

A Submission from Fred Leftwich

A Submission to the Parliament of Australia's Joint Select Committee on Constitutional
Recognition Relating to Aboriginal and Torres Strait Islander Peoples

C/- Committee Secretary

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**A Proposal to Recognise the Sovereignty of Aboriginal and Torres Strait Islander
(Indigenous) Peoples with the Establishment of a House of First Nations to Facilitate the
Negotiation of Treaties**

Short Title: The Shared Sovereignty Model

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The Proposal:

Indigenous poverty remains well and truly entrenched and the existing policy approach of assimilation has failed. A new policy paradigm is required to make Indigenous Nations legally responsible for their own welfare by providing constitutional recognition of Indigenous sovereignty. I propose this can be achieved by extending to Indigenous Nations the shared sovereignty franchise that exists between the Australian and State Parliaments.

At the heart of my proposal is to create a House of First Nations in the Australian Parliament. Its members would consist of one male and one female representative elected from each Indigenous Nation. Its function would be the same as the House of Representatives and Senate, that is, to table, pass or reject bills. Only those members in a House of First Nations that have declared an interest would vote on a bill such as a mining project. Other bills like taxation reform would naturally have a declared interest from all Indigenous Nations.

Indigenous Nations would be identifiable by their traditional boundaries based upon Tindale's Map of Aboriginal Australia but also as negotiated with Indigenous Nations. They would have tracts of sovereign land reserved within their traditional borders for their Parliament just as the Australian Capital Territory is reserved for the Australian Parliament. Indigenous Parliaments would make laws for their people as well as for the management of their traditional lands. This would lead to all citizens, both Indigenous and non-Indigenous, being subject to Australian, State and Indigenous parliamentary laws.

The rights of Indigenous Nations would not be included in the Australian Constitution but written in Treaties between Indigenous Nations and the Australian Parliament. The House of Representatives and the Senate would have to pass Treaty bills before they would be enacted by the Governor-General, before registration with the High Court, which would also arbitrate on disputes. The Treaties would include anything and everything Indigenous Nations want to include in a Treaty with the Australian Parliament. A House of First Nations would also be a separate institution from the Australian Parliament and situated in the Parliamentary Triangle.

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Indigenous Nations would then be equal partners in the shared sovereignty franchise with the Australian and State Parliaments in the Australian Federation. They would receive financial assistance that State Parliaments accept from the Australian Parliament and be eligible for government financial assistance payments. Indigenous Nations would also receive reparation payments from the Australian Parliament based on a formula negotiated between Indigenous Nations and the Australian Parliament. The reparation payments would exist in perpetuity and could be calculated upon a percentage of gross national product or another acceptable formula that would also take account of inflation.

The creation of a House of First Nations in the Australian Parliament would also require a number of amendments to the Australian Constitution. Establishing Indigenous States would be achieved under "Chapter VI: New States" of the Australian Constitution that provides for the creation of new states in the Australian Federation. However, there would need to be new clauses recognising the sovereignty of Indigenous Nations, acknowledging Treaties with Indigenous Nations, and creating a House of First Nations in the Australian Parliament. As a result, a referendum put to the public would need to propose these particular constitutional amendments.

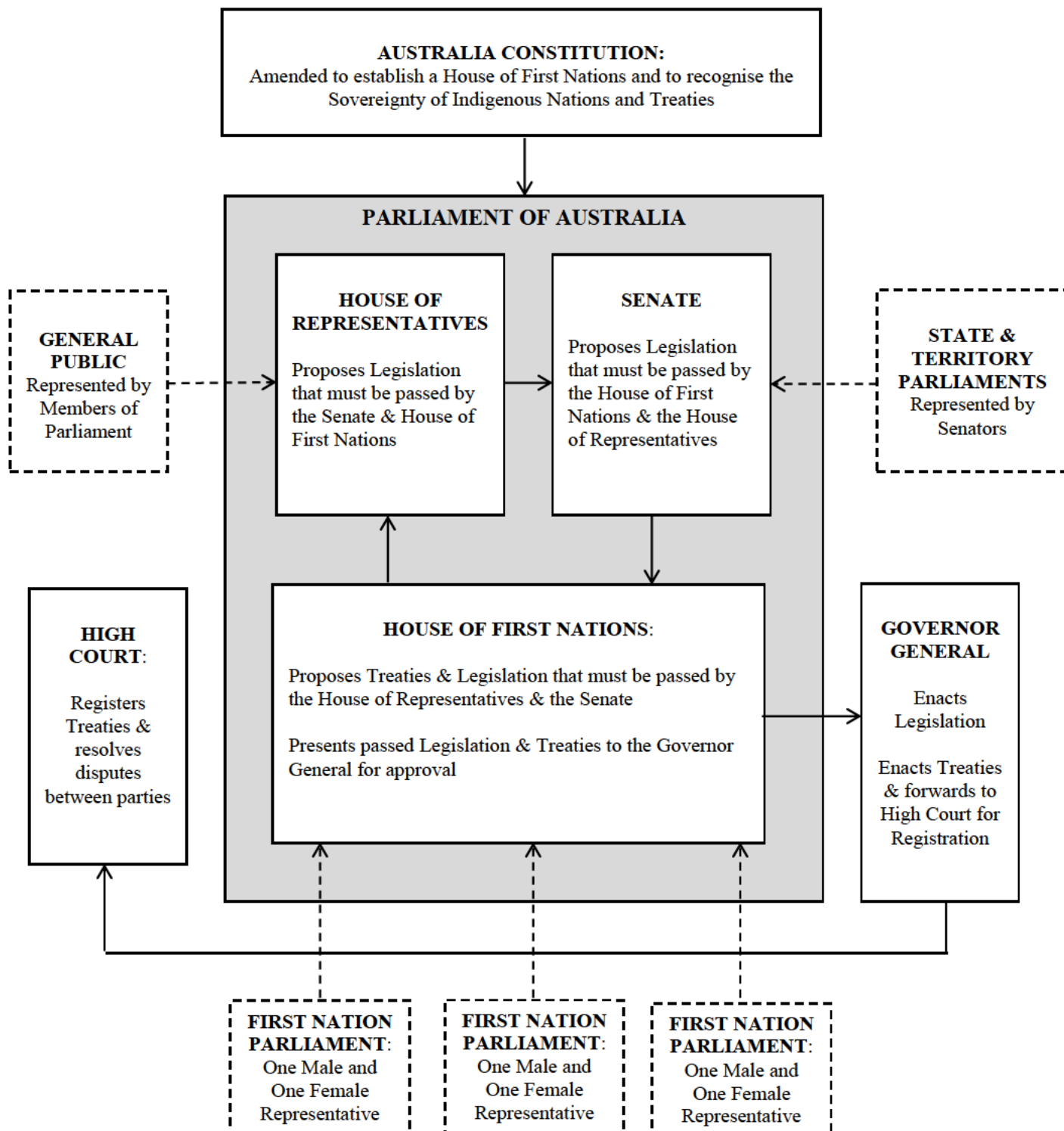
The extent of these amendments to the Australian Constitution would require the establishment of a Joint Select Committee on Shared Sovereignty. The committee would work with the Attorney Generals Department to inform, educate, consult and gain the support of Indigenous Nations and the wider Australian community to develop constitutional amendments and wording for a referendum. The committee would have a life of 12 months before reporting to the Australian Parliament and would also hold a Constitutional Convention to inform the public of their work prior to holding a referendum.

Recommendation:

That a Joint Select Committee on Shared Sovereignty be established to inform, educate, consult and gain the support of Indigenous Nations and the wider Australian community to develop constitutional amendments and wording for a referendum to implement this proposal.

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The Shared Sovereignty Model:



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1. A Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples will inquire into and report on matters relating to constitutional change, and in conducting the inquiry, the committee:

a. consider the recommendations of the Referendum Council (2017), the Uluru Statement from the Heart (2017), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015), and the Expert Panel on Constitutional Recognition of Indigenous Australians (2012);

The recommendations from these reports have progressed from just ‘recognising the existence of Indigenous Nations’ to ‘recognising the sovereignty of Indigenous Nations’ in the Australian Constitution. This submission addresses this criteria.

b. examine the methods by which Aboriginal and Torres Strait Islander people are currently consulted and engaged on policies and legislation which affects them, and consider if, and how, self-determination can be advanced, in a way that leads to greater local decision making, economic advancement and improved social outcomes;

Indigenous Nations are currently ‘consulted’ by Australian Governments under the existing policy of assimilation. Australian Governments will have to ‘negotiate’ with Indigenous Nations when their sovereignty is recognised in the Australian Constitution. This will lead to greater local decision making, economic advancement and improved social outcomes. This submission addresses this criteria.

c. recommend options for constitutional change and any potential complementary legislative measures which meet the expectations of Aboriginal and Torres Strait Islander Peoples and which will secure cross party parliamentary support and the support of the Australian people;

The establishment of a Joint Select Committee on Shared Sovereignty to inform, educate, consult and gain the support of Indigenous Nations and the wider Australian community will develop constitutional amendments and wording for a referendum to implement this proposal, which may also require associated legislation. A Joint Select Committee on Shared Sovereignty with cross party representation will have the responsibility of securing the

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support of the Australian public for this proposal like the Australian Parliament achieved for the 1967 referendum. This submission addresses this criteria.

d. ensure that any recommended options are consistent with the four criteria of referendum success set out in the Final Report of the Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution:

i. contribute to a more unified and reconciled nation;

The extension of the shared sovereignty franchise to Indigenous Nations will address Indigenous poverty by giving back control to Indigenous people which will lead to a unified and reconciled nation. This submission addresses this criteria.

ii. be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples;

The constitutional recognition of the sovereignty of Indigenous Nations will provide every individual Indigenous person with the choice of identifying with their Indigenous Nation or assimilating into the wider Australian society. The important distinction is that it will be the choice of the Indigenous person and not imposed from above by Australian Governments. As a result, it will address the wishes of every individual Indigenous person. This submission addresses this criteria.

iii. be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums; and

A Joint Select Committee on Shared Sovereignty with cross party representation will have the responsibility of securing the support of the various sectors of the Australian community for this proposal like the Australian Parliament achieved for the 1967 referendum. A Joint Select Committee on Shared Sovereignty will also hold a Constitutional Convention to inform and gain the support of the public of their work prior to holding a referendum. This submission addresses this criteria.

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iv. be technically and legally sound;

A Joint Select Committee on Shared Sovereignty will be advised by the Attorney Generals Department which will also undertake technical, legal and all other tasks associated with the work of the committee. This submission addresses this criteria.

v. engage with key stakeholders, including Aboriginal and Torres Strait Islander peoples and organisations; and

A Joint Select Committee on Shared Sovereignty with cross party representation will have the responsibility of securing the support of the various sectors of the Australian community for this proposal like the Australian Parliament achieved for the 1967 referendum. The Attorney Generals Department will also advise the committee on appropriate strategies for engaging with the Australian public. This submission addresses this criteria.

vi. advise on the possible steps that could be taken to ensure the referendum has the best possible chance of success, including proposals for a constitutional convention or other mechanism for raising awareness in the broader community;

A Joint Select Committee on Shared Sovereignty would have a life of 12 months before reporting to the Australian Parliament as well as holding a Constitutional Convention to inform and gain the support of the public for their work prior to holding a referendum. This submission addresses this criteria.

- END OF SUBMISSION -