Self Determination and Human Rights Forum
Aboriginal and Torres Strait Islander Peoples -
‘Participants Not Recipients’
12 May 2010

“...the idea of the recognition of sovereignty as an expression of distinct identity and a starting point for the exercise of self-determination as a way of achieving empowerment, autonomy and equality” – Professor Larissa Behrendt

Introduction

The right to self determination is a fundamental concept in international law and is known as a ‘foundational’ right of all people.

The recognition of self determination as an inherent right of Aboriginal people in Australia has been a central part of the struggle to gain equal social, economic, cultural and political rights. Aboriginal Victorians have played an active and significant role in advocating for the right to self determination and sovereignty.

The forum

On 12 May 2010, VCOSS in partnership with VACCA, VACCHO, VAEAI, VACSAL and VALS held a forum: ‘Aboriginal and Torres Strait Islander Victorians- Participants not Recipients- Human rights and self determination’ at the Aboriginal Advancement League in Thornbury.

Approximately 80 people attended the forum, including representatives from Aboriginal Community Controlled Organisations (ACCOs), elders, community members and mainstream community sector organisations.

The forum aimed to reinvigorate dialogue in the community about human rights and Aboriginal Victorians, focussing specifically on the right to self determination.

The right to self determination

The right to self determination is derived in international law. When engaging in dialogue about human rights and Aboriginal self determination, it is fundamental to acknowledge at the outset that self determination is an inherent right, not one...
which is ‘given’ to an individual or community. This has been highlighted by Aboriginal people and is reinforced by international law.

The UN Declaration on the Rights of Indigenous Peoples is the key document which sets out the ‘baseline’ of acceptable rights. The Declaration brings together pre-existing rights relevant to Indigenous people into one document and:

“catalogues the kinds of violations that have historically plagued and, sadly, continue to plague Indigenous Peoples around the world. In particular, there are attacks upon their culture, their land, their identity, and their own voice... In short the Declaration lays out the minimum standards for the ‘survival, dignity and well being of Indigenous Peoples’. That, itself, is language taken from the Declaration and is proof enough of the practical value of the instrumenti.

The right to self determination is also included in other international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR)ii and the International Covenant on Economic, Social and Cultural Rights (ISESCR)iv. The concept of self determination is analogous to that of sovereignty for Aboriginal people. It describes the right to manage their own lives- social, economic, cultural, spiritual and political. There is no precise definition of Aboriginal self determination and it holds diverse meanings and interpretations for each individual and community. However, a central element of this right is the ability to exercise self management.

The need for Australia to take action to comply with its international human rights obligation has been highlighted most recently in the United Nations Report on the Status of Australia’s Indigenous People: Protection and Promotion of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to developmentv. The Report highlighted the need for a holistic approach to Indigenous rights which recognises the interdependent character of human rights, and with regard to the rights of indigenous peoples to self determination and freedom from racial discrimination.

1. Master of Ceremonies (MC), Tony Lovett welcomed the group.

2. Welcome to Country by Aunty Di Kerr.
3. Opening address, Frank Guivarra, Chief Executive Officer, Victorian Aboriginal Legal Service (VALS)

The Chief Executive Office of the Victorian Aboriginal Legal Service (VALS) Frank Guivarra delivered the opening address focussing on human rights and Aboriginal self determination and the operation of Aboriginal Community Controlled Organisations in Victoria.

“I wish to acknowledge that we are meeting on the land of the Traditional Owners, the Wurrundjeri people of the Kulin Nation. I wish to thank Aunty Di Kerr for welcoming us to Country.

I have been asked to talk about human rights, in particular the right to self determination, and how it relates to Aboriginal and Torres Strait Islander community controlled organisations. But it would be remiss of me not to acknowledge at this point that what I will say about self-determination from an Aboriginal community controlled perspective will not paint the full picture about self-determination. The planners of this forum, some peak and Statewide Aboriginal organisations in Victoria, are aware of the importance of not overlooking other voices about self-determination, such as the voices of Traditional Owners and community members. The planners had hoped to offer more than this forum and target various sub-groups within the Aboriginal and Torres Strait Islander community and provide space for dialogue within the Aboriginal and Torres Strait Islander community about self-determination. However, without wanting to raise expectations all I can say is ‘watch this space’. Our application to the Victorian Equal Opportunity and Human Rights Commission to do widespread consultation on human rights was unsuccessful and so we are considering other options. This forum is funded through the Victorian Council of Social Service by the Victorian Government and I would like to thank VCOSS at this point. It was thought that given the suggestions attached to this funding that people involved in Aboriginal and Torres Strait Islander organisations would be in the best position to contribute to and benefit from this forum.

I am the Chief Executive Officer of the Victorian Aboriginal Legal Service (VALS). I wish to acknowledge my counterparts in the room from the other Aboriginal organisations supporting this forum: Lionel Bamblett from VAEAI... etc. Lionel, myself and the CEOs at VACCA, VACSAL and VACCHO all have big footprints to fill. Aboriginal Community Controlled organisations, and those involved in the establishment of them, primarily in the 1970s, and those involved in the running of them leave a legacy for generations to come.

I can only speak about VALS. VALS is a self-determining Aboriginal community controlled organisation. VALS sprung up out of the community in 1973 to attempt to address the over-representation. VALS is funded by the Commonwealth Government and an Aboriginal Board of Management. As VALS was created by
our community, we remain community-controlled and, as such, are key to Indigenous self-determination. We are anchored in community – not separate from it – and are always answerable to our communities.

In 2006 VALS and the other peak and Statewide organisations produced a document titled ‘ A Fairer Victoria for Indigenous Communities: A Framework for Action’ - A Proposal for building the capacity of community-controlled Aboriginal organisations in Victoria’. This document was in response to the Victorian State Government’s document titled “A Fairer Victoria”. The Government’s document stresses the importance of supporting communities to be self-determining and effective (Strategy 13). It also promotes building new partnerships with Indigenous communities (Strategy 9).

The aim of the peak and Statewide Aboriginal organisations producing a ‘Framework for action’ was to:
- inform the Government, amongst other things, of the value of Aboriginal and Torres Strait Islander organisations;
- place self-determination and culture as a central focus. The key principles of our vision were:
  Self-determination which is described as: self-determination is internationally recognised as a human right. It is fundamental to building the capacity of our communities to overcome disadvantage. We believe that Indigenous Victorian communities are best-placed to work together to achieve positive outcomes for our people. The framework also states that “we believe that culturally-centred approaches to overcoming Indigenous disadvantage are the most effective. Australian Indigenous cultures are the longest continuing cultures in the world: sophisticated and holistic, linking spirituality with politics, education, economics, ecology and law”.
- suggest ways the Victorian Government could build the capacity of the Aboriginal Statewide and peak organisations so these organisations and Government can work together to improve outcomes for Indigenous Victorians. The framework contains suggestions about specific actions which can be summarised as increase funding for Indigenous organisations to develop policy, research and program delivery capacity.

You may agree with what I have said about Aboriginal community controlled organisations and self-determination or, you may have points of difference. Can I encourage you to express these thoughts in the workshop session at the end of this forum and factor in what Larissa and Emily also say to you. Thank you for listening"

The Victorian Charter of Human Rights and Responsibilities 2006 (Vic) and The Right to Self Determination
In January 2008, the Victorian Charter of Human Rights and Responsibilities 2006 (Vic) (‘the Charter’) came into effect as a new mechanism designed to protect the fundamental rights and freedoms of all Victorians.

It aims to protect human rights by requiring that government and other public authorities observe the Charter when making decisions, creating laws, setting policies and providing services.


The report highlighted many situations in which the Charter has been invoked to bring positive change for individuals and communities, however also noted that there is more work to do to ensure it effectively protects the rights of all Victorians.

Keynote Speaker – Professor Larissa Behrendt

In her keynote address, Professor Behrendt explored the concept of the right to self determination for Aboriginal Victorians and gave an overview of the broader international context.

Professor Larissa Behrendt is a Eualeyai/Kamillaroi woman. She is the Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology, Sydney. She is admitted to the Supreme Court of the ACT and NSW as a barrister.

Larissa is a Land Commissioner at the Land and Environment Court and the Alternate Chair of the Serious Offenders Review Board, a member of the Academy of Social Sciences of Australia and a founding member of the Australian Academy of Law. She is the Chair of the Humanities and Creative Arts panel of the Australian Research Council College of Experts.

She is the author of several books on Indigenous legal issues. She won the 2002 David Uniapon Award and a 2005 Commonwealth Writers Prize for her novel Home. Her latest novel, Legacy, is due for release in October this year. Larissa is a Board
Member of the Museum of Contemporary Art, a board member of Tranby Aboriginal College and a Director of the Bangarra Dance Theatre. She was named as 2009 NAIDOC Person of the Year.

Professor Behrendt noted the ‘significant and formative role’ taken by Victorian Aboriginal communities in campaigning for human rights and self determination, and highlighted the key themes and ‘components’ of self determination (below), noting that each requires a different and appropriate response:

a. **“Access, non-discrimination and equality rights”**: These rights relate to access to services and opportunities, including in education, health, employment and housing. It also encompasses the right of Aboriginal peoples to live free from racial discrimination and freely express Aboriginal identity (‘integrity of identity’). Despite the existence of anti-discrimination law federally and in all states and territories, discrimination is still pervasive and an everyday reality for Aboriginal people.

b. **“Aboriginal rights”**: These rights relate specifically and fundamentally to Indigenous people, and refer to elements such as land, culture, language and heritage. These rights are more difficult to achieve given their specificity and uniqueness to Aboriginal people.

c. **“Empowerment rights”**: These rights refer to the aspiration of Aboriginal self government and the right of Aboriginal people to govern and direct their own communities. This includes political, economic and (possibly) legal self sufficiency. For example, legal self determination could involve Aboriginal courts and the application of customary law. Empowerment rights require full access and control of natural resources, and require specific protection for areas not already legislated for. They require governments to give power back to Aboriginal people and recognise the sovereignty of Aboriginal tribal areas.

These concepts are further explained in Professor Behrendt’s book *Achieving Social Justice: Indigenous Rights and Australia’s Future* (2003) in which she highlights five areas central to self determination vii:

1. Recognition of past injustices;
2. Autonomy and decision making;
3. Property rights and compensation;
4. Protection of cultural practices and customary laws;
5. Equal protection of rights (constitutional protection/treaty).

These themes were also expressed and reflected in group discussion between participants at the forum.

Professor Behrendt also highlighted that self determination is an inherent right of Aboriginal people, in that it already exists and is not to be ‘given’ by a government. This is recognised in international law.

Key Themes – Group Discussions exploring the meaning of Self Determination

Following Professor Behrendt’s keynote presentation, people participated in forum workshops, responding to six key questions:

1. What does self determination mean to you?
   - Choice
   - Control
   - Cultural identity
   - Inclusion
   - Rights

2. (a) What is the role of Aboriginal Community Controlled Organisations in self determination?
   - ACCOs are an expression of self determination
   - Advocacy for community aspirations
   - Community control is empowerment
   - Cultural maintenance
   - Empowerment as a collective
   - Inclusiveness at all levels in all areas
   - Leadership role in the community
   - Taking responsibility
   - Resources- negotiated
   - Role models
   - Skills

   (b) How can these organisations be strengthened?
   - Education, especially for young people.
   - Independent ownership.
   - Natural resources.
   - Leading by example
   - Local focus- communities recognise their own needs and differences.
   - Partnerships.
   - Promoting unity.
   - Taking human rights to the community at a grass roots level.

3. What impact do barriers to achieving self determination have on Aboriginal Victorians and their communities?
   - Apathy.
• Confusion and frustration
• Economic disadvantage.
• Identity- this impacts on everything.
• Hurt and distrust
• Lack of education.
• Limited decision making- following government agenda rather than formulating our own.
• Loss of collective voice.
• Loss of cultural practices.
• Negative attitude of Government and non-Aboriginal Australians toward ACCOs reinforced.
• Systemic discrimination

4. Are human rights and the Victorian Charter useful?

Useful when:

• Acts as a protective mechanism.
• Can be utilised collaboratively.
• Can protect culture.
• Holds government accountable.
• Is easily available and accessible to the individual.
• Use to ‘shame’ government internationally.
• Transparent.
• When enforced.

Not useful when:

• Community isn’t aware of how it operates.
• Inaccessible.
• Left un-interpreted.
• Misunderstood.
• Sunset clause.
• Tokenistic.

5. How can self determination be achieved?

• Activism and advocacy.
• Awareness.
• Be carriers of our own message stick.
• Economic self-sufficiency.
• Education and empowering young people.
- Education at all levels in community.
- Have a Social Justice Commissioner.
- Holistic approaches.
- Identified parliamentary positions.
- Leadership.
- Listening to Elders.
- Release our own shackles.
- Treaty.
- When we don’t need permission to be self determined.

6) How do you want to be consulted about human rights, including the right to self determination and economic and social rights when the Charter will be reviewed in 2011?

- Collaboration not consultation.
- Community driven- bottom up.
- Culturally safe and comfortable environments for consultation.
- Government walking with Aboriginal people, not in front or behind, but beside us and each other.
- Involvement in developments from the start.
- Include Elders and youth- ‘youth our future’.
- Information sharing.
- Onus on government to work to community needs, not the other way around.
- Plain English information for everyone, especially Elders.
- True engagement at the local level.
- Work as a collective- government and community together with cultural sensitivity.

Participants reported their findings back to the broader group and the documented information above was shared and discussed.

**National Context**

In 2009, the Federal Government undertook consultations to assess whether Australia should adopt a National Human Rights Act. Unfortunately, despite recommendations in the National Human Rights Consultation Final Report, the Federal Government has decided not to implement an Act to protect and promote human rights.

The consultation process and final report have been criticised for not being inclusive of Aboriginal people and Aboriginal Community Controlled Organisations.
Professor Behrendt noted that the National Human Rights Consultation process in 2009 was deeply disappointing for Aboriginal people. The Report itself did not refer to or comply with the Declaration on the Rights of Indigenous Peoples (DRIP), offered no protection for specific rights nor any recommendations regarding constitutional change or a treaty. She stated that the narrow definition of ‘consultation’ adopted by the Committee was ‘consultation as self determination’, an approach which is inappropriate and far too confined.

The failure of Federal progress and developments in human rights make Victorian reform even more significant.

**Review of the Charter**

The Victorian Charter is due for review by the Attorney General in 2011, with a final report due in October 2011. The inclusion of a right to Aboriginal self determination is one of several aspects of the Charter to be analysed and reviewed. Accordingly, this is an important opportunity for Aboriginal Victorians and Aboriginal Community Controlled Organisations (ACCOs) to contribute their views about the current operation of the Charter.

**Consultations and reporting**

The Department of Justice is yet to publicly announce the process for the review.

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) will be conducting consultations and provide a report to the Attorney General with its findings and recommendations. For more information, see the Commission’s website at [www.veohrc.vic.gov.au](http://www.veohrc.vic.gov.au).

**The Way Forward - Next Steps**

The review of the Charter and consultation processes will be a valuable opportunity for all Aboriginal Victorians and Aboriginal Community Controlled Organisations to contribute their views, not only about self determination, but rights more broadly.

VCOSS will continue to work collaboratively with Aboriginal communities and Aboriginal Community Controlled Organisations to work toward improved human rights protection and equality for all Aboriginal Victorians, and the right to self determination being included in the Victorian Charter.
For more information, see the following sites:

- Information about the Charter, access to human rights reports and general equality and anti-discrimination information:

- Human rights commentary and cases

- Where to get advice and help
  - Public interest law clearing house (PILCH)
  - Federation of Community Legal Centres (FCLC): [www.fclc.org.au](http://www.fclc.org.au)

- National and international human rights bodies
Endnotes


ii Extract from Mokhiber, C, Declaration a historic document, out of a historic process, Panel Presentation, New York, 4 November 2006, available online at: http://www.ipcaucus.net/Mokhiber.html. For further information on the panel discussion see; http://www.ipcaucus.net/Panel_061026.html.

iii Article 1: The right to self determination for all peoples.

iv Article 1: The right to self determination for all peoples.


vii Professor Behrendt highlights the ‘recurrent themes’ in the recognition of sovereignty and the exercise of self determination (p.115-117):

Recognition of Past Injustices

- Changing national identity
- Reconciliation
- Preamble to the Constitution
- Treaty.

Autonomy and decision making

- decentralised government
- economic base
- recognition of customary law
- regional framework agreement.

Property rights and compensation

- recognition of land rights
- recognition of other property rights
- compensation
- Non-discrimination in dealings with land
- Allow development of culture and more modern uses
- Hunting and fishing
- Sea and river rights
• Right to negotiate
• Oral evidence

Protection of Cultural Practices and Customary laws
• Customary laws
• Institutional experimentation
• Heritage protection

Equal protection of rights
• Constitutional protection
• Bill of Rights.