



# Victorian Aboriginal Legal Service Co-operative Ltd.

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## COMMUNITY MEETING

### Re: Human Rights for Indigenous Australians

7 September 2005 from 7.00pm -9.30 at the Aborigines Advancement League

#### **Present:**

Frank Guivarra, Alf Bamblett, Haddon Storey QC, Michelle Burrell, Lester Coyne, Julie Phillips, Karen Jackson, Peter Rotumah, Robin Inglis, Daniel Kiag, Berryl Booth, Greta Jubb, Loretta O'Neill, Rose Smith, Jan Muir, Caine Muir, Dot Button, Marg Thorpe, John Targin, Robbie Thorpe, Jason Timaru, Larry Walsh, Keith , Cheryl Kaulfus, Keith Kaulfus, Jo-ann Proctor, Cheryl Harrison

Following is a break down of people who attended the meeting:

- 20 Indigenous Australians.
- 2 non-Indigenous Australians.
- 1 member of the Human Rights Consultation Committee and Human Rights Consultation Project Worker (Non-Indigenous Australian).
- 4 VALS staff (2 Indigenous Australian and 2 non-Indigenous Australian).

## DISCUSSION

### **Introduction**

Alf Bamblett welcomed the participants and described the background and agenda for the meeting.

### **Background**

Haddon Storey (QC), member of the Human Rights Consultation Committee, gave a brief introduction to the consultation process and provided some information about the issues outlined in the Government's Statement of Intent in relation to a charter of rights.

He made the following points:

- The Government has told the Human Rights Consultation Committee (Committee) to look at Civil and Political rights, but this does not stop the Committee making recommendations around economic, social and cultural rights in its Report to Government.
- An Indigenous Australian specific pamphlet has been produced.
- The Government would prefer to have a Bill of Rights (BOR) in legislation.
- 1800 submissions have been received from the public. The majority of submissions state that there is a need to do something to support human rights protection in Victoria. There are some submissions that state there is no need for such human rights protection.

### **Summary of previous meetings:**

Frank Guivarra provided a detailed report on the previous meeting held on August 10, 2005.

Some common themes of the presentations that Frank summarized were as follows:

- There are gaps in the protection of human rights.
- A Bill of Rights (BOR) should recognise the specific rights of Indigenous Australians. Particular mention was paid to the right to self-determination as being a fundamental human right for Indigenous peoples.
- The specific rights of Indigenous Australian children, particularly those in the Child Protection system, were discussed.

Frank reported on three motions from the meeting on 10 August 2005:

1. That a letter be sent to the Attorney General requesting that an Indigenous Australian person is appointed to the Human Rights Consultative Committee. This letter was sent on 12 August 2005, but no reply has been received to date.
2. A second meeting should be held during the evening to enable more members of the Koorie community to have their say on human rights. This meeting is the result of this recommendation. It has been facilitated by VALS and supported by six other Indigenous Australian organisations.
3. It feels like the horse has bolted and we are trying to catch it. Something needs to be written up, such as a petition in order to get the numbers supporting it. Can the Victorian Aboriginal Legal Service (VALS) do something? This is a disempowering mainstream process, as it is difficult for the Indigenous Australian community to write a submission. We are letting people down if they cannot have a say. A petition, drafted by representatives of VALS and the Victorian Aboriginal Child Care Agency, was presented at the meeting.

### **Genocide, Sovereignty, Treaty**

Comment: Frank Guivarra has missed the point and skirted around the issues of genocide, sovereignty and treaty. Before considering a BOR we must tackle the fundamental issues of genocide, sovereignty and treaty. If the Government does not tackle these issues a BOR is irrelevant. European settlement was an act of genocide and a treaty between sovereign nations is essential and anything else is a waste of time. We have no rights. I know an Aboriginal lady who said she was better off in 1965 when she was part of the flora and fauna.

Comment: I agree as things have not improved as young people are still locked up and there is a 25% increase of Indigenous women in jail. The issue of sovereignty has not been addressed and needs to be resolved. Some Aboriginal people say 'give us back our sovereignty', but we never gave it up. The lifting of the Racial Discrimination Act by the Native Title Act is an act of genocide. Indigenous peoples are sovereign owners of the land and native title has not advanced this, nor has race discrimination legislation. If you do not have land what hope is there for future generations? Land is the essence of us. The Yorta Yorta people got nothing through the Native Title process.

A BOR is not talking about the fundamental rights. There are three basic rights – “stop genocide, recognise sovereignty and make a treaty” and without these the Government remains an illegal occupant. How do you get over gross human rights violations? I am not convinced a BOR would

help. We should be very careful about a BOR. If it doesn't include our fundamental rights and will be no value and could have bad consequences.

Comment: If United Nations standards do not help, how can a BOR help?

Comment: We have not seen an improvement since the reports of the Royal Commission into Aboriginal Deaths in Custody and the Stolen Generations Report. People have lost faith and are not coming to meetings like they used to. A High Court Judge (Sir Ronald Wilson QC) admitted that genocide occurred. How do you get over genocide? It is not fixed by a BOR. The issue is of sovereignty.

In 1949 the Australian Government accepted the Genocide Convention, but never legislated to enact it and so it is not enforced. If it was enforced a lot of things would not have happened. The UN is another process of genocide (ie: Rwanda). Genocide needs to be stopped. A treaty can be a symbol of the stopping of genocide. The colonization of Australia by white people was a pre-mediated criminal act/pre-mediated genocide. The crown is responsible for the county and Constitution. Non-Indigenous Australian people are beneficiaries of genocide (ie: proceeds of crime). Indigenous Australian people are sick of being terrorised by people in uniform. We need to start with a treaty. This needs to be fixed before the Commonwealth Games. Australia is the only Commonwealth Country without a treaty. Women know what consent is and that sex is rape without consent. Indigenous Australians did not consent to non-Indigenous Australians coming and they have raped Australia. Black people are performing genocide on other black people, such as the night patrols. The Native Title Act is a perversion and feast for lawyers. If you do not have land rights you give up.

Response: If you want to talk about genocide have a bit of think. Genocide has not been going on for 56 years (since Genocide convention not enforced) but for 200 years. Our culture has been stolen too. I thought we came here to talk about a BOR. It is a simple question, do we want a BOR and what should be in it?

## **Discrimination**

Comment: The education system discriminates against cultural rights relating to oral tradition. The education system requires a certificate to teach, which means people without a certificate cannot teach (formal qualification). There is discrimination against those who try to practice culture (ie: oral). I am supposedly a good teacher, historian and community development worker but I do not have the appropriate certificate. My skills as an educator and cultural teacher are not recognised or valued by mainstream culture. My Indigenous oral cultural traditions do not fit within European views of culture and so are devalued and not recognised. There is a clash between western and Indigenous Australian notions of education and culture. Cultural practice needs to be kept alive. There is danger that by emphasising "human rights" we take away "cultural rights".

I just want my human rights. If you have the right education or the right lawyer you can get your way. This is discrimination. Acts of Parliament do not work for me. They actually discriminate against me. How can I seek my rights when I am screwed over?

It is important that a BOR does not create any unintended consequences and end up discriminating in practice. There are cases where existing equal opportunity laws allow white people to bring discrimination claims against Indigenous peoples. It is important that any BOR is clear about what it

aims to protect and does not end up providing avenues for racists. Legislation may discriminate against those it is supposed to protect.

### **Complaint Process: Equal Opportunity Commission (re: discrimination)**

Question: I am not sure if this is the right forum but I want to draw people's attention to something that happened to me. I and another person went through an Equal Opportunity complaint process. The complaints process is very hard for people. It requires legal support, is inaccessible and is very hard for people to use. We need to make it easier for people to get redress.

Response: You are in the right forum.

### **Information Provision/Consultation**

#### *Lack of information/inadequate consultation*

Comment: It is difficult to process the information provided at this meeting and in other places. I am grappling to understand talk about a BOR. Too often Indigenous Australian issues are seen as an afterthought and are not given primacy in the debate and discussion from very start. We need to look at where we have come from to know where we are going. We need to know what our human rights are and what the violations are. We need more information before we can make a decision. There is not enough information provided to Aboriginal community. We do not have enough information to understand what a BOR has to offer. People are not informed and are battling to go to school as it is. They are not informed and it is a basic human right to have information and participate in decisions that affects our lives (self determination). Little information hits the ground in country areas. There were three Bills tabled in Parliament last year that I know little about (ie: cultural heritage, land etc). I have more access to information than others and I do not totally understand these Bills. Generally people go to meetings because they have a vested interest because it is part of their job. The information at the meetings is not going back to the community. This consultation process is a white man's consultation process. Indigenous Australians are not educated or included to engage with the process.

Suggestion: If the Government is serious about a BOR it should ask Elders. If the Government is 'fair dinkum' they should give information to the Aboriginal community.

#### *Related points:*

- It is harder than ever to survive as an Indigenous Australian person or a family.
- Services were set up to help but because of racism they cannot help. Organisations are under attack and being sabotaged by Government and are not able to do what they were set up.
- The word Koori is not correct.

Response: Part of what the Committee is required to do is Report to Government on the consultation process

*Use of forums in existence that can get to our population: ie radio*

Suggestion: We need to line up a show on 3KND or John Faine (ABC) for a week to discuss issues. We are not using forums in existence that can get to our population.

I traveled 190 kilometers to get here. I bet the surrounding towns around where I come from do not know about a BOR. Today notices and documents are sent to organisations, but community members do not go into organisations. They go to the legal service for legal advice, not to see a notice. Oral conversation in the Aboriginal community is a dying art.

Response: It is hard to approach everyone. The Chairperson of the Human Rights Consultation Committee once got on John Faine.

*Elders and traditional owners network/consultation.*

Comment: Elders and traditional owners are the key to everything and have spoken. A statement was prepared by traditional owners on 17 February 2005. The paper was an outcome of a meeting of delegates of Elders and traditional owners. The statement was sent to Hulls and Jennings and we are still waiting for a response. This is another issue about communication. We need to hit the streets. Some of the issues mentioned in the statement are as follows: comprehensive land justice, cultural heritage protection, process of negotiation etc. It is up to the Government to respond and until they do we need to get more aggressive. I am frustrated and am sick of talk. I do not want to bring kids into this word because it is crap. We do not have the same rights. Aborigines only have .01% of land in Victoria and that is not even a dot on a map. Native title is a white man's system and we have not got anything out of it. I am for justice, but how do we get it?

We need action. We need to convene a General Assembly of Elders in each region. If you do not have elders you cannot properly consult as they are our Government.

*Question:* Why hasn't the Committee met with all the Elders and traditional owners in Victoria, it is a flawed process?

Answer: I admit that the consultation process is not perfect and I am sorry. We met with some traditional owners. However, it was through good luck rather than good management.

Chair: the answer is not necessarily meet with all traditional owners.

Response: A white man's consultation process is no good. It should not have gone through the networks it did. The Government should convene an assembly of all Elders in Victoria.

*Question:* Where are we going to go from here?

Answer: I am going to take it back to my Elders.

*Need to pull relevant documentation together*

Comment: There have been meetings and there is documentation around this issue of human rights as we have been down this path before. We need to use the lessons from the past. Women have had a meeting (constitutional conversations). There are documents in existence that state a position about a BOR. We need to pull this paperwork together.

Recommendation: VALS pull the documentation together (See concluding remarks of facilitator).

Question: Can the Human Rights Consultation Committee address the submission to you from Australia's First Treaty. It talks about what we have been saying here (sovereignty/Elders).  
*Communication strategy*

Comment: 1800 submissions is not many submissions really. It is not reflective of the number of Victorians as there are millions of Victorians. There should be a communication strategy for the whole State. Without such a strategy, what is the Government's real agenda? The Government has not consulted properly with Indigenous and non-Indigenous Australians.

### **Australia's First Treaty Paper**

Australia's First Treaty was to present a paper, that Melbourne University accepted, at a Global Sustainability Conference funded by the United Nations (UN). However, the UN did not want the paper to be presented. The reason was that the paper was not a result of funding through the Government/ATSIC, but done privately. The paper is a way of exercising self determination rights, but it was not accepted. This is a political issue.

I am a community person who is independent of an organisation, there is a reason I am not a part of Aboriginal organisations. A wise woman said 'if you wait for all the dont it will never get done'. While we are talking nothing is getting done. In the meantime you are better off doing what you think is right.

The paper has been copywrote so that it cannot be stolen. I am concerned by the fact that this Community Meeting is funded by the Department of Justice, as that means the information here will be owned by the Government. If you involve Government, you give up your copyright. If you do not own your own flag (ie: Aboriginal flag) or your own BOR you have nothing. People say the word Victoria because they are paid to.

### **Implementation Issues**

We need to consider carefully the implementation of recommendations. I may be cynical but sometimes the way recommendations are implemented is not how they are written up. The way legislation is implemented is a problem because it does not follow the recommendations.

### **Find out about the system**

The reason I came was to out how to play the game white people play. I came to learn how I can get my arguments right. I believe a BOR would be valuable as we need to enshrine rights. A BOR should be enshrined in legislation. I have worked in Government before and they do not pay attention to everything. We need to find out about the system. We need to look at the rules and use them. There has to be recognition of the rights of Indigenous peoples and recognition that Indigenous peoples have the right to live the life they choose.

Concluding remarks of facilitator by way of summary:  
We need:

- Recognition of rights for Indigenous Australia distinct from non-Indigenous Australian's rights. There needs to be recognition of rights of Indigenous peoples as first nations.
- A process in place to ensure the continued existence in life that people choose.

- People need to have the opportunity to choose the sort of life they want to live. They don't have that now.
- Recognition of fundamental human rights currently denied to Indigenous peoples.
- Recognition of the falsity of the system. The Government can stand at a meeting and say we recognise that traditional owners of the land, but Aboriginal people then have to go to Court to fight for their rights. There is hypocrisy in the Government saying it recognises land owners and then requiring them to fight native title claims. Where is the justice in that?
- Greater depth of consultation. There needs to be a better and longer consultation process.
- The consultation process has been organized to fit the Government's timeframe which is not our timeframe.
- Collection of relevant documentation for the Report. The Victorian Aboriginal Legal Service could do this.

# Minutes

## HEALESVILLE COMMUNITY FORUM 18 October 2005 from 9.45am to 3.00pm

**Present:** 12 Healesville community members

### Discussion

**LOST:** *What rights have Indigenous Australians lost in the last 200+ years?*

- We need 50 white boards to list what rights Indigenous Australians have lost in the last 200+ years;
- right to self determination;
- right to land;
- right to cultural identity;
- right to children (lost and stolen);
- right to be acknowledged as a unique community;
- right to language. The English language does not express Indigenous Australian culture. There are only 26 letters in the alphabet.
- right to freedom of choice;
- right to life;
- right to live free from violence;
- right to our true history. Non-Indigenous Australians have been disadvantaged by this too;
- right to be heard.

**WANT:** *What rights do Indigenous Australians want in the future?*

- All of the rights listed under the above heading (ie: 'the lot'). Why should Indigenous Australians settle for anything else?;
- right to education and curriculum that raises awareness of Indigenous Australian history and knowledge. Private school children seem to know more about Indigenous Australians and Australian history than State school children. Non-Indigenous Australians need to understand the background to understand why a specific Aboriginal Liaison Officer position is required in organisations etc;
- right to understanding of cultural practices and environment;
- right to an apology. The Government/establishment should acknowledge injustices and apologise for what the establishment has done. Australian citizens do not need to apologise. The Government/establishment is to blame and John Howard should apologise for the establishment he is working for.
- right to inclusion in the law. Indigenous Australians should not have to get fishing licenses. Indigenous Australians should be employed in the Fisheries Department. There is need for cultural inclusion in the law;
- right to justice;
- right to health;
- right to Indigenous Australian solutions to crime, poverty, health issues etc;

- right to individual jobs and roles in community;
- right to respect and self respect of Indigenous Australian knowledge;
- The Healesville kids had a list of right they want and we should ask for permission to use it.

**HOW:**        *How can the rights of Indigenous Australians be protected in the future?*

- recognise the power of education. The Government in Canberra needs to be educated rather than starting from the bottom up with children;
- change the school curriculum (ie: target key years);
- enable newly arrived migrants to receive education about Indigenous Australians and Australian history;
- introduce stronger intellectual property rights rules in order to protect language and ideas. Indigenous Australians should have ownership of ideas, words and pictures;
- devote more positive media coverage to Indigenous Australians;
- recognise that Aboriginal people/art/culture are all over Australia. Aboriginal people come in all shapes and sizes and are not just in the Northern Territory. Victorian art is not promoted as much as art from other places (ie: central desert).
- introduce Indigenous Australian/Koori political party.
- introduce specifically allocated Indigenous Australian seats in Government, at local, state and federal level.
- Ensure Indigenous Australian positions are not tokenistic. Rather than appointing a tokenistic Indigenous Australian member being appointed to the Human Rights Consultation Committee, the current members should be aware of the issues facing Indigenous Australians and be able to represent them.

## CHARTER OF RIGHTS PETITION TO THE HUMAN RIGHTS CONSULTATION COMMITTEE

### *Re: Indigenous Australian's Human Rights*

We the undersigned urge the Victorian Government and ultimately the Parliament to adopt a comprehensive and holistic approach to rights protection.

This should include:

1. Promoting greater understanding of and respect for rights.
2. Legislating to ensure that Victorian law is consistent with the following United Nations Instruments:
  - International Covenant on Civil and Political Rights, such as rights to vote, free speech and fair trial (ICCPR).
  - International Covenant on Economic, Social and Cultural Rights, such as rights to housing and education etc (ICESCR).
  - Convention on the Rights of the Child (CROC).
  - Convention on the Elimination of all Forms of Racial Discrimination (CERD).
  - Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
3. Advocating that the Commonwealth Government also legislate to ensure that Commonwealth law is consistent with United Nations Instruments.
4. Including a preamble in the Victorian Charter of Rights which recognises the traditional owners and custodians of the lands and waters of Victoria and Indigenous persons in Victoria as self determining peoples in accordance with Article 1 of the ICCPR and ICESCR.
  - *ICCPR: "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."*
  - *ICESCR: "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."*
5. Including in the body of the Charter of Rights the explicit right to self determination for Indigenous peoples in Victoria in regard to their lands and waters, the protection of their culture and early engagement with Government policies and procedures which impact on their future.
6. Establishing a Human Rights Commission (Commission) which develops policy and promotes awareness of rights issues and reviews Bills and Legislation. The Commission should include an Indigenous Australian Policy and Consultation Unit. Funding should be made available to Indigenous Australian organisations to enable them to contribute to policy development in a rights framework.
7. Providing an opportunity for individuals or groups who believe their rights have been ignored to take action through Tribunals and Courts to seek a remedy.

