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UnitingJustice AUSTRALIA

SUBMISSION TO THE SENATE COMMUNITY AFFAIRS COMMITTEE

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2011 AND TWO RELATED BILLS

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1 | INTRODUCTION

UnitingJustice Australia is the justice unit of the National Assembly of the Uniting Church in Australia, pursuing matters of social and economic justice, human rights, peace and the environment. It sits within the mandate of Uniting Faith and Discipleship and works in collaboration with other Assembly agencies, Uniting Church synod justice staff around the country, and with other community and faith-based organisations and groups.

It engages in advocacy and education and works collaboratively to communicate the Church's vision for a reconciled world. It provides resources for the Church as it considers its position on issues of national and international importance and public policy.

UnitingJustice Australia exists as an expression of the Uniting Church's commitment to working toward a just and peaceful world. This commitment arises from the Christian belief that liberation from oppression and injustice is central to the incarnation of God through Jesus Christ. We welcome this opportunity to make a submission to the Senate Community Affairs Committee's inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills (the Stronger Futures legislative package).

The Uniting Church in Australia hopes for a nation which acknowledges the rights of Indigenous Australians as the First Peoples of this land, respects the land on which we live, and is committed to empowering Indigenous peoples to take control of their own lives and destinies. Justice for Indigenous peoples will depend on policies which ensure appropriate resourcing in the areas of health, housing, education, employment and welfare support and the Uniting Church is committed to public advocacy that pursues these policies.

At its 7th National Assembly, the Uniting Church formally entered into a relationship of Covenant with its Indigenous members, recognising and repenting for the Church's complicity in the injustices perpetrated on Australia's Indigenous community, and pledging to move forward in hope towards a shared future. The Covenanting Statement, in part, reads

> It is our desire to work in solidarity with the Uniting Aboriginal and Islander Christian Congress for the advancement of God's kingdom of justice and righteousness in this land, and we reaffirm the commitment made at the 1985 Assembly to do so. We want to bring discrimination to an end, so that your young people are no longer gaoled in disproportionate numbers, and so that equal housing, health, education and employment opportunities are available for your people as for ours. To that end, we commit ourselves to build understanding between your people and ours in every locality, and to build relationships which respect the right of your people to self-determination in the church and in the wider society.[1]

At its inception in 1977, the Uniting Church affirmed its commitment to human rights in its 'Statement to the Nation'

> We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.
>
> We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.[2]

1 http://www.unitingjustice.org.au/component/content/article/15-uniting-church-statements/187-covenanting-statement.html

2 http://www.unitingjustice.org.au/component/content/article/15-uniting-church-statements/190-statementtothe-nation-1977.html

The Church's commitment to human rights is born from the belief that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected, or the human community and its reflection of God and all people is diminished.

In 2006, the National Assembly of the Uniting Church in Australia adopted its statement 'Dignity in Humanity: Recognising Christ in Every Person'. This statement bound the Church to a continuance of its commitment to human rights and, in particular, to holding the Australian Government accountable to its international human rights obligations, stating

> We pledge to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.[3]

It is therefore crucial that the Church address the Stronger Futures legislative package in relation to its impact on the rights of Indigenous Australians and advocate for improvements that better meet the Australian Government's international human rights commitments.

2 | RACIAL INEQUALITY AND NON-DISCRIMINATION

Non-discrimination and equality before the law are among the most basic principles in the protection of human rights. These principles create an obligation on the Australian Government to ensure that every person is able to exercise their rights without discrimination. The Convention on the Rights of the Child (CRoC), for instance, makes it clear that all human rights as they relate to children must be applied in a non-discriminatory manner.[4]

One of the most important characteristics of the international human rights system is the acknowledgement that human rights are overlapping, inter-connected and indivisible. This means that all rights are of equal importance and there is no priority in the protection of rights. In the context of the Stronger Futures legislative package, we do not believe there is a justification for violating the non-discriminatory principles of the international human rights system. Human rights law requires that solutions be found to the problems facing Indigenous communities that protect all human rights.[5]

In Australia, there is no constitutional protection against discrimination, except on the narrow grounds of state residency. Currently, the most significant protections against racial discrimination are statutory, and contained within the Commonwealth Racial Discrimination Act (RDA) 1975. This Act prohibits

> any act involving a distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom.[6]

The Act also makes it an offence to discriminate in many specific areas, such as employment, housing and the provision of goods and services.[7]

In international law, the right to non-discrimination has attained a status of *jus cogens*, which means that under no circumstances can a government justify the introduction of discriminatory policy. Therefore, it is never permissible to claim to 'balance' a discriminatory measure to further the enjoyment of a specific human right.[8]

However, there does exist the concept of 'special measures', which allows for exemption from the prohibition of racial discrimination. 'Special measures' enables preferential treatment for a group, defined by race, in order to make possible the full enjoyment of their human rights. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) states that these measures will not be deemed to be racial discrimination.[9]

The criteria for a 'special measure' are set out in Article 1(4) of the ICERD. 'Special measures' will

- provide a benefit to some or all members of a group based on race,
- have the sole purpose of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others,
- are necessary for the group to achieve that purpose, and

3 http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/assembly-resolutions/11_dignityhumanity2006.pdf

4 HREOC Aboriginal and Torres Strait Islander Commissioner (2008), 'Social Justice Report 2007', available at http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf, p. 239.

5 Ibid, p. 238.

6 http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/

7 HREOC (2008), 'An International Comparison of the Racial Discrimination Act 1975,' Background Paper No. 1, p. 7.

8 HREOC Aboriginal and Torres Strait Islander Commissioner (2008), op. cit., p. 239.

9 http://www2.ohchr.org/english/law/cerd.htm

- stop once their purpose has been achieved and do not set up separate rights permanently for different racial groups.

In order for the amendments proposed in the Stronger Futures legislative package to be deemed 'special measures', it must be demonstrated that the proposals

- will clearly benefit Indigenous peoples by tackling systemic economic disadvantage,
- have the sole purpose of advancing Indigenous peoples,
- are absolutely necessary to ensure the advancement of Indigenous peoples, and
- will cease once their purpose has been achieved.

3 | INCOME MANAGEMENT

The Social Security Legislation Amendment Bill 2011, part of the Stronger Futures legislative package, provides for the control of welfare payments to Indigenous peoples in the prescribed Northern Territory communities. According to the Act, the purpose of this measure is to

- Reduce the amount of income spent on substance abuse and gambling,
- Ensure that welfare payments are spent on priority needs of adults and children, and
- Promote socially responsible behaviour, particularly in relation to the education (i.e.: school attendance) of children.

The right to social security is set out in Article 9 of ICESCR, Article 5 of ICERD, Article 26 of CRoC and Articles 11(1)(e) and 14(2)(c) of CEDAW. One key feature of these articles is the principle that the right to social security is to be enjoyed without discrimination, including on the basis of race. Quarantining the income payments of all Indigenous peoples in the prescribed communities is a racially-based, and therefore discriminatory, measure. The blanket application of income management as outlined in section 123UFAA of the proposed legislation, means that individuals who are not responsible for the care of children, do not gamble and do not abuse alcohol or other substances, may still have their income managed. The criteria for income management are therefore based solely on race, rather than on the basis of need.

The quarantining of income payments is a blunt, ineffective instrument for addressing the complex social problems in Indigenous communities. There is no evidence to suggest that making school attendance a condition of income support, as proposed in the amended legislation under subparagraph 123UGD, will improve attendance and retention rates of young Indigenous students. In cases of truancy, parents want their children to attend school, but they are often powerless to achieve this without significant support from schools, their families and kinship groups, and other community services.[10]

Of key concern with regards to income management in general, but particularly when linked to school attendance of young people, is the lack of evidence to suggest that such a scheme works. There is, in fact, no discernible proof that the implementation of such programs will 'close the gap' for Indigenous communities. These programs serve to draw valuable time, attention and resources away from the issues that underpin low Indigenous attendance and retention rates.

The amendments proposed in the Stronger Futures legislative package are underpinned by what is referred to as 'mutual obligation' – the idea that those receiving welfare from governments should give something back. While the capacity to divert a part of an individual's welfare payment to cover debts of child support payments has long been a feature of Australia's welfare system, income management regimes (IMRs) are relatively new. They signal a dangerous shift from a welfare system based on legal entitlement to one based on individualised (and often highly punitive) contracts between the Government and individuals. We are strongly opposed to this shift, believing that it reduces the responsibility that we all have to care for our brothers and sisters, and that it serves only to fracture often vulnerable communities. The income management criteria in the proposed Stronger Futures legislative package signal a dangerous return to paternalism, are overly punitive, and represent a top-down approach that fails to address the real issues of disadvantage faced by many Indigenous communities.

Making improved school attendance an objective of income management presupposes that children in the Northern Territory could access educational opportunities if they and their family wished to do so. The Combined Aboriginal Organisations of the Northern Territory have reported a severe lack of

10 ACOSS (2007), 'Submission to the Senate Legal and Constitutional Affairs Committee on: Social Security and Other legislation (Welfare Payment reform) Bill; Northern Territory National Emergency Response Bill 2007; and Family and Community Services and Indigenous Affairs and Other legislation (Northern Territory National Emergency Response and Other Measures) Bill 2007', available at http://www.acoss.org.au/publications/submissions/3015_Senate%20Legal%20Affairs%20Committee%202007/pdf

educational services in the region.[11] Just under 95 per cent of Indigenous communities in the Northern Territory have no preschool, 56 per cent have no secondary school and 27 per cent have a local primary school that is located more than 50km away. The Combined Aboriginal Organisations of the Northern Territory also details a lack of adequately trained, culturally-aware teachers and a high turnover of teachers in remote communities.

As there is a lack of significant studies on the Australian attempts to link school attendance with welfare payments under income management regimes, it is necessary to examine international analyses of similar programs. The largest study of this kind was undertaken in 2005, where seven programs running in the United States over a twenty-year period were examined. The results found that of the three programs that instituted sanctions without simultaneously expanding case management services, none improved attendance or indeed achieved any other intended outcome.

Evaluations found that geographic location was a better predictor of attendance than welfare status, and that illness rather than truancy was the primary cause of absence – a finding which undercuts the idea that sanctions alone are likely to alter attendance patterns.

The study found that programs which seek to link welfare payments to school attendance are based on 'assumptions of questionable validity, including the fact that they implicitly define the problem as one of parental or student negligence.' The study concluded that these programs spend disproportionate amounts on monitoring students, rather than directing funds to areas of poverty and disadvantage that may actually alleviate the underlying barriers to students attending school.[12]

The only independent evaluation that is currently available in Australia is that of a voluntary trial conducted in Halls Creek in 2006. It was found that the voluntary method used in the Halls Creek did not work. The evaluators noted,

> it became apparent that the parents of Indigenous children are not the only 'lever' or 'method of engagement' that can be used to get children to attend school. The evidence all points to the pivotal role that teachers and the school 'culture' itself plays in a community where children decide their own time use patterns from a very early age.

The evaluation also found that poor or strong attendance did not run in families – that in one family with five school-age children, attendance levels ranged dramatically from 14 per cent to 88 per cent. The evaluators noted that,

> other programs at other schools have also had a significant impact. The key to improvement is to create an education environment in which students want to remain. In other words, the students need to be engaged. The main means for doing this is with high quality teachers and a strong leadership culture within the school.

The issue of health as it relates to truancy is vitally important in the Australian context, and one which has not been adequately addressed in the Stronger Futures legislative package. The National Aboriginal Community Controlled Health Organisation (NACCHO) conducted the 'Ear Trial and School Attendance Project' in 2003 and found that children with chronic suppurative otitis media (CSOM – also known as "runny ear"), attended school only 69 per cent of the days available, compared with 88 per cent of healthy children in the same schools. Studies in the Northern Territory have revealed that Indigenous children with low rates of school attendance were more likely than their counterparts to have ear disease and associated hearing loss. Poor nutrition and the associated health impacts were also found to have significant impact on the attendance rates of Indigenous children at school.

Intergenerational poverty, an insidious legacy of institutionalised racism in this country, also impacts the rates of attendance. It should be noted that in Indigenous communities, responsibility for young people is not the sole domain of the biological parents. Any policy which then seeks to focus exclusively on the parents is not culturally appropriate. Policies that focus only on parents, fail to recognise the agency that young people have (particularly once they reach high school), and overlook issues such as bullying or systemic racism that may prevent these young people from enjoying (and therefore wanting to attend) school.

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11 Combined Aboriginal Organisations of the Northern Territory (2007), 'Submission to the Inquiry into the Northern Territory National Emergency response Bill 2007 and Related Bills', available at http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/submissions/sub125.pdf, p. 18.

12 Campbell, D. & Wright, J. (2005), 'Re-thinking welfare school-attendance policies,' Social Service Review, March, Volume 79, No. 1.

The Centre for Aboriginal Economic Policy Research estimates that if all students in remote communities in the Northern Territory attended school, an extra $79 million per year would be required to expand the number of teachers and other resources, together with $295 million for infrastructure including teacher housing. While there have been a significant number of studies attempting to discern the reasons for non-attendance at school, several recent studies have focussed solely on Australian Indigenous students. They reveal the following key (Indigenous-specific) reasons for non-attendance

- a lack of recognition by schools of Indigenous culture and history
- failure to fully engage parents, carers and the wider Indigenous community
- ongoing disadvantage in many areas of the daily lives of Indigenous Australians.

At the start of the 2009 academic year, a trial was implemented, attaching school attendance conditions to parents' income support payments. Known as SEAM (Improving School Enrolment and Attendance through Welfare Reform Measure), the trial – though not Indigenous-specific – was conducted in predominantly Indigenous communities. SEAM commenced on a trial basis in six Northern Territory communities, and was extended into Queensland at the end of 2009.

International assessments of the Australian trial have been largely negative. In comparison, for instance, to programs of a similar nature implemented in the United Kingdom, USA, and Europe, the Australian program lacks the 'layered financial and service supports,' and fails to incorporate 'peer support programs such as those in Norway [which] help welfare recipients to map their needs, raise self-esteem and develop networks (through for example, attending classes on child development or social outings) before plans are put into action.'[13]

Importantly, although the SEAM trial has been moved into Stage Two, there are still no publicly available independent evaluations. This makes it difficult to justify the Government's determination to proceed with a formula in the Stronger Futures legislative package that has not been sufficiently scrutinised.

In contrast to the SEAM program, there are also initiatives that offer incentives and rewards for positive behaviour – particularly targeting Indigenous students through the use of sports programs. These programs, funded through the Federal Government, but run in conjunction with organisations such as the AFL and Academy of Sport take various forms, depending on the region in which they are implemented. One of the most successful is The Clontarf Foundation, lauded by Mick Dodson as 'an example of what is working in Indigenous education, one of the inspiring chinks of light that are up against some appalling examples of forgotten kids, forgotten places.'[14]

The program has undergone two evaluations, both of which cite it as a success for the following reasons

- staff commitment to the participants and the strength of the relationships that are formed
- the development of an Indigenous-appropriate curriculum, including a significant vocational education and training (VET) program
- a demonstrable belief on the part of all staff that the students can succeed
- the provision of appropriate structures and support
- strong sense of belonging experienced by the students
- clear vision and goal setting by members of the staff
- provision of assistance to students to set and achieve their own goals
- promotion of healthy lifestyles.

The attendance and retention rates for the Clontarf Foundation programs (last published in 2009) reveal

- 77 per cent attendance rate for Indigenous students
- 76 per cent of Indigenous students completed Year 12
- 75 per cent of program graduates were placed in full-time employment within one year of graduation.

These statistics are markedly higher than any program based on punitive measures introduced by the Government to date, and demonstrate that there *are* programs that will achieve the aims of the proposed Stronger Futures legislative package without resorting to the implementation of punitive income management regimes.

The findings of the longitudinal study from the United States, supported by the troubling health and economic statistics in some Indigenous communities, lend credence to the argument that income management linked to school attendance is a 'bandaid' approach to a serious societal issue.

13 Australian Government, Australian Institute of Health & Welfare (AIHW), Australian Institute of Family Studies (AIFS) (2010), "Closing the Gap: School attendance and retention of Indigenous Australian students," Issues Paper No. 1, September, Closing the Gap Clearinghouse.

14 Dodson, M. (2010), "Respect. Relationships. We have come so far," National Times, 17 January.

While there are individual accounts of positive experiences with income management, these are isolated and anecdotal reports that lack independent corroboration.[15] It has also been argued that quarantining welfare payments may increase the risk of violence against women and children, threatening their right to live free of the threat of violence and abuse. In those communities where the mother is the person responsible for the children, the father may blame the mother for the quarantining of payments. In addition, many Indigenous families have care arrangements where members of the extended kinship group have primary responsibility for the children. Yet, if those children fail to attend school, the payments of the mother and father will be quarantined. This may expose a range of women to violence.

Income management does not encourage fiscal responsibility, and may in fact lead to greater dependency on others to manage budgets.[16] More constructive and beneficial policy would involve programs to improve financial literacy and the capacity of Indigenous peoples to budget their welfare payments.

4 | ALCOHOL BANS

We recognise alcohol abuse is a serious problem in some Indigenous communities as well as many non-Indigenous communities. While Foetal Alcohol Spectrum Disorder occurs at a rate of between 0.06 and 0.68 per 1,000 live births in the general population, among Indigenous Australians the rate is between 2.76 and 4.7 per 1,000 live births.[17] We support a comprehensive public health approach to addressing the problem of alcohol abuse in Australia. This would include supply and accessibility constraints, through restrictions on the location of liquor outlets and their hours of operation, and the use of price signals (through a floor price on alcohol and a tax system that taxes products with high alcohol content more heavily).[18] It also includes culturally-appropriate public education about the dangers of alcohol abuse and support services for those impacted by alcohol abuse.

Alcohol restrictions with the full support and consent of communities may qualify as 'special measures' under the RDA. We note the positive benefits of such restrictions when supported by the local community.[19] The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs noted the alcohol restrictions implemented in Fitzroy Crossing since 2008 had resulted in

- 36 per cent reduction in alcohol related presentations to the Fitzroy Crossing Emergency Department
- 25 per cent reduction in women seeking assistance from the Women's Refuge
- 28 per cent reduction in the average number of alcohol related matters attended by the police.

The Committee formed the view that alcohol restrictions have been particularly successful in some communities because they were driven by strong local leaders.[20] The Committee further stated

> In order to effect long term behavioural changes in communities, alcohol and substance restrictions must be owned and driven by the community rather than continuously imposed by government or police forces… While the Committee would like to see more widespread introduction of alcohol restrictions, it is aware that, unless there is community support, ownership, and drive for change, this merely introduces a black-market for alcohol or drives people to the fringes of local townships where alcohol can be purchased more easily. Instead, every support must be given for communities to recognise the damage caused by alcohol and substance abuse, and to initiate their

15 Cox, E. (2012), 'What's data got to do with it? Reassessing the NT Intervention,' Australian Policy Online, available at http://apo.org.au/commentary/whats-data-got-do-it-reassessing-nt-intervention

16 ACOSS (2007), op. cit.

17 Peadon, E., Fremantle E., Bower, C. and Elliott, E. (2008), 'International Survey of Diagnostic Services for Children with Foetal Alcohol Spectrum Disorders', BMC Pediatrics, 8:12.

18 Importantly, we note that there is compelling evidence for countering excessive alcohol consumption and related harms utilising this approach in all areas of Australian societies, not only remote Indigenous communities. See, for instance, Carragher, N. & Chalmers, J. (2012), 'What are the options? Pricing and taxation policy reforms to redress excessive alcohol consumption and related harms in Australia,' NSW Bureau of Crime Statistics and Research, http://apo.org.au/node/27838

19 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011), 'Doing Time – Time for Doing. Indigenous youth in the criminal justice system,' June, pp. 90-91.

20 Ibid., p. 92.

> own measures and restrictions to tackle these issues. The Commonwealth and states and territories should be active though in educating communities about the personal health and broader social consequences of alcohol and substance abuse in communities, and in ensuring access to rehabilitation services.[21]

This type of policy, however, should only be the first step. A sustained response which properly establishes and funds programs to address the underlying factors that contribute to alcohol abuse is needed, including funding for treatment and rehabilitation services in remote communities, such as counselling and health facilities. We note that many of the elements of a holistic approach to stemming alcohol abuse in Indigenous communities are contained within the Commonwealth Government's Indigenous Family Safety Agenda, including treatment and rehabilitation services for Indigenous people, a National Binge Drinking Strategy targeting younger people, a study by the Fitzroy Valley community of diagnosis and community education strategies for Foetal Alcohol Spectrum Disorder, building the leadership and skills of people advocating for alcohol restrictions and the construction of Indigenous specific drug and alcohol residential rehabilitation facilities.

Under Division 2, clause 8 of the proposed legislation

> There is an alternative process available under the Liquor Regulations for the issue of penalty infringement notices for minor offences. Further, there is the option to refer an offender to the Substance Misuse Assessment and Referral for Treatment Court.

We strongly believe that all incursions of alcohol bans and restrictions should be dealt with in the first instance by referral to this court to ensure that the problem of alcohol abuse in Indigenous communities is addressed at its root. Purely punitive measures of up to six months incarceration will fail to reduce the impact of alcohol abuse on Indigenous families and community members, and will serve only to increase the disproportionate rate of incarcerated Indigenous peoples.

We are concerned that the proposed amendments in the Stronger Futures legislative package make no reference to the enactment of customary law to address incursions of alcohol bans.

Customary law – the social rules and customs of Indigenous communities that have evolved over centuries – sets down a system of law and order for a community, governing the roles and responsibilities of the residents. It provides for rights and respect for others and consequences for those who breach community standards of behaviour.[22]

Article 34 of the Declaration of the Rights of Indigenous peoples states

> Indigenous peoples have the right to their own legal systems and customs, as long as they accord with international human rights law.[23]

Customary law can help Indigenous communities exercise greater self-governance and take greater control over problems facing their communities. It should be seen by the Government as integral to attempts to develop and maintain functional, self-determining Indigenous communities.[24]

There are, and have been, a range of formal processes recognising customary law across Australia, in addition to informal recognition by the judiciary in some circumstances. Formal processes include the Ngunga Court in South Australia, the Koori Court in Victoria, circle sentencing in New South Wales and the Australian Capital Territory, the Murri Court in Queensland and Community Courts in Western Australia. The development and implementation of these traditional justice systems has been supported by the National Aboriginal Justice Advisory Council, established in 1995.

The Northern Territory Emergency Response Act 2007 (Cth) prohibits the consideration of customary law in the Northern Territory. This blanket exclusion removes an important mechanism by which traditional Indigenous practices intersect with the Australian legal system, and deprives the First Peoples of the right to determine their own social and political

21 Ibid., pp. 94 – 95.

22 Law Council of Australia (2006), 'Aboriginal Customary Law: Submission to the Law Reform Commission of Western Australia,' available at http//www.lawcouncil.asn.au/shadowmx/apps/fms/fmsdownload.cfm?file_uuid=E3F2E50E-1E4F-17FA-D204-C32419A643D9&siteName=lca

23 http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

24 HREOC (2003), 'Submission to the Northern Territory Law Reform Committee Inquiry into Aboriginal Customary Law in the Northern Territory,' available at http://www.humanrights.gov.au/legal/submissions/sj_submissions/customary_law/nt_lawreform.html

development.[25] We call for the reinstatement of customary law consideration as per Article 40 of the Declaration of the Rights of Indigenous Peoples, to empower and promote Indigenous peoples in respect to transgressions of alcohol bans in communities.

5 | CONSULTATION WITH INDIGENOUS PEOPLES

Successful consultation with Indigenous Australians must be the cornerstone of any legitimate policy to address violence and disadvantage in Indigenous communities. We do not believe that the consultations for the Stronger Futures legislative package have been sufficiently extensive.

In 2011, the Northern Synod of the Uniting Church in Australia released a statement on the Intervention. In part, this statement reads:

> stop telling us and doing things to us and start to work alongside us in partnership. This will involve a resetting of the government-Indigenous relationship and for government to start to use different approaches.[26]

Without consulting with communities, the Government cannot fully understand the needs and circumstances of Indigenous Australians and cannot expand successful programs that have been devised and implemented by Indigenous communities.

In addition, any measures that are taken with neither the consultation nor consent of those affected cannot legitimately be labelled as 'special measures'. This principle is particularly important in relation to the rights of Indigenous peoples. The UN Committee on the Elimination of Racial Discrimination has called on parties to ICERD to

> 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.[27]

The approach taken by the Government in the proposed Stronger Futures legislative package has distanced and disempowered Indigenous communities from the policy process.

6 | CONCLUSION

The Uniting Church has long been opposed to the introduction of any policy measures that are overly detrimental to our First Peoples. We have long advocated for engagement with Indigenous communities based on genuine consultations, long-term solutions to the problems that affect community members, and adequately funded programs that seek to address the root causes of disadvantage. This latest suite of reforms offered by the Stronger Futures legislative package fails on all accounts and stands in direct contradiction to all the Uniting Church hope to achieve in partnership with our Indigenous brothers and sisters.

There is no simple solution to the complex set of problems outlined in the Stronger Futures Report, however we strongly oppose any legislation that is not supported by evidence-led research, and that removes responsibility from families and communities by operating from an enforcement-based position. The way forward to overcoming disadvantage, improving outcomes and increasing the rates of Indigenous attendance and retention are clear: families must be empowered to take control of their situations, rather than being singled out by harsh penalties that threaten only to exacerbate the economic injustices that drive much of the disadvantage particularly in remote communities.

The aims of the Government in introducing these measures are – to a certain degree – laudable. Certainly, the Uniting Church supports the overarching principle of equality and 'closing the gap' between Indigenous and non-Indigenous peoples. However, the seductive simplicity of banning alcohol, increasing sentences for violations of bans, quarantining welfare payments and holding parents accountable by suspending their income support based on their child's school attendance shifts all responsibility for long-term systemic issues onto the First Peoples themselves, and fails to support or further the reconciliatory goals that must inspire interactions between Indigenous and non-Indigenous Australians.

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25 HREOC (2008), 'Submission to the Northern Territory Emergency response Review Board: Practical Implications of the Northern Territory Emergency response,' available at http://www.hrlrc.org.au/files/YE0PPFCQTT/HRLRC%20Submission%20on%20NTER.pdf

26 http://www.ns.uca.org.au/wp-content/uploads/2010/05/Intervention-2011-web-update.pdf

27 http://www.unhchr.ch/tbs/doc.nsf/0/73984290dfea022b802565160056fe1c