arguments against

Dedicated seats may:

- be seen as tokenistic and patronising
- be divisive in the general community and in the Aboriginal community
- allow the major parties to assume they do not have to deal with Aboriginal issues
- suggest "special treatment" for Aboriginal people
- be considered an injustice by other ethnic groups in the community
- suggest Aboriginal people cannot get elected on merit

- give Aboriginal people the balance of power and therefore expose them to pressure from the major parties
- be seen as undemocratic.

Plenary discussion

In the plenary discussion, Dan Naidoo expressed his concern that the representation of Aboriginal people in Parliament should not be considered a question of politics. He suggested that representation was a moral issue:

It is for the Australian population to be convinced morally that years of colonialism have placed our indigenous people at a great disadvantage (Naidoo evidence, Armidale).

Michael Sivaraman argued that Aboriginal people, as the original owners of Australia had a definite right to political representation, and if necessary, dedicated seats. He said:

I, as an Indian Australian, do not think I am a traditional owner. You are talking about traditional owners, people from this country, and I think they have the right to say "I belong here, and I do not wish to be alienated; I very much wish to be part of the decision-making process" (Sivaraman evidence, Armidale).

WORKSHOP 2 Dedicated seats - how could it work?

Which House?

There was only limited discussion on the location of the dedicated seats, but most participants indicated there should be representation in both the Legislative Council and the Legislative Assembly. The number of seats was not nominated by this group.

One vote or two?

One group suggested that an Aboriginal person should be eligible for two votes. The spokesperson for that group, Dan Naidoo explained that when an Aboriginal person goes to vote, he or she would be given one voting paper for an Aboriginal dedicated seat, and another paper for the general candidate.

Selection of candidates

Participants debated the possible role of Aboriginal Land Councils in the selection of candidates for dedicated seats. There was no agreement on the specific role that the Land Councils should play, and some participants expressed concern about the "indifferent records of some Land Councils". On this basis it was argued by one group that:

we should make a clean break from Land Councils and let the candidates come from the Aboriginal community (Naidoo evidence, Armidale).

The other group suggested that ATSIC could provide a useful model for the selection of candidates for the dedicated seats because it is a recognised organisation to which people have been elected.

Bi-partisan support for dedicated seat proposal

In addition to the need for broad education campaigns to encourage community understanding and support for dedicated seats, several participants suggested that support from the major political parties was essential to the success of dedicated seats:

None of this will be successful without the total and unanimous support of both major political parties (Naidoo evidence, Armidale).

Function of the dedicated seat

There was considerable support for the dedicated seat to play a major role in directing policy on Aboriginal affairs. One group suggested that the elected Aboriginal representative could act as an advisor to the Minister for Aboriginal Affairs and determine appropriate policy on Aboriginal issues. There was some debate on the involvement of the Aboriginal representative in mainstream debate and the group reached the conclusion that the dedicated seat should have the same rights and responsibilities as other Parliamentary members.

Education campaigns

There was some discussion on the necessity for education campaigns on the introduction of dedicated seats and that these campaigns should be aimed at the general community and particularly at school children.

Referendum

There was considerable concern in one group that a referendum on dedicated seats would not succeed. One participant agreed with the issue raised by Dan Naidoo that Aboriginal representation is a moral issue and should be presented as such to the community at a referendum.

WORKSHOP 3 - Other options to increase Aboriginal representation

Mentoring

One participant informed the meeting about the Local Government Mentoring Program run by the Local Government and Shires Association. According to Fred Alletsee,

The mentoring program is like a training program. We have adopted it in our shire of Moree. I believe it has got three mentorees on it. It has been a quite successful mentoring arrangement throughout New South Wales (Alletsee evidence, Armidale).

Mr Alletsee suggested that the program be considered for State government. He presented a model whereby Members of Parliament have an Aboriginal person sit alongside him or her for six or seven months and receive training on the political system. Mr Alletsee says this would give the Aboriginal representative an insight into the workings of party politics and the role and function of Parliament and government. One participant was opposed to the mentoring program on the basis that it assumed 'Aboriginal people are lacking in something and that it could be seen as patronising.

Other participants suggested that mentoring, in the more general sense should be a feature of the dedicated seats:

(A dedicated seat) would actually drive the State parties to build up their programs, because they are going to be trying to entice indigenous people elected to dedicated seats. So I am of the view that that is more of an argument in support of dedicated seats. It is a question of getting the right person into the dedicated seat, because that would tie it to the regular party politics structure (Harney evidence, Armidale).

One participant suggested that it would be inappropriate to appoint an Aboriginal representative to a dedicated seat without providing education and advice. The participant suggested that a Koori mentor group with membership from local councils, local government and ATSIC be established to provide this education.

Sovereign Black Parliament

Several participants put forward an alternate option of a Sovereign Black Parliament which would operate as a parallel Parliament with full voting rights and powers. While the group had limited time to develop this model, participants felt the important point to make was that this model would,

be an autonomous system, that it would be self-determining, that Aboriginal people would be deciding what was happening in Aboriginal affairs, rather than being put into a white political system (Frøland evidence, Armidale).

Referendum

Some participants felt that a referendum would have little change of success in the current political climate without a broad education campaign. The group suggested that it may take several years before a referendum could be successfully put to the New South Wales community.

Formal Reports to Parliament by ATSIC Commissioners

One group felt that as the referendum would probably not succeed in the current political climate, and suggested an interim alterative to dedicated seats based on the model of ATSIC.

One thing that could happen is that a partnership could be made with ATSIC, in the same way as a group like the Ombudsman works. ATSIC, at least in New South Wales, has representatives already. Perhaps it could do its research and present a report to Parliament, as the Ombudsman does, at least maybe once or twice a year on matters that the Parliament needs to address. That report would involve providing issues that need to be looked at by each of the various government departments. For example, what are the issues for health in New South Wales? What are the issues in education? (Mackay evidence, Armidale).

Some participants felt there were advantages to this model such as being able to present Aboriginal issues to relevant government department and ensure a response in Parliament from the Minister responsible. It was also suggested that a representative of the advisory group could address Parliament at any time on his or her own motion. The group felt this model would be successful as it avoided the immediate need for a referendum. Some participants believed the model could, over time, encourage Aboriginal people to become more deeply involved in the political process. It was stressed that this model would be a first step with the possibility of a referendum on dedicated seats "in five or six years time".

There was some skepticism about this option, as several participants felt that ATSIC was not the appropriate body because while it is a government-funded organisation created for Aboriginal people, "basically it is controlled by the government" (Harney evidence, Armidale).

ARMIDALE CONSULTATION WITH ABORIGINAL PEOPLE

Venue:

Aboriginal Cultural Centre and Keeping Place

108 Kentucky Street, Armidale

Date:

Wednesday 13 May 1998

Time:

2pm - 5pm

No Participants: 45

At Armidale two separate meetings were held, one for Aboriginal people and one for non-Aboriginal people. The information presented below is a summary of the meeting with Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- ensure that every issue relevant to Aboriginal people will be raised in Parliament
- enhance the visibility of Aboriginal people in the broader community
- provide consistent pressure, rather than ad hoc pressure, on indigenous issues
- quarantee effective representation
- ensure greater exposure of Aboriginal issues in the community
- give Aboriginal people a "fair go" in the New South Wales political system
- be a formal recognition of Aboriginal people as the original owners of the land
- enable Aboriginal people to participate in "law-making".

Arguments against

Dedicated seats may:

- bypass traditional ways, or elders' knowledge
- give very little real power to Aboriginal people
- be tokenistic, or seen as "window-dressing"

- not effectively represent the grass-roots Aboriginal people and their concerns
- mean that the Aboriginal representative is swamped by workload, pressure and unrealistic expectations
- be seen as special treatment by others in the community
- experience similar problems to those occurring at ATSIC and the Land Councils
- not be accepted by the community at a referendum
- stop Aboriginal people using the mainstream process and create a "separatist mentality"
- see the Aboriginal representative used as a scapegoat.

Plenary discussion

In the discussion on the advantages of dedicated seats, the spokesperson for one group explained the importance of Aboriginal participation in "law-making".

A lot of the laws that we are dealing with are really set out in a destructive way for Aboriginal people; they are not taking into account what the culture of the Aboriginal people is, and what is happening in Aboriginal communities. And a dedicated seat would mean more power to the Aboriginal people in New South Wales (Libbs evidence, Armidale).

Another participant agreed with this concern and added "we have been a minority in this country for so long that we are sick of the isolation, we are tired of the alienation". One participant argued that gender balance should be considered as important in the establishment of dedicated seats.

However the bulk of the discussion focused on whether dedicated seats would provide Aboriginal people with any real power. Rose Lovelock expressed concern about the number of seats Aboriginal people could expect given the relatively small indigenous population in New South Wales. Ms Lovelock said "we don't have the numbers to effect a great deal of change" (Lovelock evidence, Armidale).

One participant queried the ability of a small number of Aboriginal dedicated seats to represent the interests of the 60 Aboriginal nations in New South Wales.

In response to these concerns, Pat Dixon, Armidale Deputy Mayor, and a candidate for the 1998 Federal election, said:

I believe strongly that when we measure the disadvantages against the advantages, we need to have Aboriginal people in the Parliament. For too long now the bureaucrats have been making the decisions for us, at the State and Federal level. More Aboriginal people are getting into local government, as I have pointed out earlier. We are getting near to the year 2000. Other countries have monitored this, and sometimes even token is good (Dixon evidence, Armidale).

Pat Dixon urged the group to become involved in finding ways to further improve Aboriginal participation in politics and the process of reconciliation.

Reconciliation is not just about flying the flag. It is about social justice (Dixon evidence, Armidale).

WORKSHOP 2 Dedicated seats - how could it work?

Number of seats

There was a reluctance to specify a number of seats but most participants believed there should be more than one. There was concern that a small number of dedicated seats would leave those Aboriginal representatives isolated, alienated and pressured to represent the diversity of Aboriginal views and issues. Several participants agreed that four to ten seats might be appropriate although there was no group consensus. Other participants said there should be an equal number in both Houses, with a preference for six to eight seats in each House with a possible total of 12 to 16 seats.

Which House?

Participants generally agreed that the dedicated seats should be located in both the Legislative Council and the Legislative Assembly.

Electoral roll?

One group said that the electoral roll should not be based on existing rolls used by organisations such as ATSIC. While the group did not go on to provide an alternative electoral roll they did discuss the election process and the option of "zoned representation". Several participants said that the election process for dedicated seats should not negate or stop ATSIC elections and Aboriginal Land Council elections.

Who can vote?

Only one group discussed who should vote for dedicated seats, and some participants believed that both indigenous and non-indigenous voters should participate in the elections. While there was some opposition to this suggestion, the majority of the group felt that the process should be open to everyone.

There was debate on whether voting should be open only to Aboriginal people indigenous to New South Wales. Lorna Hague felt that eligibility to vote should be based on a proven commitment to the community.

I am sure that there would have to be a clause there that says you have to be here two and a half years or at least in constant work or constantly dedicated to Aboriginal communities. I think that is how it should be worked out, on your time and my time working in the community before I can be eligible as a candidate (Hague evidence, Armidale).

Selection of candidates

Most participants were undecided on whether only Aboriginal people indigenous to New South Wales should qualify as candidates for the dedicated seats.

Education campaign

There was strong support for a public education campaign as a necessary tool to

validate us being there as representatives on Aboriginal issues, but also to minimise the impact back on us for having special treatment (Evidence, Armidale).

Rose Lovelock suggested that the 1967 referendum should be examined to see if there were any issues that may be relevant to an education campaign on dedicated seats.

One group recommended that training should be compulsory for all candidates who nominate for the position. This training would involved education on the election process with the possible use of mentors within the Aboriginal community to ensure that the links with the community are not lost.

Funding

Several participants raised the issue of how the candidate(s) would be funded felt that consideration should be given to election funding legislation if the dedicated seats option was successful at a referendum.

WORKSHOP 3 Other options on increase Aboriginal representation

Treaty

The development of a Treaty with Aboriginal people was suggested by a number of participants in several groups. Some participants felt strongly that a Treaty was the first step towards reconciliation and that before considering options such as dedicated seats, governments should initiate discussions on signing a Treaty with Aboriginal people.

Aboriginal Assembly

There was some support for an Aboriginal Assembly although no particular model was put forward by the group. Participants' major concern was that Aboriginal representatives should have full voting power within the Parliament and that anything less than that was unsatisfactory.

Training, support and encouragement

Participants were united in their support for developing strategies to train, support and encourage Aboriginal people in New South Wales to become involved in the political process. One participant said that an education campaign would greatly enhance the voting power of Aboriginal people and another said that students in Years 11 and 12 should be encouraged to think of careers in the political system. Trisha Libbs said,

One of the disadvantages at the moment is the fact that Aboriginal people are not using the political system to the best of their benefit (Libbs evidence, Armidale).

Aboriginal Party

While not providing any details on the suggestion, one group discussed the possible value of establishing an Aboriginal party. One participant pointed out that this had been done once before, and there was some support for a second attempt to establish such a party.

MOREE CONSULTATION WITH NON-ABORIGINAL PEOPLE

Venue:

Spa Village Motor Inn

300 Warialda Street, Moree

Date:

Thursday 14 May 1998

Time:

9.30am - 12.30pm

No. Participants: 3

At Moree two separate meetings were held, one for Aboriginal people and one for non-Aboriginal people. The information presented below is a summary of the meeting with non-Aboriginal people

The group was very small and the discussion did not follow the structure of the consultations held at the other locations.

Registration and voting

Participants expressed their concern about problems with the current Aboriginal electoral rolls and encouraging Aboriginal people to vote. Pam Girlie said:

Bus loads of Aboriginals have been brought in to register to vote, and none of them seemed to reach the polls. They seemed to want immediate action (Girlie evidence, Moree).

Health, education and illiteracy

Several participants felt that the major problems for Aboriginal people in Moree were to do with illiteracy, education and health. There was general discussion about these issues, and the disadvantage Aboriginal people experienced as a result of poor health and inadequate education. These problems were given as reasons why Aboriginal people did not vote in State and Federal elections, and many participants believed that dedicated seats would do little to change the problems of poor health and illiteracy.

Formal reports to Parliament by ATSIC Commissioners

Participants suggested "strengthening the already existing ATSIC system" as an alternative to dedicated seats. In addition, it was suggested that ATSIC Commissioners could report to Parliament on a regular basis. However, one participant was concerned with this option because it would not provide Aboriginal people with any real power.

There was also concern about whether the there would be any response to those reports from the Parliament. As a potential solution to this problem, one participant said that measures could be taken to ensure that an official response from government was given within a set time period.

Local Government Mentoring Program

One participant told the group of the success of the Local Government Mentoring Program in Armidale and the potential for the mentoring program to increase Aboriginal participation in politics. However some participants thought that it might be a difficult and complicated program to introduce at the State level.

Aboriginal representation in political parties

The group discussed the commitment of the mainstream parties to Aboriginal representation in Parliament. It was felt that Aboriginal representation in the major political parties would be an acceptable alternative to dedicated seats provided it was "fair among all parties". One participant argued strongly against this alternative on the basis that "it would be impossible to legislate to impose requirements on the parties".

Education campaign

Several participants discussed the importance of education on the political system for Aboriginal people and for the general community. One participant suggested that

It could be done as part of societal studies in years 11 and 12 at our schools (Rogers evidence, Moree).

MOREE CONSULTATION WITH ABORIGINAL PEOPLE

Venue:

Spa Village Motor Inn

300 Warialda Street, Moree

Date:

Thursday 14 May 1998

Time:

1pm - 4pm

No. Participants: 7

At Moree two separate meetings were held, one for Aboriginal people and one for non-Aboriginal people. The information presented below is a summary of the meeting with Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- be a recognition of the original owners of Australia
- afford equity "a fair go"
- ensure an increase in participation in the decision-making process
- lead to more relevant policies and programs
- provide greater cultural awareness amongst non-Aboriginal members of Parliament
- provide a voice, "hopefully by the year 2000"
- ensure more respect of government by Aboriginal people and therefore more credibility.

Arguments against

Dedicated seats may:

- mean the wrong people "self appointed Uncle Toms" are elected
- not be representative of the diversity of Aboriginal people and issues
- allow for the formation of factions within the indigenous community
- place too great an expectation on the Aboriginal representative and undue pressure
- be considered a token gesture

- suggest there is "special treatment" for indigenous people and cause a backlash from the non-Aboriginal community
- put pressure on independent representatives to align with a political party
- take away the responsibility for Aboriginal issues from other members of Parliament.

Plenary discussion

It was suggested that dedicated seats could improve cultural awareness of non-Aboriginal members of Parliament. The group felt that the very fact that Aboriginal people were present in Parliament would help to education Parliamentarians and the wider community on the issues specific to indigenous communities.

In addition, the group felt dedicated seats would ensure:

there would be Aboriginal perspectives on the issues being discussed - for example, the environment, mining, use of resources, and so on (Evidence, Moree).

On the disadvantages of dedicated seats, the group suggested that the negative experience of ATSIC may also translate to a negative for the dedicated seat. Participants felt that there was a lack of credibility surrounding ATSIC and its capacity to properly represent Aboriginal people in the communities. There was some concern that the dedicated seat would also encounter similar problems.

WORKSHOP 2 Dedicated seats - how could it work?

Number of seats

The group said there should be three seats in the Legislative Council and six seats in the Legislative Assembly. The three seats in the Upper House and the six seats in the Lower House would be additional seats, taking the number of seats to 45 and 99 respectively. For the Legislative Assembly, the six seats would be chosen from the six existing ATSIC regional boundaries.

One participant emphasised the need to ensure a gender balance if dedicated seats were established.

Electoral roll

The group felt that the Aboriginal Land Council roll would be an effective model to use "because they were more representative of Aboriginal people". The group also suggested various ways to encourage voter registration such as the use of education campaigns.

One vote or two?

Some participants said that Aboriginal people should have two votes, one for the dedicated seat and one for their local member "because that person has a responsibility to me too, not just my Aboriginal person". Others felt that the non-Aboriginal community may object to Aboriginal people having two votes.

However, the group recognised the complexity of the issue of voting options and had difficulty in reaching consensus. The group did raise some relevant questions.

Do we have dedicated seats on the end of the ballot paper? Do Aboriginal people have one vote to elect that person, but also have another vote each so that we have a say in electing our party? Or do we keep that completely separate, and have it as a separate election process before the major elections, so that when we have our dedicated seats people are already elected regardless of what government gets in? (Taylor evidence, Moree).

The group did not attempt to provide a definitive answer on these questions and felt that more time would be required to establish the best possible option for Aboriginal people.

WORKSHOP 3 Other options to increase Aboriginal representation

Aboriginal representation in political parties

The group debated the importance of encouraging the major political parties to include Aboriginal people on their 'tickets'. The group spokesperson explained,

That would help to meet the objectives of the Aboriginal people, because they would then be a part of the political system. Also, they would have an effective voice in the Parliament because they are part of a major party (McGray evidence, Moree).

There was consensus within the group that the major political parties should consider putting Aboriginal people into the Legislative Council as a first step in this strategy. One participant suggested that there should be some consideration given to the establishment of an Aboriginal Party in the Legislative Council.

Education campaigns

The group urged the Committee to consider education as an important issue regardless of the recommendations made on dedicated seats. There was some suggests made about improving political eduction in New South Wales schools. One participant suggested that poor education was one of the reasons behind the small number of Aboriginal people voting in State and Federal elections.

Formal reports to Parliament by ATSIC Commissioners

Several participants suggested that ATSIC Commissioners in New South Wales could report to the Parliament on a regular basis on issues concerning indigenous people.

One of the merits of that is that ATSIC representatives are representatives of the Aboriginal people, so we could at least feel we were part of that process through electing people to ATSIC in the first place (McGray evidence, Moree).

LISMORE CONSULTATION

Venue:

Lismore and District Workers Club

225-231 Keen Street, Lismore

Date:

Tuesday 9 June 1998

Time:

9.00am - 5.00pm

No Participants: 65

The Lismore consultation was a combined meeting with Aboriginal and non-Aboriginal people.

Arguments for and against dedicated seats Workshop 1

Arguments for

Dedicated seats could:

- provide a voice for Aboriginal people
- ensure Aboriginal issues are represented in Parliament
- expose people to an Aboriginal viewpoint
- create a role model for Aboriginal people, especially younger people
- enhance the democratic system by giving Aboriginal people greater faith in the parliamentary system
- be an important step towards reconciliation.

Arguments against

Dedicated seats may:

- create an expectation that an Aboriginal member would be responsible for all Aboriginal issues, allowing non-Aboriginal members to abrogate their responsibility for Aboriginal issues
- not provide sufficient seats to represent the diversity of Aboriginal issues
- put enormous pressure on the Aboriginal representative, particularly if there were only one or two seats
- lead other minority groups to demand dedicated seats
- encourage political parties to interfere with the determination of Aboriginal candidates

- be seen as undemocratic, especially if Aboriginal people have two votes
- be perceived as tokenistic
- invite a backlash from the broader community.

Plenary discussion

Pauline Gordon responded to the suggestion that other ethnic groups may demand dedicated seats if they are established for Aboriginal people:

...Australian Aboriginal people are the indigenous people of this country...we are nowhere near on a level with immigrant groups, ethnic groups, or non Aboriginal groups...We have had to jump from one culture to another to make up the ground and be on level terms with these people in only a matter of 209 years...it is a must that we have dedicated seats in Parliament (Gordon evidence, Lismore).

Andrew Hegadus commented that:

It is only through decent, informed debate that you will realise, as a member of the NSW community, that the advantages of this far outweigh the disadvantages. All I ask is that everyone who has a chance to push this debate further should seek informed discussion, because otherwise we will hear the rhetoric and the crap that keeps coming over talk-back radioAll I am saying is that..... the arguments for far outweigh the arguments against. The time is right (Hegadus, evidence, Lismore).

John Jessup agreed with this sentiment and suggested that:

dedicated seats certainly will not be the answer to all our problems, but it is a positive step in the process (Jessup evidence, Lismore).

One participant expressed a concern about the disadvantage of political parties interfering in the preselection process:

.....the existing party structure may infiltrate Aboriginal communities and cause difficulties within those communities regarding the nomination of their candidates (Dowell evidence, Lismore).

WORKSHOP 2 Dedicated seats - How could it work?

Number of seats

Most participants agreed that dedicated seats should be added to the existing number of seats. Jenny Dowell explained her group's reason for this:

we feel that the existing politicians would feel threatened and would not give up any of their space or population (Dowell evidence, Lismore).

Participants did not reach consensus on the appropriate number of seats. However, most felt there should be more than one seat in both Houses. As one participant explained, "you could not just put one person in the Lower House and expect that person to survive". A suggestion from one of the groups that there should be six seats: two people drawn from each of the three ATSIC regions in NSW was considered problematic because on a population basis, Aboriginal people would only be entitled to one or two seats in the lower House:

We did think that six would really threaten everybody, and that probably we should go for a lesser number (Bolin evidence Lismore).

Which House?

There was considerable debate regarding the appropriate venue for dedicated seats. Some people thought the Lower House was more appropriate because this is where most Ministers sit and most legislation is initiated. Other participants thought the Upper House was preferable because it is the House of Review and the balance of power is often held by one Member. Eventually, most participants agreed there should be dedicated seats in both Houses.

Electoral roll?

Some participants suggested using the rolls used in ATSIC or NSW Land Council elections, or a combination of both. However, many participants noted there were problems with both rolls, particularly in relation to the identification of Aboriginality.

One vote or two?

One of the groups suggested that Aboriginal people should have two votes: one for the dedicated seat and one for the general candidate. They felt it would be unfair to deprive Aboriginal people the opportunity to vote for the general candidate. However, another group felt that giving Aboriginal people two votes would be undemocratic. This group presented a model for the establishment of dedicated seats which would avoid giving Aboriginal people two votes. This model is summarised below.

A model for the introduction of dedicated seats

According to this model, there would be four seats in the Lower House and two in the Upper House. The dedicated seats would be drawn from existing seats, "because we don't want to go against the current trend of reducing the number of seats". For election to the Lower House, the State would be divided into four quadrants: north-west, north-east, south-west and south-east and candidates would stand in each quadrant.

There would be two rolls: the standard electoral roll and a special roll for the dedicated seats:

with every individual, not just Aboriginal people.....who want(s) to support this process of Aboriginal seats in Parliament, having the democratic choice of being on that dedicated roll as opposed to the normal electoral roll (Light evidence, Lismore).

Voting for the Aboriginal candidate would require abdicating the right to vote for the general candidate. There could be several candidates in each quadrant and they could be politically aligned or independent. They could campaign on Aboriginal issues only or on broader social issues.

There was considerable interest in the above model. However, some people expressed concern that if they opted to vote for the dedicated seat, they would lose their right to determine who their representative would be in the non-dedicated seat. One participant suggested that every elector should have two votes.

Referendum

There were mixed views on the likely success of a referendum on dedicated seats. Some participants felt it was important not to underestimate support for change in indigenous issues in the community. Others felt the electorate would need between two to five years to prepare to vote on such an issue. As Mark McMurtrie said:

So anybody who thinks that it is going to be an easy task to get dedicated seats for Aboriginals in this country will have to think again.....the big job will not be to convince the Parliament, it will be to convince the people that we must have those seats (McMurtrie evidence, Lismore).

Workshop 3 Other options to increase Aboriginal representation

Aboriginal Assembly

Participants generally agreed an Assembly should only be considered as an interim measure: the first choice is dedicated seats. They also agreed that if established, an Assembly should be governed by a charter. The charter would clearly set out the role of the Assembly, its membership and its relationship to the Parliament and to government agencies. In addition, the charter should be set down in legislation.

One group also suggested the need for a mechanism to guarantee the government would respond to the Assembly and its recommendations.

One of the main points of contention was how membership of an Assembly would be determined. Most participants agreed the Assembly should be an elected body. However, there was no consensus on the appropriate way to preselect and elect members. While some participants supported using the electoral systems in place for ATSIC and NSW Land Council elections, others expressed concern about either or both systems.

Participants were also concerned that the role of an Aboriginal Assembly might overlap or conflict with the existing representative Aboriginal organisations: ATSIC and the NSW Land Councils. Michael Light suggested a variation on the Assembly idea:

What I am suggesting is that every electorate in the State, at least lower House electorates, have an Aboriginal community forum established specifically for political purposes, with a view to lobbying their local member, and that local community forum elect an advocate, or whatever you want to call that person, to actually work very closely with, lobby or hound, or whatever you want to call it, their local member. But every electorate should have its own Aboriginal community forum with an elected delegated person to do that work specifically, informing their local member, whatever party they represent, of Aboriginal issues and of the impact that legislation would have on the Aboriginal community (Light evidence Lismore).

Non-voting seats

The majority of participants were opposed to non-voting seats, arguing that the person in the dedicated seat should have the same power as any other Member of Parliament. However, some people felt that if the establishment of non-voting seats did not need to be approved at a referendum, it may be acceptable to introduce such seats as an interim measure only.

Aboriginal representation in political parties

Many people at the meeting felt it was important to look at ways to ensure Aboriginal people get into Parliament on their own merit. For example, by encouraging political parties to recruit Aboriginal people and nominate them to winnable seats, mentoring programs (as exist in local government), quotas and political cadetships. However, several people noted that the down side of encouraging political parties to further Aboriginal representation is that the candidate is bound by the views of the party.

An Aboriginal Party

Some participants raised the possibility of starting an Aboriginal People's Party, as apparently occurred in Lismore two years ago.

Local Government

Local government was considered an important "stepping stone" to State Parliament for Aboriginal people. Participants suggested extending the initiatives already in place to encourage Aboriginal participation in local government, including the local government mentoring program and the Aboriginal Reference Group in the Local Government Association.

Other options

Participants suggested several other initiatives to improve Aboriginal representation in Parliament. These include:

- broad education strategies to improve awareness of the political process among Aboriginal people
- Identifying Aboriginal representatives in ministries to act as information points for Ministers and Department heads
- cross cultural training for all Members of Parliament
- Amending the NSW Constitution to recognise Aboriginal people. As suggested by John Jessup:

my feeling is that our first approach should be to amend the Constitution to the effect that it acknowledges that the Aboriginal people are the forefathers of our country, and to put the lie to the concept of terra nullius (Jessup evidence, Lismore).

WAGGA WAGGA CONSULTATION

Venue:

Wagga Wagga Education Centre Co-operative Ltd

102 Peter Street, Wagga Wagga

Date:

22 July 1998

Time:

10.00am - 5.00pm

No. Participants: 55

The Wagga Wagga consultation was a combined meeting with Aboriginal and non-Aboriginal people. Due to the lack of a quorum in Wagga Wagga, the meeting was considered to be a "briefing", rather than a formally constituted meeting of the Committee (see Section 4.4).

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- give a voice to the Aboriginal community in NSW
- acknowledge the unique role of Aboriginal people as the first people of this land
- promote cultural awareness and sensitivity about Aboriginal issues in the Parliament and the community
- encourage greater interest and involvement in the political system by Aboriginal people
- be a positive step towards reconciliation
- allow Aboriginal people to feel more comfortable about approaching a Parliamentarian if the Member was an Aboriginal person
- encourage greater accountability among Aboriginal organisations
- be a positive role model for indigenous people, especially young people.

Arguments against

Dedicated seats may:

- be perceived as divisive by the wider community
- be manipulated by party interests

- put considerable pressure on one or two people to represent all issues relevant to Aboriginal people
- isolate Aboriginal Members from non-indigenous Members of Parliament
- be perceived as tokenistic.

Plenary discussion

Several participants were concerned about the possibility of representation extending to a limited number of seats and the subsequent pressure it would place on those people:

...it would be very important that they didn't just elect a representative and throw him in at the deep end...he or she would need all sorts of support and back-up in order to be able to do their job properly (Matthews briefing, Wagga Wagga);

can you imagine the pressure, not only from the Aboriginal community but the wider community, for that person to deliver all for all people? (McPherson briefing, Wagga Wagga).

Workshop 2 Dedicated seats - how could it work?

The number of seats

The majority of participants agreed there should be more than one dedicated seat in the Lower House and at least one in the Upper House so as to reduce the isolation and pressure a single Aboriginal representative would be likely to experience. One of the groups suggested establishing three seats in the Lower House drawn from each of the three ATSIC zones. Another group opted for two dedicated seats in the Legislative Assembly, arguing that two seats would be in proportion to the Aboriginal population in New South Wales:

...if you went for a higher number of seats you would run the risk of alienating the non-indigenous population (Mullins briefing, Wagga Wagga).

Which House?

Most participants felt the dedicated seats should be in both Houses. However, one group suggested that the Upper House may be more appropriate because its members represent the whole State.

Who can vote?

There was no consensus among participants on whether Aboriginal and non-Aboriginal people should be able to vote for a dedicated seat:

If everybody voted it would give everybody responsibility for what happened, so the whole community could have input into it as well the Aboriginal people (Simpson briefing, Wagga Wagga);

We were strongly of the opinion that it should only be the indigenous people...if the whole community could vote it could well be subject to political pressure to vote in a particular way and we would finish up with people in the dedicated seats who weren't really representative of indigenous people (Mullin briefing, Wagga Wagga).

One group also tackled the question of whether Aboriginal people from other States should be eligible to vote:

...we thought the best way to do that would be for that person to get endorsement from his local community in the State where he previously resided. That could be sent across to the local community where he now resides and that would be the endorsement he needed to go onto the electoral roll (Mullins briefing, Wagga Wagga).

One vote or two?

There was no consensus on whether Aboriginal people should choose to vote for the candidate in the dedicated seat or the general candidate. Only one group considered this issue in any depth and was adamant that Aboriginal people should be restricted to one vote:

Any suggestion to give them more than one vote we thought would raise a storm of objection from the general community (Mullins briefing, Wagga Wagga).

Electoral roll

One group suggested there should be an Aboriginal roll for the whole State and this roll would be managed by the Electoral Commission. Some participants added that the "Aboriginal community" would be responsible for regulating who should be on the roll.

Improving Aboriginal participation in elections

Concern was espressed about the number of Aboriginal people who vote in Land Council and ATSIC elections:

In all Aboriginal elections there is a very small proportion of the people on the electoral roll who actually vote and we have got to try and overcome that problem (Matthews briefing, Wagga Wagga).

The selection of candidates

Most participants felt it was extremely important to ensure that the Aboriginal community controlled the pre-selection of candidates for the dedicated seat. If non-Aboriginal people were involved in pre-selection, it was argued:

you would have political parties getting involved and probably paying people to stand so they got the people they wanted... It would be a disaster (Matthews briefing, Wagga Wagga).

There was also a general consensus that the selection of candidates should come from the "grassroots".

Party aligned or Independent?

Two of the groups felt it was important for the representative to be independent from political parties. However, it was acknowledged that keeping the candidate or member free from party interference would be difficult:

We sort of came to a bit of a bind there. We couldn't determine how you would manipulate and keep that candidate independent or how that candidate would be sort of hijacked by one of the major political parties (McPherson briefing, Wagga Wagga).

Function of the dedicated seat

One group discussed who should be represented by the Aboriginal person in a dedicated seat. Some participants in the group felt it would be important for the representative in the dedicated seat to work on all issues, not just Aboriginal issues:

If we had an Aboriginal person in there they wouldn't just be wholly and solely for Aboriginal issues. There is no such thing as Aboriginal issues in isolation.....It will also involve all the other issues that a community are faced with, such as education, health, employment...(Bilney briefing, Wagga Wagga).

More time for consultation

Many participants commented on the difficulty of reaching conclusions about the way dedicated seats might work in a one hour workshop:

...we found it very difficult to reach conclusions or consensus. There was no animosity but there was a lot of discussion and people had a lot of different viewpoints, so we didn't actually come to that many definitive conclusions (Matthews briefing, Wagga Wagga);

I found in our discussions overall there were probably more questions raised, particularly when we are talking about the final mechanisms of this whole issue (Bilney briefing, Wagga Wagga).

Workshop 3: Other options to increase Aboriginal representation

Non-voting seats

The majority of participants were opposed to establishing non-voting seats as an alternative to dedicated seats with full voting rights. Many people felt non-voting seats would be tokenistic:

There is no way the Aboriginal community of NSW will embrace representatives who couldn't vote. It would just be tokenistic and another symbolic gesture... We should have representatives in Parliament the same as everyone else with voting rights (Carroll briefing, Wagga Wagga);

I am not quite sure whether anyone would actually listen to what people had to say if they weren't able to actually have a vote in what was being said...I don't think you would have credibility in a non-voting seat (Simpson briefing, Wagga Wagga).

However Peter Matthews argued that non-voting seats could be an important first step towards greater political representation for Aboriginal people and Alex Hickson suggested that the non-voting seats could provide an important role model which would encourage Aboriginal people to become politically involved and to vote.

Peter Matthews also suggested it may be easier to get approval at a referendum for a non-voting seat than a seat with full voting rights. After people saw that it was not a "dreadful ogre", they may be more willing to accept a voting seat in the future. In the meanwhile, he said, non-voting members would perform an important monitoring role in Parliament.

Aboriginal Assembly

One of the groups supported the establishment of an Aboriginal Assembly, not as an alternative to dedicated seats but "to go alongside" the dedicated seats. According to this group, the Assembly would provide a forum for Aboriginal people to meet and discuss indigenous issues as well as operate as a training ground for Aboriginal people interested in politics:

[An Assembly would] give the Aboriginal community a place to go to take their issues and then possibly from there they could put a recommendation to the Parliament (Murray briefing, Wagga Wagga).

Each group presented different models for determining the membership of the Assembly, including the following suggestions:

- one representative from each ward of the ATSIC regional councils, in six regions (approximately 20 people);
- a combination of current ATSIC and NSW Land Council representatives; and
- one representative elected from the various Aboriginal nations in NSW.

Many participants were keen to ensure such an Assembly could not be "legislated out of existence". Another group suggested that three members of the Assembly would sit in Parliament as non-voting members and that eventually the seats would become voting seats. This was considered a softer, but more achievable option.

Referendum

Several participants were sceptical about the likely success of a referendum to introduce dedicated seats:

...referenda in Australia almost always fail, so it is almost certainly that if we come up with a really radical suggestion, it will fail (Matthews briefing, Wagga Wagga).

Some felt a proposal for non-voting seats would have an increased chance of success. Lee Simpson suggested that it would be essential to educate the community about the issues before holding a referendum.

Aboriginal representation in political parties

Several participants suggested that the political parties could do more to increase Aboriginal representation, including quotas to guarantee the pre-selection of Aboriginal candidates. However some participants were sceptical of the likelihood of Aboriginal candidates being pre-selected by the major parties:

If Aboriginal people are going to wait for the political parties to show equal representation for males and females, and likewise for Aboriginal and non-Aboriginal people, they will be waiting a long time (Matthews briefing, Wagga Wagga).

Mentoring

The option of a mentoring scheme was briefly discussed. One participant suggested a model such as in local government or a mentoring system in reverse, where parliamentarians are advised by Aboriginal people.

BATEMANS BAY CONSULTATION

Venue:

Country Comfort Inn

crn. Princes Highway & Canberra Road

Batemans Bay

Date:

Thursday 6 August 1998

Time:

10am - 5pm

No Participants: 48

The Batemans Bay consultation was a combined meeting with Aboriginal and non-Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- ensure that the Minister for Aboriginal Affairs is an Aboriginal person
- provide representation for Aboriginal people in Parliament
- provide a voice and therefore ensure equity for Aboriginal people
- lead to an address of the real issues "rather than just rhetoric"
- encourage more Aboriginal people to enrol and vote in elections
- encourage young people to think of politics as a possible career
- give young people a better idea of the workings of government
- provide a role model for Aboriginal people
- provide an opportunity to dispel misinformation in the community
- be an acknowledgement of the rightful place of Aboriginal people in our society
- in the event of the member having the balance of power, give Aboriginal people a powerful voice
- provide leadership for Aboriginal communities
- assist in the process of reconciliation.

Arguments against

Dedicated seats may:

be seen as tokenistic and patronising

- lead to a perception that the representative should only speak on Aboriginal issues and not on a broad range of issues
- be seen as an attack on ATSIC and "land rights structures"
- feed the myth that Aboriginal people receive special privileges
- provide the major parties with an excuse not to take responsibility for Aboriginal
- see the Aboriginal member unduly pressured by the major parties
- place "unbearable pressure" on the Aboriginal member to represent the diversity of Aboriginal cultures and nations across New South Wales
- leave the indigenous Member isolated and vulnerable if there is small number of dedicated seats
- mean other groups in the community lobby for dedicated seats.

Plenary discussion

All three groups expressed support for dedicated seats on the basis that it would provide Aboriginal people with a strong voice in Parliament and could provide "real power". Similarly, all three groups felt that dedicated seats could provide an opportunity to acknowledge Aboriginal Australians as the original owners of the country and assist in the process of reconciliation. Roy Kennedy from the Illawarra Land Council said,

It could be a way of demonstrating compassion to Aboriginal people (Kennedy evidence, Batemans Bay).

Several participants said that dedicated seats would help to educate the wider community on the abilities of Aboriginal people to represent themselves and the issues relevant to their communities.

There were also some similarities across the groups in the discussion on the disadvantages. Participants expressed concern about the pressure that may be placed on the Aboriginal member,

not just from their own people, through unrealistic expectations, but through pressure from the main political parties to get their vote on things (Evidence, Batemans Bay).

Many participants felt that a limited number of Aboriginal dedicated seats could not adequately represent the diversity of Aboriginal cultures and nations that exist in New South Wales. There was concern that dedicated seats would not work unless they were supported by the grass roots communities. There was a call for education for both the indigenous and non-indigenous communities.

If the government is fair dinkum about having special places for our people. I believe they must make the whole community aware of the issues with dedicated seats so that, for the first time maybe, the community are getting an understanding of where we are coming from. Governments - and I have seen it time and time again, and we have all experienced it - introduce new laws and legislation, and then we have to break that down and interpret in order to make it work in our communities (Kennedy evidence, Batemans Bay).

One group said that the representation of women in the dedicated seats was an important issue. This group also discussed the representation of dedicated seats as only being advantageous to Aboriginal people if it reached out to rural and regional New South Wales. There was some concern that the dedicated seats would represent Aboriginal people from the urban areas only.

WORKSHOP 2 Dedicated seats - how could it work?

Number of seats

While there was no decision on the number of seats all participants supported dedicated seats as an option provided the Aboriginal member had full voting rights and an education program was put in place to explain the need for dedicated seats.

Group one decided that while they would like to have six or more dedicated seats, a more realistic number might be one seat in each House. Spokesperson for the group, Graeme White said the emphasis should be to provide the most realistic option to ensure Aboriginal people a voice in Parliament. Other participants argued for two seats in the Upper House and three seats in the Lower House.

Who votes?

The group was divided on whether voting should be restricted to Aboriginal people or open to all members of the New South Wales community. One participant suggested that "there would be compulsory voting by the Aboriginal people only". Graeme White explained his concern about allowing all New South Wales citizens to vote for the Aboriginal candidate:

Let's say 20 of these white people here are very influential persons; they could pick some Koori out of the community to run against you, and he would win on white votes, not Koori votes (White evidence, Batemans Bay).

Gil Saunders from the Illawarra Aboriginal Land Council argued that both Aboriginal and non-Aboriginal people should be eligible to vote for the dedicated seat. He asserted that the dedicated seat should not only speak for Aboriginal people but for all his or her supporters.

We have got to go up there and be able to not only talk for our people but all of our supporters as well, in regard to fighting for what we want (Saunders evidence, Batemans Bay).

There was lengthy discussion in the plenary on the suggestion that all voters should be given the choice to vote for the dedicated seat. Many participants argued that it was the democratic right of all people to choose to vote, and restricting the vote to Aboriginal people was discrimination. Many Aboriginal and non-Aboriginal participants agreed with Gil Saunders.

I agree with Gil on one principle. Illawarra is a very multicultural society. We have, I say, 95 per cent support in our community, from all sectors of the community. That is why I think it is imperative that it is by choice that we vote. If white people want to vote for black, so be it. And if black people vote for white, so be it. It is all based on our policies and what we can deliver to our people (Kennedy evidence, Batemans Bay).

Electoral roll

Several participants suggested that the Aboriginal Land Council roll would be suitable to use in an election for dedicated seats. However others were concerned about the adequacy of the ATSIC and Land Council rolls.

Selection of candidates

There was strong support in group one for representation to come from the grass-roots community. One participant proposed that candidates could be drawn from each Aboriginal Land Council, and those candidates would compete against one another for a number of dedicated seats. Other participants added their support for some sort of criteria to be established for the pre-selection of candidates.

Function of the dedicated seat

One group felt strongly that "the representative in the dedicated seat should represent the broad range of issues, and not just the Aboriginal issues" (Stein evidence, Batemans Bay).

This suggestion was supported by other participants. Jim Davison said the Aboriginal representative should have full voting rights on all issues debated in Parliament.

I think the Aboriginal person should have that right because, if they were going to put an expressway through Batemans Bay, it is going to involve Aboriginal people and if you are going to build a hospital it involves Aboriginal people. So I think that person should have the right to talk on everything and anything, plus the Aboriginal issues too (Davison evidence, Batemans Bay).

Funding

In the Plenary discussion one participant queried how the Aboriginal representatives would fund campaigns for election to the dedicated seats. Graeme White asked the Committee to give some consideration to the expenses involved in running election campaigns and the problems associated for Aboriginal communities accessing the necessary finance and resources.

Referendum

Many participants were overwhelmingly positive about a successful referendum on dedicated seats. Les Cameron put it this way:

I don't think we should be worried about a referendum, because 31 years ago we had a referendum for Aboriginal rights and over 90 per cent of the community in Australia voted for Aboriginal rights;

I think it stands to reason that, if we are looking at dedicated seats, it would be hard to assume that that support would not be there. I am saying we should not be worried about a referendum. If it came to a referendum, I am almost positive that it would pass overwhelmingly that there be dedicated seats (Cameron evidence, Batemans Bay).

Peter Cairney said that while he supported the idea of a referendum, he was less sure of the outcome.

Maybe this is going to be too rushed and, because there is a lack of information or education in the wider white community, a referendum is going to get knocked on the head (Cairney evidence, Batemans Bay).

Mr Cairney argued that there would need to be an extensive education campaign aimed at the non-Aboriginal community on the issue of dedicated seats for Aboriginal people because "they are the ones who are going to carry the vote". The need for education was supported by Phil Myssonski.

It is common practice to advertise the issues to be answered in a referendum prior to a referendum. It would seem it needs to be bolstered in this case, with a much earlier presentation of issues for and against. The machinery is there. It just should be used this time (Myssonski evidence, Batemans Bay).

Several participants said before any other options on Aboriginal representation in Parliament were considered, the New South Wales electorate should be presented with a referendum on dedicated seats.

WORKSHOP 3 Other options to increase Aboriginal representation

Aboriginal Assembly

The option of an Aboriginal Assembly was raised in all three groups as a possible option to increase Aboriginal representation in Parliament. However, many participants were antagonistic to any other option than dedicated seats.

One group recommended an Assembly as an interim measure that would provide

a training vehicle for people going upwards in regard to full political power. These are the things we talked about - that the Assembly would be a stepping stone (Saunders evidence, Batemans Bay).

One group gave conditional support to an Assembly based on the Sami model in Norway. Some participants asked for more information to be provided on the Sami model and its appropriateness to the Australian environment.

Treaty

One group felt that a Treaty with Aboriginal people would be a positive step towards reconciliation between Aboriginal and non-Aboriginal people.

Aboriginal representation in political parties

Many people felt that something should be done to encourage Aboriginal people to seek out political parties and either present their views to that party or, if they have political aspirations, seek pre-selection. Several participants felt it would be a long time before Aboriginal people gained representation in Parliament as representatives of a political party. Roy Kennedy argued that Aboriginal people were disillusioned with politics and this was the reason they were not joining the major parties.

Education campaigns

Many participants believed there was a need for a range of eduction strategies for both Aboriginal and non-Aboriginal people. One participant argued an education campaign was necessary to dispel "the amount of misinformation about Aboriginal people and what they get from the government" (Kennedy evidence, Batemans Bay). Some participants wanted education programs directed at Aboriginal children to provide them with the skills and resources to seek out careers within the political system.

The consultation process

While the discussion on dedicated seats in Batemans Bay was overwhelmingly positive and many important issues were raised, there was concern expressed by the group about the lack of Aboriginal representation on the Committee and, more generally, about the process of consultation with Aboriginal people. This proved to be a recurring theme throughout the meeting.

I am sick of seeing meeting after meeting where it just ends up nowhere (Evidence, Batemans Bay).

Other participants were frustrated by the limited time to debate the complexity of the issues and expressed a desire to take the issues back to their communities for a more extensive debate. At the end of the day's discussion, Gil Saunders suggested that the consultancy process should return to the community.

The only thing I would like to see come out of this is a further consultancy. Once it has been decided on, it should come back to the people before the policies are put to Parliament (Saunders evidence, Batemans Bay).

COFFS HARBOUR CONSULTATION

Venue:

Coffs Ex-Services Club Vernon St, Coffs Harbour

Date:

Thursday 20 August 1998

Time:

10am-5pm

No. Participants: 45

The Coffs Harbour consultation was a combined meeting with Aboriginal and non-Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- demonstrate respect for Aboriginal people as the original owners of Australia
- give Aboriginal people an "effective" voice
- encourage Aboriginal people to vote and participate in the parliamentary process
- give Aboriginal people a say in legislation that affects them
- represent a true measure of reconciliation
- provide effective role models for young Aboriginal people
- represent a move towards greater equity for Aboriginal people.

Arguments against

Dedicated seats may:

- be perceived as a hand-out, undemocratic, tokenistic and demeaning
- generate greater division in the wider community
- lead other minority groups to push for dedicated seats
- make it difficult for one or two people to represent the diversity of Aboriginal people.

Plenary discussion

One group said that it was difficult to list the potential advantages and disadvantages of dedicated Aboriginal seats without information about the "nuts and bolts" of how they would work in practice.

Another group raised the possibility of an Aboriginal person in a dedicated seat holding the balance of power which may be perceived as an advantage for Aboriginal people, but as a disadvantage by the major political parties and the wider community.

WORKSHOP 2 Dedicated seats - how could it work?

Number of seats

Several participants in one group suggested there should be four seats, drawn from four different regions in the State. Another group felt that dedicated seats should comprise a significant proportion of the total number of Parliamentary seats, possible as high as 25% of existing seats because:

if you had just one or two dedicated seats in the NSW Parliament, there would be great difficulty for the Aboriginal Members having to consult with their communities to get feedback and to be effective representatives (Carlson evidence, Coffs Harbour).

Which House?

One of the groups felt the wider community may consider the Upper House a more appropriate venue for a dedicated seat. The other group felt they should be in both Houses.

Which electoral roll?

There was no consensus about which electoral roll should be used in an election for a dedicated seat. Some participants noted that one of the major challenges posed by developing an electoral roll for Aboriginal elections is that the roll may include some non-indigenous people who falsely claim to be Aboriginal.

Who votes?

One group suggested that both Aboriginal and non-Aboriginal people should be able to choose to vote for the general candidate or the Aboriginal candidate but not both. The other group felt that the answer to this question would depend on the particular model adopted for dedicated seats.

Selection of candidates

One group suggested that the representative in the dedicated seat should be chosen through a regional Aboriginal Assembly, rather than direct election. However, they did not offer any further details about the role and composition of an Assembly.

WORKSHOP 3 Other options to increase Aboriginal representation

Aboriginal Assembly

One of the groups made it very clear that an Assembly was a much less appealing way to improve Aboriginal representation than dedicated seats:

...what is the use of having an Assembly if you cannot work towards changing and making legislation for the wider community (Ferguson evidence, Coffs Harbour).

Each group discussed the essential features of an Assembly if such a body were established. The first group proposed that an Assembly should be drawn from the "grassroots" and be "independent". The second group proposed the Assembly should comprise a male and female elder from each tribal group in NSW. According to Janet Layton:

What we are trying to do is to reinforce the authority and status of elders amongst the Aboriginal people, because that is what the core of our culture is about (Layton evidence, Coffs Harbour).

Fiona Hyland thought this was an excellent model because while the elders are "leading the way", it would still be possible for the "grassroots people" to have input. One participant, Paul Parkinson, suggested that an Assembly would duplicate existing representative Aboriginal organisations:

To me this is just another Aboriginal bureaucracy, another Aboriginal body being set up, when people will say "Listen, you have already got local land councils, you have got regional land councils, you have got ATSIC, and now you want an Aboriginal Assembly. When is it going to stop?"...To me, an Aboriginal Assembly, if it has not voting rights and cannot address the Parliament, is very paternalistic (Parkinson evidence, Coffs Harbour).

Another group questioned the "representativeness" of existing Aboriginal organisations, such as ATSIC and the NSW Land Councils because the Minister has the final say over their decisions.

Non-voting seats

There was very little discussion about non-voting seats as an alternative to dedicated seats with full voting rights. One group suggested it would probably be easier to get voter approval for non-voting seats at a referendum, but participants generally felt that Aboriginal people in dedicated seats should be accorded full voting powers.

Education campaigns

There was brief mention of the potential value of education campaigns to increase Aboriginal representation in Parliament. One participant argued for cultural awareness training for Members of Parliament. Another participant suggested that Aboriginal children should receive education about Parliament and the political process.

The need for further consultation

There was considerable discussion about what some participants felt were the limitations of the current Inquiry. Several people said that an inadequate amount of time was set aside to discuss such complex issues. According to Janet Layton:

...at the community end we receive so many requests to give feedback and input to one inquiry after another...An important part of working these things through is to be able to talk about the issues, go away, come back again another time, give people some time to chew the thoughts over in their heads, and then come back and talk it over again. It does not happen in the space of a one-day workshop (Layton evidence, Coffs Harbour).

Concern was also expressed that Aboriginal people were not more closely involved in the Inquiry process:

...the process needs to be driven by the Aboriginal people. We don't want the government saying this is what is going to be done; we want the Aboriginal people coming forward and saying "This is our preferred option. How can we process this through?" So the suggestion was that the Aboriginal representatives here take the things that have come up here back to their groups, discuss it with those groups, and then come forward with what their people perceive as the way to go (Stride evidence, Coffs Harbour).

DUBBO CONSULTATION

Venue:

Dubbo RSL Memorial Club

crn. Wingewarra and Brisbane Streets, Dubbo

Date:

Thursday 3 September 1998

Time:

10.00am - 5.00pm

No Participants: 15

The Dubbo consultation was a combined meeting with Aboriginal and non-Aboriginal people.

WORKSHOP 1 Arguments for and against dedicated seats

Arguments for

Dedicated seats could:

- give the Aboriginal community a voice
- provide Aboriginal input into the development of policy and legislation affecting Aboriginal people
- lead to self-management of Aboriginal affairs
- acknowledge the Aboriginal owners of Australia.

Arguments against

Dedicated seats may:

- create expectations in ethnic communities for dedicated seats
- be divisive in both the Aboriginal and wider communities
- make it difficult for one or two members to represent the diversity of indigenous family groups across NSW.

WORKSHOP 2 Dedicated seats - how could it work?

Number of seats

The number of dedicated seats proposed by participants ranged from one in each House to 13 across the two Houses. Ted Lancaster proposed a total of 13 seats, based

on the NSW Aboriginal Land Council regional network. Des Smith suggested that one additional seat in both Houses was a less ideal, but more realistic, proposal. Another participant suggested a total of six seats, three in the Upper House and three in the Lower House. Rosemary Langford argued that six dedicated seats was unrealistic because it was disproportionate to the total number of Aboriginal people in NSW.

Electoral roll

Participants generally agreed there were inadequacies with the rolls used for both ATSIC and Land Council elections.

One vote or two?

Greg Evans said it would be extremely difficult to get approval at a referendum for dedicated seats if Aboriginal people had more than one vote. However the majority of Aboriginal participants thought it was essential that they be able to vote for the person in the dedicated seat as well as the general candidate.

Who can vote?

Most Aboriginal participants felt that only Aboriginal people should vote for the Aboriginal candidate, but one of the non-Aboriginal participants thought non-Aboriginal people should also be able to vote for the dedicated seat.

Selection of candidates

Participants generally felt that the candidate for a dedicated seat should be independent rather than party aligned and should be drawn from the "grass-roots". Two participants suggested that the regional boundaries of the NSW Land Councils could provide a basis for the selection of candidates.

Education campaigns

Several participants noted that dedicated seats would not work unless they were preceded by a broad education campaign on the political system, which targets the Aboriginal community.

Workshop 3 Other options to increase Aboriginal representation

Aboriginal Assembly

Most of the Aboriginal participants were initially opposed to the establishment of an Aboriginal Assembly, including Tony Amatto:

My personal view is that the idea of an Aboriginal Assembly is out. I cannot see the point of a group of Koori people meeting in Parliament to discuss legislation or policies when we have already got structures set up to do that now. What does the Department of Aboriginal Affairs do? They advise the Minister and talk to him about relevant polices and procedures. We have the NSW Aboriginal Land Council, which is the principal adviser for Kooris to State governments. So I just think it would be a waste of time, a waste of money, and a waste of Koori people's time to sit in the corridors down there with really no power, So I think an Assembly is out (Amatto evidence, Dubbo).

Paul Devitt supported this argument:

I agree entirely with what Tony and other fellows are saying: if you have an Assembly that actually does not give them any power, you are perpetuating an injustice...While ever we keep them outside the decision-making process, it remains unjust (Devitt evidence, Dubbo).

However, late in the discussion one of the participants suggested that, as further consultation and a referendum could take a long time, an Assembly could be established as an interim measure.

Non-voting seats

There was very little discussion about the possible introduction of non-voting seats. One of the non-Aboriginal participants suggested that non-voting seats could be introduced as a realistic interim measure. However, several Aboriginal participants expressed concern that "interim" may mean five years or 500 years.

Aboriginal representation in political parties

Ted Lancaster suggested that political parties should be encouraged to do more to improve Aboriginal representation:

another option...is to educate the political parties as to the role that the Aboriginal people play within their community, that they are constituents and that they can play a big role in winning or losing seats in particular areas, and go about it that way (Lancaster evidence, Dubbo).

The need for further consultation

Several participants commented on the inadequate amount of time allowed for this consultation:

This is probably the most important issue for NSW Kooris since 1967. One of the recommendations that I would like to make to this Committee is that this Committee seek more time from government for more consultation involving the Aboriginal community, giving us time to actually sit down and discuss things (Lancaster evidence, Dubbo);

I cannot represent my people and what I and they believe in...because of the time frame that you have given me to represent my people in (Wilson evidence, Dubbo);and

I would like to have it on the record that...we are only a small number of locals from our community. So this is not viewed as the opinion of the 7,000 people here in Dubbo. It would not be right if it were viewed as full consultation involving the Koori community when there is such a small number of people here (Lancaster evidence, Dubbo).

One of the participants suggested that the major parties should adopt a bipartisan approach to set the foundations to establish further consultations on the idea of dedicated Aboriginal seats:

Why can't we look seriously at the establishment of some black working party that has some other representatives from across the State that work with the Department of Aboriginal Affairs, the NSW Reference Group, the NSW Aboriginal Land Council and with politicians on the future development of dedicated black seats...that can go from community to community and meet at the communities best time (Amatto evidence, Dubbo).

APPENDIX SEVEN

REPORTS FROM

ARRILLA ABORIGINAL

TRAINING & DEVELOPMENT



ABORIGINAL DEDICATED SEATS IN PARLIAMENT INQUIRY

FINAL SUMMARY

Between November 1997 and September 1998 Arrilla assisted the Committee in hosting 9 community consultations within NSW, including Sydney, Parramatta, Armidale, Moree, Lismore, Wagga Wagga, Batemans Bay, Coffs Harbour and Dubbo.

It is our view that these consultations were successful in a number of ways:

The average number of people attending each consultation was 37. For a work/school day, this response was more than satisfactory.

All consultations appeared to show an even number of Aboriginal and non Aboriginal people to give balance to the debate.

Elders and senior/key Aboriginal people were well represented in most locations, particularly Sydney, Parramatta, Wagga Wagga, Batemans Bay and Armidale. This is not only a socially responsible outcome, but reflected well on the Committee and it's Inquiry.

The '3 workshop' style enabled maximum debate and evidence within the restricted timeframe.

The '3 plenary' and closing style gave a good opportunity for reflection on the outcomes of all workshops, and even more importantly, created a sense of unity in voice - to know that other locations supported their views. When their views weren't supported elsewhere, the style helped participants feel complimented on their creativeness.

For many, this was the first time participants had had an opportunity to contribute to an Inquiry, particularly one which involved their own lives and community futures. The "chance to have your say" was welcomed warmly.

The consultation also gave a real link between the parliamentarians and the very people this Inquiry affects. All locations voiced their appreciation and acknowledgement of this process.

Most important to note is the issue of information sharing which was raised at every location:

Participants felt that one day's consultation was not adequate to fully debate and make valued recommendations towards the Inquiry. Furthermore, the Aboriginal people felt that the restriction was a very 'white' way of going about the process, and was therefore disrespectful of their cultural selves - not allowing them to think, talk and digest the issue, take the discussion and outcomes back to the elders they were representing and to then respond to the Inquiry. As a small compensation, we were able to suggest the option of a formal submission, however a verbal dialogue was, as noted, far more culturally appropriate.

Sufficient notice of meeting was also seen as inadequate. In our view, all efforts were made to reach as many people as possible. Methods of advertising included

- Alerting the Premier's 'A' list of Aboriginal people in NSW
- Advertising all meetings through our own networks, eg Footsteps newsletter (over 4000), Australians For Reconciliation Local Groups and facilitators (over 40), Older Women's Network, the NSW Women's Reconciliation Network (over 300), the Aboriginal and Torres Strait Islander Employment Network (70), OUT FM and Koori Radio, SOCOG, as well as several conferences
- Offering approx 150 contact names and addresses for each location
- Independently distributing approx 30 invitations for each location
- Advertising all meetings in The Koori Mail national newspaper
- Advertising all meetings in the local press, television news and radio in each location
- Marketing the consultations one day prior by physically being in the location visiting key people, addressing other meetings, phoning and faxing

On another level, we were heartened if not surprised, by the high level of trust and openness to negotiate by the Aboriginal people. Many communities are skeptical of government 'intervention' due to the lack of response in the past. That, combined with inappropriate past government practices, can mean that responses to consultations of this nature can reflect frustration, mistrust and anger.

We believe that while some locations had their 'hotspots' the overall response was positive, constructive and valuable for Committee members, staff and participants alike.



CONSULTANT SUMMARY NOV 1997 - FEB 1998

Overview of Proposal dated 3 November 1997

1. Objective

To assist the Standing Committee on Social Issues, Parliament of New South Wales Legislative Council, to hold a series of consultations with indigenous and non indigenous people regarding Aboriginal representation in Parliament.

2. Outline

Commencing: Late November 1997

Consultancy period: Pre consultation period

8 months x 1 day per month = 8 days per

consultant

Consultation period: 8 locations x = 2 days = 16 days per consultant

3. Timeframe for this summary period

November/December Design of marketing material and strategies

February Preparation and marketing of meetings

March Sydney launch and meeting

Parramatta meeting (not in this report)

Services provided

1. Design of marketing material and strategies

- Advised and amended draft booklet to suit an indigenous audience
- Took part in 3 planning meetings
- Gave advice re venues, catering, timeframe, participants, distribution, overall dynamics

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2. Preparation and marketing of meetings

- Advised on location of launch
- Alerted planning committee of Premier's list
- Culled Premier's list to a priority 200
- Advertised all meetings through our own networks, eg Footsteps newsletter (over 4000), Australians For Reconciliation Local Groups and facilitators (over 40), Older Women's Network, the NSW Women's Reconciliation Network (over 300), the Aboriginal and Torres Strait Islander Employment Network (70), OUT FM indigenous radio program, SOCOG, and two conferences on the North Coast
- Offered contact details of possible performers/speakers including Mandaway Yunipingu, Troy Casser-Daley and Peter Garrett
- Discussed and compared running sheets for launch
- Arranged for an elder to give a traditional welcome and we have begun sourcing another for Parramatta meeting
- Secured Peter Garrett to speak at launch
- Briefly spoke at launch regarding consultation process
- Helped to facilitate launch and workshops
- Perused launch marketing material
- Offered further 30 names to launch distribution list
- Offered further names to media pack distribution list
- Offered a further 25 names to the Parramatta meeting invitation list
- Independently distributed 75 85 invitations to Parramatta meeting

Sydney meeting Summary

As a pilot, we felt there were a number of things that could be learnt from the day:

- Acceptance that with consultation comes discussion
- Realisation that some of those discussions may be longer or more detailed than we had imagined (eg what is a dedicated seat, what different kinds are there etc)
- Confirmation that patience is the key we've invited them "to take this
 important opportunity to share (their) views with us", so we should allow
 everyone to contribute as much as possible. This includes the format and
 style of each meeting.
- Flexibility be open to changing formats, timeframes, speakers etc according to each group's needs. Our experience has shown that this can only be achieved if we can become confident in guiding the outcome instead of controlling it.

Overall, we believe the day went very well from a number of perspectives:

- The type of Aboriginal people present, as they were largely opinion leaders amongst communities in rural areas. We hope that this will encourage others to attend the rural meetings around New South Wales.

- The willingness to discuss and work through these issues honestly.
- The traditional welcome and singers gave a much needed indigenous flavour to an otherwise standard launch
- Overall, participants appeared to trust and respect their facilitators
- In most cases, outcomes were filtered in a consultative manner



ABORIGINAL DEDICATED SEATS IN PARLIAMENT INQUIRY

CONSULTANT SUMMARY APRIL - IUNE 1998

Overview of Proposal dated 3 November 1997

1. Objective

To assist the Standing Committee on Social Issues, Parliament of New South Wales Legislative Council, to plan for and hold assist in consultations with indigenous and non indigenous people regarding Aboriginal representation in Parliament.

2. Schedule

Dec - March See previous report

April Preparation and marketing for May

May Assist in the facilitation of three meetings (2×2)

Armidale, 1 x Moree)

June Assist in the facilitation of one meeting

(Lismore)

Services provided

1. Preparation and marketing

General:

- Took part in three planning meetings 14 April, 19 May, 16 June
- Gave advice re venues, catering, timeframe, participants, distribution, agenda and overall dynamics
- Advertised all meetings through our own networks, eg Footsteps newsletter (over 4000), Australians For Reconciliation Local Groups and facilitators (over 40), Older Women's Network, the NSW Women's Reconciliation Network (over 300), the Aboriginal and Torres Strait Islander Employment Network (70).
- Offered 500 names to the Secretariat for distribution of invitations
- Independently distributed 30 invitations

VALCLARE PTY LTD ACN 056 859 566 TRADING AS ARRILLA - ABORIGINAL TRAINING & DEVELOPMENT 214 Crown Street East Sydney NSW 2010 ph (02) 9331 8080 fax (02) 9361 0840 email arrilla@netlink.com.au

Armidale:

- Arrived and canvassed Armidale one day prior to meeting
- Met with several community organisations and individuals, including
 - . Manager, Community Development Employment Program (CDEP)
 - General Manager, Armidale City Council
 - . Mayor, Armidale City Council
 - Pat Dixon, MP
 - . Manager and staff, Aboriginal Medical Service
 - Principal and teacher, local school
- Telephoned another 35 organisations/individuals
- Faxed 15 non Aboriginal Councillors
- Faxed the General Managers of Guyra and Walcha Local Councils
- Attended Information Sessions evening prior to meeting and Shelley briefly addressed group to encourage attendance and confidence in the process.
- Arranged a traditional welcome to Country by Pat Dixon
- Arranged a bus and driver to pick up elders and bring them to lunch and the meeting

Moree:

- Arrived night prior to meeting with other staff and members
- Attended Information Session
- Telephoned 20 local community and organisations to encourage Aboriginal people to attend the afternoon session
- Met with the Mayor and Indigenous Liaison Officer of the Moree City Council
- Encouraged the Local Council to cancel a 2pm meeting to lead participants to our session
- Met with the Manager of the Aboriginal Legal Service
- Arranged a traditional welcome to Country by Owen Dennison

Lismore:

- Due to the Monday public holiday, we were unable to work in the area the day prior to the meeting. Alternatively, we telephoned and faxed information and reminder notices to our contacts in Lismore and surrounding north coastal areas. Some of those organisations/individuals included
 - . The Koori Mail
 - The Northern Rivers Native Title group
 - 3 x Local Reconciliation Groups
 - Southern Cross University
 - . Keith Gastine, Elders Council
 - Aboriginal Medical Service
 - . Aboriginal Legal Service
 - . ATSIC

- Attempted to secure a local to traditionally welcome people to country.

2. Assist in the facilitation of meetings

Armidale (2 meetings):

- Shelley facilitated 4 plenaries and maintained timekeeping throughout
- Shelley provided feedback and a summary at the end of both meetings
- John facilitated 4 workshops (2 x advantages vs disadvantages, 2 x other options)
- Attempted to handle recommendations and criticisms re meeting issues

Moree:

- Both Shelley and John were meeting with and telephoning local people during the first session (half day)
- Facilitated two afternoon sessions
- Attempted to handle recommendations and criticisms re meeting issues

Lismore:

- Shelley and John facilitated five workshops between them
- Shelley facilitated 3 plenaries and provided a closing summary
- On the Chairperson's request, gave an interview to Prime Television
- Arranged two local Aboriginal people for interviews

Meeting Summaries

Armidale:

We believe this meeting was very successful in a variety of ways.

Support from Pat Dixon was valuable as she provided us with administration support and a car and driver so that we could encourage as many people as possible to attend the following day.

The venue was well known to all locals, and provided both the space and appropriate environment to conduct the meetings. Catering was simple and popular.

Several people attended the Information Session, even though another important community meeting was being held at the same time concerning custody issues amongst Aboriginal residents. A representative from the Aboriginal community thanked the Social Issues Committee for conducting the Inquiry and including Armidale in their consultations.

Attendance at the non Aboriginal and the Aboriginal Information sessions exceeded our expectations.

This meeting was Jan Burnswoods' first meeting as the newly appointed Chairperson of the Committee, and we felt her delivery and manner was extremely appealing and appropriate to an indigenous audience.

Feedback regarding group dynamics seemed to favour indigenous and non indigenous mixed workshops. We therefore recommended that we pilot joint workshops in Lismore.

Moree:

Arriving into Moree 30 minutes prior to the Information Sessions did not allow for ample promotion of the workshops - in our experience, telephone calls, mail and faxes do not make the kind of impact that a face-to-face meeting does.

Our promotions work amongst the Aboriginal communities confirmed this. Three people attended the non indigenous session, and nine people attended the indigenous session. 95% of the indigenous participants were people we had made direct contact with that morning.

While these numbers were considerably low compared to the Lismore meeting, we did not expect large numbers due to the many factions and sensitivities of the area.

For future workshops, we would recommend a full day of promotions the day before, where possible. Likewise, we would also recommend that the Committee consider the use of a hirecar for this task if other local arrangements cannot be made.

Lismore:

Several people participated in the meeting eventhough Senator Minchin was delivering a Native Title session at the same time and venue.

Numbers were also good when you consider that our arrival coincided with a death in the family of a respected elder. This elder still attended the session all day, however she preferred not to formally welcome people traditionally, while another elder arrived later in the session.

We piloted the idea of combined workshops, and the response and outcome was very good. The session was a good mix of indigenous and non indigenous and we were very impressed with their understanding of the issues, energy and new recommendations.

We believe that this meeting was the most successful due to the already active groups in this area. Communities, both indigenous and non indigenous have

been working together to arrive at mutual goals in this area for some time nowin the formal sense, the Lismore Local Reconciliation Group has been operating for approximately 12 months, while other areas further north have a secure understanding of social issues surrounding indigenous people.

Because of this, we believe that our 'no-face' promotions three days earlier would never have been as successful without this established attitude.

General:

We believe that the meetings are becoming more successful as each location is completed. We largely account this to

- a. a greater level of flexibility to the process
- b. a more relaxed attitude which can often come with familiarity
- c. a fine-tuned execution of staff skills and 'comfort zones'

We look forward to the last three months which includes Wagga Wagga, Batemans Bay, Coffs Harbour, Dubbo with Port Macquaire still to be confirmed.



ABORIGINAL DEDICATED SEATS IN PARLIAMENT INQUIRY

CONSULTANT SUMMARY IULY - SEPTEMBER 1998

Overview of Proposal dated 3 November 1997

1. Objective

To assist the Standing Committee on Social Issues, Parliament of New South Wales Legislative Council, to plan for and hold assist in consultations with indigenous and non indigenous people regarding Aboriginal representation in Parliament.

2. Schedule

Dec - March

See previous report

April - June

See previous report

July

Assist in the preparation, marketing and

facilitation of one meeting (Wagga Wagga)

August

Assist in the preparation, marketing and

facilitation of two meetings (Batemans Bay and

Coffs Harbour)

September

Assist in the preparation, marketing and

facilitation of one meeting (Dubbo)

October

Final summary report

Services provided

1. Preparation and marketing

General:

- Advertised all meetings through our own networks, eg Footsteps newsletter (over 4000), Australians For Reconciliation Local Groups and facilitators (over 40), Older Women's Network, the NSW Women's

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Reconciliation Network (over 300), the Aboriginal and Torres Strait Islander Employment Network (70).

- Offered 330 names to the Secretariat for distribution of invitations
- Independently distributed 40 invitations

Wagga Wagga:

- Arrived and canvassed Wagga Wagga one day prior to meeting, with the assistance of another Arrilla consultant, Jillian Little.
- Met with several community organisations and individuals, including
 - Department Housing
 - . Juvenille Justice office
 - . Mayor, Wagga Wagga City Council
 - . Aboriginal Medical Service
 - . Aboriginal Legal Service
 - . Aboriginal Children's Services
 - . Aboriginal Land Council, Regional Office and Local Office
 - . Dept. Employment, Education, Training and Youth Affairs
 - Education Centre
- Telephoned/faxed approx 40 organisations/individuals
- Secured a traditional welcome to Country by Lena Whyman, a Yorta Yorta woman, supported by Isabelle Reid, a Wiradjuri woman.

Batemans Bay:

- Arrived and canvassed Batemans Bay one day prior to meeting
- Telephoned 35 local communities and faxed another 15
- Met with the Acting General Manager, Eurobodalla Shire Council
- Tried to source an appropriate person to perform a traditional welcome to Country
- Met with several community organisations and individuals, including
 - Aboriginal Legal Service
 - . Aboriginal Land Council Manager, Batemans Bay and Mogo
 - Dept Housing
 - . Community Development Employment Program (CDEP)

Coffs Harbour:

- Arrived and canvassed Coffs Harbour one day prior to meeting
- Met with several community organisations and individuals, including
 - . Aboriginal Legal Service
 - . Aboriginal Land Council
 - . Aboriginal Family Community Care centre
 - . Aboriginal Homecare
 - . Australians for Native Title and Reconciliation meeting
 - Mayor John Smith, Coffs Harbour
- Faxed 40 individuals/organisations who did not receive info or required confirmation
- Attempted to secure a local to traditionally welcome people to country.

Arranged for elders to be picked up and taken to the consultation

Dubbo:

- Arrived and canvassed Dubbo one day prior to meeting
- Addressed the Dubbo Local Reconciliation Group and their Executive at their quarterly meeting
- Met with several community organisations and individuals, including
 - National Parks and Wildlife Service
 - . CATARAC
 - Aboriginal Land Council
 - Aboriginal Community Education Centre
- Faxed and/or telephoned 50 individuals/organisations to confirm details and create enthusiasm
- Secured a local Aboriginal person and Chairperson of the Aboriginal Land Council to traditionally welcome people to their land.

2. Assist in the facilitation of meetings

Wagga Wagga:

- Two additional Arrilla consultants, Jillian Little and Debbie Evans, assisted in mechanics of the consultation throughout the day
- Briefed and supported Lena Whyman and her support person re welcome
- Briefed acting Chairperson, Marlene Goldsmith
- Attempted to handle meeting issues from Cr Eldridge, including moving the meeting to avoid disruptions, providing a statement to the Wagga Wagga police, curtailing negative press where possible, calming participants and encouraging some to continue with the consultation
- Shelley facilitated 3 plenaries and maintained timekeeping throughout
- Shelley provided feedback and a summary at the end of each workshop
- John facilitated 3 workshops
- Assisted with media liaison

Batemans Bay:

- Briefed Chairperson, Jan Burnswoods
- Shelley facilitated 3 plenaries and maintained timekeeping throughout
- Shelley provided feedback and a summary at the end of each workshop
- John facilitated 3 workshops
- Assisted with media liaison
- Attempted to handle recommendations and criticisms re meeting issues
- We were unable to secure a traditional person to welcome the meeting as the community could not identify anyone who could appropriately represent the many Aboriginal mobs of the area. The traditional owners

and their names were still identified and then acknowledged by the Chairperson.

Coffs Harbour:

- Briefed Chairperson, Jan Burnswoods
- Shelley facilitated 3 plenaries and maintained timekeeping throughout
- Shelley provided feedback and a summary at the end of each workshop
- John facilitated 3 workshops
- Attempted to handle recommendations and criticisms re meeting issues
- We were unable to secure a traditional person to welcome the meeting as the community could not identify anyone who could appropriately represent the many Aboriginal mobs of the area. The traditional owners and their names were still identified and then acknowledged by the Chairperson.

Dubbo:

- Briefed Chairperson, Jan Burnswoods
- Shelley facilitated 2 plenaries and maintained timekeeping throughout
- Shelley provided an overview as part of the opening session, feedback and a summary at the conclusion of the consultation
- Attempted to handle recommendations and criticisms re meeting issues
- We secured a local Aboriginal person who is the Chairperson of the Aboriginal Land Council to traditionally welcome people to the land.

Meeting Summaries

Wagga Wagga:

The meeting experienced a shakey start with disruptions caused by Cr Jim Eldridge (please see the Standing Committee on Social Issues for formal details) as he interrupted Deputy Chairperson and member Marlene Goldsmith during her introduction to the meeting.

Once participants supported the removal of Cr Eldridge from the meeting, assisted in his removal, guarded all entry doors to exclude him, relocated the meeting to another room, one would think that the overall 'feel' of the meeting would be lost. Much to their credit, all participants remained motivated and willing to continue with enthusiasm.

From that period, the workshops went very well and offered fresh, constructive and innovative ideas. This group was well informed of the issues, and social issues generally - their active local reconciliation group which has been operating with strength for over 12 months probably assisted with the current social and political awareness.

Participants were also very thankful that the Committee chose to consult with 'ordinary' people, and to do so in the Riverina area. They showed their appreciation by giving all members, present and not present, a print of a local Aboriginal artist's work.

Batemans Bay:

Compared to other groups, we found this one to be quite angry and frustrated as a result of past government policies and consultations previously undertaken. Their skepticism regarding *this* consultation and it's results appeared justified.

However, as the day progressed, the angry energy transfered into heated and constructive discussion. The Walking Together reconciliation group were well represented at the meeting, and well informed.

This meeting was awarded our 'most innovate idea' prize - the suggestion of a house for each economic sector eg a Hairdressers House, a Butchers House etc! This participant was politely informed that this would be highly unlikely.

Coffs Harbour:

A good number of people participated in this consultation, however this consultation was perhaps the only meeting that offered little constructive suggestions for a variety of reasons:

- the group was not 'ready' for the weight of this issue and therefore found it difficult to grasp the issue easily
- they did not want to arrive at concrete suggestions without taking it back to their elders and communities first.
- there are many factions in the area, and most were well represented amongst the group, thus making consensus difficult

To their credit, one participant contributed many racist and patronising comments to his workshop throughout the day, however this did not inhibit the consultation or its progress.

As Chair of the plennaries, Shelley encouraged groups to reform outside this consultation to discuss the issues further, and to give their absent elders and communities an opportunity to contribute to the Inquiry through their own formal submission.

Dubbo:

This was a smaller group which began quietly and conservatively. As the day progressed they became more involved and vocal, however it was largely dominated by two of the participants. Unfortunately, the group wasn't large enough to break into smaller groups - a tactic we would normally use to enable quieter participants to contribute.

This group also did not want to arrive at concrete suggestions without taking it back to their elders and communities first.

In support of this criticism, one highly respected Aboriginal man left the room as he felt the time restrictions were an insult to his culture and people. Shelley spoke to him outside the forum to thank him for his comments and to encourage him to offer a formal submission to the Inquiry based on his discussions with his people.

APPENDIX EIGHT

CORRESPONDENCE FROM

PROFESSOR ANTHONY BLACKSHIELD

(Two Letters)



Beverly Duffy
Senior Project Officer
Standing Committee on Social Issues
Legislative Council
Parliament of New South Wales
Macquarie Street
SYDNEY 2000

29 July 1998

Dear Ms Duffy:

You wrote to me in June inviting me to comment on the evidence given to the Social Issues Committee by Mr John Waugh of the University of Melbourne in the course of the Committee's inquiry into the creation of dedicated Aboriginal seats in the New South Wales Parliament.

Specifically, the short question you asked me was whether I agree with Mr Waugh that the introduction of such seats in either House of the Parliament would require the support of a majority of voters at a referendum. The short answer to that question is Yes.

Before elaborating on that answer I should make certain preliminary points.

- 1. Regardless of the answers to the technical legal questions, I agree with Mr Waugh that, as a matter of general constitutional principle, any legislation designed to implement such a proposal should be subject to two presumptions. One is that it *should* be framed as a formal amendment to the *Constitution Act* 1902; the other is that it *should* be put to the people of the State at a referendum. This would be so even if neither presumption was seen as a technical legal requirement. Whatever the strict legal position might be, both of the above presumptions *should* apply for two reasons. One is simply that such an approach would be consonant with the general spirit of the *Constitution Act* 1902, and with the particular combination of representative and direct democracy which the *Constitution Act* embodies. The other is that, equally, such an approach would be appropriate to both the symbolic and the practical significance of any system of dedicated Aboriginal representation.
- 2. As a technical legal matter I would perhaps emphasise more strongly than Mr Waugh that it is not strictly necessary for changes of this nature to be expressed as formal amendments to the Constitution Act. This is because, leaving aside the entrenched provisions, the Constitution Act is not a superior enactment overriding and limiting the powers of the New South Wales Parliament, but is itself an enactment made by that Parliament, and freely subject to amendment by it. Any subsequent legislation expressed as a formal amendment to the unentrenched provisions of the Constitution Act will therefore simply take effect according to its terms. Equally, any subsequent legislation which is not expressed as a formal amendment to the unentrenched provisions of the Constitution Act, but which is construed as modifying those provisions or as inconsistent with them, will still take effect according to its

terms, with the rationalisation that, to the extent of the modification or inconsistency, the new legislation has operated as an *implied* repeal of the provisions in the *Constitution Act*. This analysis is *not* confined to those instances where the later enactment is entitled as a *Constitution (Amendment) Act*; it extends to *any* legislation.

- 3. The above paragraph is expressed as referring only to the unentrenched provisions of the Constitution Act; but essentially the same analysis applies to the entrenched provisions. The "entrenchment" provisions in ss 7A and 7B of the Constitution Act do not require that any of the changes there referred to should be framed as a Constitution (Amendment) Act. They only require that any such change be conditional upon approval by a majority of voters at a referendum. The point I am making, for entrenched and unentrenched provisions alike, is spelled out by s 7 of the Constitution Act: "The Legislature may, by any Act, alter the laws in force for the time being under this Act or otherwise concerning the Legislative Council or Legislative Assembly" (emphasis added).
- 4. It follows that, even if Mr Waugh is correct in thinking that provision for dedicated Aboriginal seats would amount to an amendment of ss 26 to 28 of the Constitution Act, such a scheme could be implemented by amendments to the Parliamentary Electorates and Elections Act 1912, or indeed by separate stand-alone legislation making no explicit reference either to that Act or to the Constitution Act. In agreeing with Mr Waugh that any such proposal should be implemented by formal amendments to the Constitution Act, I base my opinion solely on the general considerations referred to in paragraph 1 above.
- 5. It follows, finally, that the question of whether a referendum would be required is entirely independent of whether or not the change is expressed as a formal amendment to the Constitution Act. If the change does not affect the "entrenched" provisions of the Constitution Act (so as not to require a referendum), then obviously the change can be effected by an enactment in any form and under any title. Equally, if the change does affect the "entrenched" provisions, then a referendum will be required regardless of the form or title of the proposed enactment, and regardless of whether it makes any explicit reference to the Constitution Act or not.

Against that background, I turn to the specific question you asked me: Would a referendum be required? If the dedication of Aboriginal seats involved any formal amendment of the "entrenched" provisions, or in practice had such an effect upon those provisions as to amount to an *implied* amendment or partial repeal, then the answer would be "Yes".

I sympathise with those members of the Committee who expressed their difficulty in being sure what the "entrenched" provisions are. The answer is found in ss 7A and 7B of the Constitution Act, which require a referendum as a necessary condition for the passage of a Bill (that is, any Bill) having the effects there referred to. Section 5B, though it also provides for a referendum, is not relevant for this purpose: it does not mark out the referendum procedure as one which must be followed as the only way in which certain specified kinds of laws may be passed, but as one which may be followed as an alternative way in which any kind of law may be passed.

The text of ss 7A and 7B is appended to this letter for convenience. Section 7A deals primarily with the Legislative Council, s 7B primarily with the Legislative Assembly. I shall deal here

most fully with s 7A. The matters entrenched by that section are set out in subsection (1). By the opening words of that subsection read with paragraph (a), they include any law abolishing or dissolving the Legislative Council, or altering its powers. The remaining paragraphs of subsection (1) then add the following matters:

- (b) any law *expressly or impliedly* repealing s 11A; Division 2 of Part 3 (apart from ss 22G to 22J); the Sixth Schedule; or s 7A itself.
- (c) "any provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament".
- (d) "any provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant".

However, subsection (6) in effect makes certain exceptions to the above list, by providing that certain Bills or provisions are *not* affected by s 7A. Among these exceptions the only one significant for present purposes is the exception in paragraph (d):

(d) "a provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament which applies in the same way to the persons capable of being elected or of sitting and voting as Members of the other House of Parliament" (emphasis added).

In subsection (1) of s 7A, the protected provisions referred to in paragraph (b) are specifically enumerated. The remaining paragraphs require a referendum for certain categories of laws identified only by general descriptions. When a doubt arises as to whether a particular legislative proposal would require a referendum, the doubt may be of two kinds. If the question arises in relation to the specific protected provisions referred to in paragraph (b), the doubt will be whether the proposed legislation would *impliedly* amend or repeal those provisions. If the question arises in relation to the other paragraphs, the doubt will be whether the proposed legislation falls within the relevant description.

In the present context, the only relevant general description is that contained in paragraph (c). Whether a provision for dedicated Aboriginal seats would be a provision "with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament" might perhaps be a matter of debate. My own view would be that such a provision would fall within that description, though it might conceivably depend upon the precise form of the final proposal. However, that issue need not be pursued because, when paragraph (c) of subsection (1) is read along with paragraph (d) of subsection (6), it is clear that laws answering this description do not require a referendum provided that the provision they make is the same for both Houses of Parliament. Thus, so far as that particular issue is concerned, a provision for dedicated Aboriginal seats would not require a referendum provided that it applied to both Houses of Parliament, and to both of them in the same way.

However, when one turns to the specific provisions referred to in paragraph (b) of subsection (1), it will be seen that they include the Sixth Schedule. I agree with Mr Waugh that the most appropriate way to provide for dedicated Aboriginal seats in the Legislative Council would be to amend the Sixth Schedule; and that, even if a way were found to make that provision without

4

formally amending the Sixth Schedule, any such provision would almost certainly count as an *implied* amendment thereof. Accordingly, a referendum is required. Conceivably, depending on precisely how the final proposal was framed, it might be thought to involve an implied amendment of some of the provisions in Division 2 of Part 3. In that event a referendum would be required on that ground also.

It might just be possible to contest this conclusion by reference to what I have said above about paragraph (d) of subsection (6). Subsection (6) asserts in terms that the provisions of s 7A "do not apply to" a provision of the kind there referred to: that is, that *none* of the provisions of s 7A so apply. It might therefore be possible to argue that a provision framed so as to satisfy the description in paragraph (d) of subsection (6) would thereby be immunised not only against any need for a referendum arising from paragraph (c) of subsection 1, but also against any need for a referendum arising from *any part* of subsection (1), including paragraph (b). My own view, however, is that the exceptions in subsection (6) would be narrowly construed, and that the effect of paragraph (d) would be *limited* to its interaction with paragraph (c) of subsection (1).

The structure of s 7B is similar. In subsection (1) of that section, paragraph (a) protects certain *specified* provisions against express or implied repeal or amendment, while paragraph (b) requires a referendum for laws answering a general description. Subsections (7) and (8) then add certain exceptions. The general description in paragraph (b) of subsection (1) (relating to the duration of the Legislative Assembly) is clearly not presently relevant; nor are the exceptions in subsections (7) and (8). All that is relevant for present purposes is the list of protected provisions in paragraph (a) of subsection (1). These are s 11B; ss 26 to 29; Part 9; the Seventh Schedule; and s 7B itself.

I agree with Mr Waugh that the most appropriate way to provide for dedicated Aboriginal seats in the Legislative Assembly would be to amend ss 26 to 28; and that, even if a way were found to make that provision without formally amending those sections, any such provision would almost certainly count as an implied amendment thereof. Accordingly, a referendum is required. Again, this conclusion would be reinforced if the final proposal were framed in such a way that it might involve an implied amendment of the Seventh Schedule.

Moreover, this conclusion as to s 7B does *not* appear to be open to any possible counter-argument of the kind which I referred to above as arising from subsection (6)(d) of s 7A. It follows that, even if (contrary to my own view) that argument were seen as avoiding the need for a referendum under s 7A, a referendum would still be necessary under s 7B.

I hope these comments will be of assistance.

Yours sincerely,

A.R. Blackshield Professor of Law 14-OCT-1998 14:16 FROM SCHOOL OF LAW - MAC UNI TO



092302981

Beverly Duffy
Senior Project Officer
Standing Committee on Social Issues
Legislative Council
Parliament of New South Wales
Macquarie Street
SYDNEY 2000

14 October 1998

Dear Ms Duffy:

Thank you for your letter of 7 October giving me an opportunity to review the draft chapter of your report. I should comment immediately on your query concerning the phrase "most likely".

In my letter to you on 29 July I was giving a somewhat qualified answer to the question of whether the introduction of dedicated seats would require a referendum. I was trying to take account of possible arguments that the need for a referendum might be avoided, or that the proposal might be implemented by other legislative means. I suppose I was reluctant on such a question to give a categorical answer. Nevertheless I did when I wrote that letter come finally and firmly to the opinion that a referendum would be required. To summarise again my main reasons for that conclusion:

- 1. Any provision for dedicated seats in the Legislative Council would most likely involve an express amendment of the Sixth Schedule to the Constitution Act 1902; and even if it did not involve an express amendment of the Sixth Schedule, it would almost certainly involve an implied amendment thereof. (That is, I cannot imagine any way in which the objective could be achieved without an implied amendment of the Sixth Schedule.) Any express or implied amendment of the Sixth Schedule is expressly covered by s 7A(1)(b); so a referendum would be required.
- 2. Any provision for dedicated seats in the Legislative Assembly would most likely involve an express amendment of ss 26 to 28 of the Constitution Act 1902; and even if it did not involve an express amendment of those sections, it would almost certainly involve an implied amendment thereof. (That is, I cannot imagine any way in which the objective could be achieved without an implied amendment of ss 26 to 28.) Any express or implied amendment of ss 26 to 29 is expressly covered by s 7B(1)(a); so a referendum would be required.
- 3. The conclusion in (1) above (as to the Legislative Council) might possibly be answered by an argument based on s 7A(6)(d), which I discussed on the final page of my earlier letter. But that argument would only be available if the proposed changes applied in the same way to both Houses of the New South Wales Parliament; and in any event my own view was that such an argument would not succeed that is, that the requirement in s 7A(1)(b) could not be avoided by an argument based on s 7A(6)(d).
- 4. The conclusion in (2) above (as to the Legislative Assembly) is *not* open to any possible qualification of the kind referred to for the Legislative Council in (3) above. Accordingly, the conclusion in (2) above is unqualified.

SCHOOL OF LAW

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Email: info@law.mq.edu.au

To sum up, if one looked only at paragraphs (1) and (3) above, the possible qualification referred to in (3) would mean that the most prudent statement is only that the proposal would most likely require a referendum. But when one looks at paragraphs (2) and (4) above, my own firm conclusion is that the proposal would require a referendum.

The result is that in my opinion a statement that the proposal would require a referendum is more accurate than the weaker statement that it would most likely do so, and in para 6.1 I would have been inclined to use the stronger formulation. On the other hand what you say in para 6.2.5 is of course accurate, and I see no need to change that paragraph. Would it help if para 6.1 said "almost certainly" rather than "most likely"?

I hope the above comments are helpful.

I have read through the rest of the draft chapter and it seems to me that you have done an excellent job. The draft has my approval subject to the following small points:

- In para 6.2.1 the correct title of the Commonwealth legislation is the Racial Discrimination Act.
- Para 6.2.4 as presently drafted leaves more room for the possibility of avoiding a referendum than I would consider appropriate. In my view the second paragraph should be amended by inserting the words in italics below:

For example, provided that the entrenched provisions were not affected, the introduction of dedicated seats . . [etc]

And the following paragraph should be amended by substituting the words in italies below:

However, both Waugh and Blackshield argue that even if it were . . . [etc]

Yours sincerely,

Professor of Law

APPENDIX NINE

LEGAL ADVICE FROM THE NSW Crown Solicitor

Crown Solicitor's Office

NEW SOUTH WALES

Your ref: My ref:

LGC088.22

T8 I V Knight

Tel: (02) 9224 5238

Fax: (02) 9224 5244

20 October 1998

Mr John Evans
Clerk of the Parliaments
Legislative Council New South Wales
Parliament House
SYDNEY NSW 2000

By facsimile: 9230 2761

Attention: Lynn Lovelock

Dear Mr Evans

RE: INTRODUCTION OF ABORIGINAL SEATS IN PARLIAMENT

1. Advice sought

- You refer in your letter of 3 October 1998, received on 7 October 1998, to the fact the Standing Committee on Social Issues has been conducting an inquiry into aboriginal representation in the New South Wales Parliament and has requested my advice prior to 26 October 1998 on the following:
 - "1. Would the introduction of dedicated Aboriginal seats to either House of the NSW Parliament require approval by a majority of voters at a referendum:
 - (a) if the person in the dedicated seat has the same voting rights and entitlements as other members of Parliament; and
 - (b) if the person in the dedicated seat is not entitled to vote?
 - 2. Would the introduction of such a measure require amendment of the NSW Constitution Act 1902?
 - 3. Are there any other significant legal or constitutional issues which are raised by the introduction of dedicated Aboriginal seats in Parliament, whether for voting or non-voting members?"

2. Advice as to question 1(a)

Legislative Council

2.1 The introduction of dedicated aboriginal seats in the Legislative Council would require approval by a majority of voters at a referendum as such introduction would, depending upon how it is done, either expressly or impliedly repeal or amend within the meaning of s. 7A(1)(b) of the Constitution Act 1902 ss. 22, 22A and the Sixth Schedule thereof. A Bill which would expressly repeal or amend these provisions must not be presented to the Governor for assent until the Bill has been approved by the electors in accordance with s. 7A.

The provisions in question provide for a single constituency for Legislative Council elections undivided by considerations of race. Any measure which created multiple electoral districts for the Legislative Council or which provided for the election of an aborigine or aborigines as a member or members of the Legislative Council by aborigines in a single electoral district comprising the whole State would be inconsistent with the system established by ss 22, 22A and the Sixth Schedule of the Constitution Act.

- 2.2 If the measure involves altering the number of members in the Legislative Council the measure would for that reason also have to be approved by the electors as s. 17(2) of the Constitution Act is entrenched by s.7A(1)(b) thereof.
- 2.3 The measure would also be a provision within the meaning of s. 7A(1)(c) of the Constitution Act and would for that reason also have to be approved at a referendum unless the measure applied in the same way to the persons capable of being elected or of sitting and voting as Members of the Legislative Assembly.

Legislative Assembly

The introduction of dedicated aboriginal seats in the Legislative Assembly would also require approval at a referendum as such introduction would, depending upon how it is done, either expressly or impliedly repeal or amend within the meaning of s. 7B(1)(a) of the Constitution Act ss. 26, 27 and 28 thereof. A Bill which would do so must not be presented

to the Governor for assent until the Bill has been approved by the electors in accordance with s. 7B.

The provisions in question appear to establish a system in which the State is divided into multiple electoral districts and each member is elected to represent one district only ie a member represents an electoral district and not merely so many of the voters in it as consist of the people of one race. Any measure which created an electoral district for the Legislative Assembly consisting of the entire State or which provided for the election of an aborigine by aborigines in one or more of a number of multiple electoral districts would be inconsistent with the provisions in question.

- 2.5 If the measure involved altering the number of members in every Legislative Assembly the measure would not for that reason have to be approved by the electors as s.25 of the *Constitution Act*, which provides the number shall be 93, is not entrenched by s.7A or s. 7B thereof.
- 2.6 The measure would also be a provision within the meaning of s. 7A(1)(c) of the Constitution Act, as to which see para 2.3 above.

3. Advice as to question 1(b)

3.1 It makes no difference to my answers in 2. above if the aboriginal member or members would not be entitled to vote. I acknowledge that while sections 22I and 32(2) of the Constitution Act contemplate members of each House who are present will be entitled to vote on questions arising in the House, it is the case that these provisions are not entrenched by s. 7A or s. 7B of the Constitution Act. However, even if the aboriginal representatives do not have the right to vote, I assume the intention is that they would be members of the House and would occupy a seat in the House; they would not be strangers who by arrangement address the House or participate in other ways in some proceedings of the House. If that is so, the measure would still expressly repeal or amend the entrenched provisions identified in paras 2.1 and 2.4 above and for that reason would have to be approved by the electors.

4. Advice as to question 2.

4.1 The Constitution Act would have to be amended either expressly or impliedly to enable the introduction of either measure. The provisions of the Constitution Act identified in paras 2.1 and 2.4 above presently preclude either measure and, as I have advised, a Bill which would expressly or impliedly repeal or amend them can only be presented for assent if approved by the electors. Strictly speaking, such amendments need not refer expressly to the Constitution Act and the amendments may be inserted in legislation other than the Constitution Act.

5. Advice as to question 3.

Contravention of Racial Discrimination Act 1975 (C'th)

Section 9(1) of the Racial Discrimination Act 1975 makes it unlawful to do an act involving a distinction etc based on race etc which has the purpose or effect of nullifying or impairing the recognition etc on an equal footing of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. Such rights and freedoms include any right of a kind referred to in Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). Article 5(c) provides:

"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(c) Political rights, in particular the rights to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;"

Section 10(1) of the *Racial Discrimination Act* provides that if as the result of a law persons of a particular race do not enjoy a right that is enjoyed by persons of another race or enjoy a right to a more limited extent than persons of another race, then, notwithstanding anything in

that law, persons of the first mentioned race shall by force of section 10 enjoy that right to the same extent as persons of that other race. Again, the reference to a right includes a right of a kind referred to in Article 5 of the Convention.

At the very least, the proposed measure would guarantee that a seat or seats would be filled by a member of the aboriginal race. No other race would have such representation guaranteed. Whereas, presumably, an aborigine could stand for any seat, a non aborigine could not stand for a seat or seats dedicated to aborigines. It may be that other aspects of the measure of which I am not aware could also bring the introduction of the measure within the terms of ss 9 and 10 of the *Racial Discrimination Act*.

- 5.2 Part II of the Racial Discrimination Act, which contains ss. 9 and 10, does not, however, apply to or in relation to the application of special measures to which paragraph 4 of Article 1 of the Convention applies. That paragraph provides:
 - "4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

In summary, a special measure:

- (a) must be for the sole purpose of securing adequate advancement of certain racial groups etc requiring such protection as may be necessary to ensure them equal enjoyment or exercise of human rights and fundamental freedoms;
- (b) must not as a consequence lead to the maintenance of separate rights for different racial groups: and
- (c) shall not be continued after the objectives for which it was taken have been achieved.

While I do not know the stated objective of the measure, I assume it would be asserted that the provision of aboriginal representation is considered necessary in order to secure the adequate advancement of the aboriginal racial group, although that necessarily involves an admission that their adequate advancement cannot be secured by the existing system of representation. The measure would enable one or more aborigines to become members and, as a consequence, also enable aborigines to participate in Parliamentary business as representatives of aboriginal electors. A measure which has as its objective these results could, I think, constitute a special measure within the meaning of paragraph 4 of Article 1 of the Convention. It cannot, however, lead to the maintenance of separate rights for this racial group and is not able to be continued after the objectives for which it was taken have been achieved. I have no knowledge as to whether other racial or ethnic groups would claim that their adequate advancement also requires dedicated seats

Contravention of International Covenant on Civil and Political Rights

5.3 Paragraphs (a) and (b) of Article 25 of the Covenant provide:

"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;"

The distinction of race is one of the distinctions mentioned in article 2.

While the measure would appear to breach the terms of article 25(a) and (b), the Commonwealth does not appear to have implemented the Covenant in such a way as to give legal force to the rights contained therein or to render invalid any State law which is inconsistent with the Covenant. The measure, as a proposed enactment, would, however, be subject to the possibility of examination by the Human Rights and Equal Opportunity Commission pursuant to its function under s. 11(1)(e) of the Human Rights and Equal Opportunity Commission Act 1986.

Contravention of Anti Discrimination Act 1977(NSW)

5.5 The Anti -Discrimination Act 1977 does not appear to make it unlawful to discriminate in the area of Parliamentary representation and thus no amendment to this Act would be necessary if the proposed measure proceeds.

Oath of Allegiance

5.6 An aboriginal member would be required by s. 12 of the Constitution Act as presently worded to take the oath of allegiance before being permitted to sit or vote in the Legislative Council or the Legislative Assembly.

Casual vacancies

- 5.7 If some procedure other than that set out in s. 22D of the *Constitution Act* is to apply in the case of dedicated seats in the Legislative Council, that section would have to be amended. I note that s. 22D is entrenched by s.7A(1)(b) and any amendment would have to be approved by electors.
- 5.8 The provisions of the *Parliamentary Electorate and Elections Act 1912* may have to be amended depending upon the method which is to apply for filling casual vacancies in the Legislative Assembly.

Method of voting for Members

5.9 If some method of voting for members for dedicated seats in the Legislative Assembly other than that set out in the Seventh Schedule is to apply, that Schedule would have to be amended. I note that the Schedule is entrenched by s. 7B(1)(a) and any amendment would have to be approved by electors.

- 5.10 The present method of voting for members of the Legislative Council set out in the Sixth Schedule is also entrenched by s. 7A(1)(b) and any amendment would have to be approved by the electors.
- 5.11 Depending on the method of voting which is to apply and other matters relating to the conduct of elections for dedicated seats, amendments to the Parliamentary Electorates and Elections Act may be necessary.

Yours faithfully

I V Kright
Crown Solicitor

APPENDIX TEN

SS 7A AND 7B

CONSTITUTION ACT 1902 (NSW)

- (3) If at the referendum a majority of the electors voting approve the Bill it shall be presented to the Governor for the signification of His Majesty's pleasure thereon and become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.
- (4) For the purposes of this section the Legislative Council shall be taken to have failed to pass a Bill if the Bill is not returned to the Legislative Assembly within two months after its transmission to the Legislative Council and the Session continues during such period.
- (5) This section shall extend to any Bill whether it is a Bill to which section 7A applies or not.

And in the application of this section to a Bill to which section 7A applies:

- (a) the submission of the Bill to the electors by way of referendum in accordance with this section shall be a sufficient compliance with the provisions of section 7A which require the Bill to be submitted to the electors;
- (b) the referendum under this section shall, notwithstanding anything contained in section 7A, be held upon a day which shall be appointed by the Governor; and
- (c) the day so appointed shall, notwithstanding anything contained in subsection (2), be a day during the life of the Parliament and not sooner than two months after the Legislative Assembly has passed a resolution in accordance with that subsection for the purposes of such referendum.
- (6) A joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly for the purposes of this section may be convened by the Governor by message to both Houses of the Parliament

At such joint sitting the President of the Legislative Council or in his absence the Speaker of the Legislative Assembly shall preside, and until standing rules and orders governing the procedure at joint sittings have been passed by both Houses and approved by the Governor, the Standing Rules and Orders of the Legislative Council shall so far as practicable apply.

Constitution Act 1902 No. 32

Words of enactment

5C. (1) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5A, the words of enactment shall be as follows:

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, in accordance with the provisions of section 5A of the Constitution Act 1902, as amended by subsequent Acts, and by the authority of the same, as follows:

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

(2) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5B, the words of enactment shall be as follows:

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors, in accordance with the provisions of section 5B of the Constitution Act 1902, as amended by subsequent Acts, and by the authority of the same, as follows:

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

Power to alter constitution of Legislative Council or Legislative Assembly

7. The Legislature may, by any Act, alter the laws in force for the time being under this Act or otherwise concerning the Legislative Council or Legislative Assembly.

Referendum for Bills with respect to Legislative Council and certain other matters

- **7A.** (1) The Legislative Council shall not be abolished or dissolved, nor shall:
 - (a) its powers be altered;
 - (b) section 11A, Division 2 of Part 3 (sections 22G, 22H, 22I and 22J excepted), the Sixth Schedule or this section be expressly or impliedly repealed or amended;

Constitution Act 1902 No. 32

- (c) any provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament
- (d) any provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant be

except in the manner provided by this section.

- (2) A Bill for any purpose within subsection (1) shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.
- (3) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors qualified to vote for the election of Members of the Legislative

Such day shall be appointed by the Legislature.

- (4) When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes.
- (5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for His Majesty's assent.
 - (6) The provisions of this section do not apply to:
 - (a) a Bill for the repeal, the amendment from time to time or the reenactment from time to time with or without modifications of:
 - (i) any of the provisions of section 15 or 38A; or
 - (ii) any provision for the time being in force so far as it relates to the subject-matter dealt with in any of the provisions referred to in subparagraph (i);
 - (b) a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 22A (5);
 - (c) a provision of a Bill, being a provision with respect to the capacity of a person who holds or accepts an office of profit under the Crown specified in the Bill to be elected or to sit and vote as a Member of either House of Parliament;
 - (d) a provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament which applies in the same way to the persons capable of being elected or of sitting and voting as Members of the other House of Parliament; or

Constitution Act 1902 No. 32

- (7) The provisions of this section do not apply to a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 29 (2).
- (8) The provisions of this section do not apply to a provision of a Bill, being a provision that would, upon its coming into operation, be a law that amends section 52 for the purpose of extending the application of Part 9 to additional judicial offices or classes of judicial offices.

Assent to Bills

8.

- 8A. (1) Except as otherwise provided by this Act, every Bill:
- (a) shall be presented to the Governor for Her Majesty's assent after its passage through the Legislative Council and the Legislative Assembly; and
- (b) shall become an Act of the Legislature when it is assented to by the Governor in the name and on behalf of Her Majesty.
- (2) Nothing in subsection (1) (b) precludes Her Majesty from assenting to a Bill while Her Majesty is personally present in the State. 4: * 4: 18:

PART 2A-THE GOVERNOR

Appointment of Governor

- 9A. (1) There shall continue to be a Governor of the State.
- (2) The appointment of a person to the office of Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.
- (3) Before assuming office, a person appointed to be Governor shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Judge of the Supreme Court.

Appointment of Lieutenant-Governor and Administrator

- 9B. (1) There shall continue to be:
- (a) a Lieutenant-Governor of the State; and
- (b) an Administrator of the State.
- (2) The appointment of a person to the office of Lieutenant-Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Scal of the State.

(e) a provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant which applies in the same way to the circumstances in which the seat of a Member of the other House of Parliament becomes vacant.

(8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted from time to time in accordance with this Act.

Referendum for Bills with respect to Legislative Assembly and certain other matters

7B. (1) A Bill that:

- (a) expressly or impliedly repeals or amends section 11B, 26, 27, 28 or 29, Part 9, the Seventh Schedule or this section; or
- (b) contains any provision to reduce or extend, or to authorise the reduction or extension of, the duration of any Legislative Assembly or to alter the date required to be named for the taking of the poll in the writs for a general election,

shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with this section.

- (2) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.
- (3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing
- (4) When the Bill is submitted to the electors the vote shall be taken under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.
- (5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty's assent.
- (6) Nothing contained in this section affects the operation of section 5B and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B and has been approved by a majority of the electors voting may be presented to the Governor for Her Majesty's assent as if this section had not been

Constitution Act 1902 No. 32

- (3) The Administrator shall be:
- (a) the Chief Justice of the Supreme Court; or
- (b) if the Chief Justice is the Lieutenant-Governor or in the event of a vacancy in the office of Chief Justice or the absence from the State or the incapacity of the Chief Justice—the next most senior Judge of the Supreme Court who is for the time being not absent from the State or incapacitated,

and shall be deemed to have been appointed as Administrator during Her Majesty's pleasure.

- (4) A person may be appointed as Administrator during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State and, where such an Administrator has been appointed and is not absent from the State or incapacitated, subsection (3) does not
- (5) The Lieutenant-Governor or Administrator shall not assume the administration of the government of the State or act as deputy to the Governor unless the Lieutenant-Governor or Administrator, as the case may be, has taken on that occasion, or has previously taken, the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Judge of the Supreme Court.

Administration of government by Lieutenant-Governor or Administrator

- 9C. (1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State in the event of:
 - (a) a vacancy in the office of Governor;
 - (b) the assumption by the Governor of the administration of the government of the Commonwealth;
 - (c) the absence from the State of the Governor; or
 - (d) the incapacity of the Governor.
- (2) The Governor shall not, for the purposes of this section, be regarded as being absent from the State or incapacitated at any time when there is a subsisting appointment of a deputy under section 9D.
- (3) The Administrator shall not assume the administration of the government of the State except in the event of a vacancy in the office of Lieutenant-Governor or the absence from the State or the incapacity of the Lieutenant-Governor.

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CORRESPONDENCE FROM THE
HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION

Human Rights and Equal Opportunity Commission



Beverly Duffy
Senior Project Officer
Standing Committee on Social Issues
Parliament of New South Wales, Legislative Council
Macquarie St
Sydney NSW 2000

11 August 1998

Dear Ms Duffy

I am writing in response to your request of 24 June for advice on whether a system of guaranteed representation of Aboriginal people in the New South Wales Parliament by the provision of dedicated seats would breach the provisions of the *Racial Discrimination Act 1975* (Cth).

On 23 October 1997, Mick Dodson, the then Aboriginal and Torres Strait Islander Social Justice Commissioner, provided a submission to the Inquiry into Aboriginal Representation in Parliament. The submission provided comprehensive advice on a range of options for reform of the existing system, as well as views on dedicated Aboriginal representation in New South Wales Parliament.

I draw your attention in particular to the following passage from the submission:

"The submission does not seek to endorse a particular resolution to the narrow question of whether there should be separate seats for Aboriginal people in the New South Wales Parliament. In the Commissioner's view, respect for the right to self-determination itself demands that the value and appropriateness of this option as a strategy of self-determination ultimately be judged by the Aboriginal peoples of New South Wales."

With this in mind, I stress that the attached discussion paper addresses the *likely legalities only* of the possibility of guaranteed representation of Aboriginal people in the New South Wales Parliament and it is not provided for the purpose of providing legal advice to the Committee (which would of course be outside the functions of the Commission). Rather the attached document may be used to assist in providing an understanding of the general issues that may surround a system of guaranteed representation. It is also suggested that if implementation of

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the system is to be seriously considered, detailed independent legal advice should be sought on the issue.

Furthermore, the attached document does not in any way represent the broader views of the Commission on this issue. The formulation of an opinion on the appropriateness or desirability of dedicated seats for Aboriginal people in the New South Wales Parliament would require close and comprehensive consultation with the Aboriginal peoples of New South Wales.

I trust that the attached information is helpful.

Yours sincerely

Zita Antonios

Race Discrimination Commissioner

1. INTRODUCTION

This discussion paper addresses whether a system of guaranteed representation of Aboriginal persons in the New South Wales Parliament (by the provision of dedicated seats) would breach the provisions of the *Racial Discrimination Act 1975* (Cth) ("RDA").

It addresses only the possible legalities of such a hypothetical situation and does not in any way represent the broader views of the Commission on this issue. It is also suggested that if implementation of the system is to be seriously considered, detailed independent legal advice should be sought on this issue. The formulation of an opinion on the appropriateness or desirability of dedicated seats in NSW Parliament for Aboriginal and Torres Strait Islander people would require close and comprehensive consultation with the Aboriginal and Torres Strait Islander peoples of NSW. In addition, there are a host of other complex issues which would need to be taken into consideration.

2. ADVICE

2.1 History of Aboriginal representation in NSW Parliament

The Issues Paper produced in April 1997 by the Standing Committee on Social Issues titled *Aboriginal Representation in Parliament* ("the *Issues Paper*") provides detailed analysis of and background to the topic of under-representation of Aboriginal persons in the political institutions of Australia, including the Parliament of New South Wales.

In New South Wales, 65,133 people identify themselves as being Aboriginal (a higher number than in any other State or Territory) and 4,886 as Torres Strait Islanders: together they comprise 1.2% of the population of New South Wales (and 27.3% of Australia's Indigenous population). There has, however, never been an Indigenous member of either House of the New South Wales Parliament.

The biggest obstacle to Indigenous representation appears to be the system of single member electorates in New South Wales Legislative Assembly whereby one member is elected through an optional preferential system of voting and needs a high quota of the vote to be elected.²

One suggested method to addressing the lack of Indigenous representation in the New South Wales Parliament has been that dedicated Indigenous seats should be established in Parliament so as to guarantee Indigenous representation.

Statistics from 1991 census as detailed at p.ii of Introduction to the Issues Paper.

In the Legislative Council, New South Wales is treated as a single electorate with Members elected through a system of proportional representation.

2.2 Proposal to establish dedicated Indigenous seats

It has been proposed that in order to guarantee Indigenous representation in the New South Wales Parliament that seats be reserved that can only be filled by Indigenous candidates. Such candidates could be elected by persons who register on an Indigenous roll of voters and while the voters are not barred from voting in the general election for general representatives, they must choose to do one or the other.³

A system of guaranteed representation for Indigenous groups operates several countries.⁴ The models that exist in New Zealand in relation to the Maori and in Maine, United States of America in relation to people of the Penobscot and Passamaquoddy tribes, are of particular interest.

A number of dedicated seats have existed for Maori for over 125 years in New Zealand. Five seats currently are reserved for those Maori who are registered on a separate Maori electoral roll and voters can cast two votes - one for a local member in a General or Maori constituency seat and once for the party of the voter's choice. The candidates elected to the dedicated seats have full voting and participative rights within the Parliament.

In Maine, the two largest Indigenous groups are represented in the state legislature but do not have voting rights. The other two tribes that are indigenous to Maine do not have parliamentary representation. The Indigenous delegates may sponsor bills of concern to their tribes and may serve on Committees as non-voting members. The delegates do not receive the same salary as other members (they are paid a daily rate) and are entitled to all other privileges, allowances and expenses.

2.3 Are dedicated Indigenous seats discriminatory under the RDA?

2.3.1 Special measures

As well as being encapsulated within the RDA,⁵ it is well recognised as a fundamental principle of international law that all persons are equal before the law and are entitled without discrimination on any ground such as race to the equal and effective protection from discrimination.⁶

It may be argued *prima facie* that a scheme of dedicated Indigenous seats may be racially discriminatory under the RDA in that the seats would not be available to non-Indigenous candidates and non-Indigenous voters could not vote for candidates for the dedicated seats.

It is also recognised, however, that in order to achieve "genuine and effective equality" before the law, it may be necessary to enact laws which differentiate between the people of different races: namely, special measures. This concept is recognised in international law as well as domestically 9:

"The right to equality before the law and to equal protection of the law without any discrimination does not make all differences in treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of Article 26 [of the ICCPR]." 10

While it is "a rare exception, for there are few legitimate objects that do require differential treatment based on specific racial attributes"¹¹, the indicia of a special measure are satisfied if:

- (a) the measure confers a benefit on some or all members of a class;
- (b) the membership of the class must be based on race, colour, descent or national or ethnic origin;
- (c) the sole purpose of the measure is to secure adequate advancement of the beneficiaries in order for them to enjoy and exercise equally with others human rights and fundamental freedoms: and
- (d) the protection is given in circumstances where it is necessary in order for the members of the class to enjoy and equally exercise human rights and fundamental freedoms.¹²

The special measure, however, must not result in the maintenance of separate rights for different racial groups and should not be continued after the objectives of the special measure have been achieved.¹³

There appears to be several possible permutations as to how the guaranteed seats would be established and candidates elected. The one summarised appears to be the one contemplated by the *Issues Paper*.

⁴ See Chapter 2 of the *Issues Paper*.

Sections 9 and 10 of the RDA.

Articles 1, 2, 5(e)(vi) and 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination* ("CERD") and Article 26 of the *International Covenant on Civil and Political Rights* ("ICCPR").

⁷ Gerhardy v. Brown (1985) 159 CLR at 130 per Brennan J.

Article 1(4) of CERD.

⁹ Section 8(1) of the RDA.

Broeks v. Netherlands, Communication No. 172/1984, Selected Decisions under the Optional Protocol, Volume 2 at 196.

¹¹ Gerhardy v. Brown op.cit. at 127 per Brennan J.

ibid at 133 per Brennan J.

Article 1 (4) of CERD.

It is not necessary, however, for the measure to have a specified time of cessation but rather that the relevant body should keep the special measure "under review, and... the measure will lose the character of a special measure at the time when its objectives have been achieved". 14

2.4 Would dedicated Indigenous seats be a special measure?

It should be noted that any advice as to whether dedicated Indigenous seats would be a special measure has to be accompanied with the qualification that the proposal can only be commented upon in its generality. It is assumed that guaranteed representation would be effected by enactment or amendment to the legislation governing the operation of the New South Wales Parliament. Until such legislation is reviewed, it is impossible to comment confidently and definitely on the status of the proposal given that the interpretation of the legislation will be integral to identifying the nature of the proposal.¹⁵

With the above proviso, some comments on whether the proposal is a special measure can be made with reference to the indicia identified by Brennan J (as he then was) in *Gerhardy v Brown*.

(a) Does the measure confer a benefit on a class?

It appears reasonable to say (at least objectively) that the measure would be beneficial to members of the Indigenous community as it would promote equality in that members of this class would have the opportunity to secure a seat in Parliament and represent the interests of that class.

(b) Is membership of the class based on race, colour, descent or national or ethnic origin?

It would be assumed that the right to be listed on the Indigenous electoral roll so as to vote and the candidates nominated for the guaranteed seats would be limited to the class of persons who are Aboriginal or Torres Strait Islander. The criteria of membership of the class would appear, therefore, to be race and/or descent.

(c) Is the sole purpose of the measure to secure adequate advancement of the beneficiaries?

Brennan CJ commented in *Gerhardy v Brown* in relation to this indicia and the one contained in paragraph (d) below that they involve "questions of fact and opinion". They are the most difficult of the indicia to comment on in a vacuum without knowledge of how the measure will be effected.

Gerhardy v. Brown op.cit. at 140 per Brennan J.

A consideration of the following matters will assist in determining whether this indicia is satisfied:

- if the measure is to be implemented by way of a legislative measure, then its purpose can be determined by considering *inter alia* its terms and its operation in the circumstances so as to determine if its sole purpose is to secure adequate advancement for the relevant class;¹⁷
- (ii) the wishes of the class of beneficiaries are of great importance to determining whether a measure secures their advancement; and
- (iii) the purpose of the special measure must not give the beneficiaries greater privileges than are necessary to secure adequate advancement.¹⁸

There is some comment on the *Issues Paper* as to how much guaranteed representation actually furthers the rights of the relevant class. In relation to guaranteed Maori seats, it has been noted that:

- (i) the number of seats guaranteed does not provide equal representation on a population basis and the small number of Maori M.Ps makes it difficult for all legislation to be carefully scrutinised to determine if it is disadvantageous to Maori;
- (ii) the large size of the Maori electorates make it difficult for all constituents to be serviced;
- (iii) the constraints of party allegiance inhibit Maori M.Ps from speaking out strongly on Maori issues for fear of alienating other supporters and fellow party members.¹⁹

Furthermore, one must question how effective representation would be if the Maine model were adopted whereby there is guaranteed representation but no voting rights attach to that representation.

While it would appear from the information contained in the *Issues Paper* in relation to guaranteed Indigenous representation in the New South Wales Parliament that it would be possible for the measure to guarantee Indigenous representation to satisfy this indicium, this will very much depend upon the exact provisions of any legislative enactment used to implement such a measure.

(d) Is the protection necessary for the members of the class to enjoy and equally exercise human rights and fundamental freedoms?

It is advisable to make this point very clear if we are to provide advice on this issue to persons outside the Commission, such as the Legislative Assembly Committee on Social Issues

¹⁶ Gerhardy v Brown op.cit at 137.

ibid. per Brennan J at 135.

¹⁸ ibid at 136.

¹⁹ Issues Paper at p.31.

This indicium really has to be considered together with that in paragraph (c) above. In order to answer the questions posed by both indicia as to whether the measure is intended to remove and is necessary to remove inequality,

"the circumstances affecting the political, economic, social, cultural and other aspects of the lives of the disadvantaged group must be known and an opinion formed as to whether the measure is necessary and likely to be effective to improve those circumstances". 20

The opinion referred to is the opinion of the branch of government that determines if circumstances require a special measure. The test formulated by the Court as to how to test this opinion is to ask "could the political assessment inherent in the measure reasonably be made?". Again it is not possible to answer this question with much degree of certainty in the present circumstances given the scarcity of information but it would appear on the basis of the material contained in the *Issues Paper* that there may be reasonable basis for deciding that such a measure is necessary and likely to improve the lack of representation in the New South Wales Parliament that currently exists if the provisions that implement the measure are appropriately drafted.

- (e) (i) Does the measure result in the maintenance of separate rights for different racial groups?
 - (ii) Can it be ensured that the special measure will not be continued after the objectives of the special measure have been achieved?

Article 1(4) of CERD prohibits special measures from maintaining separate rights for different racial groups. This prohibition has been held to take effect once genuine equality has been achieved and limits the period for which discrimination will be permitted.

It may be advisable for the legislation that implements the special measure to have some provision that the measure will be reviewed or assessed at some time in the future rather than it being left open-ended. Again, however, until the specific method of implementation has been considered, it is not possible to answer this question confidently.

3. CONCLUSION

It would appear that in light of the information provided to date about a possible measure to guarantee Indigenous representation in the New South Wales Parliament, it is possible that such a measure would qualify as a special measure if the provision to implement the measure is drafted with reference to the indicia stated in *Gerhardy v Brown*. No definite confirmation or assertion to this effect can be made, however, without the opportunity to consider the manner in which such a measure would be enforced.

²⁰ ibid. at 137.

²¹ ibid. at 139.