paragraph 1 - introduction

* political rights: rights that create access or allow participation in a country (e.g. freedom of association, the right to vote)
* legal rights: rights that operate within the court system (e.g. right to fair trial, translation)
* brief summary of history and ATSI rights
* strong thesis, address the question directly

paragraph 2 - political rights (statutory change)

* 1967 referendum commonly thought to have given right to vote to ATSI people
* **Commonwealth Electoral Act amendment** (1962) under Menzies government
* historical watershed for political rights (granted right to enrol to vote in federal elections)
* not compulsory until 1983
* **important as** it granted a political right that non-Indigenous people had since Federation, allows them to participate in democratic process, parliamentarians had to start considering interests of ATSI people and making beneficial legislation to get their votes, facilitated ATSI people with the right to self-determination (may freely determine their political status and pursue their economic, social and cultural development)
* **Racial Discrimination Act** (1975) ratified International Convention on the Elimination of All Forms of Racial Discrimination under Whitlam government (external affairs power 51xxix), uniform federal law overriding conflicting State laws
* made it illegal to discriminate or be unfair on the basis of race, colour, descent, nationality, or ethnic origin
* Section 18C added by the Keating government in 1995
* controversial as it is thought to challenge freedom of speech and political communication
* applied in Eatock v Bolt (2011) for discriminatory and offensive articles but later dropped
* more than 6000 complaints about racial discrimination have been successfully resolved (67 per cent)
* **important as** it formally removed bounds for racism federally and allowed for the HC to defend Aboriginal rights, and can override state legislation (Section 109) such as sections of the Anti-Discrimination Act 1977 (NSW) - Viskauskas and Metwally HC cases (1983), but also allows non-conflicting state legislation to remain (Section 6A (1)), continues to provide much discussion of rights
* **Kevin Rudd’s Apology Speech** (2008) - formal apology to stolen generation
* motion had bipartisan support, ALP election promise, manifested from findings of 1997 Bringing Them Home Report
* **important as** it was symbolic of changing experience and brought ATSI issues to the forefront of Aus politics

paragraph 3 - political rights (constitutional change)

* **Constitution Alteration (Aboriginals) 1967 referendum** amended Section 51 (xxvi) and removed Section 127 under Holt government
* removed the “other than the Aboriginal race in any state” clause from racial provisions
* removed “Aboriginal natives shall not be counted” in “reckoning” of population (census)
* implication that Aboriginals were now under Commonwealth jurisdiction rather than State and federal laws could be made about them
* 90% overall “YES” vote (most successful in Australian history)
* no campaign against “YES” vote
* **important as** despite limited change in ATSI rights, received much public attention and placed emphasis on the importance of ATSI rights in government agendas, demonstrated public support for progress, pressured governments

paragraph 4 - legal rights (land rights/native title)

* Australia declared “terra nullius” when colonised - no ATSI legal recognition of ownership
* terra nullius reinforced in **Milirrpum v Nabalco Pty Ltd (1971)** in 1st native title case
* precedent of terra nullius overruled in **Mabo case (1992)** landmark ruling and introduced doctrine of native title into Australian law (Meriam people entitled to Murray Islands), ruled native title existed where traditional land connection maintained & gov hadn’t taken
* **important as** it established common law right and legal framework for native title claims, led to establishment of Woodward Royal Commission and NT land rights
* Aboriginal Land Rights (NT) Act (1976) passed under Fraser
* decision codified in **Native Title Act (1993)** under Keating
* right broadened in **Wik v Queensland (1996)** ruling that native title could coexist within pastoral leases (therefore pastoral leases could not claim exclusive right to land)
* **important as** codifying provides stronger protection of rights (parliamentary sovereignty), formally recognised traditional ownership of the land, acknowledged the physical & spiritual bond with the land, established bounds for claiming & compensation

paragraph 5 - legal rights (court experience)

* recent calls for judiciary to reflect ATSI laws and customs
* **Coe v Cth (1979)** found ATSI subject to Cth laws, “no judicial organs by which sovereignty may be expecised”
* **R v Pascoe (2003)** 49 yr old convicted to min 18 months jail time for rape of 15 year old, acceptable under customary Indigenous law regarding promised marriage
* Aboriginal Community Courts attempt to include Aboriginals in judiciary by allowing senior ATSI community members to express their views upon and be involved in sentencing process (only if defendant pleads guilty)
* **R v Roby Kina (1988)** proved difficult as case concerned murder of partner however in ATSI culture it is forbidden to speak names of deceased, caused communication issues
* language barriers (75% of NT ATSIs speak indigenous dialects, limited English)
* Aboriginal people may not understand why they must repeat story, so they change it in court
* ATSI Commission removed (2004) due to the perception that it was ineffective (seen as harmful)
* **important as** it shows lack of right to a fair trial due to disputes between traditional and Cth law (3% of WA population, 42+% of prisoners), still much progress to be made, leads to issues regarding customs and practices of ATSI people, limited recognition of customary law

paragraph 6 - contemporary issues and reforms (political/legal representation, recognise campaign, voice treaty truth, australia day, stolen wages, uluru, adani mine)

* 8 total in history, 1.32% of HoR, 2.63% of Senate, 3-4% of population
* Ken Wyatt (first Aboriginal in Cabinet, Minister for Indigenous Australians 2019) & Linda Burney (first Indigenous female of House 2016) (HoR), Pat Dodson and Malarndirri McCarthy (Senate)
* 1 judge Robert Bellear NSW District court (1996-2005)
* Australia day - nationwide celebrations on an ATSI day of mourning (Council of Fremantle moved to 28th, Triple J countdown was moved to 27th as of 2018)
* government control over welfare & wages has led to huge debts towards ATSI ($500 mil in QLD)
* contributes to intergenerational poverty and welfare dependent stereotype
* Uluru climbs banned from Oct 2019 to preserve cultural significance
* construction of Adani coal mine threatens ATSI lands, waters, and cultures
* Federal Court ruled that Adani had not followed proper processes in conducting cultural heritage surveys (2018)
* Recognise campaign for constitutional Aboriginal acknowledgement as the traditional owners of the land, remove section 25 (allows States to ban races from voting), remove section 51 xxvi
* pros: constitutional protection of Aboriginal rights, removes grounds for racial discrimination
* cons: may impact beneficial race specific laws (Abstudy)
* evaluation: should be implemented out of respect and to provide strong protection of rights
* Uluru Statement from the Heart and Makarrata - “Voice, Treaty, Truth”
* voice = voice within the Constitution, establish First Nations Voice in Parliament as representative body to influence relevant policies and laws
* treaty = agreement between Aus gov and Indigenous people, “the coming together after a struggle”
* truth = sharing of cultural stories and history in order to heal and preserve culture (truth telling)
* pros: would make great progress in equality between ATSI and non ATSI people, allows for cultural and spiritual healing on a national level
* cons: “voice” requires a referendum which may be difficult to pass, however the last referendum on Aboriginal rights was the most successful in history
* evaluation: should be implemented fully

paragraph 7 (conclusion)

* restate thesis
* brief summary of history
* clarify opinion
* closing sentence

Misc Notes

Cook declared Australia terra nullius (no man's land)

declared New South Wales to be property of Britain’s King George III

1788 First Fleet arrived in Sydney, Aboriginal ownership of land revoked

Aboriginals being massacred or dying from introduced diseases (250 000 to 60 000 by 1920)

failure to acknowledge Aboriginal ownership or sovereignty

tribal groups broken up and cultural traditions began disappearing

any Aboriginal child could be institutionalised and apprenticed to work from the age of 12 until the age of 21 in WA (1874), age lowered in 1886, boys sent to work on pastoral properties, girls worked as domestic servants

poor and substandard living conditions, especially on pastoral stations

segregation from land and family

forced to work for government for low wages (3% of pay of white Australians)

Section 51 (xxvi) created (special race provisions except Aboriginals)

Section 127 created (“aboriginal natives shall not be counted” in population

reasons were that Aboriginal population was thought to die out quickly, and that they were deemed unintelligent and not human

Commonwealth Franchise Act 1902 denied voting rights of ‘Aboriginal natives of Australia … unless so entitled under Section 41 of the Constitution’, Invalid and Old-age Pensions Act 1908 declared ‘Aboriginal natives of Australia’ were ineligible to receive benefits, Northern Territory Ordinance Act (1912) created allowing the government to undertake the “care, custody, and control” of Aboriginals, Maternity Allowance Act 1912 declared ‘Aboriginal natives of Australia’ were ineligible to receive benefits, government intercepted federally-paid maternity allowances from 1912

Australian Aboriginal Progressive Association formed by Frederick Maynard for for citizenship rights and discrimination following World War I (1925)

Bleakley’s report on the Aboriginals and Half-Castes of Central Australia and North Australia released (1928) recommended improved living conditions, minimum wages for pastoral workers, increased financial assistance for missions, increased protection, proposed amendments to the Northern Territory Aboriginal Ordinances

Australian Aborigines’ League formed by William Cooper for Federal parliamentary representation and equal rights (1932), Cooper’s petition got over 1800 signatures but was dismissed by Federal gov

assimilation introduced at Initial Conference of Commonwealth and State Aboriginal Authorities (1937)

Aboriginals forced to leave reserves (reclaimed by governments for housing and mining)

children removed from families and attempted to remove Aboriginal culture (more than 100 000 children & records destroyed), Day of Mourning protests about treatment of Aboriginals in white Australia (1938)

Aborigines’ Progressive Association founded by William Ferguson and Jack Patten (1939)

Bringing Them Home Report (1997) by HREOC

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