

Summary - Focus Group: Aboriginal and Torres Strait Islanders

Status under the law

- Indigenous people occupied the Australian continent for over 50 000 years prior to 1788. They have experienced a range of government policies since 1788, from dispersal and dispossession to assimilation and recognition.
- There has been a range of legal challenges and changes since the 1960's, including constitutional change and land-rights challenges by the Yolngu people.
- The *Mabo* cases of the 1980's and 90's were the first successful legal challenges in Australia and led to the abolition of terra nullius. The *Native Title Act 1993* was passed as a result of this High Court decision.
- The *Wik* decision was also important for indigenous people, as it led to the concept of co-existence between pastoralists and customary Indigenous practices.
- The *Native Title Amendment Act 1998*, passed in response to the *Mabo* and *Wik* cases, reduces the power and rights of Indigenous people.

Mechanisms for Achieving Justice

- Indigenous people experience a range of disadvantages in areas such as health, education, employment and the criminal justice system
- Legislation has existed for over 20 years that outlaws racial discrimination and vilification, yet conflict continues between the Indigenous and non-Indigenous population.
- The Anti-Discrimination Board of New South Wales and the New South Wales Legal Aid service provide support to Indigenous people who are socially and economically disadvantaged.
- The Royal Commission into Aboriginal Deaths in Custody made 339 recommendations to assist in the reduction of custodial deaths.
- ATSIC was established in 1989 and abolished in 2005. Practically reconciliation has emerged as the federal government policy and involved shared responsibility agreements.
- The *Aboriginal Land Rights Act 1983 (NSW)* recognised that land was owned by Indigenous people prior to 1788. Currently the NSE Aboriginal Land Council aims to administer land now held on behalf of Indigenous people.
- Political power can be exerted in a number of ways, such as direct representation in parliaments, peaceful protests or through government agencies or departments such as ATSIC or the NSW Department of Aboriginal Affairs.
- Self-determination is a concept that is difficult to define, but involved recognition of Indigenous customary law and the rights of their traditional way of life, language and culture.
- A treaty, such as the Treaty of Waitangi between Maoris and the New Zealand colonial powers, is a possibility in Australia.

Responsiveness of the legal system

- State and federal governments have responded and recognised Indigenous rights in a range of ways since 1967. Legislation has been passed that recognises both land rights and native title; however, current federal legislation 'waters down' the rights of Indigenous people under the ten-point plan.

- The different languages and cultures of Indigenous people may or may not be recognised by the law. Some court cases, such as *R vs. Williams*, demonstrate recognition of customary rights.
- The Royal Commission into Aboriginal Deaths in Custody handed down 339 recommendations in response to the unacceptable number of Indigenous deaths in police custody or goal. There has not been a significant improvement in this area since the report was published.
- In 1995, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families was established in response to the policy of forcible removal of Indigenous children. The report 'Bringing them Home' called for compensation, reunion and counselling services for the victims, as well as an apology from the federal government.
- Practical reconciliation is the current federal policy on Indigenous affairs. It has been widely criticised for lacking sufficient funding and a shallow understanding of the problems faced by Indigenous people in the past, present and future.