

THE SHARED SOVEREIGNTY MODEL

A Submission to the Parliament of Australia's House of Representatives Standing Committee on Indigenous Affairs regarding:

**A Proposal for Constitutional Reform to Negotiate Treaties with Aboriginal and Torres Strait Islander (Indigenous) Nations as New States in the Australian Federation**

**Short Title: The Shared Sovereignty Model**

**From Fred Leftwich**

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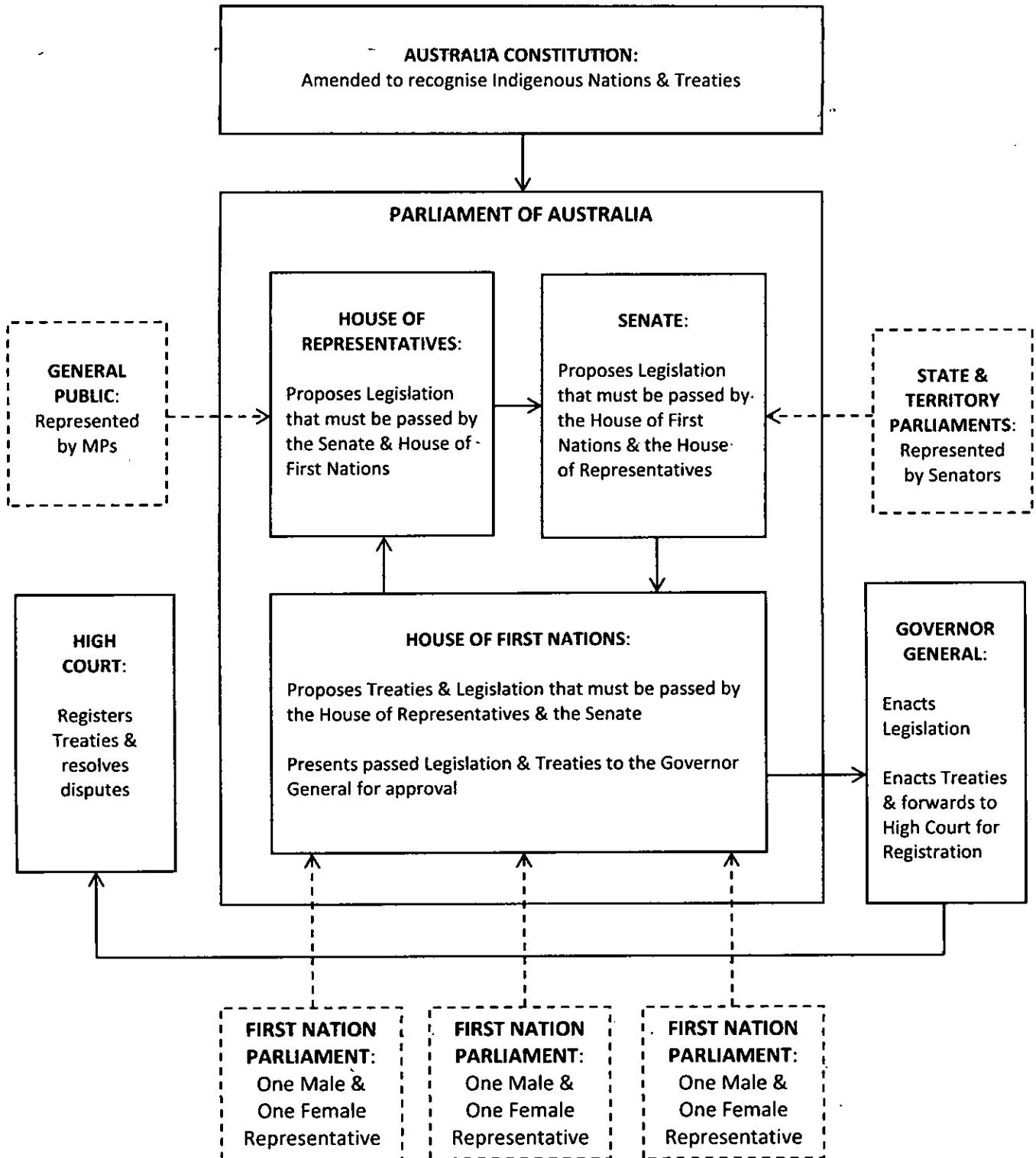
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1. THE SHARED SOVEREIGNTY MODEL



## **2. PURPOSE**

- 2.1 To establish a Treaty Commission as an Act of the Australian Parliament to develop constitutional amendments to incorporate Indigenous sovereignty under a new Share Sovereignty Model of the Australian Federation.

## **3. INTRODUCTION**

### **3.1 Mabo & Terra Nullius**

- 3.1.1 The Australian High Court Mabo decision ruled the concept of Terra Nullius was a lie and that the lands of the Australian continent were not Terra Nullius or practically unoccupied in 1788.
- 3.1.2 The Mabo decision provides a legitimate imperative to readdress this flaw in Australia's constitutional arrangements that omits the sovereignty of Indigenous Australians.

### **3.2 Reconciliation**

- 3.2.1 The Royal Commission into Aboriginal Deaths in Custody final recommendation was that the Australian Government should facilitate a process of reconciliation between the Indigenous and wider Australian communities.
- 3.2.2 The findings of the Royal Commission into Aboriginal Deaths in Custody provide the moral argument for the recognition of the sovereignty of Indigenous Australians.

### **3.3 Indigenous Poverty**

- 3.3.1 The continuing third world and intergenerational poverty and disadvantage of Indigenous Australians provide the evidence of genocide as a direct result of the failure of the assimilation policies of Australian Parliaments.

### **3.4 Current Treaty Negotiations**

- 3.4.1 For the first time in history the Victorian and South Australian Governments are the first Australian Parliaments to commence Treaty discussions with their respective Indigenous Nations.

3.4.2 The Victorian Government established an Aboriginal Treaty Interim Working Group to commence discussions with Indigenous Nations in March 2017.

3.4.3 The South Australian Government appointed a Treaty Commissioner to commence discussions with Indigenous Nations on a Treaty in 2017.

### **3.5 The Need for a Federal Policy Response**

3.5.1 Under the existing Australian Constitution, Treaties between Indigenous Nations and Australian State and Territory Parliaments will remain submissive to the laws of the Australian Parliament.

3.5.2 The negotiation of Treaties should be made between Indigenous Nations and the Australian Parliament to ensure their legality. This submission proposes the Shared Sovereignty Model as a solution.

## **4. A MODEL FOR INDIGENOUS SOVEREIGNTY**

### **4.1 Indigenous Sovereignty**

4.1.1 Indigenous nations have never ceded or surrendered their sovereignty to the British or Australian governments or parliaments and continue to seek the recognition of their sovereignty.

### **4.2 Indigenous Nation's Traditional Borders**

4.2.1 The sovereignty of Indigenous Nations will be identifiable by their traditional boundaries based upon Tindale's Map of Aboriginal Australia and as negotiated between Indigenous Nations and the Australian Parliament.

### **4.3 Indigenous Parliaments**

4.3.1 Indigenous Nations will have an identifiable tract of land reserved within their traditional lands solely for the Parliaments of Indigenous Nations, in the same manner that the Australian Capital Territory was reserved for the Australian Parliament.

4.3.2 Indigenous Parliaments will make laws for their Indigenous people as well as for the social, cultural and economic management of their Indigenous Nations and their traditional lands.

#### **4.4 Shared Sovereignty & Citizenship**

4.4.1 The Shared Sovereignty Model extends to Indigenous Nations the same shared sovereignty that already exists between the Australian and State/Territory parliaments.

4.4.2 As Australian citizens are subject to both Australian and State Parliaments' laws so will Indigenous citizens be subject to Australian, State/Territory and Indigenous Nation's laws.

#### **4.5 House of First Nations**

4.5.1 Under the Shared Sovereignty Model there will be a third house established in the Australian Parliament called the House of First Nations.

4.5.2 The membership of the House of First Nations will consist of one male and one female representative elected from each Indigenous Nation in Australia.

4.5.3 The function of the House of First Nations will be the same as the House of Representatives and the Senate i.e. to table bills and pass or reject bills proposed by the House of Representatives and the Senate.

4.5.4 When the House of Representatives and the Senate propose bills only those members in the House of First Nations that have declared an interest in a bill can vote on the bill.

4.5.5 For example, a mining proposal will draw declarations of interest from the Indigenous Nations where a mine will be located as well as any other Indigenous Nations who may be impacted by the mine.

4.5.6 Bills from the House of Representatives and the Senate such as taxation reform will have a declared interest from all Indigenous Nations.

**4.6 Location of the House of First Nations**

4.6.1 The House of First Nations will be a new building separate from the Australian Parliament and located in front of the Old Parliament House on the foreshore of Lake Burley Griffith.

**4.7 Treaties**

4.7.1 The House of First Nations will draft Treaties that the House of Representatives and the Senate have to pass before being enacted by the Governor General, prior to being registered with the Australian High Court who will also resolve any disputes between the parties to the Treaties.

4.7.2 Treaties will cover anything and everything Indigenous Nations seek to include in a Treaty with the Australian Parliament.

**4.8 Australian Government Financial Assistance Payments**

4.8.1 As with other Australian States and Territories, Indigenous Nations will also be eligible for Australian Government Financial Assistance Payments.

**4.9 Reparations Payments to Indigenous Nations**

4.9.1 Indigenous Nations will also receive ongoing reparation payments from the Australian Parliament based upon a formula to be negotiated between the Australian Parliament and Indigenous Nations.

**4.10 Registering Indigenous Peoples as Claimants**

4.10.1 The Australian High Court will also maintain a Register of Indigenous Claimants for every individual Indigenous person belonging to an Indigenous Nation.

**5. AMENDING THE AUSTRALIAN CONSTITUTION**

**5.1 Existing Chapter VI: New States**

5.1.1 There already exists a provision in Chapter VI of the Australian Constitution to create new states in the Australian Federation.

**5.2 New Clause Recognising Sovereignty of Indigenous Nations**

5.2.1 The Australian Constitution will need to be amended after a successful referendum to include a new clause recognising the sovereignty of Indigenous nations.

**5.3 New Clause Recognising Treaties with Indigenous Nations**

5.3.1 The Australian Constitution will need to be amended after a successful referendum to include a new clause recognising Treaties between the Australian Parliament and Indigenous Nations.

**5.4 New Clause Establishing House of First Nations**

5.4.1 The Australian Constitution will need to be amended after a successful referendum to include a new clause establishing a House of First Nations.

**5.5 Referendum**

5.5.1 The Treaty Commission will develop wording for a referendum to be put to the Australian public regarding the amendments to the Australian Constitution.

**6. A TREATY COMMISSION**

6.1 The Australian Parliament establishes a Treaty Commission that will:

(a) inform, educate and consult with the Australian public on the Shared Sovereignty Model;



(b) develop constitutional amendments for a Shared Sovereignty Model;

(c) develop wording for a referendum seeking endorsement from the Australian public for the Shared Sovereignty Model;

(d) consist of a governing committee with equal representation of male and female members as well as equal representation of Indigenous and non-Indigenous members; and

(e) have a life of six years after which it will report to the Australian Parliament.

## **7. CONCLUSION**

### **7.1 Failure of Assimilation Policies**

7.1.1 The policies of Australian Parliaments since the 1967 referendum have continually failed to address the worsening poverty and disadvantage of Indigenous Australians while the lives of other Indigenous peoples throughout the world have substantially improved.

### **7.2 Indigenous Self Determination**

7.2.1 Self-determination for Indigenous people means the legal recognition of the Sovereignty of Indigenous Nations.

7.2.2 Indigenous peoples want to live and die by their own decisions and not the decisions of Australian Parliaments.

### **7.3 Liberating the Wider Australia Community**

7.3.1 The legal recognition of Indigenous Sovereignty will also relieve Australian Parliaments of their misplaced sense of responsibility for the welfare of Indigenous Nations, which is a remnant of the bygone era of colonialism.

7.3.2 The legal recognition of Indigenous Sovereignty will not only free Indigenous Nations from their poverty and disadvantage but also free Australian Parliaments and the general public of their sense of guilt of the devastating impact of

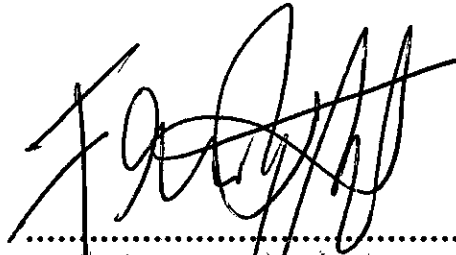
assimilation policies upon Indigenous  
Australians.

**8. RECOMMENDATION**

- 8.1 That the House of Representatives Standing Committee on Indigenous Affairs recommends to the Australian Parliament that it passes an Act to create a Treaty Commission to develop processes for the establishment of a Shared Sovereignty Model of the Australian Federation to incorporate Indigenous Nations.

**9. SIGNATORY**

- 9.1 The sole signatory to this submission is:



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9 APRIL 2017

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**- END OF SUBMISSION -**