

CHAPTER SEVEN

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**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

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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*

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*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 education 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:

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*...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 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).*

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.

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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.