

# Community fact sheet: Aboriginal Self-Determination

## What is the right to self-determination?

While the right to self-determination remains undefined under international law. It can best be described as the right of a 'people' to collectively exercise control over, and make decisions regarding, matters that affect them. It is the right of a people to determine their destiny.

The right to self-determination is different to other traditional human rights. Most human rights are concerned with rights of individuals or 'persons' within a society. Self-determination is a collective right of 'peoples' under international law.

## What is a 'people'?

No universal definition of 'people' exists under international law. The common features of 'peoples' include distinct communities composed of individuals with:

- common tradition and culture
- ethnicity
- historical ties and heritage
- language
- religion
- sense of identity or kinship
- the will to constitute a people
- common suffering

Indigenous peoples were recognised as 'peoples' under international law by the United Nations General Assembly and bearers of the right to self-determination in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2007.

## Why is the right to self-determination important to Aboriginal communities in Victoria?

The right to self-determination can serve as a means by which Aboriginal communities can restore Aboriginal authority over Aboriginal affairs through Aboriginal-determined institutions.

Contemporary Victorian government practices treat Aboriginal people as minorities

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– a group or category of individuals making up a small portion of Victorian society and in a non-dominant position – that have suffered violations of human rights and dignity as a result of their status. Minority rights traditionally require the government to determine the means by which to protect the rights of minorities. While representatives of minority groups are allowed to participate in discussions concerning how issues affecting the group are addressed, there is no requirement for a government to reflect the opinions and decisions voiced by a minority group in legislation, policy or practice.

As ‘peoples’, Victorian Aboriginal communities are legally entitled to more than a seat at the table. The right to self-determination of Aboriginal peoples in Victoria mandates that Aboriginal communities and their self-determined institutions:

- Actively participate in decision-making processes that affect them; and
- Possess the right to free, prior and informed consent over administrative and legislative measures that affect them.

### **What are the current issues relating to the Aboriginal right to self-determination in the Victorian legal system?**

The following themes have consistently emerged in the advocacy undertaken by VALS.

#### *Systemic discrimination against Aboriginal peoples*

Victorian Government practices that fail to recognise, respect and reflect the collective rights of Aboriginal communities as ‘peoples’ in Victorian Government practices and processes that denies Aboriginal peoples the enjoyment and exercise of their rights in political, economic, social cultural and other fields of public life, constitutes ‘racial discrimination’ under Article 1(1) of the *International Convention on the Elimination of All Forms of Racial Discrimination*.

#### *Legal distinctiveness of Aboriginal communities*

Aboriginal communities are distinct communities within Victoria and their status should

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be reflected in legislative practice. Specific and dedicated legislative guidelines and frameworks should be created for matters that affect the individual and collective rights and interests of Aboriginal communities.

### Legislative recognition of the right to self-determination of Aboriginal peoples in Victoria

To date, Victorian legislation has not recognised the right to self-determination of Aboriginal communities in Victoria. Victorian legislation, particularly the *Charter of Human Rights and Responsibilities 2006*, should be amended to explicitly recognise Aboriginal self-determination as a right of Aboriginal communities in Victoria.

### Free, prior and informed consent

The Victorian Government current consultation processes often leave Aboriginal Community Controlled Organisations (**ACCOs**) with little time to provide feedback and regularly do not incorporate feedback from ACCOs in final outcomes.

The right to free, prior and informed consent mandates that governments consult with the Aboriginal community and ACCOs prior to designing legislative and administrative measures and reach consensus with Aboriginal communities and ACCOs on the scope and content of measures affecting Aboriginal communities prior to being implemented.

### Cultural rights

The Victorian Government generally determines that legislation does not contradict Aboriginal cultural rights despite submissions from Aboriginal communities and ACCOs stating that conflicts with Aboriginal culture and tradition exist. By virtue of self-determination, Aboriginal communities should make such determinations rather than the Victorian Government.

### Aboriginal deaths in custody

In 1991, Recommendation 188 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) stated that governments should negotiate with Aboriginal communities to determine guidelines, procedures and processes to be followed in the

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modification, design and implementation of policies and programs affecting Aboriginal communities. The Recommendation was premised upon self-determination and has yet to be consistently and meaningfully reflected in practice.

### Aboriginal data sovereignty

The concept of Aboriginal data sovereignty mandates that Aboriginal communities and ACCOs have a right to access and interpret information concerning Aboriginal individuals and communities, as well as the right to determine how the data is used and disseminated within mainstream society. The authority and control over such data not only ensures that the information is understood in its appropriate context, but is also beneficial to ACCOs to ensure that the services and programs provided meet the demand and needs of Aboriginal communities.

### Funding for ACCOs

Article 39 of the UNDRIP and Recommendation 190 of RCIADIC emphasise the importance of funding ACCOs to ensure that such organisations are able to effectively perform their respective functions. However, ACCOs frequently lack sufficient funding and resources to implement and maintain needed programs and services for the benefit of Aboriginal communities.

## Where can I learn more about Aboriginal self-determination in Victoria?

You can learn more about self-determination and its impacts for Victorian Aboriginal communities in the following VALS documents:

- [Submission to the Parliamentary Inquiry on Victoria's Criminal Justice System](#)
- [Submission on the Anti-Racism Strategy](#)