



Victorian Equal Opportunity  
& Human Rights Commission

# Talking rights

> Consulting with Victoria's Indigenous community about the right to self-determination and the Charter





## Victorian Equal Opportunity & Human Rights Commission

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March 2011

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Printed on Impact.

Printed by Typo Corporate Services.

Cover image: Aunty Shirley Firebrace, Yorta Yorta Elder. Photograph by James Henry.

ISBN 978-0-9808061-8-2 (print)

ISBN 978-0-9808061-9-9 (online)

# Contents

The charter of human rights and responsibilities	2
The four-year review of the Charter	3
<b>Acknowledgements</b>	<b>4</b>
<b>Overview</b>	<b>5</b>
<b>Introduction</b>	<b>8</b>
About the Charter	8
About the project	9
Methodology	10
<b>Consultation findings</b>	<b>15</b>
Finding 1	15
The needs, goals and aspirations of Indigenous people are diverse, extend across many sectors and vary in priority	
Finding 2	19
The right to self-determination is important to Indigenous people in Victoria	
Finding 3	21
Providing a definition of self-determination for Indigenous people in Victoria must allow for individual perspectives in its application	
Finding 4	24
The Charter is not well known or applied in Victorian Indigenous communities and further engagement is required	
Finding 5	25
The consultation generally supported the inclusion of the right to self-determination in the Charter; where discussed, the UN Declaration on the Rights of Indigenous People was considered an appropriate benchmark for an Australian and Victorian human rights framework	
<b>Concluding comments</b>	<b>28</b>

# The Charter of Human Rights and Responsibilities

The Charter of Human Rights and Responsibilities (the Charter) outlines the basic human rights of all people in Victoria.

The law aims to build a fairer, more inclusive community.

The Charter affects the operation of the legislature, the executive (including public authorities), and the courts:

- A statement of compatibility with the Charter must be tabled with all Bills on their introduction to parliament that tells parliament whether they meet the standards set by the Charter.
- All legislation (including subordinate legislation) must be assessed for compatibility with human rights by the Scrutiny of Acts and Regulations Committee.
- Public authorities must act in accordance with human rights and give proper consideration to human rights in decision making.
- Courts and tribunals must interpret and apply legislation consistently with human rights and may have regard to international, regional and comparative domestic human rights law.
- The Supreme Court has the power to declare that a law is inconsistent with human rights but does not have the power to strike it down.

The Charter gives specific legal protection to 20 fundamental rights:

- recognition and equality before the law (including being entitled to protection from discrimination)

- right to life
- protection from torture and cruel, inhuman or degrading treatment
- freedom from forced work
- freedom of movement
- privacy and reputation
- freedom of thought, conscience, religion and belief
- freedom of expression
- peaceful assembly and freedom of association
- protection of families and children
- taking part in public life
- cultural rights (including recognition that human rights have a special importance for the Aboriginal people of Victoria)
- property rights
- right to liberty and security of person
- humane treatment when deprived of liberty
- children in the criminal process
- fair hearing
- rights in criminal proceedings
- the right to not be tried or punished more than once
- retrospective criminal laws.

In certain circumstances, rights may be limited. However, this must be necessary and reasonable and there must be clear reasons for the decision.

For more information about the Charter, visit the Commission's website: [humanrightscommission.vic.gov.au](http://humanrightscommission.vic.gov.au).

# The four-year review of the Charter

One important role of the Victorian Equal Opportunity and Human Rights Commission (the Commission) is to examine how the Charter – and the protection of human rights in Victoria more broadly – can be strengthened.

The Charter itself provides for ongoing reform, with section 44 requiring the Attorney-General to conduct a review of the first four-years of the Charter's operation and to table a report of the review in Parliament by 1 October 2011.

While the scope of the four-year review is broad, it is specifically required to examine whether additional human rights should be included in the Charter. The review must include (but is not limited to) economic, social and cultural rights, women's rights and the rights of children as they are set out in the United Nations (UN) conventions.

Indigenous self-determination is an issue identified in the Charter for further consideration.

This paper builds upon, and should be read in conjunction with, the occasional paper *Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion*<sup>1</sup> prepared by Larissa Behrendt and Alison Vivian for the 2009 Charter Report, available at [humanrightscommission.vic.gov.au/charterreport](http://humanrightscommission.vic.gov.au/charterreport).

# Acknowledgements

We would like to express our sincere thanks to the following people:

- The traditional owners of all locations where discussions were held
- All consultation participants for providing their personal experiences, professional expertise and their time in discussing such a challenging issue
- We would like to extend a special acknowledgment to the local Indigenous communities in Mildura, Melbourne, Dandenong, Bittern, Geelong, Heywood, Shepparton and Framlingham for participating in and assisting the organisation of local discussion groups.

Ingenuity – SED is an Aboriginal owned and operated consulting group. It provides high-quality leadership, development and project management skills to Aboriginal communities. Ingenuity is a centre of excellence within the SED Consulting Group. It was established to encourage and value the benefits of Indigenous people working together.

Ingenuity seeks to advance Aboriginal intelligence. It respects the knowledge that Aboriginal people hold about their own cultures and communities. It recognises the ways in which communities conduct their business. It facilitates the use of Aboriginal intelligence in the interests of Aboriginal communities.

Innovation, understanding and cultural inclusiveness are central to Ingenuity's business philosophy. Blending these core values with a unique combination of education, expertise and practical experience has positioned Ingenuity as one of Australia's leading consultancies in Aboriginal affairs.

Ingenuity consultants have worked with more than 200 Indigenous communities across Australia. In each case, Ingenuity has achieved culturally appropriate solutions for sustainable community development, both in Aboriginal Australia and within the broader communities in which we all live.

# Overview

The Commission engaged Ingenuity – SED Consulting to consult with Victoria’s Indigenous community about the right to self-determination, for inclusion in the Commission’s 2010 report on the operation of the Charter. This was prompted by the forthcoming four-year review of the Charter to be undertaken by the Attorney-General and tabled in the Parliament of Victoria in 2011, as required by section 44 of the Charter. The review will include an examination of whether the right to self-determination should be included in the Charter.<sup>2</sup>

Human rights are basic entitlements that belong to everyone, regardless of background, where someone lives, how they look or what they think or believe. Based on the values of freedom, equality, respect and dignity, human rights acknowledge the fundamental worth of each person. The enjoyment of human rights places responsibilities on governments and other public authorities to consider people’s rights when developing laws and policies, and delivering services.

Under the Charter, human rights must be considered whenever new legislation is being prepared and presented to the Parliament of Victoria. The Charter creates obligations for public bodies such as local councils and state government departments, requiring them to act in a way that is compatible with human rights and to consider human rights when making a decision. All Victorian legislation must be interpreted in a way that is compatible with human rights.

The consultation program conducted by Ingenuity – SED Consulting established three targeted engagement methods:

- open participation community forums
- invited targeted demographic focus groups of eight to 10 persons
- online or written submissions.

The community forums were held in three locations. In addition, eight focus group discussions targeted specific demographics, including men, women, young people, elders, traditional owners, regional and urban populations, and senior employees. The aim of the consultation methodology was to capture a sample of voices across the Victorian Indigenous demographic. The sample was not intended to be representative of the entire state; rather, it aimed to provide some perspective acknowledging the great diversity within the Indigenous population in Victoria. In total, 95 individuals were consulted.

In 2009, Jumbunna Indigenous House of Learning Professor Larissa Behrendt and colleague Alison Vivian were engaged by the Commission to prepare an occasional paper, *Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion*. The paper was written as a starting point in the conversation with Victorian Aboriginal people about whether to include self-determination in the Charter and was used to assist the consultation project.

The detail of the paper assisted in stimulating discussion, using the international jurisdictional examples of self-determination ‘in practice’, the highlighted existing definitions of self-determination and the four suggested options for inclusion of the right to self-determination in the Victorian Charter. The project’s line of inquiry was developed to capture individual voices of Victorian Indigenous peoples.

The consultation aimed to document the views of Indigenous Victorians on three broad topics:

- What does self-determination mean to you and is it important?
- Should the right to self-determination be included in the Charter and, if so,
- How might this be achieved?

The consultation outcomes were broad and diverse; each discussion provided many specific examples outlining the relevance of the key questions and the application of human rights to the lives and experiences of Indigenous people residing in Victoria. The discussions in community forums and focus groups were robust, prompting many questions by participants as topics, questions and collective responses were considered, deliberated and assessed.

The consultation findings are summarised under five key findings. These findings emerged as common and consistent threads or messages across the discussions and were raised in the majority of consultations:

- Finding 1: The needs, goals and aspirations of Indigenous people are diverse, extend across many sectors and vary in priority.
- Finding 2: The right to self-determination is important to Indigenous people in Victoria.
- Finding 3: Providing a definition of self-determination for Indigenous people in Victoria must allow for individual perspectives in its application.
- Finding 4: The Charter is not well known or applied in Victorian Indigenous communities and further engagement is required.

- Finding 5: The consultation generally supported the inclusion of the right to self-determination in the Charter; where discussed, the UN Declaration on the Rights of Indigenous People was considered a benchmark for an Australian and Victorian human rights framework.

These key findings are further explored and analysed throughout the report.

The consultation acknowledged the importance of the history of Victoria's Indigenous peoples, recognising that this history is unique and has had a significant impact on the situation in Indigenous communities today.

Although not all consultation participants were initially familiar with the discussion on the right to self-determination, across the consultation this right was considered important and relevant to Indigenous people in Victoria. It should also be noted that discussions were clear that this consultation process should not be considered as 'informed consent' on behalf of the Indigenous peoples of Victoria and that further engagement with Indigenous communities should be a priority in future discussions about the right to self-determination.

A strong theme emerging in discussing the needs and goals of Indigenous people was the need to recognise the inherent rights of Indigenous people, the acknowledgment of their history and their unique status as First Peoples. Common references were made to cultural rights and the ability of these rights to allow Indigenous people to live their lives as 'Indigenous persons'. In addition, although currently well documented across the sector, specific references were made to significant social, economic and political needs of Indigenous peoples.

The potential inclusion of the right to self-determination into the Victorian Charter was generally supported, although discussions were cautious about how it might be included and prioritised the need for further engagement and consideration in preparing for inclusion. Where discussed, the UN Declaration of the Rights of Indigenous Peoples was supported and considered a valuable benchmark in developing a number of potential options for inclusion in the Victorian Charter.

Importantly, this consultation engagement was only considered a 'first step'. The requirement for ongoing engagement and participation of Indigenous peoples in the self-determination discussion and in preparing the detail and further mechanisms for the inclusion of the right to self-determination in the Charter was considered to be a mandatory part of this process.

The establishment of an ongoing 'working' or 'reference' group to further progress some options for inclusion of the right to self-determination in the Charter should be considered, with opportunities for discussion with Indigenous Victorian regarding the detailed wording. The working group could seek broad representation across demographics and could include community representatives and individuals with relevant legal and human rights expertise. The participants of this consultation process were very clear that they were not attending the consultation as 'representatives' of their community; this must be considered in determining future actions.

In addition, it was considered that the inclusion of the right to self-determination in the Charter creates a responsibility for the Victorian Government to further engage with Indigenous communities 'post-potential inclusion', ensuring communities are well informed and allowing for localised enforcement, advocacy and practice of these rights by Indigenous peoples.

The four-year review should take into consideration the depth of conversation that has been undertaken in this consultation project, while recognising that the current absence of the discussion in some parts of the communities has created a 'gap' in the detail that was available when considering the inclusion of the right to self-determination in the Victorian Charter. The review should also acknowledge the level of importance given to the holistic references made to the practice of self-determination in communities and the relevance of the role that potential inclusion in the Charter may fulfil in Indigenous communities across Australia.

While some limitations of the project are noted, the findings presented in the report reflect a great breadth of participation and a high level of engagement. The responses captured inform the stated aims of the project with significant detail, including personal reflections and well-articulated directions forward in considering the right to self-determination and its potential inclusion into the Victorian Charter of Human Rights and Responsibilities.

# Introduction

The Victorian Equal Opportunity and Human Rights Commission (the Commission) engaged SED Consulting to consult with Victoria's Indigenous community about the right to self-determination, for inclusion in the Commission's 2010 Report on the operation of the Charter of Human Rights and Responsibilities. This was prompted by the forthcoming four-year review of the Charter to be undertaken by the Attorney-General and tabled in the Victorian Parliament in 2011, as required by section 44 of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). The review will include an examination of whether the right to self-determination should be included in the Charter (section 44(2)(b)).

Consistent with previous reports prepared by the Commission on the operation of the Charter (s41(a)), the Commission has adopted a focus on self-determination to inform the community prior to the four-year review.

Central to this report is the recognition that greater awareness and legitimate information about the day-to-day experiences of Indigenous people are needed. This is essential if any real conclusions are to be drawn about how the Indigenous community's realisation of rights is impacted by concerns about their connection to culture and ownership over their lives.

The consultation aimed to capture the views of Indigenous Victorians on three broad topics:

- What does self-determination mean to you and is it important?
- Should the right to self-determination be included in the Charter and, if so,
- How might this be achieved?

The Victorian Indigenous community is not a homogenous group with common experiences and views. The consultation process was designed to ensure that a range of different perspectives, reflective of the diversity that exists within this community, could be captured. The consultation process has been informed through the use of a number of different engagement tools that were able to stimulate a rich discussion and encourage individual participants to express their views and experience. These are discussed further below.

This report outlines the background to the project, the consultation process and the consultation findings. The report also highlights a number of key considerations to inform the four-year review of the Charter.

## About the Charter

Human rights are basic entitlements that belong to everyone, regardless of background, where someone lives, how they look or what they think or believe.

Based on the values of freedom, equality, respect and dignity, human rights acknowledge the fundamental worth of each person. The enjoyment of human rights places responsibilities on governments and

other public authorities to consider people's rights when developing laws and policies and delivering services.

Human rights are the cornerstone of strong, healthy communities where everyone can participate and be included.

The Victorian Parliament enacted the *Victorian Charter of Human Rights and Responsibilities Act* in 2006. The Charter contains 20 rights, which generally mirror the civil and political rights in the International Covenant on Civil and Political Rights. The Charter also contains a cultural right and provides that:

*Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—*

- (a) to enjoy their identity and culture; and*
- (b) to maintain and use their language; and*
- (c) to maintain their kinship ties; and*
- (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.<sup>3</sup>*

The preamble to the Charter includes a statement that:

*Human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.<sup>4</sup>*

Under the Charter, human rights must be considered whenever new legislation is being prepared and presented to Parliament. The Charter creates obligations for public bodies such as local councils and state government departments, requiring them to act in a way that is compatible with human rights and to consider human rights when making a decision. All legislation must be interpreted in a way that is compatible with human rights.

## About the project

In 2009, Jumbunna Indigenous House of Learning Professor Larissa Behrendt and colleague Alison Vivian were engaged by the Commission to prepare an occasional paper, *Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion*. The paper was written to assist the consultation project with Victoria's Indigenous peoples, the outcomes of which will inform the 2011 Charter review.

The paper provided valuable context to the conversation on the right to self-determination, presenting in detail the international law context, examples of international applications and interpretations of the right to self-determination (including the jurisdictions of the United States of America, Canada and New Zealand) and a timeline of significant events relevant to the rights of Indigenous people in Australia and Victoria. Feedback was also provided from preliminary consultations undertaken with the Victorian Indigenous community by Jumbunna. Finally, specific attention was given to the potential inclusion of the right to self-determination in the Victorian Charter, with four possible options suggested for inclusion.

In its introductory comments, the paper suggests there are two approaches to defining what self-determination means and how the inclusion of the right to self-determination in the Charter may impact upon Aboriginal peoples in Victoria:

- 1. The Charter is designed to be a living document that is interpreted according to contemporary and evolving international human rights standards and values. Therefore, it is important to understand how the right to self-determination has been interpreted in international law so as to gain an understanding of how it might be interpreted if included in the Charter.*
- 2. The second approach is to consider the Charter by asking "What are the aspirations of the Victorian Aboriginal community and how may the Charter be used to fulfil those aspirations?" While it is clear that Aboriginal communities are not the same and that people do not speak with a single voice, to provide a starting point for this conversation, a number of Aboriginal people have been asked about their aspirations and vision. It is hoped that their points of view may spark discussion during the broader community wide consultation process to be undertaken through 2010.<sup>5</sup>*

These two approaches formed the foundation of the consultation methodology, including the creation of a framework for discussion in community forums and focus groups, the selection of engagement methods and the development of engagement tools. These tools included a 15-minute summary DVD presentation provided by Professor Larissa Behrendt, which was utilised throughout the consultation process.

The project's line of enquiry was developed to capture individual voices of Victorian Indigenous peoples. The detail of the paper assisted to stimulate discussion utilising the international jurisdictional examples of self-determination 'in practice', the highlighted existing definitions of self-determination and the four suggested options for inclusion of the right to self-determination in the Charter.

## Methodology

### Consultation Process

The key objective of the project was to capture individual voices on the identified questions relating to the project aims. A consultation process was developed to:

1. provide information and knowledge on the given topics to stimulate discussion, conversation and debate
2. engage in consultation with specific questions seeking individual and collective responses relating to the project aims.

The consultation program established three targeted engagement methods;

- open participation community forums
- invited targeted demographic focus groups of eight to 10 persons
- online or written submissions.

The aim of the consultation methodology was to capture a sample of voices across the Victorian Indigenous demographic. The sample was not intended to be representative of the entire state; rather, it aimed to provide some perspective acknowledging the great diversity within the Indigenous population of Victoria.

### ***Community forums***

The community forums were undertaken as the first method of engagement. Sale, Melbourne and Mildura were selected as the three locations, with each forum planned for a half-day duration. The forums were promoted through the statewide Indigenous organisational and individual community networks. Promotion was undertaken by post, email, fax and phone.

Unfortunately, the community forums were not well attended. Feedback suggested that competing community demands, the conversation not being an immediate priority in people's working roles and the possibility that a community-led process would be undertaken at a later stage all contributed to low attendance. There were also a number of funerals in one community at the time the forum was scheduled. The low attendance at the forums resulted in recalibrating the approach for the subsequent focus groups, as described in 'Line of enquiry' below.

### ***Focus groups***

Focus groups were undertaken in regional and urban locations with careful consideration provided to select targeted demographics, rather than industry sectors or geographical representation. The focus groups selected were men, women, elders, young people, senior employees and traditional owners, and aimed to capture a balance of Indigenous people residing in suburban Melbourne and in regional areas. The groups were selected with the intention to capture a diverse range of individual views and identify possible commonalities or differences across demographic groups. In total, eight focus groups were undertaken and one individual interview.

Focus groups were of two to three hours duration and were undertaken in communities at times and locations determined by the participating group. Social research best practice suggests six to 12 participants as an ideal number that will allow for individual opinions to be captured in a short space in time.<sup>6</sup> All focus group participants were paid a gratuity for their participation, with feedback from participants suggesting that the payment was well received and appreciated.

### ***Online forum***

A website with functionality for online community forums was established to encourage online participation and allow for all individuals to have input into the process regardless of the presence of a forum or focus group in their community. The online forum was promoted through Indigenous organisations and community networks, as well as through the community forums and focus groups mentioned above. The website also provided a location to store documents and resources relevant to the conversation for individuals to access and download, and also invited online written submissions. There were nine registrations to the forum and one written submission was provided.

Attendance summary – focus groups	
Indigenous women	8 people
Indigenous traditional owners (young persons)	10 people
Indigenous elders	10 people
Indigenous men	8 people
Indigenous young people	1 person
Indigenous young people	6 people
Indigenous people residing in suburban Melbourne	12 people
Indigenous traditional owners	10 people
Indigenous senior employees	6 people
TOTAL	71 people
Attendance summary – community forums	
Mildura	15 people
Melbourne	9 people
Sale	Zero
TOTAL	24 people

## Line of enquiry

The line of enquiry was informed by the aims and objectives of the project. A ‘knowledge sharing’ approach was undertaken in the community forums to allow for informed conversation and debate. It was also anticipated that the outcomes of the community forums would inform the development of the focus group line of enquiry. The community forums discussion format was consistent with the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report and was generally presented as:

- Introducing self-determination with reference to international law and to definitions provided in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the

## Declaration on the Rights of Indigenous Peoples

- Providing international context regarding the practical application of self-determination in the United States of America, Canada and New Zealand
- Introducing the Charter, with a Commission representative presenting an overview of the rights protected by the Charter, the role of the Commission, the application of the Charter and the four-year review
- Providing a summary of ‘consultation quotes’ presented in the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report
- Further exploring the right to self-determination and the additional rights it potentially encompasses

- Outlining four potential options in which the right to self-determination may be included in the Charter. These options are presented in the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report and are provided as suggestions to prompt discussion. It was stated that the four options suggested were not the only options for consideration and that individuals may suggest further options, support a number of options collectively, incorporate a combination of many options or support none of the options.

A 15-minute DVD presentation of Professor Larissa Behrendt speaking about the occasional paper prepared for the 2009 Charter Report was shown in the forums. This presentation responded to the questions:

- Why is a Charter of Rights important?
- What are some potential benefits of including self-determination in the Victorian Charter?
- How could self-determination be included in the Charter?
- How could we define what self-determination actually means?
- How much power will this Charter actually have?
- How might the inclusion of self-determination into the Victorian Charter actually affect my life and my rights?

The Mildura community forum explored local needs and the relationship between these needs and right to self-determination. The consultation provided for an engaging and very informative discussion with a request by participants for further engagement at later stages in the consultation process and for additional community members to be involved.

The Melbourne forum received low attendance. While there were over 20 responses, only nine people attended

the forum, making it more suited to a focus group format. As such, a number of individual experiences were captured and direction provided as to future engagement opportunities.

In response to the community forum outcomes, the focus group format was modified and presented in three parts. Following an introduction of the project purpose and focus group objectives, these were:

1. An introductory discussion to set the local context responding to the questions:
  - What are your needs and what are your community's needs?
  - What are your goals and aspirations and those of your community?
  - Where would you like to see yourself and/or your community in five to 10 years?
2. The human rights framework from both Australian and international perspectives:
  - Existence and role of the Charter – this presentation was provided by the Commission representative as an informal brief summary supported with printed documentation. The upcoming review of the Charter was discussed in this presentation.
  - The relationship between the UN and Australian legislation – using a diagram summarising relevant international, national and state legislation and instruments protecting human rights. The UN Universal Declaration and the UN Rights of Indigenous Peoples Declaration were also provided in hard copy with a specific reference to the right to self-determination for Indigenous peoples. The definition of self-determination provided by the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report was also presented.

3. The final discussion was in a question and answer format, seeking individual Indigenous voices and considered views on:

- What does self-determination mean to the participants individually and for their families and communities? This was prompted by questions such as: “Do you think you are genuinely free to practise the right to self-determination?” “What is stopping you?” “Do you feel your rights are being protected?” “What does self-determination actually mean and how would you define it?”
- Would including this right in the Charter make a difference? – exploring the potential benefit to be gained by Indigenous communities if the right to self-determination was to be included in the Charter.
- Should the right to self-determination be included in the Charter?

The Behrendt and Vivian occasional paper prepared for the 2009 Charter Report was introduced to five of the eight focus groups. These groups watched Professor Larissa Behrendt’s DVD presentation and considered the suggested four options for inclusion of the right to self-determination into the Charter.<sup>7</sup>

The modified format for discussion was successful in engaging participants at all focus groups. No challenges in attendance or participation were identified and all feedback provided by participants considered the consultation to be a valuable process for individuals. The majority of consultations indicated a strong desire to continue the engagement process.

# Consultation findings

The consultation outcomes were broad and diverse. Each discussion provided many specific examples outlining the relevance of the key questions and the applications of discussed human rights to the participants' lives and experiences as Indigenous people residing in Victoria. The discussions in both community forums and focus groups were robust, prompting many questions by participants as topics, questions and collective responses were considered, deliberated and assessed.

Although the hours of discussions with participants (95 individuals in total) represented great diversity of individual opinions and views on needs and future directions, a number of key findings emerged as common threads or messages across the discussions. The majority of these common views are captured by the five key findings set out below. Consultation discussion outcomes are summarised under each of these headings.

The five key findings consistent throughout the majority of consultations are:

- Finding 1: The needs, goals and aspirations of Indigenous people are diverse, extend across many sectors and vary in priority.
- Finding 2: The right to self-determination is important to Indigenous people in Victoria.
- Finding 3: Providing a definition of self-determination for Indigenous people in Victoria must allow for individual perspectives in its application.
- Finding 4: The Charter is not well known or applied in Victorian Indigenous communities and further engagement is required.
- Finding 5: The consultation generally supported the inclusion of the right to self-determination in the Charter. Where discussed, the UN Declaration on the Rights of Indigenous People was considered a benchmark for an Australian and Victorian human rights framework.

It should be noted from the outset that, although the findings do suggest some future directions, the discussions were clear that *this process* should not be considered as 'informed consent' on behalf of Indigenous peoples of Victoria. Individuals were conscious of the importance of this issue and further opportunities for engagement in the discussion. However, these consultation findings are very informative to any future considerations for engagement with Indigenous Victorians.

## Finding 1

### **The needs, goals and aspirations of Indigenous people are diverse, extend across many sectors and vary in priority**

The majority of consultations commenced with an open discussion on defining the needs, goals and aspirations of Indigenous individuals and their communities. These discussions reflected the diversity of Victorian Indigenous communities and individuals.

*"There is 36 languages in Victoria and we all different; our issues are different, our culture values are different depending on where you live."<sup>3</sup>*

The needs of Indigenous people were presented as individual needs, community needs and collective Indigenous peoples' needs. In no order of priority, these were outlined as a need for:

### **Healing**

The need for healing was discussed in a number of consultations. The discussion acknowledged that there are many communities and individuals whose lives are still significantly impacted by the social injustices of the past, such as stolen generations policies, forced removal from lands, creation of mission stations and reserves, racism and – in many examples – social issues including family violence, substance abuse, blame, anger and challenges in personal identity. Within Victoria, there are limited services available to meet the healing needs of communities. Healing is commonly recognised as a journey in overcoming trauma, grief or loss and allowing for the individual to deal with the experiences that are negatively impacting on their lives today. A number of people spoke about the need for appropriate spaces and services to address broader trauma, grief and loss issues. Specific reference was also made to healing programs for children.

### **Services**

The need for quality services that meet the needs of Indigenous people and are considered culturally safe was considered of great need for all Indigenous peoples. This includes services to meet allied health needs, social support services, housing services, aged care support services, services in the justice sector, mental health services, youth specific services and employment services. Although there are a number of services on offer in communities, in many cases they are considered culturally inappropriate with little appreciation for the Indigenous context in which the above

social issues arise (this has been identified from the personal experiences of community members). A number of discussions went further to clarify that a culturally appropriate or cultural safe service should not result in a compromise on the quality of that service.

Finally, a further reference was made to 'access', making a clear statement that Indigenous people should have a genuine choice as to which services they would prefer to access, that Indigenous people are not mandated to access only Indigenous specific services and that there should be an availability of and genuine access to mainstream services as well.

*"The right to choose."*

### **Appropriate housing**

Access to housing was a very specific area of need that was raised on a number of occasions, with further reference to the need for access to affordable, safe and liveable accommodation, appropriate housing for large families and assistance for Indigenous people to find housing.

*"We need safe living environments for our mob."*

### **Economic**

Economic needs focused on the need to have financial security and the need to have an asset base in which future directions for self-determination can be pursued. There was a frustration with the lack of acknowledgement of how past injustices have impacted on the opportunity for wealth creation, including loss of land and wages both impacting on the ability to purchase housing and/or establish business enterprises. This was identified as a need to be addressed in the majority of discussions and was discussed in further detail with great emphasis on its importance in a small number of discussions.

## **Employment**

The need for 'real' jobs for Indigenous people was discussed, with a direct relationship identified between limited economic opportunities and social and health needs for Indigenous people. Specific reference was made to the need to increase the number of Indigenous people working in Indigenous organisations and the need for more traineeships in communities.

## **Education**

The need for education was discussed in many different contexts, including the need for more support in the retention of young people in schools, the need for more transitional programs from school to work and the need to provide relevant curricula for Indigenous people: for example, by ensuring referencing to Indigenous people is accurate and, where possible, has a local context.

Further discussion regarding education related to capturing the need to ensure the sharing of cultural knowledge and the need to pass on cultural knowledge to the next generation. Some specific examples were suggested, including an identified need for cultural exchange programs.

*"Need to erase the feeling of shame in our schools."*

## **Culture**

The role of culture was discussed as a defining element across all of the identified needs. Needs were commonly expressed as having to be met with consideration to 'my culture' as an Indigenous person and without a compromise of Indigenous identity. There were specific references to the need to strengthen cultural knowledge and cultural identity, and the need for further education and acceptance of the role of culture in contemporary Indigenous communities.

*"We need to teach strong cultural identity."*

*"Every Koori child to be comfortable and confident enough to be themselves."*

## **Strong families with dedicated support for elders and young people**

There was significant discussion in some communities promoting the need to create strong families. This was considered in the context that it would provide a support structure to overcome and address existing needs and also act as a preventative action to creating further disadvantage.

*"Our elders are not as active any more ... it's up to us now."*

## **Leadership and capacity building**

Some specific reference was made to the need for building capacity and to supporting the development of leadership both within communities and for individuals to establish their own personal goals and aspirations.

*"People need to step up, establish needs and goals first."*

The goals and aspirations discussed by participants were largely reflective of the needs presented above, including aspirations of appropriate housing, gaining employment and good health. Some specific references to the future were made, with visionary statements suggesting that future approaches should not just aim to meet deficit needs (that is, focusing on disadvantage), but should be strengths-based, focusing on the positive characteristics of a situation and setting targets over and above mainstream benchmarks.

*"Everyone needs direction."*

In one consultation a detailed one-on-one discussion was undertaken with a participant in a residential alcohol and drug rehabilitation program. The individual was under a safe custody order and had encountered a number of social issues and challenges throughout his life journey. When the participant was asked what he wanted in his future, his responses were common across consultations: financial independence, strong families and relationships.

Further goals and aspirations presented in the consultations included:

- genuine choice available for Indigenous people, such as choice in services available, choice of appropriate accommodation and a genuine choice in life circumstances
- access to good quality services
- opportunities for wealth generation and financial security
- good quality education that is relevant to Indigenous children
- elimination of racism
- longer life expectancy.

In addition to the goals and aspirations reflecting the immediate social and economic needs of individuals, the further desire for greater change was discussed with reference to the two points below:

- Acknowledgement of Indigenous Australians as First Peoples who have unique and inherent rights; this may be achieved by
- The creation of a National Treaty or Bill of Rights with specific reference to the inherent rights held by Indigenous peoples.

This issue was raised in the majority of discussions, although only a few discussions provided specific reference to the creation of a National Treaty or Charter or Bill of Rights. However, the majority of

discussions did make reference to the need and importance of acknowledging the unique status held by Indigenous peoples.

### **Conclusion**

The findings from this section of the consultation confirm four issues for consideration in defining self-determination:

- As the needs, goals and aspirations of Victoria's Indigenous people are diverse, a specific definition of self-determination may present a risk that some members of the community feel excluded by the definition. Therefore, any definition will need to ensure that the level of specificity is not exclusive.
- The findings presented above reflect that there is a potential need to consider the reference of further social, economic, cultural and political rights if defining self-determination in an instrument such as the Charter. The discussion suggests it may be difficult to practise genuine self-determination without reference to, and protection of, these further rights. The discussion also affirms that these rights (social, economic, cultural and political rights) are important and relevant to Indigenous people.
- Many Indigenous people are engaged on a daily basis in addressing the needs of Indigenous people working from a 'deficit' or 'needs-based' model. When dealing regularly with crisis situations, circumstances may limit aspiration goal-setting to merely meeting basic social needs and the protection of basic human rights such as those stated in the UN Universal Declaration of Human Rights.
- Further consideration and understanding is required of how the needs of Indigenous people (outlined above) are impacted by the current limited acknowledgment of the inherent rights of Indigenous people.

It is important to gain an understanding regarding the needs, goals and aspirations of Indigenous people in Victoria when defining and discussing the right to self-determination. A further question to consider is ‘how will the inclusion of this right in the Charter impact on these needs and goals?’ Any further discussions on this topic will need to consider how the right to self-determination could act as an enabler to fulfil individually defined future destinies; this may include the provision of practical examples.<sup>9</sup>

*“Moving from assimilation to having tools of empowerment. Decisions. Choices. Freedom from constraints.”*

## Finding 2

### The right to self-determination is important to Indigenous people in Victoria

In the majority of consultations, once the state, national and international human rights contexts were introduced by the consultants, discussion regarding human rights and the rights of Indigenous people was robust. Although the discussions did not collaboratively prioritise one area of rights over the other, cultural rights were always spoken of with a high level of importance from both a needs and aspirations perspective.

Cultural rights are currently included in the Charter at section 19(2), which states:

*Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—*

- (a) to enjoy their identity and culture; and*
- (b) to maintain and use their language; and*
- (c) to maintain their kinship ties; and*

- (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.<sup>10</sup>*

Throughout consultations, cultural rights were generally referred to as ‘the right to live life as an Indigenous person who is free to practise their culture’. Again, the ‘practice of culture’ can be broadly defined – and was referred to throughout consultations – as including:

- speaking Indigenous language
- freedom to teach cultural practices and educations to their children
- access to land for accommodation
- access to land to gain economic benefit and provide for their family
- access to culturally appropriate services
- living life without fear of racism
- participating in the decision making that impacts their life choices and life paths
- being represented in forums and having the opportunity for informed consent
- being recognised as the First Peoples of Australia and, as such, persons holding inherent rights.

The breach of cultural rights was discussed in depth with references to both a historical and contemporary context. Some examples include:

*“There is a community program operated by a women’s elders group. The program was operated based on cultural practices and principles, although once the program was able to secure funding to support the delivery of the programs, many restrictions and processes were imposed, compromising the right to practise the cultural practices.”*

An example was provided by elders in one community who spoke of aged care packages and access to this program by individuals. The example outlined that individuals are not able to choose through which organisation benefits from the packages are distributed. People sought for these benefits to be provided through an Indigenous organisation, which would extract less administrative costs. Currently, the mainstream organisation charges significant costs that largely impact on the amount available to the client.

A further example was also presented as 'cultural rights breached'. In the recent development of native title legislation, some participants in the consultation process spoke of their concerns in not being engaged or consulted or considered in the development of legislation that impacted their cultural rights as Indigenous peoples in Victoria.

*"It's hard to express [ourselves] culturally as society doesn't allow for this. For example if people want to live on the riverbank we couldn't, we couldn't hunt, we couldn't wear traditional attire."*

In addition to the connection and stated importance of cultural rights, further political, social and economic rights were also discussed and linked with the right to self-determination. The human rights discussion was considered important to participants; however, the success of legislation and other instruments protecting these rights was brought into question. The Northern Territory Emergency Response and the changes to the Commonwealth *Racial Discrimination Act 1975* were occasionally referred to as specific examples of the limitations of legislation.

The importance of the right to self-determination was highlighted throughout the discussion on cultural rights. The

discussion on cultural rights captures the relevance of why self-determination is uniquely different for Indigenous peoples. It also highlights the limitations on the current references to cultural rights in the Charter. The recognition of self-determination should protect the right for Indigenous people to live their chosen life as an 'Indigenous person'. The discussion above on cultural rights captures specific examples of what this may include.

In defining the right to self-determination, not only must a clear and broader definition of cultural rights be further explored, but also a further acknowledgement must be made of the unique and inherent rights that Indigenous peoples hold as First Peoples (further to what already is stated in the Charter preamble). The advocacy and promotion of the right to self-determination for Indigenous people must be grounded in such a statement.

*"The right to live my life as an Indigenous person ... how I choose."*

*"The right to practise my culture and pass on my cultural knowledge and ways."*

### **Conclusion**

The right to self-determination was considered relevant and important as it is a fundamental principle that provides the opportunity for the further acknowledgment of the status of Indigenous people and the unique rights and status they hold.

The participants in the focus group discussions rigorously discussed the needs of individuals and communities; many participants were engaged in community roles supporting or advocating for these needs. When introducing a discussion on the right to self-determination, the conversation would often raise the question 'what would this achieve? (in relation to our needs)', with the discussion then referring to

additional social, economic, environmental, cultural and political rights that would need to be protected and advocated for to allow for the right to self-determination to be realised. Self-determination could provide a foundation or platform in which these rights are protected and pursued.

Self-determination was considered important from the aspect that it could:

- allow for the further protection of human rights
- recognise and allow for the acknowledgment of the unique and inherent rights of Indigenous people
- provide a foundation in which existing rights and potential further social, political, economic and cultural rights can be advocated and protected.

In other words, it would be complementary to existing rights (and potentially future rights) within the Charter, and may also strengthen the relevance and application of these rights for Indigenous peoples.

### Finding 3

#### **Providing a definition of self-determination for Indigenous people in Victoria must allow for individual perspectives in its application**

The discussion regarding the definition of self-determination was generally an evolving one that was stimulated with reference to existing definitions of the right to self-determination. A number of participants were able to provide an immediate definition; further definitions and interpretations were provided throughout the conversation. Three common references to self-determination were provided to participants:

1. International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Article 1, which states:

*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. The States Parties to the present Covenant ... shall promote the realisation of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

2. Declaration on the Rights of Indigenous Peoples, where Articles 3, 4 and 5 state:

*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.*

*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.*

*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.*

3. Behrendt and Vivian occasional paper prepared for the 2009 Charter Report:

*It should be recognised from the outset that the concept of self-determination is not an easy one to define. While it generally may be agreed that it rests on a foundation of control of one's future destiny – whether as an individual or as a community – what that precisely involves depends upon the aspirations of the individual or group involved, making it difficult to pin down.*<sup>11</sup>

Where conversations focused on 'needs' or 'goals', the discussion was often centred on individual perspectives and circumstances, making specific reference to social and economic needs. This conversation commonly translated to a 'whole of community' need or 'whole of Indigenous peoples' need, with collective references commonly made when discussing cultural or political rights and the need for acknowledgement of inherent rights or the unique status held by Indigenous peoples.

In discussions relating to the definition of self-determination, commonly people would engage with the definition 'control over one's future destiny' (as outlined in the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report). As such, the conversation would suggest that self-determination is up to the individual to define, implying that 'future destiny' may reflect the diversity of the social and economic needs discussed above – that is, self-determination is an individual journey. In a small number of conversations a collective approach to self-determination was discussed with reference to 'what we need as Indigenous peoples'. In these cases, reference was

again made to cultural and political rights and to inherent rights as Indigenous peoples: for example, the right to participate in decision making, the right to free and informed consent, and the right to access traditional lands. A small number of discussions further explored the relationship between such collective rights and their ability to impact individual goals and needs.

*"Self-determination is what each of us makes it as individual people. Because we all have a different view on the meaning."*

Some discussions spoke of specific rights that need to be acknowledged or protected in the self-determination context; others spoke of rights as 'enablers' to achieving 'their own destinies'.

*"Education for our young people is our future."*

Acknowledging that there are barriers to self-determination, some considered the individual to be the key to overcoming these barriers and achieving self-determination:

*Facilitator question: "Can we really have anything/everything?"*

*"Can't see why not? I don't see why not if you want it."*

*Facilitator question: "What's holding people back?"*

*"The individual is holding themselves back."*

Although the individual must have the will and desire to achieve his or her future aspirations in a self-determining context, it was acknowledged in the majority of discussions that there are many political, social, economic and environmental factors impacting on the achievement of self-determination. These environmental, historic and social circumstances, often external to the individual, limit the individual's ability to genuinely practise his or her right to self-determination and choose the 'determined path'.

*"I think you need that push to go out there, and you need someone telling you can do this. Even if it's not your own parents ... just someone to give you that confidence and that boost."*

In a number of consultations, specific definitions provided by participants on 'what self-determination means' recognised the history of Indigenous people in Australia. History is an important part of Indigenous culture and is a further important element in defining self-determination that reflects the unique characteristics of Indigenous people. This is represented in the comments made by consultation participants set out below.

*"Self-determination. Recognising our past as our past, but never forget it ... acceptance not denial of the struggle we've all endured. Believe that our culture is still alive and not forgotten."*

*"Self-determination is about continuing our ancestors' struggle to control our own DESTINY/FUTURE."*

*"Living in the Grey World! Learning to blend between both worlds, never forgetting grassroots."*

## **Conclusion**

Consultation participants easily engaged with the broad statement that self-determination referred to 'the ability to have control over one's destiny' as Indigenous peoples (as provided in the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report). The majority of participants were in general acceptance that this is broadly what self-determination means. Further discussion recognised the relevance of the detail that is outlined in the UN Declaration of Rights of Indigenous Peoples, which recognises self-determination in a broad context, and similarly in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

What is not included in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (international covenants regarding self-determination) are a recognition of unique characteristics that self-determination may hold for Indigenous people: for example, 'to live life as an Indigenous person'. Although the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights acknowledge all persons, the specific reference made by the UN Declaration of Rights for Indigenous Peoples to 'Indigenous People' makes some acknowledgment that there may be unique barriers, enablers or aspects of self-determination relevant only to Indigenous persons.

Furthermore, the strong reference in the consultation to the history (or 'the past') for Indigenous Victorians may suggest that a specific reference to acknowledge the impact of historical events is required. This is captured in detail in the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report, reflecting the importance of considering history when discussing the rights of Indigenous persons.

This may be achieved by extending the current preamble of the Charter or within the detail (or context) regarding the right to self-determination.

## Finding 4

### **The Charter is not well known or applied in Victorian Indigenous communities and further engagement is required**

The Charter was introduced in the human rights framework discussion presenting relevant international, national and state instruments and human rights legislation. Within the focus groups there was significant engagement and interest, although a varied knowledge base of the existing instruments and legislation protecting human rights, including:

- the role of the UN
- the UN Declaration of Rights of Indigenous Peoples
- somewhat lesser discussion on the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights
- international treaties – in particular, Canadian and New Zealand treaties with Indigenous peoples.

In an Australian context, there were many questions and queries comparing the Australian human rights framework with other jurisdictions, including specific questions regarding the absence of a National Charter, Bill of Rights or Treaty. There was a lot of interest in the Victorian Charter, although limited knowledge on the existence or application of the Charter. The discussions regarding the existence of human rights, the role of human rights in our communities and the enforcement of rights were robust. In almost all cases, participants wanted additional discussion time to further explore what existed, what did not exist

and how this may impact communities in practical terms.

Although initial knowledge of the Charter was limited, the application of the Charter in Victorian Indigenous communities was generally accepted as an affirmative legislation around which further engagement with Indigenous communities should take place. It should be noted here that there was some scepticism on the application and effectiveness of this legislation to progress Indigenous rights; this is discussed in further detail below.

### **Conclusion**

The protection of human rights is significant to all citizens, particularly identified groups within the community who have lower socio-economic status, greater needs and therefore generally greater vulnerability. The limited existing knowledge of the Charter within Indigenous communities suggests that further engagement with these communities should be considered an important priority in future directions.

Indigenous people are their own strongest advocates: an awareness of the role of the Charter, the application of the Charter and the role of the Commission is important is ensuring the Charter is engaged with and utilised.

The further discussion outlined throughout the report makes reference to the relevance of the Charter for Indigenous people; although the rights outlined are relevant to all people and there is currently specific reference to Indigenous people, the findings suggest improvements could be made to ensure further relevance to Indigenous people.

## Finding 5

### **The consultation generally supported the inclusion of the right to self-determination in the Charter; where discussed, the UN Declaration on the Rights of Indigenous People was considered an appropriate benchmark for an Australian and Victorian human rights framework**

The consultation discussions were clear that this process should not be considered as ‘informed consent’ on behalf of Indigenous peoples of Victoria. Individuals were conscious of the importance of this issue and wanted to identify further opportunities for engagement in the discussion.

In acknowledging the above, the consultations were supportive in principle of including the right to self-determination in the Charter, emphasising that self-determination is considered a relevant right, an important right and a right that needs further attention and discussion in Victoria. Further, there was significant feedback regarding the absence of this discussion in Indigenous communities in recent times – in particular, the engagement of Indigenous youth in these discussions. In all cases, the discussion regarding the right to self-determination was welcomed.

In some cases, this consultation process was the first discussion individuals had undertaken regarding the right to self-determination; even in these cases, the support for the importance and relevance of self-determination was still clear. It should also be noted that in a number of discussions, individuals were only just becoming more familiar with the term ‘self-determination’ and the definition of the term. Importantly, this did not reflect a lack of understanding of the underlying principles, but an absence of the discussion in participants’ immediate networks.

The inclusion of the right to self-determination was often considered a positive opportunity to further stimulate discussion and debate on ‘what it means to individuals’, ‘what it means to communities’, ‘how does this right relate to our current work’ and ‘how can we work towards achieving self-determination’.

A number of discussions were held in regards to the UN Declaration of Rights for Indigenous Peoples (this was generally prompted by the facilitator introducing the Declaration, but not in all cases), with specific mention of the longstanding efforts put into the development of the Declaration and its limited application in the Australian setting. The Declaration was universally supported as relevant and important in all consultations. Suggestions were provided that as Australia is already a signatory to the Declaration, this ‘must’ serve as the minimum benchmark for inclusion in any Australian human rights legislation. Concern over the enforceability of international instruments was discussed; in this context, the Charter was seen as an opportunity to demonstrate the relevance and enforceability of these rights.

The debate and uncertainty in discussions referred to ‘how’ this right should be included in the Charter, what level of detail should be provided and whether this right should be accompanied with further rights. A further concern was expressed about how effective the application of this right would be if a ‘general’ or ‘tokenistic’ mention were inserted into the Charter. A tokenistic mention may not reflect the detail required in the definition of the right to self-determination (as noted above) or may make no specific reference to Indigenous people. It should be noted that this discussion did not reflect an objection to the inclusion of self-determination, but more a concern for *how* this might be undertaken and *what* it might achieve (and therefore the future process in which this may be determined).

*“This is a goodwill gesture ... there needs to be something included – a list of things which contribute to self-determination.”*

*“Make the reference as broad as possible to encompass community diversity.”*

Four suggested options for inclusion of the right to self-determination are outlined in the Behrendt and Vivian occasional paper prepared for the 2009 Charter Report:

**Option 1:** To have the right to self-determination specifically protected in the Charter. For example: ‘The right to self-determination held by the Aboriginal peoples of Victoria is hereby recognised and affirmed.’

**Option 2:** To have several rights added to the Charter that would assist Aboriginal people in Victoria exercise the right to self-determination. For example: ‘The right to education, the right to adequate housing, a duty to consult and the right to free and informed consent when rights of Indigenous people have been adversely affected.’

**Option 3:** To have a preamble to the Charter that places self-determination as a key principle against which the rights within the Charter need to be interpreted. For example, by including the words: ‘human rights, including the right to self-determination, have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.’

**Option 4:** To have a mechanism that supports the enforcement of rights in the Charter that are central to self-determination. For example, creation of a Social Justice Commissioner role aimed at supporting the intention of the Charter to protect the rights of Aboriginal people.

Not all of these options were discussed in each consultation. In some discussions, time did not allow for the in-depth options discussion and where individuals were presented with the options for the first time, participants expressed a desire to further discuss the options with the broader community. Consequently, the consultation did not present a unanimous decision regarding any of the above four options. General observations that were commonly presented were:

*“None of the options are relevant if we don’t have option 4.”*

*“Why can’t we have all four options?”*

Further concern regarding the limited time to consider the topic was expressed by participants seeking further opportunities for engagement, suggesting this should be an ongoing discussion:

*“There is not enough time to discuss this in detail.”*

*“It’s not enough time to discuss in this small period of time. There hasn’t really been a lot of dedicated space [in our everyday conversations/workplace] to discuss this.”*

*“This is an important issue, we should be discussing this every day.”*

Throughout the consultations, significant emphasis was placed on the importance for mechanisms of enforcement of the rights within the Charter. In this context, some reference was made to the creation of a Social Justice Commissioner role, as suggested in option 4. Although this was discussed in only a small number of consultations, the emphasis was placed on the establishment of a ‘mechanism’ for enforcement and engagement, rather than the specific role itself.

The genuine enforcement and application of the right to self-determination will come from Indigenous peoples; this will need to be stimulated through further engagement and promotion of the Charter and the potential inclusion of the new right(s). In becoming aware of the acknowledgment by the Government of Victoria of the right to self-determination, additional localised discussions may take place allowing the further definition of individual engagement in self-determination and the practice and empowerment of this right within Indigenous families and communities. In this context, the Charter will be taking a leadership role. Indigenous people must be engaged in this process.

*“Having continual ongoing consultation or discussion [is important] as people’s views change. It needs the ability to evolve as the younger generation grow and move into a working role.”*

*“One of the mechanisms should be to monitor quality, improvement and continuity.”*

### **Conclusion**

The inclusion of the right to self-determination within the Charter did not receive objection. How the right may be included, the risk of a tokenistic statement and the concern regarding informed consent on the presented options for inclusion were identified as genuine concerns. A significant amount of the consultation conversation was engaged in identifying needs and goals, defining self-determination, examining the relevance of human rights instruments in Victoria and understanding the role of the Charter. The request for further engagement to consider the inclusion in the Charter was common.

The risk of including the right to self-determination for Indigenous peoples without further engagement is that the reference is not relevant or is considered tokenistic and therefore any later

engagement or application will be minimal. In some discussions, the UN Declaration on the Rights of Indigenous Peoples was suggested as a minimum benchmark. In all discussions where the Declaration was considered, there was universal support and a genuine respect for the Declaration and the process undertaken to create it.

The requirement for further engagement should be given serious consideration. This may be achieved through further public forums and communications on the progress of the inclusion of self-determination in the Charter and the potential for further expansion of rights in the Charter. Engagement with the Indigenous community may be undertaken in partnership with community organisations already involved in such conversations.

The establishment of an ongoing working or reference group to further progress some options for inclusion of the right to self-determination in the Charter, with opportunities for discussion with Indigenous Victorians regarding the detailed and relevant wording, should be considered. The working group could seek broad representation across demographics and could include community representatives and individuals with relevant legal and human rights expertise. The participants of this consultation process were very clear that they were not attending the consultation as representatives of their community; this must be considered in determining future actions.

*“Who is going to speak on behalf of us?”*

*“How do we capture the different views of different communities?”*

*“Traditional owners have an important role in the consultation process. They must be consulted as a priority. Up to 80 per cent of consultations should be with traditional owners.”*

# Concluding comments

The four-year review of Victoria's Charter of Human Rights and Responsibilities should take into consideration the depth of conversation that has been undertaken in this consultation project, noting that the current absence of discussion in some parts of the communities has created a gap in the detail available for discussion when considering the inclusion of the right to self-determination in the Charter. The consultation was limited in its capacity to undertake both preliminary introductory discussions and detailed discussions regarding the needs and goals of Indigenous peoples, understanding the human rights framework, defining self-determination and the potential inclusion of the right to self-determination into the Charter (including potential options for inclusion). A more detailed discussion around possible options was also impacted by the greater than anticipated preliminary and introductory discussions required.

The review should also acknowledge the level of importance given to the holistic references made to the practice of self-determination in Indigenous communities and the relevance of the role that the potential inclusion of the right to self-determination in the Charter may fulfil in Indigenous communities across Australia.

The diversity of Indigenous people in Victoria is often discussed as a challenge; this need not be the case. The richness of knowledge, experience and commitment captured in this consultation process highlights a great strength of the Victorian Indigenous population. This strength should be considered in the development of any further engagement opportunities. Further engagement with the community has been identified consistently in the consultations and should be considered as a priority in future directions.

While some limitations are noted, the findings presented in this report reflect a great breadth of participation and a high level of engagement with human rights and the right to self-determination. The responses captured inform the stated aims of the project with significant detail, including personal reflections and well articulated directions forward in considering the right to self-determination and its potential inclusion in the Charter.

## Endnotes

1. Larissa Behrendt and Alison Vivian, *Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion*, The Victorian Equal Opportunity and Human Rights Commission, Melbourne, 2010, 4.
2. *The Charter of Human Rights and Responsibilities Act 2006* (Vic) s 44(2)(b).
3. The Charter of Human Rights and Responsibilities Act 2006, s 19(2).
4. Ibid, preamble.
5. Behrendt and Vivian, *Indigenous self-determination and the Charter of Human Rights and Responsibilities*, 4.
6. See for example, Groups Plus, *FAQs about Focus Groups* (2008) [www.groupsplus.com/pages/faq.htm#6](http://www.groupsplus.com/pages/faq.htm#6).
7. This discussion was not suitable for all focus groups. Where it did occur, limited time was available for discussion as it took place (in most cases) at the end of the consultation.
8. Quoted text in italics indicates actual answers gathered from participants in the focus groups and community forums.
9. A number of international examples for consideration are provided by Behrendt and Vivian, *Indigenous self-determination and the Charter of Human Rights and Responsibilities*, 9-11.
10. *The Charter of Human Rights and Responsibilities Act 2006* (Vic), s 19(2).
11. Behrendt and Vivian, *Indigenous self-determination and the Charter of Human Rights and Responsibilities*, 4.



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