



Victorian Aboriginal Child Care Agency Co-Op. Ltd
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VACCA Submission to Australian Human Rights Consultation Committee

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Introductory Remarks and Fundamental Understandings

The Victorian Aboriginal Child Care Agency (VACCA) welcomes the opportunity to make this submission to the Australian Human Rights Consultation Committee. As an Aboriginal¹ community controlled child and family services agency, we believe that the creation of domestic human rights instruments and development of a human rights policy perspective are necessary to ensure the rights and future of Aboriginal peoples and children. The Federal Government's recent decision to give its assent to the UN Declaration of the Rights of Indigenous Peoples gives us much encouragement but we are yet to see its direct implementation in the life of Australia's body politic. At VACCA much of our work is involved in overcoming centuries of governmental and dominant culture abuse and neglect of Aboriginal children, their families and communities. The Stolen Generations tragedy highlights the need for effective human rights protection. If the rights of Aboriginal children and communities had been recognised and respected it is likely that our communities would have had greater forms of legal protection and redress in the face of the on-going process of colonisation and racial discrimination and far better wellbeing and health outcomes.

In this submission, we outline the critical contextual issues, the matters of principle involved and make our recommendations as to the form of human rights protection we would like the government to adopt.

We believe that critical for any Australian Human Rights Charter is

- a) the recognition of Aboriginal peoples as the First Peoples of Australia and consequently that there are inherent rights which arise from this recognition, and
- b) the recognition of international human rights principles and instruments which are based on the recognition of the right of all people and all peoples to self-determination and therefore that due regard must be paid to the various forms of Aboriginal self-determination.

As a result of over 200 years of colonisation, the Aboriginal communities of Australia have been subject to a series of culturally inappropriate impositions and policy arrangements. These impositions have denied the reality of Aboriginal communities, ignored their laws and customs and, ultimately, failed to recognise these communities as sovereign political and legal entities. At Federation no Aboriginal person was consulted or involved, no recognition was given to Aboriginal sovereignty or governance. The myth of *terra nullius* prevailed. The constitution's only mention of Aboriginal people specifically excluded them from being counted as citizens and one of

¹ The word 'Aboriginal;' is used throughout this document to include all people in Victoria of Aboriginal and/or Torres Strait Islander descent.

the early acts of Federal Parliament in 1902 denied Aboriginal people voting rights.² Aboriginal communities have suffered from policies of 'protection', assimilation and integration.

While there have been changes in the recognition of rights for Aboriginal persons, particularly as a result of the 1967 Referendum, these rights have primarily focused on the rights of Aboriginal persons as individuals and not on Aboriginal peoples as self-determining communities. Therefore, even today, the practice of Aboriginal affairs by governments in Australia has been determined by non-Aboriginal forms of governance. Whereas other colonised countries have been prepared to accept a limited Aboriginal order of governance within their broader governmental framework, the debate in Australia has been confined to improving the prevailing government-directed, welfare-based/community service model. This model emphasises the provision of services to Aboriginal peoples by defining them as a category of disadvantaged Australians. Particularly as a result of the dismantling of ATSIC, itself a non-Aboriginal model of governance, funding to Aboriginal communities is at the discretion and direction of Commonwealth, State and Territory governments and agencies. We believe that any human rights framework must regard Aboriginal communities as self-determining peoples and not merely as 'client-groups'.

Decades of racially-based Aboriginal child removal occurred within a framework where Aboriginal sovereign and self-determining rights were denied and the assimilation policies of state/territory and Federal Governments were prominent. These Government policies sought to determine the future of Aboriginal and Islander communities rather than allow Aboriginal and Islander communities determine their own futures. In response to the trauma and injustice caused by the Stolen Generations policies it is important to today recognise Aboriginal communities' self-determining role in relation to their children. Aboriginal leaders have continually sought the restoration of this right in their on-going struggle for recognition and rights.

The issue of Aboriginal children's rights was prominent in the demands of the first Aboriginal political organisations in the nineteen-twenties. In 1927 the New South Wales based Australian Aboriginal Progressive Association sent the Premier a petition which called on the Government to, "... restore to us that share of our country of which we should never have been deprived", and requested that, " the family life of the Aboriginal people shall be held sacred and free from invasion and that the children shall be left in the control of their parents." In 1938, Bill Ferguson and J. T. Patten signed a declaration calling for the abolition of the Aboriginal Protection Board and the "repeal of all existing legislation dealing with Aborigines". Amongst other reasons for this call, they

² William Deane, Opening Address at the *Indigenous Governance Conference*, April 2002, Canberra, p. 3, available at www.reconciliation.org.au. The original intention of the bill as introduced was to confer voting rights but the bill was amended to exclude rather than include Indigenous persons.

mentioned the Boards' powers to apprentice children and to "assume full control and custody of the child of any Aborigine".³

When VACCA was formed by the late Auntie Molly Dyer in 1977 as the first Aboriginal community-controlled child welfare agency in Australia, self-determination was the critical organisational principle. It is with this historical background in mind that we believe that a human rights framework that recognises not only the rights of individuals but the self-determining rights of Aboriginal peoples is essential for Aboriginal communities today.

It is just over a year since many of us witnessed the First Welcome to Country to open Federal Parliament and the long awaited National Apology to the Stolen Generations. We have policy commitments from Federal and State Governments to 'Close the Gap' between the First Peoples of the land and rest of the nation. But while there is a welcome focus on addressing the statistical disadvantage gap between Aboriginal and non-indigenous peoples in Australia, there is much to be done when it comes to closing the gap between us **as peoples**.

That is, the gap in our understandings and our relationships. The gap in our differing accounts of the world and of each other. From our perspective as Aboriginal peoples we tend to see everything from the framework of our stories and our relationships. It is not just our stories concerning the creator spirits and the establishment of traditional law/lore but our stories of resistance which define our world along with our relationships to family, kith and kin, and the land.

So for us to talk about human rights we need to talk about how they help us close the gap in our stories and our relationships. We can do this through mutual respect.

So we want to begin by recognizing and paying respect to the non-indigenous story. The human rights movement is a key Western story which has the potential to create a meeting place between our peoples. The election of President Obama reminds us of the ironies in the Western narrative of the evolution of the human rights tradition. After all, as an African American, he now lives in a symbol of that Western human rights tradition – the White House – which was built by slaves. So we have the hope of human rights which the White House is supposed to embody with the reality of its construction as a product of slavery.

More recently, human rights was a response to the terrors of Nazism, particularly the genocide of the Holocaust. Very few people protested about the treatment of the Jews prior to the Second World War – the only protest in Australia that we are aware of was

³ As quoted by Muriel Cadd, "From Assimilation to Self-determination: issues and priorities for Aboriginal and Torres Strait Islander Children," *Just policy, sound research & joint action: selected papers from the 2000 ACOSS Congress*, ACOSS Paper 111, 2001, p. 85.

the one made by our people when William Cooper led a delegation from the Australian Aborigines League to protest outside the German Consulate in Melbourne. They were driven by the knowledge that what happened to them and their people was now happening to another people and recognized the importance of solidarity between oppressed peoples.

So the human rights story is not a dry story of law books and diplomatic memos and resolutions – it comes from a lived experience of what happens when individuals and minority groups' rights are ignored.

There are dire consequences when the state and the whims of the majority are seen as absolutes. Central to that story is the realization of the notion of self-determination for all people and *all peoples*.

So we see the story of human rights as basically about creating a platform for how we relate to each other as individuals and as peoples. Human rights is a basis for respectful relationships and a protection against inhumanity.

As we consider a Bill or Charter of Rights for the nation it is important to realize that human rights are about principles not ideology. When we don't have all the evidence about how to proceed we need to establish fair principles to guide our policies and actions. Human rights are therefore a meeting place between the narratives of Western culture and Indigenous cultural narratives. Human rights are based on the principle of freedom and self-determination. Recognition of rights can therefore assist in creating the ground rules for cross-cultural engagement.

Human rights can also be a foundation for addressing disadvantage – through freedom and empowerment not paternalism. It therefore forms a basis for responsible action.

In relation to our situation today in Australia – a human rights framework, enabled by a National Charter of Rights would help us all in the development of a more appropriate social contract between our peoples.

Human Rights Framework

Key issues

Australia is the only liberal democracy in the world that does not have a Human Rights Act. This means that there is no clear or comprehensive legal framework for appealing against breaches of human rights in Australia. While Australia has endorsed the Universal Declaration of Human Rights (UDHR), Australian governments have chosen on numerous occasions to behave in a way that contravenes the Declaration and other human rights treaties signed by Australia.

In particular, Aboriginal and Torres Strait Islander peoples have suffered from the lack of clarity and enforcement of internationally recognised human rights.

Some examples include

- The forced removal of children from their families (the Stolen Generations) contravenes UDHR Article 12: Freedom from Interference with Privacy, Family, Home and Correspondence.
- The Northern Territory Emergency Intervention contravenes UDHR Article 2: Freedom from Discrimination; the International Convention on the Elimination of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights Article 1: Right to self-determination; and most importantly the Federal Racial Discrimination Act which was suspended by the government .
- Aboriginal people were not allowed to vote in a variety of jurisdictions until the late sixties, contravening the UDHR Article 21: Right to participate in government and in free elections; and the International Covenant on Civil and Political Rights Article 25: Right to vote.
- Government policies (such as the abolition of ATSIC) that imply Aboriginal people should assimilate to non-Indigenous culture contravenes UDHR Article 27: Right to participate in the cultural life of community; and the International Covenant on Economic, Social and Cultural Rights Article 15: Right to cultural life.
- National Native Title laws contravene the International Covenant on Civil and Political Rights Article 12: Freedom of movement; UDHR Article 27: Right to participate in the cultural life of community; and the International Covenant on Economic, Social and Cultural Rights Article 15: Right to cultural life; and the International Covenant on Economic, Social and Cultural Rights Article 1: Right to self-determination .

If Australia was to have a Human Rights Act, the Federal government and parliament would have to consider how laws and policy impact on human rights. Public servants would also have to respect human rights, and any breaches would need to be remedied.

A Human Rights Act would be further strengthened by the guarantee in the Constitution of the right equality and non-discrimination.

In our view, human rights should be wholly protected within the Constitution, however this would require substantial changes to the Constitution which are less likely to be supported at a referendum.

The Australian government has recently supported the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, to adequately protect (in legal terms) Indigenous rights in Australia a Human Rights Act is required at the very minimum.

A Human Rights Act would be considerably strengthened by a constitutional guarantee of equality and non-discrimination, including:

- Removal of the current racially discriminatory section of the Constitution (Section 25)
- Amending the current 'race power' (Section 51 (xxvi)) to ensure equality and non-discrimination.

There should also be in addition preamble recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.

The following Indigenous-specific rights should be included in a Human Rights Act:

- The right to a distinct status and culture, which helps maintain and strengthen the identity, spiritual and cultural practices of Indigenous communities.
- The right to land, which provides the spiritual and cultural basis of Indigenous communities.
- The right to self-determination, which is a process where Indigenous communities take control of their future and decide how they will address the issues facing them.
- Protection of the rights of children.
- Protection from genocide.

International Human Rights Instruments

The UN Charter, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights

Article 2 of the *UN Charter* and Article 1 of *the International Covenant on Civil and Political Rights* and *the International Covenant on Social, Economic and Cultural Rights* enshrine the rights of all peoples to self-determination. There are two different concepts which relate to self-determination: internal, which involves recognition of population within a State, and external, which involves formation of a new State by distinct peoples. The principle of self-determination suggests that a people or political

community has a fundamental right and ability to determine their own governance model and practices. The principle of self-determination enables Indigenous communities to determine their own priorities and strategies, and recognises them as political communities of peoples with their own governance arrangements. Article 1 of the *International Covenant on Civil and Political Rights (ICCPR)* defines the right of self-determination as involving the free choice of political status and the freedom to pursue economic, social and cultural development. The ICCPR is binding on Australia. Importantly, international law does not prioritise a nation state's organisational sovereign form over the rights of its constituent members. In fact, the integrity of the nation state is "**dependent** on it remaining representative and being truly **of the people**".⁴

As former Chairperson of the *United Nations Working Group on Indigenous Populations*, Madame Erica-Irene Daes said:

The concept of 'self-determination' has... taken on a new meaning in the post-colonial era. Ordinarily, it is the right of the citizens of an existing, independent State to share power democratically. However, a State may sometimes abuse this right of its citizens so grievously and irreparably that the situation is tantamount to classic colonialism, and may have the same legal consequences. The international community... discourage(s) secession as a remedy for the abuse of fundamental rights, but, as recent events around the world demonstrate, secession cannot be ruled out completely in all cases. The preferred course of action, in every case except the most extreme ones, is to encourage the State in question to share power democratically with all groups, under a constitutional formula that guarantees that the Government is 'effectively representative' ...

Continued government representivity and accountability is therefore a condition for enduring enjoyment of the right of self-determination, and for continued application of the territorial integrity and national unity principles.⁵

There are a range of possible forms of self-determination from self-government or regional autonomy or integration into an existing nation. Professor Daes notes that self-determination for Indigenous peoples,

... means that the existing State has the duty to accommodate the aspirations of Indigenous peoples through institutional reforms designed to share power democratically. It also means that Indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and to exercise the right to self-determination by this means and other peaceful

⁴ William Jonas, *Recognising Aboriginal Sovereignty – implications for the treaty process*, presented at ATSIC National Treaty Conference, Tuesday 27 August 2002, p. 4.

⁵ Erica-Irene Daes, *Explanatory note concerning the Draft Declaration on the Rights of Indigenous Peoples*, 19 July 1993, UN Doc: E/CN.4/Sub.2/1993/26/Add.1, paras 22,23.

ways, to the extent possible ... Furthermore, the right of self-determination of indigenous peoples should ordinarily be interpreted as the right to negotiate freely their status and representation in the State in which they live.⁶

Self-determination was a key policy principle in Indigenous affairs in Australia from 1972 to 1996 and was the key consideration in the establishment of land rights legislation, the Keating Government's approach to native title and the founding of ATSIC. Broadly speaking, a developing understanding of the principle of self-determination has also been a factor in the Indigenous policies of state and territory governments. At both national and state/territory levels it needs to be said that effective self-determination has been limited, with only land rights legislation delivering any real measure of autonomy. The formal nature of the relationship between Australian Governments and Indigenous peoples has remained undefined due to the lack of any treaty or treaties. VACCA believes that self-determination is a critical principle for effective Indigenous child and family welfare. The issue of self-determination was a key concern of the *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families Report*.

Clearly, the implementation of self-determination is important for juvenile justice, child welfare, adoption and family law matters. It is the principle grounding a right for Indigenous people to exercise control over matters directly affecting their children, families and communities. The Indigenous perspective on self-determination provides for the development of control over these areas of social life through processes which may involve some form of autonomy or self-government.⁷

The *Bringing Them Home* Report recommends various measures to enable self-determination for Indigenous communities in the area of child welfare and protection.

Recommendation 43a: That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation establishing a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the well-being of Indigenous children and young people (national framework legislation).

Recommendation 43b: That the national framework legislation adopt the following principles.

⁶ Erica-Irene Daes as quoted by Catherine Iorns, "The Principle of Self-determination in International Law and Aboriginal Child Welfare," Unpublished paper commissioned by the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1996, p. 13.

⁷ *Bringing Them Home: Inquiry into the Separation of Indigenous Children from their Families*, HREOC, 1997, p. 565.

- 1. That the Act binds the Commonwealth and every State and Territory Government.**
- 2. That within the parameters of the Act Indigenous communities are free to formulate and negotiate an agreement on measures best suited to their individual needs concerning children, young people and families.**
- 3. That negotiated agreements will be open to revision by negotiation.**
- 4. That every Indigenous community is entitled to adequate funding and other resources to enable it to support and provide for families and children and to ensure that the removal of children is the option of last resort.**
- 5. That the human rights of Indigenous children will be ensured.**

Recommendation 43c: That the national framework legislation authorise negotiations with Indigenous communities that so desire on any or all of the following matters,

- 1. the transfer of legal jurisdiction in relation to children’s welfare, care and protection, adoption and/or juvenile justice to an Indigenous community, region or representative organisation,**
- 2. the transfer of police, judicial and/or departmental functions to an Indigenous community, region or representative organisation,**
- 3. the relationship between the community, region or representative organisation and the police, court system and/or administration of the State or Territory on matters relating to children, young people and families including, where desired by the Indigenous community, region or representative organisation, policy and program development and the sharing of jurisdiction, and/or**
- 4. the funding and other resourcing of programs and strategies developed or agreed to by the community, region or representative organisation in relation to children, young people and families.⁸**

While recommendations concerning draft national framework legislation have not been adopted by the Commonwealth Government nor agreed to by State/Territory Governments they do outline the critical issues at stake concerning the need for self-determination in the area of Indigenous child and family welfare.

Before informed decisions can be made there needs to be proper negotiation between government and Indigenous communities and organisations relating to self-determination in juvenile justice, welfare and adoption matters. Communities must be in a position to make choices about what they see as suitable long-term solutions to particular issues.⁹

The Aboriginal Child Placement Principle governs the practice of Aboriginal child protection in Victoria. It is endorsed by the Secretariat of National Aboriginal and

⁸ *Bringing Them Home*. p. 580.

⁹ *Bringing Them Home*, p. 577.

Islander Child Care and is incorporated into the Victorian government's *Children, Youth and Families Act, 2005*. The Principle aims to strengthen children's connections with their family, community and cultural identity particularly in response to previous detrimental policies as revealed in reports such as the *Bringing Them Home Report*.

Aboriginal children and young people have an inherent right to know their own family and culture. Past policies of child removal from Aboriginal families have had devastating effects on Aboriginal communities and cultures. The over-representation of Aboriginal people in criminal justice and welfare systems is a direct consequence of these policies which failed to respect the culture and families of Aboriginal children.

The Aboriginal Child Placement Principle includes the following:

- Removal of any Aboriginal child must be a last resort.
- If, after consultation with community controlled Indigenous Welfare agency, removal of a child from its family is unavoidable then the authorities must have regard to the direction of the Indigenous agency.
- If such a removal is necessary, then the child must be placed within the extended family, or if this is not possible, the child may be placed within the Indigenous community, within close proximity to the child's natural family.
- If there is not an Aboriginal placement available, then in consultation with the relevant Indigenous agency the child may be placed with a non-indigenous family on the assurance that the child's culture, identity and contact with the Aboriginal Community are maintained.

In Victoria, since 1992, a protocol between the Department of Human Services and VACCA has been established to ensure that there are culturally appropriate and effective responses to protecting Indigenous children from harm in accordance with the Indigenous Child Placement Principle. Current Victorian legislation recognises self-determination for Indigenous peoples in relation to child welfare.¹⁰

In regards to self-determination we believe that there is a corresponding need for greater protection of Aboriginal cultural interests and a commitment to processes of cultural restoration. Disconnection from culture has been cited in Department of Human Services *Inquiries into Child Deaths* as a critical issue facing Aboriginal children and families. We therefore believe protection, restoration and promotion of culture is essential for human rights and addressing disadvantage.

¹⁰ *Children and Young Persons Act 1989 Section 119*. Victorian Parliament.

United Nations Convention on the Rights of the Child

International human rights instruments recognise that children as well as adults have basic human rights. It is also understood that children have the right to special protection because of their vulnerability. There are several human rights instruments specific to children's rights. In 1959 the United Nations General Assembly adopted the *Declaration on the Rights of the Child*. The Declaration affirms some of the most basic principles of children's rights, including the provision of health care, housing, social security, education, and protection from neglect, cruelty and exploitation.

In November 1989 the United Nations General Assembly adopted the *Convention on the Rights of the Child*, the most widely ratified human rights treaty in the world. The Convention incorporates civil, political, economic, social and cultural human rights and sets out the specific ways these should be ensured for children and young people. The Convention recognises that the degree to which children can exercise these rights independently is influenced by their evolving maturity. It also emphasises the rights and responsibilities of parents where applicable.

The key principles in the Convention are

- the right to survival and development
- respect for the best interests of the child as a primary consideration
- the right of all children to express their views freely on all matters affecting them
- the right of all children to enjoy all the rights of the Convention without discrimination of any kind.

Article 30 of the Convention on the Rights of the Child explicitly recognizes the right of indigenous children to enjoy their traditional culture, practice their own religion and use their traditional language. From the perspective of Aboriginal communities we believe that the child's rights to culture, which acknowledges that protection of culture and identity are in the best interests of the child, should be part of any Victorian Human Rights document. We would also want an extension of this principle to address issues of access to culture for Aboriginal children within the education system so that, for example, there is a reasonable expectation that cultural material is available in schools.

Genocide Convention

The 1948 UN *Convention on the Prevention and Punishment of the Crime of Genocide* was ratified by Australia in 1949 and it came into force in 1951. The Convention confirms that genocide is a crime against humanity. This expressed a shared international outrage about genocide and defines Genocide as

... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. killing members of the group;
- b. causing serious bodily or mental harm to members of the group;
- c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. imposing measures intended to prevent births within the group;
- e. forcibly transferring children of the group to another group (article 2).

Genocide does not just mean the immediate physical destruction of a group or nation. The Polish jurist Raphael Lemkin, the author of the term and the major proponent of the United Nations Convention, defined genocide to include 'deliberate separation of families for depopulation purposes subordinated to the criminal intent to destroy or to cripple permanently a human group'. The separation of Aboriginal children from their parents and their community could result in the disappearance of the group as a cultural unit and therefore the Genocide convention seeks to ensure that minority cultural groups are respected and protected.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The principle of non-discrimination on the grounds of race is clearly stated in the *Preamble of the Charter of the United Nations*, which reaffirms "faith in fundamental human rights, in the dignity and worth of the human person". The 1948 *Universal Declaration of Human Rights (UDHR)* and other international human rights instruments which specifically refer to the principle of non-discrimination on the basis of race have been adopted by the United Nations. In 1963 the UN adopting a *Declaration on the Elimination of All Forms of Racial Discrimination* and in 1965, the General Assembly adopted the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*. This Convention specifies the measures that States agree to undertake to eliminate racial discrimination when they ratify the Convention. These international human rights instruments are therefore crucial for any racial minority group and, in the case of Indigenous peoples, any racial group who have suffered from systemic racism.

Australia's recent poor performances before the Committee on the Elimination of Racial Discrimination, particularly in relation to the previous Federal Government's response to native title, dismantling of ATSIC and Northern Territory Emergency Intervention, underlines the need for greater protections for Aboriginal peoples against discrimination.

It is clearly the view of the CERD that Australia's human rights instruments are currently inadequate in their protection for Aboriginal peoples against systemic racism and

recognition of Aboriginal peoples self-determining rights. A Federal Human Rights Act would greatly strengthen the position of Victoria's Indigenous peoples if it includes measures which address issues of racial discrimination and racial respect.

We would therefore contend that the self-determination rights of peoples as expressed in Article 2 of the *UN Charter* and Article 1 of the *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Economic and Cultural Rights*, and the UN Conventions on Children's Rights, the Prevention of Genocide and the Elimination of All Forms of Racial Discrimination should all be incorporated into any national human rights charter and framework if it is to address issues of concern for Aboriginal communities.

Constitutional Status

VACCA is of the view that the best protection for rights is a constitutionally based one. That is, human rights charters offer the best protection when they are *above* the legislature and executive government. We contend that governments should not have the power to alter rights without recourse to the people. We do acknowledge that, not only is this status model not preferred by the current Government and successful constitutional change takes time and bi-partisan support. In the light of this, while still maintaining our view, we believe that an acceptable compromise would be the requirement that a two-thirds majority of both houses of parliament would be required to make any change to a charter of rights.

We also believe that the enforceability of a charter of rights should be stronger. We believe that the Human Rights and Equal Opportunity Commission should be provided with greater resources. The new body should be given powers to ensure compliance, be resourced so that it can do an annual 'human rights' audit for the nation and be expanded to work on human rights education and promotion.

Rights and addressing disadvantage

VACCA believes that the issue of human rights is not just a theoretical issue but has practical ramifications. Issues of disadvantage in Aboriginal communities are best addressed by taking seriously **a human rights framework** which respects Aboriginal communities' rights to self-determination. Fundamental to providing for Aboriginal self-determination and respecting Aboriginal governance, is also working with Aboriginal communities to **restore their capacity to exercise their rights, freedoms and responsibilities** in the context of the dominant culture. Respecting self-determination and building capacity are the critical principles which will lead to positive outcomes for our children and families. They are a foundation through which rights protection can lead to positive outcomes.

International research and practice also demonstrates the importance of culture as a means through which Indigenous communities can overcome disadvantage. A recent study from Canada by Michael Chandler and Travis Proulx for the International Academy for Suicide Research has pointed out that as measures for self-determination and culturally-based services increase, youth suicide dramatically decreases. As demonstrated by the following chart, the more Nation or tribal groups – here referred to as ‘bands’ – have control over and cultural input into governance, health, education, policing, resources and seeking title to land, the lower the incidence of youth suicide.

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Being on your own land, having a form of self-government, having Aboriginal health services and policing; all combine to create a sense that there is not only a proud past – but a promising future for young Aboriginal people. It is clear from this that self-determination and cultural connection has a positive impact on the social determinants that relate to Aboriginal wellbeing and health and can create a platform for better outcomes for Aboriginal children.

Specific measures

We would suggest that the Human Rights legislation should include specific protections for Aboriginal communities on the basis of their status as First Peoples/Nations and their rights to self-determination. We also believe that children’s rights should be included with a priority given to the protection of children’s rights to identity, culture and connection to family and community as being in the best interests of the child. Measures to prevent discrimination should acknowledge the collective rights of Indigenous communities and the need to prevent measures which are defined as potentially ‘genocidal’ in accordance with the Genocide Convention. As the Prime Minister said in the National Apology, the nation must work towards

A future where this Parliament resolves that the injustices of the past must never, never happen again.

Human rights protection for Aboriginal children from potential attacks on their culture is necessary to ensure such a future. We would welcome the strengthening of the cultural rights of children, particularly as Aboriginal child removal is still problematic within Australian society and the cultural rights of children need protection both within a human rights charter and the National Child Protection framework. Compliance with the Aboriginal Child Placement Principle is still haphazard even though it is in many state laws. Given the tragedy of the Stolen Generations policies of the past and the statement of the Prime Minister that this ‘would never again’ happen to our people, we believe particular attendance should be paid to Aboriginal and Torres Strait Islander children’s rights. We would suggest that HREOC could play a direct ombudsman-type role in ensuring the cultural rights of our children and should have powers of enforcement as well as powers (and resources) of investigation.

The Human Rights Charter should follow the advice of the Committee on the Elimination of Racial Discrimination and

Ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.¹¹

We also recommend a practical section in any human rights bill which sets out how human rights are enshrined, how they are to become the basis for policy and service delivery, how they are to be implemented and how compliance is to be ensured.

If human rights are to be truly respected in practice there need to be measures which acknowledge how the dominant culture impacts negatively on Aboriginal communities and how bridges are to be built between the two. One area of great concern for us is in the area of cross-cultural training for mainstream public sector bureaucracies and community sector agencies. Cross-cultural training needs to be accredited and include standards for practitioners and policy makers. We would also recommend broad public awareness of cross-cultural and Indigenous specific issues. Many of the above issues could be addressed through increased resourcing of HREOC.

Content

Key human rights principles to maintain Indigenous self-determination and protection of Indigenous children's cultural rights

We would like to see the following principles reflected in any Human Rights Charter or Bill of Rights.

- Indigenous communities have a right to self-determination because they remain sovereign and self-determining peoples.

- Article 2 of the *UN Charter* and Article 1 of *the International Covenant on Civil and Political Rights* and *the International Covenant on Social, Economic and Cultural Rights* enshrine the rights of all peoples to self-determination.

¹¹ Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII – Indigenous people*, 18 August 1997, UN Doc: A/52/18, annex V para 4 (d).

- Indigenous communities have the right to determine their own priorities and strategies, as political communities of peoples with the right to
 - determine their own governance arrangements.
 - look after their children.
- Indigenous communities through national, regional and local Indigenous bodies should be engaged as equals by governments on the basis of their self-determining rights.
- Arising from the negative impacts of colonisation and government policies which have ignored the rights of Indigenous communities, there should be measures which ensure the protection of Indigenous peoples' cultures, commit to the restoration of cultures and avenues for compensation for racist practices such as the removal of Indigenous children from their families.
- The UN *Convention on the Prevention and Punishment of the Crime of Genocide*.
- *The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*.
- Children should enjoy the following rights in line with *UN Convention on the Rights of the Child*
 - the right to survival and development
 - respect for the best interests of the child as a primary consideration
 - the right of all children to express their views freely on all matters affecting them
 - the right of all children to enjoy all the rights of the Convention without discrimination of any kind.

Key rights for the whole community

VACCA acknowledges that general human rights protect all citizens and particularly protect those who are most vulnerable. We therefore support the inclusion of the following suite of rights:

Adequate standard of living (housing, food, clothing)
 Freedom from arbitrary arrest and detention
 Freedom of assembly
 Freedom of association
 Clean, healthy environment
 Cultural and intellectual property rights
 Disability rights

Freedom from discrimination (includes race, social status, sexuality etc.)
Right to Education
Equal access to services
Equal access to natural, cultural, economic resources
Equality before the law
Right of ethnic, religious or linguistic minorities to belong to and enjoy their own cultures
Right to form unions, collective bargaining
Fair trials
Right to Health
Independent judiciary
Liberty and security of the person
Right to life
Natural justice, procedural fairness
Equal pay for equal work
Right to participate in the cultural, economic and social development of the community
Presumption of innocence
Privacy
Protection of environment for future generations
Freedom of movement
Respect for humanity and dignity
Safe drinking water
Safe work conditions
Right to seek asylum
Social Security / income support
Freedom from slavery
Freedom of speech, expression
Right to silence
Freedom of thought, conscience and religion
Freedom from torture and cruel, inhuman or degrading treatment or punishment
Freedom from violence or threats of violence
Right to vote
Women's rights
Right to work, fair working conditions

Conclusion

VACCA believes that the Human Rights consultation presents the Federal Government with a historic opportunity to give recognition of, and protection to, the rights of First Nation peoples in Australia, and, indeed, all Australians.

The recent Social Justice report by the Aboriginal and Torres Strait Islander Commissioner provides an excellent legal and policy framework for understanding the importance of human rights of Aboriginal and Torres Strait Islander peoples in both ensuring fairness for our peoples and tackling issues of disadvantage. We commend that report to the Committee.

We hope that the Consultation Committee will acknowledge and address the specific rights issues of Aboriginal peoples in its recommendations to the Government. The denial of Indigenous rights has led to the current situation of gross Indigenous disadvantage. By recognising and establishing measures to protect our rights, proposed human rights laws can go a long way in establishing just relationships between our peoples.