A SUBMISSION

TO THE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE'S

INQUIRY INTO

PROGRESS TOWARDS RECONCILIATION

REGARDING

RESERVED PARLIAMENTARY SEATS

FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

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1. PURPOSE

1.1 I make this submission calling on the Legal and Constitutional References Committee (the Committee) to hold a separate inquiry into how Reserved Seats for Aboriginal and Torres Strait Islander (indigenous) people can be incorporated into the Commonwealth Parliament.

2. WE MUST CHANGE THE WAYS WE DO THINGS

2.1 Commonwealth Responsibility for Indigenous Affairs

2.1.1 The Commonwealth Parliament assumed greater responsibility for indigenous affairs through the 1967 referendum. Before 1967, legislation concerning indigenous people was essential a State rather than Commonwealth matter. Section 51, Clause 26 of the Constitution prevented the Commonwealth from making laws for indigenous people. The only exception to this was the Northern Territory, which was the responsibility of the Commonwealth Government after 1911. Historically, indigenous people had been seen as a State rather than a Commonwealth responsibility (Cunneen and Libesman, 1995: 42).

2.1.2 The national referendum in 1967 altered the Australian Constitution. The referendum was passed with a record majority of over 90 per cent. The Commonwealth was allowed to make laws relating to indigenous people. In addition, indigenous people were now required to be counted in the national census. In the 1971 census, indigenous people were counted alongside other inhabitants of Australia for the first time (Cunneen and Libesman, 1995: 42).

2.2 Government Policy

2.2.1 Commonwealth Government policies since the 1967 referendum has ranged from 'self-determination', self-management' to 'self-sufficiency'. Many

government programs and initiatives have been implemented and yet statistical indicators show that indigenous disadvantage remains unchanged, and in some areas, is actually getting worse.

2.2.2 These has been a variety of Government initiatives which have tried to address indigenous disadvantage including: National Aboriginal Consultative Committee, Aboriginal Land Rights Commission, Northern Territory Land Rights Act 1975, Royal Commission into Aboriginal Deaths in Custody, Aboriginal and Torres Strait Islander Commission Act 1991, Council for Aboriginal Reconciliation Act 1991, Torres Strait Islander Regional Authority 1993 and the Native Title Act 1993.

2.3 Indigenous Disadvantage

2.3.1 Despite the numerous policy attempts, indigenous people remain the most disadvantaged group of Australians. The following statistics from the Australian Institute of Health and Welfare (http://www.aihw.gov.au/publications/ihw/hwaatsip01/index.html) confirm the extreme disadvantage that indigenous people, who make up only 2 per cent of the population, suffer compared to other Australians:

(a) medium age is 20 years compared to national medium age of 34 years;

(b) higher users of supported accommodation assistance;

(c) children are more likely to be placed under care and protection orders;

(d) aged care services are accessed at younger ages;

(e) disabled have a lower mean weekly income;

(f) experience poorer living conditions;

(g) experience lower access to health services;

(h) male life expectancy 56 years to Australian average 76 years;

(i) female life expectancy is 63 years to Australian average of 82 years;

(j) more likely to smoke, consume alcohol, exposed to violence;

(k) child birth at younger ages;

(l) babies more likely to die at birth, during post natal phase, lower birth weight;

(m) suffer more from mental and behavioural disorders;

(n) more likely to be hospitalised for most diseases and conditions; and

(o) more likely to have diabetes, high blood pressure, infections, obesity.

2.3.2 The Australian Institute of Health and Welfare found indigenous people are disadvantaged across a range of socio-economic indicators. Indigenous people experienced lower incomes, higher rates of unemployment, poorer educational outcomes and lower rates of home ownership to name a few.

2.4 Conclusion

2.4.1 I submit that:

(a) since the Commonwealth assumed greater responsibility for indigenous people the 1967 referendum, indigenous disadvantage continues to get worse;

(b) thirty-five years of Commonwealth policies have failed to address the underlying cause of indigenous disadvantage; and

(c) as a result – there must be a fundamental change in the way the Commonwealth Parliament engages with indigenous people.

3. THE REAL CAUSE OF INDIGENOUS DISADVANTAGE

3.1 The Nature of the Relationship

3.1.1 The exclusion of indigenous people from Australian society first occurred on 7 February 1788 when the officials of the first fleet raised the British flag at

Sydney Cove and took possession of Australia. In this one instant, several hundred indigenous nations across Australia had become dispossessed. From this moment on they were technically, under British law, trespassers on Crown land.

3.1.2 No treaty or negotiation between British and indigenous people, as entered into by other countries, occurred despite the instruction that Captain James Cook was given that he seek 'the consent of the natives to take possession of convenient situations in the country in the name of the King of Great Britain'. Captain Cook refused to negotiate with indigenous people and claimed Australia on the basis that it was terra nullius.

3.1.3 Terra nullius at this time had two meanings: first, that a country without a sovereign recognised by European authorities; and secondly, that the people inhabiting the land did not actually own the land – that is, there was no system of land tenure (Cunneen and Libesman, 1995:9). It has since been proven by the High Court of Australia's Mabo decision that indigenous people have indeed always had a land tenure system.

3.1.4 The fiction of terra nullius set the trend for the ongoing exclusion of indigenous people from all facets of Australian society. The most important document that defines who we are as a nation, the Australian Constitution, when it came into effect in 1901, excluded indigenous people from our primary decision-making institution – Australian parliaments. Governments' policies and practices that followed reinforced their exclusion from participating in Australian parliaments and society in general.

3.1.5 The period from 1836 to 1930 saw all States and Territories, with the exception of Tasmania, pass some form of 'protection' legislation with an

emphasis on segregation and restriction. The legislation had been built on the assumption that indigenous people were a dying race and were taken off their traditional lands and placed on reserved parcels of lands. Indigenous people throughout Australia had their legal status formally and dramatically reduced.

3.1.6 The principal protection legislation included: Aborigines and Restriction of the Sale of Opium Act 1897 (QLD), Aborigines ACT 1905 (WA), Northern Territories Aborigines Act 1910 (SA), Aborigines Act 1911 (SA), Aborigines Protection Act 1909 (NSW) and the Aborigines Act 1890 (VIC).

3.1.7 The legislation during this period progressively controlled all aspects of indigenous people's lives from birth to death. A central feature of the regulation of indigenous people was their restriction and segregation from non-indigenous society.

3.1.8 The period from the 1930s through to the 1960s saw the assimilation and integration period. In the 1930s, Australian authorities recognised an increasing so-called 'half-caste' indigenous population and introduced these policies to absorb them into non-indigenous Australian society. This was the period of the stolen generation.

3.1.9 The principal government legislation in each State and Territory between 1940 and 1972 included: Aboriginal and Torres Strait Islander Affairs Act 1965 (QLD), Aborigines Act 1871 (QLD), Torres Strait Islander Act 1871 (QLD), Aborigines Protection (Amendment) Act 1963 (NSW), Aborigines Act 1969 (NSW), Aborigines Act 1957 (VIC), Aboriginal Affairs Act 1967 (VIC), Aboriginal Affairs Act 1962 (SA), Community Welfare Act 1972 (SA), Natives (Citizenship Rights) Act 1944 (WA), Native Welfare Act 1963 (WA),

Aboriginal Affairs Planning Authority Act 1972 (WA), Welfare Ordinance 1953 (NT) and the Social Welfare Ordinance 1964 (NT).

3.1.10 The 1991 Royal Commission into Aboriginal Deaths in Custody gave the following analysis of assimilation: "While the policy offered the same rights and privileges, this was highly conditional upon Aboriginal people accepting the same responsibilities, observing the same customs and being influenced by the same beliefs, as other Australians. The statement created a nationalistic fiction. By setting up a false model of Australia as an 'imaged community' of shared interests, beliefs, etc, it was casting Aboriginal people as 'other' ... people were in fact not part of this nation, this Australia" (Johnston, 1991: Overview p.108)

3.1.11 Since British arrival in 1788 there has been a continual process of exclusion of indigenous people from Australian society. Non-indigenous law prevailed and the aim and actual effect of Government policy and practice from 1788 to 1967 was to segregate and marginalise indigenous people from Australian society. Today, indigenous people still remain the most socially and economically disadvantaged group of Australians.

3.2 The Lie of Terra Nullius

3.2.1 On 3 June 1992, the High Court of Australia delivered its historical judgement in the case of Mabo v. the State of Queensland (No 2) (1999), declaring that the common law of Australia recognised native title. A majority of six, with one dissenting judge, held that the plaintiffs owned their land. Their title, native title, was and continued to be based on their own laws and customs.

3.2.2 The Mabo decision has overthrown the following two widely held ideas about the legal basis of land ownership – that the Crown, that is the government,

owned absolute title to the land and all property rights were granted by the Crown; and that the land was legally uninhabited, ie terra nullius, at the time of colonisation (Cunneen and Libesman, 1995:110).

3.2.3 The Mabo decision, in bringing Australian law into line with the country's history, has established a basis from which pass wrongs can be addressed. While native title will only survive in limited circumstances, the High Court acknowledged that the Australian nation had been built on the dispossession of the majority of Australia's indigenous people's legal rights, which was recognised in the Native Title Act 1993 (Cunneen and Libesman, 1995:109).

3.3 The Legacy of the Lie of Terra Nullius

3.3.1 The legacy of the lie of terra nullius is that indigenous people have become disenfranchised from Australian society to the extent that the majority of indigenous people live in third world conditions. The Government's attempt to address indigenous disadvantage through normal service provision is flawed in that it assumes indigenous people are participating in society to the same extent as other Australians.

3.3.2 The Commonwealth Grants Commission Report on Indigenous Funding 2001 (http://www.cgc.gov.au/publications.html) found that government service provision has continually failed to deliver to indigenous people. The report stated:

(a) "It is clear from all available evidence that mainstream services do not meet the needs of indigenous people to the same extent as they meet the needs of non-indigenous people;

(b) Mainstream services are intended to support access by all Australians to a wide range of services. Given the entrenched levels of

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disadvantage experienced by indigenous people in all functional areas addressed by our inquiry, it should be expected that their use of mainstream services would be at levels greater that those of non-indigenous Australians. This is not the case. Indigenous Australians in all regions access mainstream services at very much lower rates than non-indigenous people.

(c) The mainstream programs provided by the Commonwealth do not adequately meet the needs of indigenous people because of barriers to access. These barriers include the way programs are designed, how they are funded, how they are presented and their cost to users. In remote areas, there are additional barriers to access arising from the lack of services and long distances necessary to access those that do exist. The inequities resulting from the low level of access to mainstream programs are compounded by the high levels of disadvantage experienced by indigenous people".

3.3.3 Despite good intentions, it is obvious that programs to indigenous people are ill conceived, poorly designed and under funded to provide the quality of service needed to address indigenous disadvantage. Governments consult when they should be negotiating with indigenous people on the details of service provision.

3.4 Conclusion

3.4.1 I submit that:

(a) The now proven lie of terra nullius created a relationship in which indigenous people were subservient to the wider Australian community;

(b) It was the nature of this one-sided relationship that entrenched indigenous disadvantage and disenfranchised indigenous people from Australian society;

(c) Government service provision has proven to be a total failure as a means to addressing indigenous disadvantage.

4. CREATING A BALANCE

4.1 Reserved Seats

4.1.1 The Commonwealth Grants Commission identified the failure of the Government's approach of consulting with indigenous people on service provision. Reserved parliamentary seats for indigenous people has been proven in many countries as an effective means for government to negotiate, as opposed to consulting, with indigenous people to address disadvantage. The push for reserved parliamentary seats has been gaining momentum in Australia.

4.2 The Call for Indigenous Representation in Australian Parliaments

4.2.1 There have been calls for indigenous representation in Parliaments both at the Commonwealth, State and Territory levels during the last century and gathered pace throughout the world after world war one. The following timeline provides an overview of the demand for some form of guaranteed representation from both indigenous and non-indigenous people.

4.2.2 1937 – William Cooper of the Australian Aborigine's League in Victoria present a petition to the King calling for guaranteed representation in the Commonwealth Parliament in the form of one seat in the House of Representatives (Bennett, 1989:4). The Commonwealth Government, arguing

such an appointment was a constitutional impossibility, never forwarded the petition to the King.

4.2.3 1938 – Aborigines Progressive Association, in response to celebrations of 150 years of white settlement, held a protest meeting in Sydney on Australia Day, which was called the day of mourning. Five days later, an Aboriginal delegation met with and presented Prime Minister Lyons with a ten point program for Aboriginal equity. The petition specifically demanded representation in the national Parliament for indigenous people as a method of empowering them to influence and have control over their destinies (Council for Aboriginal Reconciliation 1995:42).

4.2.4 The Cabinet subsequently announced that since indigenous people could not vote, and no Federal Government was likely to sponsor a referendum addressing the situation, Cabinet was unlikely to accept the principle of giving indigenous people a guaranteed place in parliament (Bennett 1989:6).

4.2.5 1949 – Doug Nichols wrote to Prime Minister Chifley calling for one member of the House of Representatives to be elected by voters on a single indigenous roll. This call was also dismissed on the grounds that it was not permitted by the Australian Constitution (Bennett 1989:126).

4.2.6 1982 – The Western Australian Land Needs and Essential Services Committee made a similar recommendation.

4.2.7 1983 – The Hon. Frank Walker, the then Minister for Aboriginal Affairs in New South Wales, proposed a reform of the electoral laws allowing for one Aboriginal Senator in the Commonwealth Parliament to be elected from each State by voter registration on a separate electoral role. He also advocated the

creation of four Aboriginal electorates in the Legislative Assembly of New South Wales (Sydney Morning Herald, 1983:3).

4.2.8 In the same year, the then Special Minister of State in the Federal Parliament, the Hon. Mick Young, called for the Australian Labor Party to consider affirmative action for indigenous candidates.

4.2.9 1987 – The Northern Territory Legislative Assembly Select Committee on Constitutional Development considered and rejected indigenous seats in the Territory, or any new State Parliament (1987:21). The Committee expressed a preference for a single member electorate system, with one person one vote and no discrimination on the basis of race.

4.2.10 1988 – The concept of guaranteed representation received support in a number of submissions to the Constitutional Commission (1988:183). The National Aboriginal and Islander Legal Services Secretariat and the Public Interests Advocacy Centre argued that Aboriginal people should be represented in the Senate as an electorate, as if they constituted a State, for the purpose of electing a Senate representative, and the Aboriginal Development Commission supported the designation of a number of seats in the Senate for Aboriginal representatives to enable ready access to expert opinion on laws affecting Aboriginal people.

4.2.11 1993 – An Aboriginal Constitutional Convention held at Tennant Creek agreed, that if the Northern Territory becomes a State and has twelve seats in the Senate, seven of those seats should be allocated to Aboriginal representatives (Brown and Peace, 1994:107).

4.2.12 1995 – The report of the National Multicultural Advisory Council, *Multicultural Australia: The Next Steps Towards and Beyond 2000* (1995),

recommended a Select Committee of the Commonwealth Parliament be established to consider options for achieving greater representation of Australia's indigenous peoples in Parliament.

4.2.13 1995 – Father Frank Brennan in *One Land, One Nation*, advocated reserving four seats for indigenous Australians in the Senate, including one Torres Strait Islander. Father Brennan suggested that people eligible to vote at Aboriginal and Torres Strait Islander Commission elections could have an additional vote for these Senate positions. Or, alternatively, be able to choose whether to vote for these candidates or the general candidates from their State (Brennan, 1995:201).

4.2.14 1995 – The Aboriginal and Torres Strait Islander Commission's *Recognition, Rights and Reform: a Report to the Government on Native Title Social Justice Measures* made the following recommendations: "While it is difficult to define what the appropriate level of indigenous representation should be in the Commonwealth, State and Territory Parliaments and in Local Government, it is considered that measures should be taken now to institute political reform. These measures should include reserved seats in Parliaments for indigenous Australians at both Commonwealth and State level, ward structures in Local Government areas having significant Aboriginal communities, and conditions on Commonwealth local government funding which encourages greater indigenous representation on Councils (ATSIC, 1995:49).

4.2.15 1995 – The Council for Aboriginal Reconciliation's report, *Going Forward: Social Justice for the First Australians* (1995), was produced in response to a request for the identification of appropriate measures to promote the cause of social justice for indigenous people. During their community consultation

process, the report notes that proposals were "repeatedly raised" for guaranteed forms of political representation by the reservation of seats in the national, State and Territory and municipal structures. The Council recommended that, in any constitutional consultation process, an element should be provided for an educational strategy on the possibility of separate indigenous seats, based on an indigenous electorate roll, in the House of Representatives and in the Senate.

4.2.16 1995 – The following motion was moved in the New South Wales Parliament's Legislative Council: "That this house (i) being the oldest Parliament in Australia and in the State which saw the landing of Captain Cook, notes that as we approach the 21st century there has never been an indigenous member of Parliament. (ii) Notes that the New Zealand Parliament has had a number of dedicated Maori seats since the 19th century. (iii) Requests the State Government to consider legislation to ensure that a number of dedicated Aboriginal seats be set aside so that the voice of the first Australians can be heard in this Parliament, the mother of all Parliaments in Australia. (iv) Considers this action essential: to address the injustices suffered by the indigenous people over the last 200 years and a s a method of empowering Aboriginal Australians to influence and have control over their own destinies; and given the indifference of all political parties in preselecting candidates of Aboriginal background for election to the Legislative Council and Legislative Assembly. (v) refers the provision for dedicated Aboriginal seats in the Parliament of New South Wales to the Standing Committee on Social Issues for inquiry and support.

4.2.17 The Standing Committee reported to the New South Wales Parliament in 1999, *Report into Enhancing Aboriginal Political Representation. Inquiry into Dedicated Seats in the New South Wales Parliament*, recommending the Parliament facilitates further community education and consultation on reserved Aboriginal seats.

4.2.18 1998 – The Aboriginal and Torres Strait Islander Commission and Northern Territory Lands Councils sponsored an Indigenous Constitutional Convention at Batchelor College that raised the issues of reserved seats for indigenous people in Australian Parliaments.

4.2.19 1998 – An ACT Select Committee on the Report of the Review of Governance of the Australian Capital Territory recommended that a separate inquiry be held into reserved seats in the Legislative Assembly (http://www.act.gov.au). The inquiry was never undertaken.

4.2.20 2002 – Reserved seats were discussed at the National Treaty Conference and raised with the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs as a means for facilitating a treaty between indigenous and other Australians (http://www.atsic.gov.au).

4.3 New Zealand

4.3.1 In New Zealand, the Maori constitute about 12 per cent of the population. The Treaty of Waitangi was signed by the Governor and 41 Maori chiefs at Waitangi in 1840, and subsequently by a total of 540 chiefs. The English translation of the treaty was for some interpreted as the Maori handing over absolute sovereignty to the British Crown. More recently, the Treaty has been re-interpreted through a combination of statutes, the findings and recommendations of the Waitangi Tribunal, and the courts, and the Maori right

to *tino rangatiratanga*, or full chief authority over lands and possessions, has gained increased recognition (Sharpe, 1992).

4.3.2 In addition to Maori representation achieved through the traditional political processes, a number of dedicated seats have existed for Maori in the House of Representatives for over 125 years. The first-pass-the-post system in New Zealand provided for Maori representation by reserving four seats for those Maori who register on a separate Maori electoral roll. These seats cover the entire country, overlapping non-Maori constituencies, and are know as Eastern Maori, Northern Maori, Southern Maori and Western Maori. With the introduction of the Mixed Member proportional Electoral system in 1996, a fifth seat, known as Central Maori, had been created.

4.3.3 There are a total of 15 Maori members of the New Zealand parliament in a 120 seat house. Two votes are now cast by electors – the first for the local member in a General or Maori constituency seat, and the second for the party of the voter's choice for the party-list seats. The total number of seats a party has in parliament is proportional to the percentage of votes the party wins in the second vote.

4.4 Canada

4.4.1 In Canada, the indigenous population is about four percent of the total population. There have been a number of indigenous representatives in the Canadian Parliament, including three representatives from constituencies with a non-indigenous majority. There are currently three indigenous members of the House. However, the achieve representation in a proportion to their own population, approximately 12 members are required.

4.4.2 Several political parties have attempted to encourage indigenous political participation, the Liberal Party, for example, has an Aboriginal People's Commission, which supports mechanisms ensuring greater representation in the Parliament. The Congress of Aboriginal peoples were one of the first organizations to propose dedicated seats for indigenous peoples in the early 1980s. In 1990, Senator Len Marchard, a member of the Okanagan Indian Band and former Minister on the Trudeau Government, produced a paper entitled *Aboriginal Electoral reform – A Discussion Paper.*

4.4.3 The Royal Commission on Electoral Reform and Party Financing (1992) recommended that up to eight Aboriginal Electoral Districts be created in the House of Commons. The House Committee of Electoral Reform implemented a number of the Royal Commission's initiatives, but ignored others, including Aboriginal representation. In 1992, the Charlottetown Accord proposed guaranteed representation in the Senate, with Aboriginal seats in addition to provisional and territorial seats. The possibility of a double majority on relation to matters materially affecting indigenous people was also raised, with details to be discussed further by governments and representatives of the indigenous peoples. The provisions for constitution reform in the Charlottetown Accord were rejected in the referendum of that year. The Royal Commission on Aboriginal Peoples, established in 1991, also considered dedicated seats. The Commission's final report did not support special representation but instead recommended the creation of an Aboriginal Parliament.

4.4.4 Dedicated seats have been considered in a number of provinces. Quebec has created a new electoral district for an area with a considerable Inuit

population. In Saskatchewan, one northern town is to be removed from a riding to create a gerrymander for the indigenous population.

4.4.5 In 1991, the then Premier of Nova Scotia instituted a Select Committee on Establishing an Electoral Boundaries Commission. The Select Committee recommended the establishment of a Commission, and indicated the current 52 seats should be retained, but minority representation for the black and Acadian communities should be considered. Together with the option of adding an additional Mi'kmaq seat. The Commission reported in 1992, and developed an entitlement system for justifying the move to effective representation based on relative parity of voting power.

4.4.6 After further consultation with indigenous communities, the Commission recommended a guaranteed Aboriginal seat not be created at that time, at the request of the Mi'kmaq community, but that the House of Assembly adopt a procedure for further consultation.

4.4.7 The original bill dealing with the recommendation of the Commission did not include any such reference, but as a result of subsequent representations and hearings, the bill was amended at the third reading stage and the final legislation did not contain recognition of the goal of an Aboriginal seat. Section 6 of the House of Assembly Act states:

(a) "The House hereby declares its intention to include as an additional member a person who represents the Mi'kmaq people, such a member to be chosen and to sit in a manner and upon terms agreed to and approved by representatives of the Mi'kmaq people.

(b) Until the additional member referred to in subsection (i) is included, the Premier, the Leader of the Official Opposition and the Leader of a

recognised party shall meet at least annually with representatives of the Mi'kmaq people concerning the nature of the Mi'kmaq representation in accordance with the wishes of the Mi'kmaq people, the Premier shall report annually to the House on the status of the consultations".

4.5 United States

4.5.1 In the United States, the indigenous population comprises about one per cent of the total population. From 1777 to 1871, United States relations with individual Indian Nations were conducted through treaty negotiations, in contrast to the experience of indigenous Australians. These "contracts among nations" create unique sets of rights benefiting each of the treaty making tribes. Those rights, like any other treaty obligation, represent "the supreme law of the land", and protection of those rights is a critical part of the federal Indian trust relationship.

4.5.2 In the United States legislature, the dependencies of Guam, Puerto Rico, Virgin Islands and American Samoa are guaranteed a representative to Congress. These elected delegates, like the delegate from the District of Columbia, have privileges and votes on committees, but no votes on the Floor of the House.

4.5.3 In 1975, the American Indian Policy Review Commission, a congressionally sponsored research project, considered the election of an Indian Congressional delegate, but made no recommendation on the issue (National Indian Policy Centre, 1993:23). An American Samoa delegate introduced a bill into congress to establish a dedicated Congressional seat for a Native American delegate, but the bill was never debated. There are currently two Native American Senators. While there have been representatives in the past, and

there has been an Indian Vice President, there are currently no American members of the House of Representatives.

4.5.4 There has also been progress in indigenous representation in the US state legislatures. In Arizona, Navajo have elected two state House of Representative members and one Senator. Indian nations actively approach these state representatives for support.

4.5.6 In the State of Washington, a bill was introduced in 1991 to provide for Indian delegates, in recognition of the "unique government to government relationship" between tribes and the state and the "important historical and cultural perspective" they would bring to the legislature. The bill provided for two non-voting delegates in the House of Representatives, and two in the Senate. The means of election were to be left to the tribes, and the bill provide that such elections could, for example, be limited to elections by the chairs of the tribal councils. The bill was never enacted.

4.5.7 The US State of Maine provides legislative representation by way of a representative from the two largest tribes, the Penobscot and the Passamaquoddy, but the representatives have no voting rights. Maine also has Mi'kmaq and Maliseet tribes, who do not have parliamentary representation. A majority of members of the recent Task Force on Tribal-State Relationships 1997:6) recommend that the Maine Legislature also offer and fund the opportunity for these tribes to have tribal representation.

4.6 Lebanon

4.6.1 A number of parliamentary systems around the world include some form of dedicated representation for particular cultural groups. In some cases, this

occurs in nations where the population is made up of several ethnic groups of considerable size.

4.6.2 In Lebanon, each religious community is allocated a proportion of the 99 seats of the Chamber of Deputies in the 1932 census. Most of the 26 electoral districts are multi-member, and many have mixed religious populations and representations, with all voters in a voting district for all the seats (Crow 1980:46).

4.7 Fiji

4.7.1 In Fiji, where Fijian Indians slightly outnumber indigenous Fijians, both the 1970 and 1990 Fijian constitutions contained provisions for communal electoral rolls. The 1990 constitution allocates seats in a manner ensuring indigenous Fijians domination of the Parliament (Lawson 1993). In other nations, electoral arrangements are designed to ensure minority groups are represented in parliaments.

4.8 India

4.8.1 In India, where the constitution provides for Scheduled Castes and Tribes to have proportional representation through reserved seats in the national and state legislatures. The President specifies scheduled castes and tribes for particular states by Presidential order. However, members of other ethnic groups participate in the elections of the representatives in the reserved constitutions (Vanhanen, 1991:184).

4.8.2 There are currently 79 seats in the House of People (Lok Sabha) reserved for scheduled castes and 41 seats for scheduled tribes. If the President is of the opinion that the Anglo-Indian community is not adequately represented, the

constitution empowers the President to appoint up to two members of that community to the House of the People.

4.9 Zimbabwe

4.9.1 In Zimbabwe, the 1980 constitution established a system whereby 20 reserved seats from a 100 seat house were allocated for whites, who represent only one-half per cent of the voting population (Fleras, 1991:94).

4.10 Singapore

4.10.1 In Singapore, which has a unicameral Parliament of 81 members, of whom 60 are elected from 15 Group Representation Constituencies (GRCs). Candidates in a GRC contest the election on a four member group ticket, and each ticket is required to have at least one candidate belonging to a minority race. The successful ticket wins all four seats in a GRC.

4.10.2 Nine GRCs have at least one member from the Malay community, and six have at least one member from the Indian or other minority communities (Parliament of New South Wales Legislative Standing Committee on Social Issues, 1997:24),

4.11 Conclusion

4.11.1 I submit that:

(a) reserved seats in overseas Parliaments has proven a just means for creating a balanced relationship between indigenous and non-indigenous peoples as a basis for addressing indigenous disadvantage;

(b) There is growing community support for reserved seats in Australian Parliaments; and

(c) the Committee has a responsibility to the reconciliation process to hold a separate inquiry to examine reserved seats for indigenous people in

the Commonwealth Parliament as a means for addressing indigenous disadvantage.

5. SUMMARY

5.1 In conclusion, I submit that:

(a) since the Commonwealth assumed greater responsibility for indigenous people the 1967 referendum, indigenous disadvantage continues to get worse;

(b) thirty-five years of Commonwealth policies have failed to address the underlying cause of indigenous disadvantage;

(c) as a result – there must be a fundamental change in the way the Commonwealth Parliament engages with indigenous people;

(d) the now proven lie of terra nullius created a relationship in which indigenous people were subservient to the wider Australian community;

(e) it was the nature of this one-sided relationship that entrenched indigenous disadvantage and disenfranchised indigenous people from Australian society;

(f) government service provision has proven to be a total failure as a means to addressing indigenous disadvantage;

(g) reserved seats in overseas Parliaments have proven a just means for creating a balanced relationship between indigenous and non-indigenous peoples as a basis for addressing indigenous disadvantage;

(h) there is growing community support for reserved seats in Australian Parliaments; and

(i) the Committee has a responsibility to the reconciliation process to hold a separate inquiry to examine reserved seats for indigenous people in the Commonwealth Parliament as a means for addressing indigenous disadvantage.

6. RECOMMENDATIONS

6.1 That the Committee:

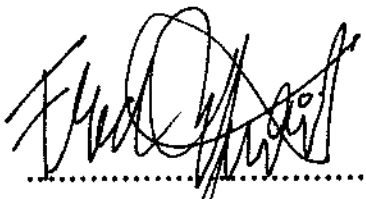
(a) conduct a separate inquiry into how reserved seats for indigenous people could be incorporated in the Commonwealth Parliament;

(b) issue a public discussion paper seeking public comment on various options for incorporating reserved seats for indigenous people into the Commonwealth Parliament;

(c) present the findings to the Commonwealth Parliament; and

(d) hear me on this issue.

7. SIGNATORY



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