


17 April 2018

Joint Select Committee on Constitutional Recognition
Relating to Aboriginal and Torres Strait Islander Peoples
PO Box 6021
Parliament House
Canberra ACT 2600

**SUBMISSION TO JOINT SELECT COMMITTEE ON CONSTITUTIONAL
RECOGNITION RELATING TO ABORIGINAL AND TORRES STRAIT ISLANDER
PEOPLES**

Please find attached a submission to the Committee.

I make this submission with some trepidation as I am neither a Constitutional expert, nor of Indigenous heritage.

The submission makes a proposal to establish a "Virtual State" for Indigenous People from which 12 people would be elected to the Senate. I do not believe such a proposal has ever been considered previously, but I do believe it has the potential to break the logjam that bedevils the issues being considered by the Committee.

The proposal is little more than a very broad outline of what may be possible. With my background it would be presumptuous of me to go into any detail. It would be far better for the Indigenous Community to confer with Constitutional experts should the concept be deemed to have merit.


CSH HARRINGTON


Enclosure:

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RECOGNITION RELATING TO ABORIGINAL AND TORRES STRAIT ISLANDER
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Submission To:

Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples

After the virtual rejection of the Uluru Statement very little has appeared in the public arena of how recognition of Australia's first people might be achieved and how they might be acknowledged in the Constitution. I am neither of Indigenous descent nor a Constitutional lawyer, simply one of the many Australians who would like to see the matter resolved to the satisfaction of the vast majority.

The overriding guiding principle Uluru declaration is that there is no diminution of Aboriginal sovereignty and Torres Strait Islander sovereignty. This proposal would, if anything, increase their sovereign rights. It proposes the establishment of a "Virtual Indigenous State" leading to an additional 12 Senators in the Senate representing that state.

The 12 representatives of a "Virtual State" would provide sufficient numbers so that representative could be drawn from a wide variety backgrounds – from, for example, small desert to inner suburban communities and from Torres Strait and other island communities.

From an administrative perspective, an increase of 12 Senators in Parliament would be much simpler and less costly than establishing a separate Makarrata Commission. It would also provide the Indigenous community with a real vote (and say) in Parliament. An advisory body can never be more than that. Its advice can be accepted, rejected, or manipulated. Indeed there is no reason why these Senators could not become Ministers of State, Senate President, or hold any other office available to Senators.

New Zealand has taken a slightly similar approach to this proposal. The New Zealand Parliament has seven Maori Seats. Together these seats cover the whole of New Zealand and are superimposed over all the other electorates of that nation. Those of Maori descent can choose to vote either for a Maori Seat or for one of the other seats. Perhaps a somewhat parallel model as outlined below could be adapted in Australia so that Indigenous Australians can be recognised in Australia's Constitution and Parliamentary system.

Unlike New Zealand, Australia has a bicameral system with a lower house (The House of Representatives), and an upper house (The Senate). The House of Representatives comprises geographically based electorates that together cover the whole of Australia with the number of electors in each electorate being roughly similar thereby adhering to the basic principle of one person one vote as closely as is practicable. The Senate, which is the house of review, on the other hand, is the States' House where each state has an equal number of seats and the two territories (NT and ACT) fewer.

Subject to Constitutional amendment, there seems to be no reason why those of Aboriginal and Torres Strait heritage could not choose to become members of a virtual state that encompassed all of Australia thereby choosing to vote for Senators representing this Virtual State. Of course, there would be no compulsion to vote in this manner: they may still opt to vote for Senators in the traditional state in which they are enrolled.

Under the Constitution, Australian States, no matter what their size and population have equal representation. This was so that larger states could not dominate the smaller ones. It can be argued that issues that had the potential to cause rifts between states have never emerged and thus the Senate has never had to vote along State lines, but if this structure had not been established it could be conjectured that more populous States could have dominated proceedings to the detriment of less populous States interests at particular times.

In the 2016 census 649,200 people reported as being of Aboriginal and/or Torres Strait Islander origin. This is more than Tasmania's population, which according to the same census has a population of just under 510,000. In other words, there are a more Australians identifying as Indigenous than in Australia's least populous state.

Senators tend to belong to the major political parties, although the Senate does have a long tradition of minority party representation and independent members – much more so than the House of Representatives. Even if many of the proposed Indigenous representatives were members more traditional political parties, there is no reason why they could not vote as a block should there be legislation that had profound implications for Australia's Indigenous Community. It would give them considerable influence should they choose to do so, either in support of, or against, any particular legislation. And they would have to answer to their electorate every six years. They would likely struggle to be re-elected should they be perceived not to have acted in the interests of the Australia's Indigenous population.

Once established, the major overhead in this proposal would be for the Australian Electoral Commission to maintain a separate register of those choosing to cast their Senate vote for the Virtual State, and with the printing of a third ballot paper at election time. There would also be the administrative cost associated with the additional 12 Senators.

Article 121 of the Constitution allows for the establishment of new states, although section 124 implies there must be territory involved. However, this would seem to be a relatively minor stumbling block.

A process would also have to be developed to select replacement Senators from the proposed Indigenous State when a Senator chose to resign, or passed away outside the normal electoral cycle.

It should be noted that the author is neither a Constitutional expert nor does he have an Indigenous background. Because of that, this submission is limited to the barest outline of a concept that he believes has merit. But the detail is more appropriately filled in by Constitutional experts and Indigenous Community Leaders.