ANTaR Victoria

Submission to the Review of the Victorian Charter of Human Rights and Responsibilities

1 July 2011

Contact: ANTaR Victoria
Ph: 94193613
Introduction

ANTaR Victoria welcomes the opportunity to make this submission to the Review of the Victorian Charter of Human Rights and Responsibilities. ANTaR Victoria’s vision is for a community that realises justice for Aboriginal and Torres Strait Islander peoples, values their diverse cultures and recognises their inherent rights to self-determination, land and heritage. ANTaR Victoria is a predominantly non-Indigenous organisation whose focus is on educating the non-Indigenous public about Indigenous rights, land justice and Reconciliation. We work in partnership with Indigenous communities to promote genuine understanding, trust, and respect between Victoria’s Indigenous and non-Indigenous communities.

The Review of the Victorian Charter of Human Rights and Responsibilities provides an historic opportunity to further protect and enhance the human rights of all Victorians, and in particular the rights and interests of Victorian Aboriginal peoples as first peoples and recognised traditional land owners. ANTaR Victoria believes that further human rights protection for Aboriginal peoples in Victoria will benefit all Victorians by creating a robust and positive human rights culture.

This submission focuses on the following terms of reference:

1. Whether the right to self-determination should be included in the Charter
2. Whether additional rights should be included as rights in the Charter

Summary of Recommendations

1. That the right to self-determination be included in the Charter, after further extensive consultation with the Victorian Aboriginal community.
2. That additional rights as outlined in both the DRIP and the ICESCR be included as human rights in the Victorian Charter

Benefits of the Victorian Charter of Human Rights and Responsibilities

The Victorian Charter of Human Rights and Responsibilities has become an important mechanism to ensure the protection of fundamental human rights in Victoria. According to the Victorian Equal Opportunity and Human Rights Commission’s (VEOHRC) *Talking rights: 2010 report on the operation of the Charter of Human Rights and Responsibilities*, the Charter provides a mechanism to prevent breaches of rights by taking human rights into consideration at the front end of the work of government. The Charter provides an opportunity for increased community consultation and partnership and cultural change through education and awareness through the broader community. VEOHRC’s 2010 report also states that continued implementation of the Charter requires commitment and leadership as its focus is on cultural change in Victoria’s public institutions and the Victorian community more broadly.
Human rights protection is particularly important for Aboriginal and Torres Strait Islander peoples in Victoria as a consequence of colonisation and a history of racially discriminatory and exclusionary government policies, which have created a lasting legacy of racism and discrimination (HREOC 2001). This has in turn led to ongoing suffering and disadvantage in opportunities in a range of social and economic processes. Aboriginal and Torres Strait Islander peoples in Australia have faced some of the worst human rights abuses from successive governments, a situation which continues into the present.

The inclusion of the right to self-determination

The right to self-determination has been described as the most fundamental of all human rights and in international law, the right to self-determination is enshrined in a number of United Nations instruments. Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (ICSECR) states that:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The United Nations High Human Rights Committee has described the right to self-determination as an 'essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights'.

The Declaration on the Rights of Indigenous Peoples (DRIP) states in articles 3, 4 & 5 states that:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 3)

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (Article 4)

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. (Article 5)

James Anaya, the UN Special Rapporteur of Indigenous Peoples, states that self-determination is not separate from other human rights, rather it is 'a configurative principle or framework linking human rights norms to the governing institutional order in both form and procedure. Anaya outlines five

---

elements that could be said to constitute the right to self-determination. These are non-discrimination, cultural identity, lands and natural resources, social welfare and development, and self-government.3


VEOHRC’s Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion, states that while the actual content of the right to self-determination is not easy to define, it includes “control over one’s future destiny... [and] depends on the aspirations of the individual or group involved.” Discussions with Aboriginal Victorians identify key themes inherent in the concept of self-determination and these include equality and non-discrimination, protection of cultural identity, land and resources, economic development and meaningful consultation and participation in decision-making. The reports states that Victoria’s Aboriginal peoples would overwhelmingly prefer to define self-determination themselves, rather than having the concept imposed on them:

*Only we can determine what self-determination means to us. That is the first step to self-determination.*

The consultation undertaken with the Victorian Aboriginal community detailed in the VEOHRC report Talking Rights: Consulting with Victoria’s Indigenous Community about the Right to Self-Determination (2011), found that the right to self-determination is important to Indigenous people in Victoria. In general, those consulted supported the inclusion of the right to self-determination in the Charter. The consultation also found that Victoria’s Indigenous people have diverse needs, goals and aspirations and that a definition of self-determination must allow for this diversity in its application. The Report recommends further engagement with the Indigenous community to develop the substance and the mechanisms for the inclusion of the right to self-determination.

**Recommendation- That the right to self-determination be included in the Charter, after further extensive consultation with the Victorian Aboriginal community.**

**The inclusion of additional human rights**

The articulation of Indigenous rights, giving specific voice to human rights as they relate to the world’s Indigenous peoples, is now enshrined in the United Declaration on the Rights of Indigenous Peoples (DRIP). This provides a comprehensive framework of standards with a strong focus on communal rights, that Indigenous peoples can use to articulate their claims. The DRIP contains a

---

3 ibid 129.

comprehensive catalogue of rights including the rights to self-determination, free, prior and informed consent, freedom from discrimination, the right to self-government in internal and local affairs, the right to practice and revitalize cultural traditions, the right to an improvement of social and economic conditions and an equal standard of health. Importantly, the DRIP sets out the right to traditional lands and compensation for land that has been taken.

The DRIP is primarily aspirational, it provides a framework to guide states in drafting legislation and developing policies relating to Indigenous peoples. The Federal Government’s recent decision to officially support the *UN Declaration of the Rights of Indigenous Peoples* is encouraging but not however, legally binding.

ANTaR Victoria believes that the following Indigenous-specific rights outlined in the DRIP, along with the right to self-determination, should be included in the Victorian Charter:

- **Articles 11-13**: The right to a distinct status and culture, which helps maintain and strengthen the identity, spiritual and cultural practices of Indigenous communities.
- **Articles 25-32**: Rights to maintain traditional connection to lands and territories which provides the spiritual and cultural basis of Indigenous communities. This includes rights to redress and compensation for lands that have been taken.
- **Articles 18-24**: Rights to participation development and other economic and social rights. These include rights to participate in decision making, rights to develop economic opportunities and special measures to address Indigenous disadvantage.

While cultural rights are currently included in section 19(2) of the Charter, Articles 11-13 of the DRIP contain a more comprehensive articulation of cultural rights including rights to practice and revitalize culture and the transmission of histories, and languages, and the protection of traditions, sites, ceremonial objects and repatriation of remains. ANTaR Victoria submits that section 19(2) of the current Charter be strengthened to encompass articles 11-13 of the DRIP.

It is important to note that the DRIP does not advocate special privileges for Indigenous peoples; it describes human rights as they apply to the specific circumstances of Indigenous peoples acknowledging the history of dispossession and ongoing violations of basic rights that Indigenous peoples continue to face around the globe.

The rights contained in the DRIP are consistent with International Human Rights Instruments such as *The UN Charter, the International Covenant on Civil and Political Rights* and *the International Covenant on Social, Economic and Cultural Rights (ICESCR)*. ANTaR Victoria submits that the following fundamental human
rights and freedoms should also be protected and included in the Victorian Charter:

- The right to an adequate standard of living, including adequate food, clothing and housing (ICESCR Article 11)
- The right the highest attainable standard of physical and mental health (ICESCR Article 12)
- The right to education (ICESCR Article 13)

Recommendation- That additional rights as outlined in both the DRIP and the ICESCR be included as human rights in the Victorian Charter.

Conclusion

ANTaR Victoria’s vision is for a community that realises justice for Aboriginal and Torres Strait Islander peoples, values their diverse cultures and recognises their inherent rights to self-determination, land and heritage. The Review of the Victorian Charter of Human Rights and Responsibilities provides an historic opportunity to further protect and enhance the human rights of all Victorians, and in particular the rights and interests of Victoria’s Aboriginal peoples as first peoples and recognised traditional land owners.

ANTaR Victoria believes that this recognition should be based on international human rights principles and instruments, which recognise the right of all peoples to self-determination, including Aboriginal self-determination.