A treaty could see indigenous affairs spending doubled and the funding stream handed over completely to Aboriginal and Torres Strait Islanders, Tasmanian Aboriginal lawyer Michael Mansell says.

As part of the deal there could be the creation of a notional new state that, using the Canadian state of Nunavut as a model, would be “not a private Aboriginal state but a public Aboriginal state, just that it would be made up predominantly of Aboriginal people”, Mr Mansell told The Australian.

In a book published this week, Treaty and Statehood, Mr Mansell argues that a modern Australian treaty would address five key issues: “Land, empowerment, resource guarantee, social, cultural and education improvement, and a commission to oversee the process.”

It could draw on aspects of treaties in New Zealand and Canada. In the latter case, he said, that would be “a shared sovereignty; the High Court of Australia says externally there is only one sovereign, and that is the commonwealth, but within Australia there are seven independent sovereign entities in the states and territories” that could be added to.

New Zealand’s Treaty of Waitangi, he said, showed that the government “can govern of behalf of all New Zealanders but it must take into account the sovereign rights of Maori that have been retained in this modern world”.

He also proposes changing the Native Title Act so that rather than only being able to prove continuing title, dispossessed people could gain compensation.
“Compensation could be either in the form of money or land, or both,” he writes, citing the instance of the 2015 Noongar agreement in Western Australia that saw claimants surrender native title in exchange for gaining freehold title to up to 320,000ha and a total cash payment of $1.3 billion.

Most significantly, he argues that a modern treaty “would be expected to provide for self-determination (and) as a result, indigenous peoples would again be able to govern themselves”.

He proposes the formation of an ATSIC-style national elected body representative of indigenous people, community governance structures and designated seats in the national parliament.