# HISTORY OF THE INDIGENOUS OTE









History of the Indigenous Vote

Australian Electoral Commission PO Box 6172 Kingston ACT 2604

Printed August 2006 Printed by National Capital Printers Designed by Wild Digital

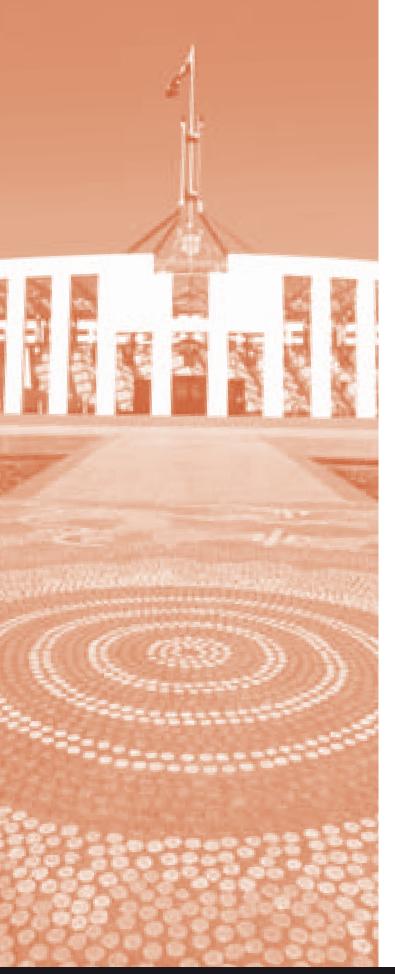
ISBN 0-9775002-1-7

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#### AUSTRALIAN ELECTORAL COMMISSION



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#### Warning

The AEC seeks to treat Indigenous cultures and beliefs with respect. To many communities it is distressful and offensive to depict persons who have died. Indigenous communities which may be offended are warned that this booklet does contain such images.

# History of the INDIGENOUS VOTE

#### INDIGENOUS PARLIAMENTARIANS – STATE, TERRITORY AND FEDERAL SINCE 1971



Neville Bonner Senator for Queensland 1971 1983



Wesley Lanhupuy
NT MLA
1983 1995



▲ Carol Martin WA MLA 2001 present



Linda Burney
NSW MLA
2003 present



Hyacinth Tungutalum
NT MLA
1974 1977



▲ Stanley Tipiloura NT MLA 1987 1992



▲ Matthew Bonson NT MLA 2001 present



Alison Anderson
NT MLA
2005 present



▲ Eric Deeral Qld MLA 1974 1977



Maurice Rioli NT MLA 1992 2001



Elliot McAdam NT MLA 2001 present



 Barbara McCarthy NT MLA 2005 present



Neville Perkins NT MLA 1977 1981



John Ah Kit
NT MLA
1995 2005



Marion Scrymgour
NT MLA
2001 present



Ben Wyatt
WA MLA
2006 present

#### **AUSTRALIAN ELECTORAL COMMISSION**



▲ Ernie Bridge WA MLA 1980 2001



▲ Aden Ridgeway Senator for NSW 1999 2005



Kathryn Hay Tasmanian MHA 2002 2006

#### INTRODUCTION

*History of the Indigenous Vote* traces the history of Indigenous people's right to vote in Australia. The story includes gaining the vote, along with other Australians, in the mid 1800s, losing the vote at Federation, and active participation in the electoral process in modern day Australia. In recent times democratically elected Indigenous organisations have been established to specifically represent the interests of Aborigines and Torres Strait Islanders. The Indigenous vote now has significant influence on the outcomes of elections at the federal, state/territory and local government levels.

This booklet documents changes in Indigenous voting rights at federal and state/territory levels. It includes a timeline for quick reference. It will be of use in a variety of educational settings. It is also available on the website of the Australian Electoral Commission (AEC), www.aec.gov.au. Other material on the website concerning Australian electoral reform and Indigenous voting history provides valuable additional information.

*History of the Indigenous Vote is* one of a range of publications and products about enrolment and voting produced by the AEC. Pamphlets, videos, DVDs and teachers' resources are also available free of charge. For further information contact the electoral education centre or AEC office in your state or territory.

## History of the INDIGENOUS VOTE

#### **IN THE BEGINNING**

Before white people arrived in Australia, Aborigines and Torres Strait Islanders were governed by laws which were laid down by the creative ancestral beings.

Aboriginal and Torres Strait Islander law came from tradition, not from parliaments.

The creative beings travelled across the landscape, giving the earth the shape we now recognise. They formed the air, the sky, the rivers, the mountains, and all the other features we see today.

Then they created the plants, animals and people who were to inhabit the landscape. Groups of people were given their own languages and the law which they were all required to obey. The creative beings told the first people how they should behave toward one another. They also defined the boundaries of the country which would belong to each group, and laid down how the land should be cared for by use and ceremony. The basic principle was that people were obliged to maintain the land and its traditions for future generations.

When the ancestors finished their creative work they rested, and their forms are in the landscape features which are called 'dreaming places' or sacred sites.

To the Indigenous people of Australia, traditional ritual, art and stories are continuing evidence of their creation, and of their government by customary laws ordained by the ancestors.

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#### **NEW PEOPLE AND NEW LAWS COME TO AUSTRALIA**

On 7 February 1788, two weeks after the First Fleet arrived in Sydney, Captain Arthur Phillip claimed the eastern part of the Australian continent (called New South Wales) on behalf of Great Britain, and declared that British law would apply to it.

The British system was that when they conquered a country, the previously existing law of that country would remain in force. Places which were peacefully settled would have British law applied to them. The British said that New South Wales had been peacefully settled, and that therefore Indigenous law would be displaced by British law – although it is unlikely that the first white settlers acknowledged that there was a system of Indigenous law anyway.

Later, the boundaries of the area claimed by the newcomers were altered, so that by 1829 British law applied to the

whole of the continent. Everyone born anywhere within the Australian continent became a British subject by birth.

New colonies were established, and gradually white settlement spread. Laws applying in the Australian colonies were at first made by the British Parliament and the King or Queen. Parliaments at that time were not democratically elected - not everyone had the right to vote. The struggle to win the right to vote, or franchise has been an important part of British and Australian history, for non-Indigenous as well as Indigenous people.

In the early years of white settlement in Australia, British law was carried out by Governors, who were given their instructions by the Parliament in London. People in Australia at first had no say in making the laws which they had to obey.



Captain Arthur Phillip raising the British flag at Sydney Cove 1788. Image Library, State Library of New South Wales

British law provided that all subjects of the King or Queen (including Indigenous people) had certain basic rights. These rights did not, at first, include the right to vote.

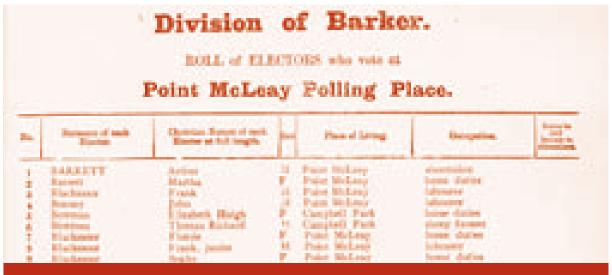
Gradually, Australians won the right to have a say in making some laws and in the administration of government. The first parliaments were set up, and some men were allowed the right to vote to decide who would represent them in those parliaments. Whether people were allowed to vote or not depended at first on how much property they owned.

Women were not allowed to vote in any Australian colony until South Australia gave them this right in 1895. Women in the other Australian colonies gained the vote over the following years.

From 1850, the Australian colonies were given the right to govern themselves, through their own parliaments. Those parliaments made laws about who could vote and who could not. It was usual for the colonial laws to say that all men above the age of 21 years could vote in elections. Indigenous men were not specifically denied the right to vote, but, in practice, they were not encouraged to enrol to vote. Australia passed laws which said that Indigenous people definitely could not vote. On the other hand, in 1895 South Australia made laws which said that all adults could vote, including all women and therefore all Indigenous women. This also applied in the Northern Territory, which was then controlled by the colony of South Australia. In 1896, and for some years following, Aborigines at the Point McLeay settlement in South Australia voted in state and federal elections.

Toward the end of the nineteenth century, Australians began to talk of Federation. This was an arrangement for the colonies to join together to create a single nation - the Australian Commonwealth. There would be a Commonwealth Parliament with some lawmaking powers, and the colonies would become 'states', and keep their parliaments.

The bad news for Aborigines and Torres Strait Islanders was that people also began to talk about 'White Australia'. Most Australians wanted to control the entry of Asian people. One effect of this was that the overwhelming majority of Australians thought it would be acceptable to limit the rights of people who did not have white skins – whether they were Indigenous Australians, or whether they were coloured people in other countries who hoped to migrate to Australia.



Part of the Point McLeay federal electoral roll for 1905. Most of the names on the list are those of Indigenous people. The Australian Electoral Commission, Head Office, South Australia.

In 1885 and 1893 respectively, Queensland and Western

#### **SECTION 41 AND A WHITE AUSTRALIAN COMMONWEALTH**

The new Commonwealth of Australia came into existence on 1 January 1901.

Section 41 of the Commonwealth Constitution was designed to guarantee the vote in Commonwealth elections to people who already had voting rights in their states – in particular, to protect the voting rights of South Australian women who had enjoyed the vote in their colony from 1895.

The section says 'No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State, shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of Parliament of the Commonwealth.'

This meant that the Indigenous people who were on the electoral rolls in some of the colonies before 1901 could (at least theoretically) vote in elections for the Commonwealth Parliament.

However, in practice there were doubts about the meaning of Section 41 as it might apply to Indigenous people.

- Did it guarantee Commonwealth voting rights to Indigenous people who might be allowed to vote by state laws passed after 1901? Or,
- Did it limit the vote to those given the vote by state laws passed before 1901? Or,
- Did it limit the right even more narrowly to just those few hundred Indigenous people who were actually on the rolls before 1901?

The narrowest view was taken. Legislation to regulate Commonwealth voting rights and procedures, the *Commonwealth Franchise Act 1902*, specifically excluded 'any aboriginal native of Australia, Asia, Africa, or the islands



Laura Harris (Spender), Indigenous voter, Point McLeay, South Australia, about 1908. Laura was on the electoral roll prior to 1901. This allowed her to remain on the roll and vote in elections for many years. South Australian Museum.

of the Pacific, except New Zealand' from voting unless they were actually on the roll before 1901. This meant that Indigenous people who became old enough (21 years) to vote after 1901 were denied voting rights.

Electoral officials had the power to decide who was an 'aboriginal native' and who was not. It was common for some people of Aboriginal and Torres Strait Islander descent to be allowed to vote (usually only if they lived like white people) and for others to be refused. In 1925, as a result of pressure from Britain and India, some non-white people were granted the right to vote in Australian elections. There had been an embarrassing court case in 1924, involving an Indian British subject, Mitta Bullosh, who was on the roll to vote in Victorian elections. A court decided that Bullosh should be allowed to vote in Commonwealth elections. To resolve doubts, and to avoid offending British dominions like India, the Commonwealth Government made all Indians in Australia eligible to vote.

Progressive and sympathetic people began to argue that, surely, if Indians could vote, Indigenous people should also have that right. Some of the states did pass laws confirming that Aborigines and Torres Strait Islanders could vote in state elections, but in practice little was done to encourage them to enrol to vote.

Service in the armed forces by Aborigines and Torres Strait Islanders during World War Two was a powerful argument in favour of their right to vote. Many people felt 'if they were good enough to fight and die for their country, they are good enough to vote in its elections'. In 1949 there was a compromise – the Commonwealth Parliament granted the right to vote in federal elections to Indigenous people who had completed military service or who already had the right to vote in their state (*Commonwealth Electoral Act 1949*).

Indigenous fighter pilot, Sergeant Leonard Victor Waters, No. 78 Squadron, RAAF, sitting in the cockpit of his P40 Kittyhawk, Black Magic . P0 1659.001 Australian War Memorial.



#### THE VOTE AT LAST



Voter education program, Northern Territory, 1966. Lands Collection, Northern Territory Library.

Although Indigenous people had won new respect through their war service, the general Australian community and government attitude after the war was that 'Aborigines should become like us'. The accepted view was that Indigenous people should be given the vote and all the other rights enjoyed by other Australians only after they had become part of white society.

In keeping with this attitude, Indigenous voting was generally discouraged and Queensland and Western Australia continued to deny Indigenous people the right to vote in state elections.

In 1957 the Commonwealth Government, which had responsibility for governing the Northern Territory, declared almost all Territory Aborigines to be 'wards of the state'– people deemed to be in need of special care and protection. Territory Aborigines were denied the vote unless they were exempted from the status of ward.

This legislation did not reflect the extent to which community attitudes were changing. By the 1960s increasing numbers of white Australians had come to believe that Indigenous Australians should have equal rights, including the right to vote and the right to preserve their own cultural inheritance if they wished to.

There was pressure from outside too – the Commonwealth Government became very sensitive about international criticism of its treatment of Indigenous people.

In 1961 a Commonwealth Parliamentary Committee was set up to investigate and report to the Parliament on Indigenous voting rights. It recommended that all Aborigines and Torres Strait Islanders who did not already have the vote should be allowed to vote in Commonwealth elections.

In March 1962 the Commonwealth Electoral Act was amended to provide that Indigenous people could enrol to vote in federal elections if they wished. Unlike other Australians it was not compulsory for them to enrol. It was also an offence for anyone to use undue influence or pressure to induce them to enrol. Once they enrolled, however, voting was compulsory.

In 1962 the right to vote in state/territory elections was also extended to Indigenous people in the Northern Territory and Western Australia.

From this time, Indigenous people were encouraged to enrol to vote rather than discouraged from exercising their rights. Steps were taken to provide them with information about the electoral process, especially in the Northern Territory. Voter education programs were started and elections were held for Indigenous Community Councils so that people would gain experience in democratic processes.

Finally, in 1965, Indigenous people around Australia gained the same voting rights as other Australians when Queensland followed the other states and permitted Indigenous people to vote in state elections.



Voter education program, Northern Territory, 1966. Lands Collection, Northern Territory Library.

#### **BEING TAKEN SERIOUSLY**

Once they had the right to vote, Indigenous people began to be taken more seriously by politicians. It was realised that in some areas they could be a significant voting bloc which would influence electoral outcomes. It was also recognised that the growing concern about giving Indigenous people a better deal could have an impact on electoral outcomes. The 1967 Constitutional Referendum highlighted the extent of this concern.

In 1967 Australians voted overwhelmingly in favour of counting Indigenous people in census figures and allowing the Commonwealth to make special laws for their benefit.

It was a very clear expression that the majority of Australians believed that Indigenous people should have equal treatment under all Commonwealth and State laws. As a result of the Referendum they were no longer to be subjected to legal disabilities as 'protected' people.

In this more inclusive climate of opinion, Indigenous people began to exercise their voting rights, and increasing numbers sought to be elected to parliaments. In 1971 Neville Bonner was appointed to the Senate to fill a casual vacancy. In the following year he was elected by Queensland voters and held his position until 1983. He was the first Indigenous person to be elected to any parliament. In 1974 Indigenous Australians were elected to both the Northern Territory and Queensland Parliaments.

When the National Aboriginal Consultative Committee was established in 1973, more than 27,000 Indigenous people voted in the election of its members. Later, the Aboriginal and Torres Strait Islander Commission (ATSIC) became the main body representing Indigenous people. Elections for ATSIC were conducted by the Australian Electoral Commission.

As a result of a successful challenge to the result of an election in the Kimberley in 1977, electoral administrators



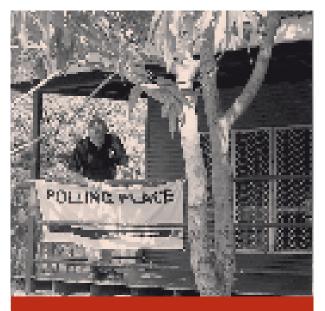
Bagot Hall polling place, Darwin, 1973. Peter and Sheila Forrest.

became more aware of their responsibilities to Indigenous voters. In 1979 the Australian Electoral Office established the Aboriginal Electoral Education Program (AEEP). Team members travelled to remote communities in Western Australia, South Australia and the Northern Territory to conduct electoral education sessions. Voter education programs have helped Aboriginal and Torres Strait Islander people to enrol.

Another effort to support Indigenous voting was the use of mobile polling. It was first used extensively in federal elections in 1984. Three person mobile polling teams use aircraft and four wheel drive vehicles to visit remote communities so that the people living there can exercise their right to vote.

In 1983, the last hurdle in the achievement of equal voting rights was crossed when a Commonwealth Parliamentary Committee recommended that compulsory enrolment should apply to all Australians. 'Aboriginal natives' were no longer referred to in Commonwealth electoral legislation.

The most important decisions affecting the lives of Aboriginal and Torres Strait Islander people are made by the Commonwealth Parliament, state parliaments and other elected bodies such as local councils. The right to vote in elections of representatives to these bodies means that Indigenous people have the opportunity to choose who they think will best represent them and that their views must be taken seriously by anyone who wants their vote.



Setting up a mobile polling booth in Langarra, East Arnhem Land, for the 2004 Federal Election. Greg Hibble



Mobile polling booth, Numbulwar outstation, East Arnhem Land, Northern Territory, ATSIC election, 1996. Don Christophersen.

#### THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION (ATSIC)



The Aboriginal and Torres Strait Islander Commission (ATSIC) was set up in 1990 as a Commonwealth statutory authority, under the *Aboriginal and Torres Strait Islander Commission Act 1989* to include Indigenous people in the processes of government affecting their lives. It was Australia's principal democratically elected Indigenous organisation.

Every three years from 1990 to 2002, Aboriginal and Torres Strait Islander people elected local representatives to a network of 35 Regional Councils around Australia.

ATSIC elections were conducted by the Australian Electoral Commission, according to procedures that were similar to those for parliamentary elections.

Regional Councillors played an important role. They were elected to represent and advocate for their communities, draw up regional plans, make funding decisions on ATSIC programs in their region, and lobby other governments/ agencies in the region to meet their responsibilities to Indigenous citizens.

ATSIC's funding role did not remove the responsibility of other government agencies to provide services to their Indigenous citizens. Primary responsibility remained with the Commonwealth Government and state/territory governments.

From 1 July 2004, the Commonwealth Government transferred responsibility for ATSIC programs and services to mainstream agencies. The ATSIC Board was abolished on 24 March 2005 and the Regional Councils ceased on 30 June 2005.

The National Indigenous Council was established in November 2004 as an appointed advisory body to the Australian Government.

#### THE TORRES STRAIT REGIONAL AUTHORITY (TSRA)

The Torres Strait Regional Authority (TSRA) was established on 1 July 1994 to represent Indigenous people living in the Torres Strait. It is a Commonwealth statutory authority governed by the *Aboriginal and Torres Strait Islander Act 2005* and was established because Torres Strait Islanders felt that they needed a separate organisation to deal with issues specifically relevant to their culture and their region.

The TSRA has a budget of approximately \$56 million and delivers programs such as the Major Infrastructure Program, the Community Development Employment Program, Social Justice, programs addressing women's issues and sports and recreation. It is also the Native Title Representative Body for the Torres Strait. The TSRA Board is made up of 20 members, 18 of whom hold this office because they have been elected Chairperson of their local Island Council through the *Queensland Community Services (Torres Strait) Act 1984*. The other two members, who represent areas not covered by that Act, are elected through separate elections conducted by the Australian Electoral Commission. These 20 Board Members elect a Chairperson, Deputy Chairperson and Alternate Deputy Chairperson via separate elections also conducted by the Australian Electoral Commission.

All Indigenous people on the Commonwealth electoral roll living in the Torres Strait have a right to vote either in the local Island Council elections or the separate elections for the other two members. Elections for these positions are held every four years.



## TIME LINE – INDIGENOUS VOTING RIGHTS AND ELECTORAL EVENTS

Time before memory	Aboriginal society governed by customary laws handed down by the creative ancestral beings.
1770	Captain Cook claims the eastern half of the Australian continent for Great Britain.
1788	European settlement of Australia commences – British legal doctrine is that because Australia is peacefully settled, not forcefully conquered, British law applies and any pre-existing law is excluded.
1829	British sovereignty extends to cover the whole of Australia – everyone born in Australia, including Aborigines and Torres Strait Islanders, becomes a British subject by birth.
1843	First parliamentary elections in Australia (for New South Wales Legislative Council) – right to vote is limited to men who meet a property qualification.
1850 +	The Australian colonies become self governing – all adult (21 years) male British subjects are entitled to vote in South Australia from 1856, in Victoria from 1857, New South Wales from 1858, and in Tasmania from 1896 This includes Indigenous people but they are not encouraged to enrol. Queensland gets self government in 1859 and Western Australia in 1890, but these colonies deny Indigenous people the vote.
1885	Queensland Elections Act excludes all Indigenous people from voting.
1893	Western Australian law denies the vote to Indigenous people.
1895	All adult women in South Australia, including Indigenous women, win the right to vote.
1901	Commonwealth Constitution becomes operative – Section 41 is interpreted to deny the vote to all Indigenous people, except those already on state rolls.
1902	<i>Commonwealth Franchise Act</i> denies vote to 'any Aboriginal native of Australia', except those already enrolled as voters in their state; electoral officers decide who is an 'Aboriginal native'.
1915	Queensland introduces compulsory voting – this is later introduced in all other jurisdictions.
1920	Commonwealth Nationality Act denies vote to people of South Sea island origin.
1922	Regulations in the Northern Territory exclude Indigenous people from voting - officials have the power to decide who is Indigenous.
1925	Natives of British India gain the vote in Australian federal elections.
1940 +	Professor AP Elkin, the Aborigines Friends Association, and others agitate for better conditions for Indigenous people and their right to vote.
1948	<i>Nationality and Citizenship Act</i> establishes that all Australian born people are citizens of Australia rather than British subjects.
1949	The right to vote in federal elections extended to Indigenous people who had served in the armed forces, or who are enrolled to vote in state elections. Indigenous people in Queensland, Western Australia, and the Northern Territory still cannot vote in their own state/territory elections.
1957	Under the <i>Northern Territory Welfare Ordinance</i> almost all Indigenous people in the Northern Territory declared to be 'wards of the state' and denied the vote.
1962	Commonwealth Electoral Act provides that Indigenous people should have the right to enrol and vote at federa
	elections, including Northern Territory elections but enrolment is not compulsory. Indigenous people gain the right to vote in Western Australian elections. Voter education for Aborigines begins in the Northern Territory. 1,338 Aborigines enrol to vote in Territory elections.
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# History of the INDIGENOUS VOTE

1972	Neville Bonner elected to the Senate by Queensland voters and becomes the first Indigenous person to be
	elected to any Australian parliament.
1973	First national elections for Indigenous people to elect 41 members of the National Aboriginal Consultative Committee. Minimum voting age lowered from 21 to 18.
1974	Hyacinth Tungutalum (Country Liberal Party), from Bathurst Island, elected to Northern Territory Legislative
	Assembly representing the electorate of Arafura. Eric Deeral (National Party), becomes the first Indigenous
	person elected to Queensland Parliament representing the electorate of Cook.
1977	Neville Perkins elected to Northern Territory Legislative Assembly - first Indigenous person to hold a shadow
	portfolio - appointed Deputy Leader of Northern Territory Australian Labor Party.
1979	Australian Electoral Office begins Aboriginal Electoral Education Program – in 1993 this becomes Aboriginal and Torres Strait Islander Electoral Information Service.
1980	Ernie Bridge (Australian Labor Party), becomes first Aboriginal member of the Parliament of Western Australia
	when he is elected to represent the electorate of Kimberley – he later becomes the first Indigenous person to
	hold ministerial office. Mobile polling first used in remote Northern Territory and Western Australia for state/
	territory elections.
1 <b>983</b>	Wesley Lanhupuy (Australian Labor Party), from central coastal Arnhem land, elected to Northern Territory
	Legislative Assembly representing the electorate of Arnhem.
1984	Compulsory enrolment and voting in Commonwealth elections for Indigenous people comes into effect.
1304	Mobile polling first used in federal elections.
1987	Stanley Tipiloura (Australian Labor Party), from Bathurst Island, elected to Northern Territory Legislative
1307	Assembly representing the electorate of Arafura.
1990	Aboriginal and Torres Strait Islander Commission (ATSIC) created – elected regional councils and a board
1990	of Commissioners make decisions on policy and funding – elections are conducted by Australian Electoral
	Commission.
1992	
1992	Maurice Rioli (Australian Labor Party), from Melville Island, elected to Northern Territory Legislative Assembly representing the electorate of Arafura.
1995	
1999	John Ah Kit (Australian Labor Party), from Darwin, elected to Northern Territory Legislative Assembly representing the electorate of Arnhem.
1000	
1996	Aboriginal and Torres Strait Islander Electoral Information Service abolished due to withdrawal of Commonwealth funds.
4000	
1998	Aden Ridgeway elected to the Senate, representing New South Wales for the Australian Democrats. (He
	commenced his term 1 July 1999.)
2001	Carol Martin (Australian Labor Party), becomes the first Indigenous woman to be elected to a state parliament
	when she wins the seat of Kimberley in the Parliament of Western Australia. Matthew Bonson (Darwin), Elliot
	McAdam (Tennant Creek), and Marion Scrymgour (Melville Island), elected to the Northern Territory Legislative
	Assembly representing the electorates of Millner, Barkly, and Arafura. They join John Ah Kit as members of the
	first Labor Government in the Northern Territory.
2002	Kathryn Hay (Australian Labor Party), from Launceston, elected to Tasmanian House of Assembly representing
	the electorate of Bass.
2003	Linda Burney (Australian Labor Party) elected to New South Wales Legislative Assembly representing the
	electorate of Canterbury.
2005	Legislation enacted to dissolve the Aboriginal and Torres Strait Islander Commission and Regional Councils.
	Barbara McCarthy (Australian Labor Party) and Alison Anderson (Australian Labor Party) elected to Northern
	Territory Legislative Assembly representing the electorates of Arnhem, and Macdonnell. One fifth of the
	Northern Territory Legislative Assembly electorates are represented by Indigenous Australians.
2006	Ben Wyatt (Australian Labor Party) elected in a by-election to Western Australian Parliament representing the
	electorate of Victoria Park.





