Catholic Social Services Australia

Submission to Senate Legal and Constitutional Affairs Committee

INQUIRY INTO THE PROVISIONS OF THE NORTHERN TERRITORY EMERGENCY RESPONSE BILL 2007 AND ASSOCIATED BILLS

9 August 2007

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SUMMARY

There has been insufficient time to consider and comment on the detail of the five Bills which make up this package of legislation.

This submission directly addresses just four of the plethora of significant issues raised by those Bills:

- The evident need for more extensive **consultation**, and for genuine Parliamentary scrutiny, if the outcomes are to be either workable or beneficial.
- Our objection to the introduction of **racial discrimination** into our welfare payment system.
- Intrinsic problems with the "**quarantining**" of welfare payments – problems which require examination and resolution before the legislated introduction of any such scheme.
- Reiteration of our previously-expressed concerns that the proposed **sentencing** provisions will discriminate against Indigenous people and other cultural minorities while not helping to redress child abuse.

Our **sole recommendation** is that the **Committee recommend the further referral of the Bills to committee, for a period of at least two months**. This would allow the beginnings of consultation on the far-reaching implications of these hastily conceived Bills – and on how they might be improved.

TABLE OF CONTENTS

INDEX to ATTACHMENTS:

1. INTRODUCTION

1.A About Catholic Social Services Australia

1. Representing 63 member organisations, Catholic Social Services Australia is the Catholic Church's peak national body for social services. It advises the Australian Catholic Bishops Conference on social policy issues as well as supporting the delivery of a wide range of social service programs. For 50 years, Catholic Social Services Australia has assisted and promoted better social policy for the most disadvantaged people in Australian society. This continues a much longer tradition of such engagement by the Catholic Church in Australia.

2. Catholic Social Services Australia has the mission of promoting a fairer, more inclusive society that gives preference to helping people most in need. It is committed to an Australian society that reflects and supports the dignity, equality and participation of all people. To this end, Catholic Social Services Australia works with Catholic organisations, governments, other churches and all people of goodwill to develop social welfare policies and other strategic responses that work towards the economic, social and spiritual well-being of the Australian community. Our 63 members employ over 6,500 people and provide 500 different services to over a million people each year.

1.B Scope of this submission

3. This submission is relatively narrow in scope. There has been insufficient time (just 48 hours) to consider and comment on the detail of the five Bills making up this package of legislation.

4. This submission directly addresses just four issues:

- Consultation.
- Racial discrimination in relation to welfare payment systems.
- The "quarantining" of welfare payments.
- Bail and sentencing provisions.

5. The issues are dealt with at slightly more length in attachments, some of which also touch on other aspects of the Bills which are not addressed in this submission. In particular, we refer the Committee to our media release of 7 August 2007 (**Attachment A**) and to the statement issued by Catholic Bishops on 5 July 2007 (**Attachment B**).

2. CONSULTATION

6. The five Bills in question introduce radical changes and would deeply affect a wide range of matters. For example, they would affect land rights[1] and the inalienability of welfare payments, as well as introducing racial discrimination into our welfare system.

[1] See e.g. Jon Altman, *"National Emergency" and Land Rights Reform: Separating Fact from Fiction – An assessment of the proposed amendments to the Aboriginal Land Rights (Northern Territory) Act 1976*, Briefing paper for Oxfam Australin 7 August 2007.

7. The publication, introduction and passage of Bills of this nature and magnitude in a single Parliamentary sitting fortnight would be a travesty of process. It would signal to the Australian (and international) community an unjustifiable disregard for consultation and debate – even on such fundamental matters as the effective application of different laws for people of different ethnicity.

8. Apart from the principles underlying the need for additional consultation, experience suggests that legislation which is drafted and passed in undue haste will prove unworkable in practice as errors and unintended consequences emerge. This is particularly the case with complex legislation making major changes to pre-existing approaches and systems.

9. There is no indication that "emergency" assistance measures would be unduly delayed by such a review, as initiatives have already commenced and could continue ahead of the introduction of this legislation.

10. We therefore urge the Senate Legal and Constitutional Affairs Committee to do everything in its power to urge the deferral of consideration of these Bills by the Senate until after more extensive scrutiny, of a period allowing at least one month for the provision of submissions by the public. This would allow the beginnings of consultation on the far-reaching implications of these hastily conceived Bills – and on how they might be improved.

Recommendation

> Catholic Social Services Australia recommends that the Committee recommend the further referral of the Bills to committee, for a period of at least two months.

3. RACIAL DISCRIMINATION

11. The Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 ("the Welfare Payment Reform Bill") introduces different "income management" (or "quarantining" regimes for income support recipients which would remove discretion over portions of government income support payments from different classes of recipient. The Welfare Payment Reform Bill would apparently make a person subject to such a regime if:

(a) They live in a "declared relevant Northern Territory area", or

(b) A State/Territory child protection officer requires the person to be so subject, or

(c) They or their partner's child is not enrolled at school, or

(d) They or their partner's child has unsatisfactory school attendance, or

(e) The "Queensland Commission" requires the person to be so subject.

12. The expectation appears to be that all persons in categories (a) and (e) would be Indigenous. Apart from the fact that simply living in a "declared" Northern Territory community would trigger income management arrangements (rather than any individualised problem regarding children), a person in a "declared" Northern Territory Indigenous community would also be disadvantaged in other ways by the operation of the proposed provisions. Most notable here is the removal of the right to external appeal to the Social Security Appeals Tribunal.

13. As stated by the Catholic Bishops of Australia on 5 July[2]:

> Institutionalised racism cannot be acceptable. As Indigenous leaders have pointed out, the policy of imposing penalties on *all* parents receiving certain income support or Family Tax Benefits if they live in remote Aboriginal communities, while equivalent penalties will apply to other Australians *only* if there is evidence of "irresponsible" parenting, is both racially discriminatory and counter-productive. It would appear to breach the Racial Discrimination Act (Cth) and Australia's international law obligations.[3][4] As stated by the Pontifical Commission on Justice and Peace, *"the law must be equal for all citizens without distinction. It is important for ethnic, linguistic or religious minorities…to enjoy recognition of the same inalienable rights as other citizens.*[4[

14. We draw the Committee's attention to the provisions of Article 5 of the International Convention on the Elimination of Racial Discrimination, to which Australia is party, concerning equality before the law in general and in relation to social security:

> Article 5
>
> In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee **the right of everyone, without distinction as to race**, colour, or national or ethnic origin, to **equality before the law, notably in the enjoyment of the following rights**:
>
> (a) The right to **equal treatment before the tribunals** and all other organs administering justice; …
>
> (e) Economic, social and cultural rights, in particular: …
>
> (iv) The right to public health, medical care, **social security and social services**

15. The Explanatory Memorandum to the Welfare Payment Reform Bill states, uncontentiously enough, that:

> Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.
>
> The impact of sexual abuse on Indigenous children, families and communities is a most serious issue requiring decisive and prompt action.

16. The same Explanatory Memorandum goes on to argue that:

> The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties. In doing so, it will take important steps to advance the human rights of the Indigenous peoples in communities suffering the crisis of community dysfunction.

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[2] *A Statement from the Catholic Bishops of Australia on dignity and justice for Indigenous Australians* (footnotes removed); reproduced as **Attachment B** to this submission.

[3][4] See *International Convention on the Elimination of All Forms of Racial Discrimination*, Articles 2 and 5 (http://www.ohchr.org/english/law/cerd.htm).

[4][5] *The Church and Racism* (n.3 above), #23.

> In the case of Indigenous people in the Northern Territory, there are significant social and economic barriers to the enjoyment of their rights to health, development, education, property, social security and culture.
>
> The provisions of this bill that relate to the Northern Territory national emergency response and the Queensland Commission reforms are the basis of action to improve the ability of Indigenous peoples to enjoy these rights and freedoms. This cannot be achieved without implementing measures that do not apply in other parts of Australia. The bill will provide the foundation for rebuilding social and economic structures and give meaningful content to Indigenous rights and freedoms. In a crisis such as in the Northern Territory, the Northern Territory measures in the bill are necessary to ensure that there is real improvement before it is too late for many of the children.

17. The sweeping assertion that the measures in the Welfare Payments Reform Bill will "improve the ability of Indigenous peoples to enjoy these rights and freedoms" is simply not substantiated by any demonstration of *how* this might be the case: how any specific measures in the Bill will have this effect. For example, it is not apparent how the Northern Territory "income management" of welfare payments (or "quarantining") would qualify as a "special measure" – it is far from self-evident how external micro-management of a child's parent's expenditure would help that child in the many cases where no previous problem existed. Nor is it clear how removing the right to appeal to the established Social Security Appeals Tribunal will assist relevant Northern Territory Indigenous people to a greater – rather than diminished – enjoyment of their rights.

18. It is inconsistent for the provisions in question to purport to "exclude" racially discriminatory provisions in these Bills from the operation of anti-discrimination legislation, while simultaneously deeming those provisions to be "special measures" under that same legislation.

19. On "special measures", we note the following points made in recent advice from the ACT Human Rights and Discrimination Commissioner to the ACT Chief Minister regarding the Commonwealth Government's 21 June 2007 announcement of "emergency" measures for Northern Territory Indigenous communities (footnotes deleted):[5]

> The UN HRC noted that the principle of equality sometimes requires affirmative action in order to diminish or eliminate conditions, which cause or help to perpetuate discrimination. Affirmative action denotes positive steps taken by a State to improve the status of disadvantaged groups, eg to 'positively' discriminate in favour of disadvantaged groups. The HRC has confirmed that affirmative action is permissible under the ICCPR [International Covenant on Civil and Political Rights] and it is permitted under articles 1(4) and 2(2) of CERD [the Convention on the Elimination of Racial Discrimination], and 'when circumstances so warrant'. The HRC had in mind preferential treatment being granted for a time to the part of the population concerned to correct those conditions.
>
> There is also scope for temporary special measures under s.8 of the federal *Racial Discrimination Act 1975* (and articles 1(4) and 2(2) CERD), but no provision for temporary exemptions. Special measures must: provide a **benefit** to some or all members of a racial or ethnic group; have the **sole purpose** of securing the advancement of the group; be **necessary** to achieve that purpose; and **stop** once the purpose has been achieved. Article 1(4) of CERD says special measures should not "lead to the maintenance of separate rights for different racial groups and …shall not be continued after the objectives for which they were taken have been achieved". Article 2(2) provides a positive obligation on States to take action to ensure that minority racial groups are guaranteed

[5] Dr Helen Watchirs, ACT Human Rights and Discrimination Commissioner, *Request for advice on discrimination & human rights implications of Commonwealth emergency measures in NT Indigenous communities announced on 21 June 2007*, letter to Mr Jon Stanhope, ACT Chief Minister, dated 26 June 2007, at pp. 4-6 and 10 (available at http://www.hrc.act.gov.au under "Submissions").

the enjoyment of human rights and fundamental freedoms. The CERD Committee's General Recommendation 14 confirms that CERD prohibits indirect discrimination on the basis of race:

> 2….In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.

The obvious risk of paternalism was considered by the Australian High Court in *Gerhardy v Brown* the leading case on special measures. Justice Brennan said "the wishes of the beneficiaries for the measures are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of securing their advancement". The CERD Committee's General Recommendation 23 on Indigenous Rights under the Convention calls upon State Parties to:

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

It is very difficult to regard these proposals as 'special measures' when Indigenous communities have not been consulted, as required by CERD. They do not appear to be effective in overcoming disadvantage, and may in fact entrench or worsen existing discrimination.

Permissible limitations on human rights and proportionality test

According to the UN HRC, not every differentiation of treatment constitutes unlawful discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a legitimate purpose under the ICCPR. Therefore proportionate measures designed to achieve a legitimate objective are permissible. This is replicated, in part, in section 28 of the *ACT Human Rights Act 2004*, which allows human rights to be subject to reasonable limits. Whether a limitation is 'reasonable' depends on whether it is proportionate. The proportionality test assesses whether:

- the objective is sufficiently important;
- the limitation on the right is rationally connected to the objective;
- the limitation minimally impairs the right or freedom in question, ; and
- is not out of proportion to the objective.

Proportionality involves consideration of the justification for the treatment in question. The UN HRC has proceeded to determine what constitutes reasonable limitations to the ICCPR's discriminatory provisions on a case-by-case basis. **The proposed Federal Government measures in Indigenous communities should be tested using the proportionality framework** as to whether the limitations on s.8 are reasonable. This should be undertaken **on a case-by-case basis**.

20. The broad assertion in the Explanatory Memorandum that the measures in the Welfare Payment Reform Bill "will provide the foundation for rebuilding social and economic structures and give meaningful content to Indigenous rights and freedoms" and "are necessary to ensure that there is real improvement" is far too broad to carry weight.

21. Instead, Catholic Social Services Australia submits that careful – and public – case-by-case consideration, in the manner outlined in Dr Watchirs's advice, is required before any purported "special measure" can be justified, much less legislated or implemented.

22. We would also stress the need for legislated steps deemed "special measures" to include sunset clauses providing for the termination of such measures as soon as practicable.

23. The hearing for this Inquiry will be held the day after International Day for the World's Indigenous Peoples. We urge the Committee to take full account of:

- The wide range of deep-seated reasons underlying the appalling conditions in many Indigenous communities (as spelled out in a number of reports[6]),

- The potential for racially discriminatory aspects of the Bills to prove counter-productive – for example, by having negative implications for self-determination, the value of which has been well-documented,

- Australia's international human rights obligations, and

- The desirability of maintaining our reputation as a good international citizen without racially discriminatory legislation on our statute books.

4. "QUARANTINING" OF WELFARE PAYMENTS

24. On the proposed introduction of "quarantining" of welfare payments *per se*, we note the following:

- It has not been shown how depriving people of personal responsibility is the best way of increasing their capacity or willingness to exercise it.

- Nor has it been shown how income management will necessarily help overcome substance abuse or addictive gambling behaviours

- Studies of U.S. programs linking welfare payments to school attendance have found that "sanction-only programs" without case management resources "do not significantly improve attendance".[7]

- In the absence of adequate support services, quarantining may have unintended and adverse consequences – not least as a result of the demeaning and stigmatizing way in which the system may well be perceived as applying.

- Child neglect and child abuse should be addressed through child protection systems which were designed for that purpose, and not through the welfare system. Funding for child protection systems should be raised to adequate levels as a matter of urgency.

- Why should welfare recipients be treated differently from others in the community – if our concern is the protection of children, is it not for the children of *all* parents, not just those on income support? While we do not believe that the income management system in the Welfare Payment Reform Bill will be effective, as a matter of logic it is not clear why it is being confined to those receiving government income support payments, and not extended to all families receiving Family Tax Benefit from the government.

- It is not for the government to tell individuals how to spend their income.

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[6] See e.g. *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred": Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007* at p. 224 – although the catalyst for recent Commonwealth action, the recommendations of this report do not appear to have informed Commonwealth Government policy.

[7] See David Campbell and Joan Wright, "Rethinking Welfare School-Attendance Policies, *Social Service Review* (2005): 2 at p. 4 (summarising seven evaluations of programs linking welfare payments to school attendance).

- The funding to be diverted into the administration of income management across entire communities in the Northern Territory would be better spent on improving both physical and social infrastructure to ensure that those households and families in particular need obtain assistance.

25. In addition to the above, we refer the Committee to the attached transcript of a Radio National *Life Matters* interview about "quarantining" with Frank Quinlan, Executive Director, Catholic Social Services Australia (**Attachment C**).

5. SENTENCING PROVISIONS

26. Clause 91 of the Northern Territory National Emergency Response Bill 2007 prohibits a court from taking into account customary law or cultural practice when sentencing a person for having committed a Northern Territory offence.

27. We do not seek here to address the major issue of the imposition by the Commonwealth of laws on a Territory – instead, our focus is on what the proposed provision would mean for sentencing.

28. The context here is the passage of amendments to the Crimes Act (Cth) in 2006 regarding bail and sentencing. Those amendments were passed without themselves being amended along the substantial lines recommended by the Senate Legal and Constitutional Affairs Committee, which had conducted an inquiry into the amending Bill, the Crime Amendment (Bail and Sentencing) Bill 2006.[8]

29. We reiterate the concerns expressed in our submission to that 2006 Inquiry by the Committee. A copy of that submission is at **Attachment E**, and a related media release is at **Attachment D**.

30. In its report on its 2006 Inquiry into then-proposed (since passed) amendments to the Crimes Act (Cth), the Committee cited extracts from our submission as follows:

> 3.15 In this context (and in strongly opposing the measures contained in the Bill), Catholic Social Services Australia submitted that it is the Commonwealth's responsibility to lead by good example:
>
> > It is incumbent on the Commonwealth Government to ensure that any legislative action it develops in response to the July 2006 COAG Communiqué is measured, just, and not liable to have unintended consequences which might further disadvantage some of the most vulnerable people in the Australian community. This is important not only directly for federal offences, but also indirectly for State/Territory offences to the extent that the Commonwealth model is followed elsewhere. [*citing p.4 of our submission*]
>
> 3.31 Catholic Social Services Australia made a similar argument:
>
> > ... changing sentencing rules is [not] an effective way of addressing the causes of violence in Indigenous communities. That requires action to address poverty, social exclusion and the deficiencies of current support arrangements for families in crisis. [*citing p.12 of our submission*]
>
> 3.61 Many argued that the amendments contained in the Bill will unnecessarily and inappropriately restrict the discretion of courts, resulting in potential injustice for Indigenous

[8] Senate Standing Committee on Legal and Constitutional Affairs, *Report: Crimes Amendent (Bail and Sentencing) Bill 2006*, October 2006.

Australians and Australians of multicultural descent. Most submissions and witnesses centred their comments on proposed amendments to the sentencing process, as contained in Items 4 and 5 of the Bill (new paragraphs 16A(2)(m) and subsection 16A(2A).

3.62 Catholic Social Services Australia provided the committee with a summary of the general concerns in this regard:

> ... the current law strikes an appropriate balance by including "cultural background" among a long list of factors which must, to the extent that they are relevant and known to the court, be considered in sentencing for federal offences. If made law, the Bill would remove the reference to "cultural background". This would create an imbalance and risk injustices stemming from inadequate consideration of cultural factors. [*citing p.7 of our submission*]

3.63 Even more significantly, by specifically prohibiting any consideration of cultural practices or customary law, the Bill 'would further disadvantage some of the most vulnerable people in our community because some relevant cultural factors would not be allowed to be weighed on the scales of justice'. [*citing p.9 of our submission*]

31. We remind the Committee that the Committee's own majority conclusions in its 2006 Inquiry mitigate against supporting Clause 91 of the Northern Territory National Emergency Response Bill (2007).

32. Specifically, the Committee's 2006 conclusions included the following points:

- "the Bill's focus is misdirected" (para 3.90)
- "the Bill will do little, if anything, to achieve its stated aim (para 3.90)
- "while the Bill's stated aim is to address violence and child abuse in Indigenous communities, its implications are much wider" (para 3.99)
- "the Bill, as it impacts upon offenders from a multicultural background, has not been fully considered." (para 3.102)
- "The Bill is …likely to have significant consequences if a similar approach is adopted in the states and territories. As evidence to the inquiry strongly indicated, the Bill will inevitably impact most on Indigenous Australians and those with a multicultural background." (para 3.97)
- "The committee endorses the reasons behind the ALRC [Australian Law Reform Commission]'s recommendations that 'cultural background' be specifically inserted into the Crimes Act" (para 3.101)
- "The committee notes the Department's assertion that the Bill is not discriminatory – that the Bill may be drafted in a way that accords with principles of formal equity but, clearly, in practice it is likely to apply only to certain categories of offenders. It does not therefore provide substantive equality to Indigenous offenders or offenders with a multicultural background." (para 3.97)
- "The committee is also mindful of evidence arguing strongly that the Bill conflicts with every major inquiry into the role of cultural background and customary law in the Australian legal system" (para 3.103)

- "the most concerning feature of the Bill is the symbolic message that it sends to the judiciary (and the community at large) and the judicial uncertainty it may create.

- "The committee has concerns in relation to the haste with which the proposals in the Bill have been drafted and introduced into Parliament, without adequate, if any, consultation with Indigenous and multicultural groups…" (para 3.92)

- the issues raised by the Bill are complex and require careful consideration in view of the fact that the issues raised by the Bill "are complex and require careful consideration" (para 3.92).

- "The committee suggests that the Department give consideration to developing consultation mechanisms prior to introducing future amendments into Parliament." (para 3.92

33. Those 2006 majority conclusions of the Committee, which were arrived at with more time for reflection and with the benefit of a public call for submissions, should inform the Committee's current deliberations on the merits of Clause 91.

6. RECOMMENDATION

Catholic Social Services Australia recommends that the Committee recommend the further referral of the Bills to committee, for a period of at least two months.

ATTACHMENT A

Catholic Social Services Australia

INDIGENOUS AND WELFARE LEGISLATION MUST GO TO COMMITTEE

Catholic Social Services Australia Executive Director, Frank Quinlan, says major legislation to be tabled in Parliament today must be referred to a Senate Committee for further consideration.

Mr Quinlan said it is essential that sufficient time – at least two months – is allowed for genuine consultation regarding this important legislation.

Members of the House of Representatives will have eight hours to consider the five Bills to be tabled.

'This is significant legislation and we need to get it right," Mr Quinlan said.

'The inquiry must provide the opportunity for Indigenous leaders close to these issues to raise their concerns and feed into this important debate.

'Undue haste and failure to consult risks worsening circumstances for those the legislation is purporting to protect.

'The scope of this legislation goes well beyond the issue of 'child abuse' in certain communities by extending to the permit system and land rights in the Northern Territory; and introducing radical change to the national welfare system.

'Together with the Indigenous communities most affected and the broader public, we are unable to comment in any detail on the substance of the 500 pages of legislation to be introduced and voted on today.

'But we call on the Federal Parliament to abstain from passing legislation with racist dimensions.

The Australian Catholic Bishops said in a statement released on 5 July:

> *'Institutionalised racism cannot be acceptable. As Indigenous leaders have pointed out, the policy of imposing penalties on all parents receiving certain income support or Family Tax Benefits if they live in remote Aboriginal communities, while equivalent penalties will apply to other Australians only if there is evidence of "irresponsible" parenting, is both racially discriminatory and counter-productive. It would appear to breach the Racial Discrimination Act (Cth) and Australia's international law obligations.'*

"Quarantining" of welfare payments is highly contentious, and should not be introduced without adequate explanation and community debate. Overseas evidence suggests that no beneficial outcomes flow from financial sanctions applied in the absence of intensive support programs.

'In the interests of ensuring workable and beneficial legislation, which does not discriminate against the most vulnerable in our community, we call on all Parliamentarians to reject the unseemly haste with which these important Bills are being processed," Mr Quinlan said.

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7 August 2007

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ATTACHMENT B

July 5, 2007

A Statement from the Catholic Bishops of Australia
on dignity and justice for Indigenous Australians

The Catholic Bishops of Australia welcome the high priority the Federal Government has now accorded to addressing the appalling problems facing people in remote Northern Territory Aboriginal communities.

The high incidence in remote Aboriginal communities of child sexual abuse and other unacceptable threats to children's wellbeing has been a matter of growing public concern for some time. Numerous enquiries and commissioned reports have raised these issues and highlighted the deplorable conditions in many Indigenous communities. The most recent such report was *Little Children are Sacred*, by Rex Wild and Pat Anderson.

In our *Social Justice Sunday Statement 2006*, we recounted some of the alarming statistics regarding the poor health, low life expectancy and high incarceration rates of Indigenous Australians. We argued that political will and relatively moderate resources could prevent such disadvantage, and called for positive and decisive action to eliminate these dire circumstances from the everyday experience of many Indigenous people.[9[1]]

While this is not a time for allocating blame, all Australians should accept some collective responsibility for redressing the current shameful state of affairs, and recognise that past wrongs are reflected in present legacies. As Pope John Paul II said when he addressed Indigenous Australians in Alice Springs in 1986:

> *what has been done cannot be undone. But what can now be done to remedy the deeds of yesterday must not be put off till tomorrow.*[10[2]]

We hope that the entire Australian community will now endorse the need for urgent and sustained action.

However, we have significant concerns about the nature of some of the Federal Government's "emergency response" measures announced on 21 June 2007, and about the proposed process for implementing that response:

- Child abuse and child poverty must be addressed by a long-term and comprehensive response – tackling such key causative factors as inadequate social services and infrastructure (including housing), inadequate numeracy and literacy, poor employment opportunities, substance abuse, and community breakdown. Guaranteed, long-term and adequate funding is essential.

[9[1]] Australian Catholic Bishops Conference, *Social Justice Sunday Statement 2006: The Heart of Our Country – Dignity and justice for our Indigenous sisters and brothers*, p.12.
[10[2]] *Ibid*.

- We need much more than a "law and order" response. Children who have been abused and vulnerable families need sympathetic and skilled carers, teachers, medical practitioners and social service practitioners. We need to ensure the full range of culturally appropriate support services to address this issue and foster strong families and communities.

- The response must be respectful of Indigenous culture and identity, and must be undertaken in full and genuine partnership with Aboriginal communities themselves. History clearly demonstrates that effective solutions cannot simply be imposed from above.

- Recognised Aboriginal community leaders have an important role to play. So too do Church and community organisations working with Aboriginal communities, many of whom have developed strong working relationships over many years of close partnerships.

- The Federal Government must do all in its power to promote the dignity and respect of Aboriginal people, and to acknowledge the many instances of good social practice that have occurred in many communities. Particular care must be taken not to stigmatise all Aboriginal men as abusers.

- Government action should take full account of, and implement where appropriate, the recommendations made in a number of reports, notably *Little Children are Sacred*.

- The Government needs to demonstrate why action to address child abuse in Aboriginal communities requires amendments to land rights and self-government legislation.

- The response must be designed and implemented so as to support, rather than undermine, the future sustainability of remote Aboriginal communities. Talk of "mainstreaming" calls to mind the following warning about the dangers of "ethnocentricity": "The rejection of differences can lead to that form of cultural annihilation which sociologists have called "ethnocide" and which does not tolerate the presence of others except to the extent that they allow themselves to be assimilated into the dominant culture."[11][3]

- Institutionalised racism cannot be acceptable. As Indigenous leaders have pointed out, the policy of imposing penalties on *all* parents receiving certain income support or Family Tax Benefits if they live in remote Aboriginal communities, while equivalent penalties will apply to other Australians *only* if there is evidence of "irresponsible" parenting, is both racially discriminatory and counter-productive. It would appear to breach the Racial Discrimination Act (Cth) and Australia's international law obligations.[12][4] As stated by the Pontifical Commission on Justice and Peace, *"the law must be equal for all citizens without distinction. It is important for ethnic, linguistic or religious minorities…to enjoy recognition of the same inalienable rights as other citizens.*[13][5]

We welcome and support the Prime Minister's affirmation that government owes a duty of care to all Australian children. This obligation applies to all children in Australia, irrespective of race or location. Indeed we are all responsible for all children, especially those who are vulnerable or at risk.

Child poverty is itself a form of abuse, making children more vulnerable to other types of abuse. An unacceptable proportion of Australian children are living in poverty, many without secure housing.

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[11][3] Pontifical Commission on Justice and Peace, *The Church and Racism*, 1988, #12.
[12][4] See *International Convention on the Elimination of All Forms of Racial Discrimination*, Articles 2 and 5 (http://www.ohchr.org/english/law/cerd.htm).
[13][5] *The Church and Racism* (n.3 above), #23.

This too is a long-overdue cause for urgent national concern. We call upon Federal, State and Territory governments to take early and decisive action towards eliminating child poverty and child homelessness from our wealthy country. A national poverty strategy with a special focus on ending child poverty could be the vehicle for this, enabling collaboration among all levels of government and community sector and business groups.

We strongly support the ongoing work of our agencies which seek to provide social services to, and promote the interests of, Indigenous Australians facing disadvantage. Among these are the National Aboriginal and Torres Strait Islander Catholic Council, Catholic Social Services Australia, Centacare NT, the Australian Catholic Social Justice Council, Caritas Australia, Catholic Health Australia and the National Catholic Education Commission.

ATTACHMENT C

Catholic Social Services Australia

TRANSCRIPT

INTERVIEW

FRANK QUINLAN, EXECUTIVE DIRECTOR, CATHOLIC SOCIAL SERVICES AUSTRALIA
ABC RADIO NATIONAL – LIFE MATTERS

MANAGING WELFARE PAYMENTS

9 JULY 2007

RICHARD AEDY: Hello, this is *Life Matters* on ABC Radio National. I'm Richard Aedy. It's good to be back after a week off. And I want to thank Joe Gelonesi for doing such a splendid job while I was away.

Today, a remarkable man with a remarkable mind who's led a remarkable life. And he isn't finished yet. Ron McCallum joins us a bit later.

We begin with wagging school. I did it a lot actually, especially in the year I was supposed to be repeating year 12. But apart from taking years off my mother's life, there weren't any consequences for the family.

That's going to change. Parents whose children fail to go to school could lose control of their family tax benefit. It's a scheme already in place for Indigenous parents in the Northern Territory where welfare payments are quarantined for food, clothing and other essentials.

Now Federal Cabinet has approved the extension of the idea to all parents judged to be negligent, Indigenous or non-Indigenous. But apart from this statement of intent, there are few details on how it will work.

Welfare groups have criticised the move, but the Family Services Minister, Mal Brough, says that welfare money should go to children and not be spent by parents on alcohol, drugs or gambling.

Frank Quinlan is the Executive Director of one of our largest charity groups, Catholic Social Services Australia, and he joins me now.
Hello, Frank.

FRANK QUINLAN: Good morning, Richard.

RA: Making sure that children are fed and go to school, isn't it sensible to make sure that welfare money is properly spent?

FQ: Look I think that's one of the reasons why these sorts of policies get such immediate appeal because who can argue with the fact that children should be protected from neglect, or who should argue with the fact that children should be at school.

But I'm reminded of a saying that somebody once told me that for every complex and difficult problem, there's a simple solution, and it's always wrong.

RICHARD AEDY: But isn't it worthwhile as a short term solution if you like, a sort of circuit breaker to end immediate neglect, and then time later to put in place a more complicated approach that would solve the problem?

FRANK QUINLAN: Well I don't think so because we don't know that that's its effect.

One of the problems we're seeing here is that there are systems in place across Australia to protect children from neglect and abuse – the child protection systems. There are programs in place to assist parents, but those programs are massively under funded and poorly implemented. So to come along with one simple idea and to consider it outside of that whole system of supports and programs that already exist, I think is a bit of a mistake.

RICHARD AEDY: Before we actually go further into this Frank, just on this situation in the Northern Territory, is there a role for managed welfare in Indigenous communities in extreme distress? Do you support the idea in the Northern Territory, but perhaps not for the rest of Australia?

FRANK QUINLAN: I think there are some particular problems with having programs in place for one group of people and not for another, but what we've seen in the Northern Territory, at least in some places, is that communities have adopted these sorts of initiatives on a voluntary basis.

And I think that's an entirely different set of circumstances to having a system imposed from the outside without explanation and possibly without the right sorts of backups.

RICHARD AEDY: If we go to the idea that Federal Governments approve the extension of this idea, to all parents judged to be negligent, there are clearly issues with detail. We don't have very much at the moment.

Part of the problem is how you judge parents to be negligent. Is school non-attendance a reliable measure of child neglect?

FRANK QUINLAN: Well I was interested in your introduction Richard, I wonder whether you'd consider your parents were negligent in relation to your absences from school. I was going

to give the example of my own daughter who one of the semesters recently, she's a 14 or 15 year old, and the report from the school came back and she had three unexplained absences for the school term.

We eventually discovered I think that the appropriate notes were still in the bottom of her bag, hadn't quite got back to the school.

So I think the question of how you actually measure neglect and how you measure what's neglectful, what's an administrative mix up and who's in the middle is a real practical challenge to these sorts of programs.

RICHARD AEDY: Yes, it occurs that there are many reasons why a child doesn't go to school, not just because of a parent who's spending all the money on booze or drugs or gambling which is being talked about as the reason to redirect payments.

FRANK QUINLAN: That's exactly right. I think there are - the other part of that is that there's truancy and school resistance or school refusal according to whichever jargon you choose, across the whole community.

One of the problems again that I have with these proposals is that we're proposing a system for protecting a certain group of children from neglect and abuse, where I think we should be developing systems that are in place across the entire community so that people from all walks of life and with all levels and forms of income share the same sorts of protections and supports, not just to have something that's targeted at welfare recipients.

RICHARD AEDY: This is Life Matters on ABC Radio National and my guest today is Frank Quinlan who's the Executive Director of Catholic Social Services Australia.

We're talking about Federal Cabinet having flagged the extension of the idea that perhaps kids who don't go to school, their parents may lose control of the family tax benefit. It's a kind of targeted welfare approach if you like.

This idea Frank, it would also, it seems to me, place a big responsibility on teachers' shoulders to report truancy, would or possibly could trigger intervention.

FRANK QUINLAN: And not just teachers, but on education systems. As I understand it, many education systems don't really have the capacity to be reporting the sort of data that's been asked for under this system. So not only would teachers have to make some reports, but the information then has to somehow get back right through state based education systems, right through into the Centrelink program.

So there are some very practical concerns about whether that's achievable. And further, at what costs it's achievable. If these sorts of programs are going to take a lot of money to initiate, then perhaps we'd be better to do a bit of a cost benefit analysis and determine that

maybe that money would be better spent on programs that are already in place, but are under funded.

RICHARD AEDY: Well let's talk about programs that might actually address the problem, because education is vital to break the cycle of disadvantage. How can we make sure that parents send their kids to school?

FRANK QUINLAN: I think that the complex range of supports that people need, we just have to pick them off one by one and look at all the various factors that contribute rather than picking off one.

We know that currently, income support leaves – our current levels of income support leave many parents living in poverty. That means they're under stress immediately.
We know that many of these parents will be on public housing waiting lists. We know that some will be requiring mental health care, but it won't be available to them.

One of the best examples I can give is the Government's own Personal Support Program. This is a program where the Government, through Centrelink, determines that some parents are in need of particular assistance and support because they have complex social barriers.

The waiting list for that program is currently at about 20,000. We see people waiting for basic health care, waiting for basic dental care, and we see that educational programs that could be available for our schools are not in place.

So we see things like the Special Teacher Assistant' programs that are under funded. We see special programs like the RAD program here in the ACT in Canberra to support shall we say behaviourally challenged young males back into school is under funded, though eminently successful from the evaluations that have been done.

So one could make the argument the other way and say that if the Government has a duty of care across all of these areas, providing income support, providing public housing, mental health care, then perhaps it's Governments at all levels that have failed to meet their side of the mutual obligation bargain. And that perhaps we should be looking at that side of the mutual obligation argument before we start to place further obligations on parents who will often be struggling and battling.

RICHARD AEDY: There's another way of looking at this through the other end of the telescope if you like too. The idea that school attendance could be – or poor school attendance could be an indicator of a family in some level of distress. So that they could be helped before the problem escalates.

FRANK QUINLAN: They could be helped before the problem escalates, but only if they're actually encouraged to come forward and to seek assistance, or only if early intervention programs are actually picking up those warning signs.

The further concern about this proposal as we've seen, and you were right in your introduction, is that there's very little detail, but one of the really concerning effects of this sort of program would be if it drove those problems below the surface.

So rather than encouraging people who are experiencing difficulties to come forward and seek support, we may well see that people try and hide these problems, try and hold information back from the school or from the welfare services that are supporting them. And I think that's a very fundamental challenge.

RICHARD AEDY: When I first started speaking to you about this a few minutes ago Frank, you seemed to say that this move, to withhold welfare could well win popular support. It's something that seems to press buttons for people. Because all of us agree that kids ought to go to school, and that any welfare money that comes into families from governments shouldn't be spent on alcohol and drugs and gambling, when children are going hungry and not going to school.

FRANK QUINLAN: There's a saying in our sector that says the state makes a bad parent. And I think that what we're seeing across a range of these initiatives is the Government, with the intention at least of trying to solve some of these problems, is potentially creating further difficulties.

That sort of goodwill if you like, or the good intention that this is based on, simply can't replace the evidence. The evidence is, as I understand it, quite limited that these sorts of programs are likely to have any success.

Where there has been some evaluation, I heard just last week of some studies in the US, they suggested that the programs that attempted to encourage school attendance by withdrawing welfare payments were largely unsuccessful. They were particularly unsuccessful if they didn't involve the range of broader supports that we've already begun to talk about.

RICHARD AEDY: Is there a kind of compassion fatigue out there, a sort of willingness to divide the world into the deserving and the undeserving poor?

FRANK QUINLAN: I think there is, and I think there's also a growing sense that we've been doing this for a long time, it's cost us a lot of money, and nothing that we seem to do has worked.

Now the problem with that argument is that it's simply not true. There is evaluation report after evaluation report that demonstrate the effectiveness of providing community-based social service supports to people in the community.

So whether it be mental health support, whether it be school attendance programs, whether it be basic health and educational preventative programs, what we have seen over decades is the chronic under-funding of these services.

So that we know programs work, but they get de-funded. We know programs work, but they're only provided in small areas and not to the whole population of need.

I think what we're seeing is a failure to really bite the bullet and say that if we are going to overcome some of these problems, we really have to make the investment in programs that we know are successful, and we need to make that investment over a long period of time.

The report that Catholic Social Services Australia and Jesuit Social Services conducted called Dropping off the Edge, demonstrated that these programs are no good for two or three years, on a short term basis, that we need to accept the fact that many of the problems that we see are intergenerational.

Some kids aren't going to school because their parents don't see the value in going to school because their school experience was exactly the same.

So we'll take decades to overcome some of these issues, and until we make the appropriate investment in the sorts of services and programs that we know will work, and until we make that investment over a long period of time, these one off sort of initiatives will just come and go.

RICHARD AEDY: Frank, we'll have to leave it there, but thank you very much for joining us today.

FRANK QUINLAN: Thanks Richard.

RICHARD AEDY: Frank Quinlan is the Executive Director of Catholic Social Services, and that Dropping off the Edge report that he mentioned, we did cover on the show a few months ago.

ATTACHMENT D

Catholic Social Services Australia

PROPOSED SENTENCING LAWS WILL LEAD TO MORE INJUSTICE

Catholic Social Services Australia Executive Director, Frank Quinlan, said today that a Bill currently before the Parliament will not address the problem of violence in Indigenous communities, but will increase the potential for injustice in sentencing decisions affecting Indigenous people and other cultural minorities.

In its submission to the Inquiry by the Senate Committee on Legal and Constitutional Affairs into the *Crime Amendment (Bail and Sentencing) Bill 2006,* Catholic Social Services Australia recommended the Bill should not be passed in its current form.

Of the ten publicly available submissions to the Inquiry, not one supports the passage of the Bill.

Catholic Social Services Australia has recommended that:

- The Bill not be passed in its current form
- The Senate Committee Inquiry timeframe be extended by at least six months
- The Inquiry's report stresses the urgent need for action to address underlying causes of violence in Indigenous communities especially poverty, social exclusion and inadequate support for families in crisis.

"The Inquiry time frame is too short and will limit scrutiny and public debate. An issue of this magnitude demands an examination period of at least six months – not four weeks," Mr Quinlan said.

"Under the proposed changes, judges passing sentence on Federal offences will no longer be required to consider a person's 'cultural background' where this is relevant. Moreover, sentencing judges will not be allowed to take account of customary practices and customary law.

"We are concerned that the proposed changes will discriminate against Indigenous people and other cultural minorities.

"Catholic Social Services Australia acknowledges the need to address the incidence of violent crime in Indigenous communities, but this Bill will not address the problem.

"We agree with CoAG that the law's response to family and community violence and sexual abuse must reflect the seriousness of such crimes. CoAG agreed that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse.

"However sentencing judges must be free to take account of cultural background, customary law and cultural practices and background when determining appropriate penalties.

"Criminal justice is inextricably linked to social justice. Indigenous people and people from disadvantaged backgrounds are disproportionately represented in the prison population," Mr Quinlan said.

The *Crime Amendment (Bail and Sentencing) Bill 2006* was referred to the Senate Legal and Constitutional Affairs Committee on 14 September for report by 16 October 2006.

The purported aim of the legislation is to amend the sentencing and bail provisions in the *Crimes Act 1914* in line with the decision made by the Council of Australian Government on 14 July this year, following the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities on 26 June.

A copy of Catholic Social Services Australia's submission is available at www.catholicsocialservices.org.au.

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29 September 2006 18/2006

CONTACT Judith Tokley 02 6285 1366 / 0408 824 306

ATTACHMENT E

Submission to Senate Legal and Constitutional Affairs Committee:

INQUIRY INTO THE CRIME AMENDMENT (BAIL AND SENTENCING) BILL 2006

27 September 2006

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SUMMARY

This submission *recommends* that the Committee recommend that, to enable appropriate consultation and scrutiny, the Senate should refer the Crime Amendment (Bail and Sentencing) Bill back to the Committee with a report-to-referral timeframe of at least six months.

The substance of this submission is confined to sentencing.

This submission argues that the Bill will not address the problem of violence in Indigenous communities, but will create additional problems by increasing the potential for injustice in sentencing decisions. This submission *recommends* that the Committee recommend against adoption of Items 4 and 5 of the Bill.

This submission further *recommends* that the Committee report stress in its report the urgent need for action to address the underlying causes of violence in Indigenous communities – especially poverty, social exclusion and inadequate support for families in crisis.

TABLE OF CONTENTS

I Introduction

A About Catholic Social Services Australia

1. Representing 61 member organisations, Catholic Social Services Australia is the Catholic Church's peak national body for social services. It advises the Australian Catholic Bishops Conference on social policy issues as well as supporting the delivery of a wide range of social service programs.

2. For 50 years, Catholic Social Services Australia has assisted and promoted better social policy for the most disadvantaged people in Australian society. This continues a much longer tradition of such engagement by the Catholic Church in Australia.

3. Catholic Social Services Australia has the mission of promoting a fairer, more inclusive society that gives preference to helping people most in need. It is committed to an Australian society that

reflects and supports the dignity, equality and participation of all people. To this end, Catholic Social Services Australia works with Catholic organisations, governments, other churches and all people of goodwill to develop social welfare policies and other strategic responses that work towards the economic, social and spiritual well-being of the Australian community.

4. Our 61 members employ over 6,500 people and provide 500 different services to over a million people each year from sites in metropolitan, regional and rural Australia. Services provided by our members encompass aged care, community care, disability services, drug and alcohol addiction, employment and vocational programs (including Job Network, Disability Open Employment and Personal Support Program), family relationship services, housing, mental health, residential care and youth programs.

B Purpose and scope of this submission

5. The purpose of this submission is to comment on some issues of principle arising from the Crime Amendment (Bail and Sentencing) Bill 2006 ("the Bill"). This submission is confined in substance to those aspects of the Bill which concern sentencing.

C Relevance of this Bill to our mission

6. If adopted, the Bill would change the extent to which cultural factors can or must be considered in sentencing. The Bill raises fundamental issues of justice, fairness, equality and human dignity – issues which are at the heart of Catholic Social Service Australia's mission. Attachment A sets out extracts from relevant statements from Catholic Social Teaching.

7. Criminal justice is inextricably linked to social justice: Indigenous people and people from disadvantaged backgrounds are disproportionately represented in the prison population.[14] The Royal Commission into Aboriginal Deaths in Custody in 1991 stressed the importance of reducing the over-representation of Aboriginal persons in custody. However, the proportion of Indigenous people in the total prison population rose from 14% in 1991 to 22% in 2005.[15] Evidence suggests that experience of arrest and imprisonment reduces employment prospects.[16] So the over-representation of Indigenous people in the criminal justice system is among the factors perpetuating Indigenous disadvantage. These issues are just the tip of the iceberg of those which should be taken fully into account in considering whether and how to change rules governing sentencing of those convicted of Federal offences.

8. Catholic Social Services Australia acknowledges the need for urgent action to address and reduce the incidence of violent crime in Indigenous communities. However, the Bill is not an effective means towards this end.[17] Moreover, if made law the Bill would have very sweeping consequences,

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[14] See e.g. Joanne Baker, "The scope for reducing indigenous imprisonment rates", *Crime and Justice Bulletin* No. 55, March 2001 at pp. 1 and 8-9; and Tony Vinson, *Community adversity and resilience: The distribution of social disadvantage in Victoria and New South Wales and the mediating role of social cohesion*, Jesuit Social Services, March 2004 at pp.48-49 (on spatial compression of disadvantage; finding for example that people in 14 Victorian postcodes, whose combined total population was under 10% of the Victorian population, were over-represented in imprisonment rates by a factor of 2.5 times).

[15] See Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia*, http://www.hreoc.gov.au/social_justice/statistics/index.html#toc9 under sub-heading 9(a).

[16] See B. Hunter & J. Borland, "The effect of arrest on Indigenous employment prospects", *Crime and Justice Bulletin* No. 45, June 1999 at pp. 1, 4 and 6. See also Don Weatherburn, "What Causes Crime?", *Crime and Justice Bulletin* No. 54, February 2001 at pp.5-6.

[17] See also paragraphs 46-47 below.

not necessarily all intended, across the entire Australian population and in relation to many, and in some cases all, Federal offences.

9. Although most crimes fall under State/Territory jurisdiction, the Commonwealth Government has an important agenda-setting role in the aftermath of the July 2006 decision by the Council of Australian Governments (COAG) which was recorded as follows:

> The law's response to family and community violence and sexual abuse must reflect the seriousness of such crimes. COAG agreed that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse. All jurisdictions agree that their laws will reflect this, if necessary by future amendment.[18]

10. In view of this COAG agreement, State and Territory Governments may see Commonwealth legislative action as a potential model for their own approaches. It is incumbent on the Commonwealth Government to ensure that any legislative action it develops in response to the July 2006 COAG Communiqué is measured, just, and not liable to have unintended consequences which might further disadvantage some of the most vulnerable people in the Australian community. This is important not only directly for federal offences, but also indirectly for State/Territory offences to the extent that the Commonwealth model is followed elsewhere.

II Need for more extensive consideration, consultation and debate

A Catholic Social Services Australia's concerns

11. The Inquiry timeframe – with report due one month from date of referral – has precluded adequate public consultation. The short Inquiry timeframe means this submission is more narrowly focused, and subject to less extensive consultation, than we would have preferred. We understand that it has also made it impossible for some other interested bodies to lodge a submission at all.

12. In relation to Indigenous Australians, the Bill is in many respects at odds with the conclusions of several significant and relevant reports:

(i) The 1991 report of the Royal Commission into Aboriginal Deaths in Custody[19] included the following recommendations:

> 104. That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases.
>
> 62. That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce

[18] Council of Australian Governments (COAG) Meeting Communique, 14 July 2006, p.12.
[19] Australia, *Royal Commission into Aboriginal Deaths in Custody, National Report* (Five Volumes) (AGPS, Canberra, 1991-92).

the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

(ii) The 1986 report of the Australian Law Reform Commission, *The Recognition of Aboriginal Customary Laws*,[20] recommended a range of statutory measures for the recognition of Aboriginal customary laws. Clause 24 of the draft legislation proposed by the report related to sentencing, and provided for courts to take account of customary laws in sentencing. This ALRC report was described as a "significant, well-researched study" in Recommendation 219 of the report of the Royal Commission into Aboriginal Deaths in Custody.

(iii) The 2000 NSW Law Reform Commission report, *Sentencing: Aboriginal Offenders*,[21] recommended that:

> Where a person, who is, or was at a relevant time, a member of an Aboriginal community, is convicted of an offence, in determining the sentence, the court shall have regard to any evidence concerning the customary laws of that Aboriginal community, and the customary laws of any other Aboriginal community of which the victim was a member at a relevant time.

(iv) The December 2005 Discussion Paper by the Law Reform Commission of Western Australia, *Aboriginal Customary Laws*,[22] made the following proposals:

31. That the Sentencing Act 1995 (WA) and the Young Offenders Act 1994 (WA) be amended to provide that when sentencing an Aboriginal offender a sentencing court must consider:
    - any aspect of Aboriginal customary law that is relevant to the offence;
    - whether the offender has been or will be dealt with under Aboriginal customary law; and
    - the views of the Aboriginal community of the offender and the victim in relation to the offence or the appropriate sentence.

32. That the Sentencing Act 1995 (WA) and the Young Offenders Act 1994 (WA) should be amended by inserting the following provision:

> That when sentencing an Aboriginal person the court must have regard to any submissions made bya representative of a community justice group or by an Elder or respected member of the Aboriginal community of the offender or the victim. Submissions for the purpose of this section may be made orally or in writing on the application of the accused, the prosecution or a community justice group. The court sentencing the offender must allow the other party a reasonable opportunity to respond to the submissions if requested.

13. It is not apparent that all the relevant issues comprehensively addressed in those reports and others have been adequately considered in the context of the Bill. The Bill appears to have been

[20] Australian Law Reform Commission (ALRC), *The Recognition of Aboriginal Customary Laws* (Report 31, 1986).
[21] NSW Law Reform Commission, *Sentencing: Aboriginal Offenders*, Report 96 (2000).
[22] Law Reform Commission of Western Australia, *Aboriginal Customary Laws: Discussion Paper*, Project 94 (December 2005).

loosely based upon the three-sentence paragraph cited above in the 14 July 2006 COAG Communiqué (which refers specifically to "family and community violence and sexual abuse" – see paragraph 9 above).

14. In short, insufficient time has been allowed for the thorough scrutiny and public debate the Bill warrants.

B Recommendation 1

15. Catholic Social Services Australia recommends that the Senate Committee on Legal and Constitutional Affairs recommend in its report that:

(a) The Bill not be adopted in its present form; and that

(b) To enable appropriate consideration, consultation, scrutiny and debate, the Senate should again refer the Bill to the Committee on Legal and Constitutional Affairs – this time with a referral-to-report deadline of at least six months.

III Removal of "cultural background" as mandatory factor to be considered in sentencing if relevant and known

A What the Bill does

16. Currently, section 16A(2) of the Crimes Act provides that a court imposing a sentence for a federal offence "must take into account such of the following matters as are relevant and known to the court" – and the long list which follows can be paraphrased as:

(a) Nature and circumstances of offence
(b) Other offences
(c) Whether offence forms part of a course of conduct
(d) Personal circumstances of any victim
(e) Injury, loss or damage resulting from offence
(f) Degree of contrition shown
(g) Fact of any guilty plea
(h) Extent of co-operation with law enforcement agencies
(j) Deterrent effect of sentence
(k) Need to ensure adequate punishment
(m) "the character, antecedents, cultural background, age, means and physical or mental condition of the person"
(n) Rehabilitation prospects
(p) Probable effect of sentence on person's family or dependants

17. The Bill would omit "cultural background" from s.16A(2)(m).

18. As described in the Bill's *Explanatory Memorandum*:

> Item 4 omits the term "cultural background" from paragraph 16A(2)(m). The effect of this amendment is that a court will no longer be expressly required to consider a person's "cultural background" when passing sentence on that person for committing a federal offence.

Subject to the amendment to be made by item 5, a court will still be able to take into consideration the "cultural background" of an offender, in sentencing that offender, should it wish to do so, but this amendment removes an unnecessary emphasis on the "cultural background" of convicted offenders.

B Catholic Social Services Australia's concerns

(1) Overview

19. Catholic Social Services Australia believes that the current law strikes an appropriate balance by including "cultural background" among a long list of factors which must, to the extent that they are relevant and known to the court, be considered in sentencing for federal offences. If made law, the Bill would remove the reference to "cultural background". This would create an imbalance and risk injustices stemming from inadequate consideration of cultural factors.

(2) Balancing sentencing factors: Human dignity, equality before the law, and "cultural background"

20. As the law stands, "cultural background" must be considered in sentencing for federal offences only where it is "relevant and known to the court" (s.16A(2)). The reference to "cultural background" helpfully guides courts to consider this as one factor among many others in the balancing and weighing process that is an essential part of sentencing. Catholic Social Services Australia does not agree with the assessment evident in the Bill's *Explanatory Memorandum* that the current law contains an "unnecessary emphasis" on "cultural background".

21. We are concerned that the omission of "cultural background" may lead to injustice. There will be occasions where failure to take account of cultural background will mean that a person is not fairly sentenced. Removing the obligation to consider relevant "cultural background" issues does not ensure equality before the law. On the contrary, this removal devalues the significance of an essential component of ensuring equality before the law and thus ensuring justice.

22. International human rights treaties emphasise the need to eliminate indirect as well as direct discrimination. Relevant here are Articles 2.1(c) and 2.2 of the International Convention on the Elimination of all Forms of Racial Discrimination,[23] to which Australia is party:

> 2.1(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws or regulations *which have the effect of* creating or perpetuating racial discrimination wherever it exists" (emphasis added)
>
> 2.2 States Parties shall, when the circumstances so warrant, take in the social, economic, cultural and other fields, *special and concrete measures to ensure* the *adequate development and protection of certain racial groups* or individuals belonging to them, *for the purpose of guaranteeing* them the *full and equal enjoyment of human rights and fundamental freedoms*… (emphasis added)

23. As stated by the Pontifical Commission on Justice and Peace in a 1988 statement, *The Church and Racism* (at #23):

> Equality does not mean uniformity. It is important to recognise the diversity and complementarity of one another's cultural riches and moral qualities. Equality of treatment

[23] International Convention on the Elimination of All Forms of Racial Discrimination (1966), 660 *UNTS* 195, [1975] *ATS* 40; entered into force generally on 4 January 1969 and for Australia on 30 October 1975.

therefore implies a certain recognition of differences which minorities themselves demand in order to develop according to their own specific characteristics, in respect for others and for the common good of society and the world community.

24. The Bill's *Explanatory Memorandum* states that it will still be possible for courts to consider "cultural background" where this is considered relevant, subject to the restriction which is discussed below in paragraphs 29 to 45 (and see also paragraph 26 below). Under current law, if "cultural background" is not considered "relevant" by the court it will not be considered. So nothing is gained by omitting "cultural background" – but something is lost: there may be cases where a relevant issue related to cultural background is not considered because courts consider only those factors which are explicitly listed under s.16A(2). Some judges and magistrates may be less likely even to think of cultural background in the absence of an explicit statutory prompt; and others may decide to accord cultural background a lesser, even negligible, status because of Parliament's decision to remove it from the statutory list of factors.

(3) Impracticality arising from retention of mandatory consideration of certain related factors

25. Catholic Social Services Australia does not believe that "the character, antecedents … [and] means…of the person" can in all circumstances be appropriately assessed without reference to "cultural background". However, the explicit removal of "cultural background" from s.16A(2)(m) assumes the contrary.

(4) Impracticality and injustice arising from prohibition of consideration of other related factors

26. This aspect of the Bill (Item 4) is interlinked with another aspect of the Bill (Item5) which explicitly prohibits sentencing courts from considering "any form of customary law or cultural practice as a reason for excusing, justifying, authorising, requiring or rendering less serious the criminal behaviour to which the offence relates" (see paragraphs 29-45 below). It is not clear how this prohibition would be applied by courts. However, there is a risk that judicial efforts to abide by this explicit prohibition would result in the deliberate disregard of cultural factors which courts would otherwise have regarded as an indispensable element of the sentencing equation.

(5) Application to all Federal offences

27. The July 2006 COAG Communiqué referred only to "family and community violence and sexual abuse". However, the Bill appears to remove "cultural background" from mandatory consideration in sentencing for *any* federal offence – i.e. for a far wider range of offences than those with which COAG was concerned.

C Recommendation 2

28. Catholic Social Services Australia recommends that the Senate Committee on Legal and Constitutional Affairs recommend against the adoption of Item 4 of the Bill.

IV Prohibition of consideration in sentencing of customary law or cultural practices

A What the Bill does

29. The Bill's *Explanatory Memorandum* describes Item 5 of the Bill as follows:

This item enacts the Council of Australian Governments decision, made on 14 July 2006, that no "customary law or cultural practice" can provide a "reason for excusing, justifying, authorising, requiring or rendering less serious the criminal behaviour to which the offence relates." This item expressly prohibits a court from accepting a "customary law or cultural practice" as an excuse or justification when sentencing a person for having committed a federal offence.

30. Item 5 of the Bill would add, after the list of issues which a sentencing court *must* consider, a new provision listing what the court must *not* consider. That provision is as follows:

> However, the court must not take into account…any form of customary law or cultural practice as a reason for excusing, justifying, authorising, requiring or rendering less serious the criminal behaviour to which the offence relates.

31. This might be interpreted in either of two ways:

> Variant (a): Prohibiting *any* consideration by the sentencing court of cultural practices and/or customary law
>
> Variant (b): Prohibiting *inappropriate* consideration by the sentencing court of cultural practices and/or customary law

32. Judging from the Second Reading Speech and the Bill's Explanatory Memorandum, Catholic Social Services Australia assesses that the most likely interpretation of Item 5 would be Variant (a). This submission proceeds on the assumption that, in practice, some courts at least would apply the prohibition in the sense described in Variant (a).

B Catholic Social Services Australia's concerns

(1) Overview

33. By prohibiting any consideration of cultural practices or customary law, the Bill, if made law, would further disadvantage some of the most vulnerable people in our community because some relevant cultural factors would not be allowed to be weighed on the scales of justice.

(2) Definitional issues

34. What is encompassed by the terms "customary law" and "cultural practice"? How do these terms differ from and/or overlap with "cultural background"? This last question is especially significant because the Bill's *Explanatory Memorandum* affirms that "cultural background" could still be considered by sentencing courts – but only to the extent such consideration would not breach the prohibition set out in Item 5 of the Bill.

(3) Justice concerns

35. Catholic Social Services Australia endorses the following comments of Mr John North, former President of the Law Council of Australia:

> The Courts have always taken into account any matter relating to the circumstances of an offender, whether it be cultural, religious or socio-economic. Courts should not be prevented from taking account of relevant matters affecting their sentencing decisions…
>
> Customary laws have been recognised by the courts for decades as potentially relevant to the sentencing process in a variety of different matters. However, domestic violence and abuse of children have never been recognised by the courts, or Aboriginal communities, as being justified by customary law.
>
> Limiting the discretion of the courts to consider customary law will not lead to equality – it will result in further disadvantage for one of the world's most disadvantaged minority groups.[24]

36. If inappropriate use were made of cultural practices or customary law in a particular case, the appeals system provides the appropriate channel for rectification.

(4) Apparent lack of confidence in judgement of sentencing authorities

37. The Bill departs from a reliance on judicial officers to weigh up a complex range of factors to determine appropriate sentences. Do the sponsors of this Bill believe that judicial consideration of, say, the sentence's impact on of a convicted offender's family has the effect of "excusing, justifying, authorising, requiring or rendering less serious" any criminal behaviour? Presumably not, as the sentence's impact on an offender's family is not addressed in the Bill and remains, if relevant and known, a mandatory consideration under s.16A(2)(p). If judges and magistrates can be trusted not to over-estimate the significance of the sentence's impact on the offender's family, why can't they be trusted to accord appropriate but not undue weight to cultural practices and customary law?

(5) Impractical nature of prohibition, in view of mandatory consideration of related factors

38. The omission of "cultural background" from s. 16A(2)(m) would still leave courts bound to take account, to the extent relevant and known, of "the character, antecedents … [and] means…of the person". Catholic Social Services Australia does not believe that these factors can in all circumstances be appropriately assessed without reference to any "cultural practice" or "customary law". By forcing courts to purport to achieve this feat in every case, the Bill if made law would cause injustice by preventing consideration of the full range of factors necessary to ensure fair sentencing outcomes in particular cases.

(6) Impact of prohibition on discretionary consideration of "cultural background"

39. As noted above (paragraphs 26 and 24), the prohibition in Item 5 of the Bill is interwoven with Item 4's removal of "cultural background" from factors requiring mandatory consideration if relevant. As noted, is not clear how a court could close its eyes to cultural practices and customary law during the process of exercising its discretion to take account of "cultural background". Catholic Social Services Australia is concerned that judicial deference to the Item 5 statutory prohibition would unduly discourage courts from paying appropriate heed to "cultural background", especially as it would no longer be mandatory for courts to consider this where relevant and known. By forcing judges and magistrates consciously to disregard cultural practices and customary law, the Bill if made law would make it impossible to fairly and fully assess and take account of relevant "cultural background" issues should courts wish to exercise their discretion to do so.

(7) Inadequate differentiation of customary law and customary practices

[24] *Calls to Scrap Customary Law Misconceived*, Media Release by Law Council of Australia, 23 May 2006.

40. Although these terms are not defined in the legislation, it seems sweeping to treat customary law and customary practices as a single category.

(8) Possible effect on lived experience of cultural practices

41. Catholic Social Services Australia is concerned that an unintended and undesirable consequence of the proposed legislation could be an intangible but negative "chilling" effect on the maintenance of cultural practices – because a degree of legal recognition has been withdrawn.

(9) Apparent influence of misconceptions of Aboriginal customary law

42. Item 5 of the Bill should be considered in the context of the following comments in a 2000 NSW Law Reform Commission report which recommended recognition of Aboriginal customary law in sentencing: [25]

> 3.112 Any proposal to recognise Aboriginal customary law in sentencing must carry with it a caution to distinguish legitimate and authentic customary law from false assumptions and misconceptions. Specifically, there is a danger that the judiciary, and others involved in the sentencing process, will accept the claim or myth that sexual and domestic violence against women is sanctioned by Aboriginal culture, or, at least, not regarded as seriously as it is in non-Aboriginal culture. This premise must be categorically repudiated.
>
> 3.113 In a number of cases, Aboriginal custom at least, if not customary law, has been relied on to legitimise domestic and sexual violence against Aboriginal women, or to minimise the seriousness of the offence or the suffering of the victims...
>
> 3.114 Fortunately, most judges have dismissed this distortion of Aboriginal culture:
>
> > Ill treatment of women and assaults upon women will not be tolerated by the law and I know of no Aboriginal custom which would refute that as a philosophy.[160]

43. Catholic Social Services Australia is concerned that the motivations underlying the Bill, however well-intentioned, may be grounded in the very misconceptions of Aboriginal customary law against which the NSW Law Reform Commission warned. In particular, there appears to be an operating assumption that judges and magistrates may take account of Aboriginal customary law in such a way as to "excuse" or lessen the seriousness of offences involving violence against women. Even apart from grave doubts about whether this assumption accurately reflects Aboriginal customary law, as noted above the appeals process is the most effective means of redressing any individual inappropriate sentencing decision.

(10) Application to very wide range of Federal offences

44. The July 2006 COAG Communiqué referred only to "family and community violence and sexual abuse". However, the Bill's Item 5 prohibition would apparently apply to any federal offence involving "criminal behaviour". "Criminal behaviour" is not exhaustively defined in the Bill, but is stated to include conduct which is (and any fault element relating to) "a physical element of the offence in question". So Item 5 of the Bill relates to a much wider range of offences than those

[25] NSW Law Reform Commission, *Sentencing: Aboriginal offenders*, Report 96 (2000). The internal footnote (160) is as follows: "160. *R v Long* (NT, Supreme Court, No 6 of 1989, Asche CJ, 8 February 1989, unreported) at 19. See also *R v Tilmouth* (NT, Supreme Court, No 45 of 1989, Kearney J, 18 July 1990, unreported)."

mentioned in the COAG Communiqué. However, the *Explanatory Memorandum* states that Item 5 "enacts" the July 2006 COAG decision.

C Recommendation 3

45. Catholic Social Services Australia recommends that the Senate Committee on Legal and Constitutional Affairs recommend against the adoption of Item 5 of the Bill.

V Urgent need for action to address underlying causes of violence in Indigenous communities

46. Catholic Social Services Australia does not believe that changing sentencing rules is an effective way of addressing the causes of violence in Indigenous communities. That requires action to address poverty, social exclusion and the deficiencies of current support arrangements for families in crisis. We endorse the following remarks by Professor Larissa Behrendt (Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology, Sydney):

> …when a member of the judiciary is looking at a case where violence has been committed against Aboriginal women or children, they're really looking at the symptoms of the problems of violence within Aboriginal communities. And the real way to start to make a difference to those levels of violence and those levels of sexual abuse is not so much through the judiciary, because they're really at the end of the process – they're undertaking damage control – it's to get into the issues that actually compound to create the circumstances of cyclical poverty, of despondency, of despair, of substance abuse, and therefore violence and other antisocial behaviour, including sexual abuse in those communities.[26]

Recommendation 4

47. Catholic Social Services Australia recommends that the Senate Legal and Constitutional Affairs Committee stress in its report the urgent need for action to address the underlying causes of violence in Indigenous communities – especially poverty, social exclusion and inadequate support for families in crisis.

VI Conclusion and Recommendations 1-4

48. Catholic Social Services Australia appreciates the opportunity to contribute to the Committee's Inquiry into the Bill.

[26] ABC Radio National transcript: *Law Report*, "Abuse in Aboriginal Communities", 30 May 2006.

49. Catholic Social Services Australia recommends that the Senate Legal and Constitutional Affairs Committee:

1. Recommend that:

   (a) The Bill not be adopted in its present form; and that

   (b) To enable appropriate consideration, consultation, scrutiny and debate, the Senate should again refer the Bill to the Committee on Legal and Constitutional Affairs – this time with a referral-to-report deadline of at least six months.

2. Recommend against the adoption of Item 4 of the Bill.

3. Recommend against the adoption of Item 5 of the Bill.

4. Stress in its report the urgent need for action to address the underlying causes of violence in Indigenous communities – especially poverty, social exclusion and inadequate support for families in crisis.

APPENDIX A *[to Attachment E to August 2007 submission]*

Some extracts from Catholic Social Teaching relevant to the Senate Legal and Constitutional Affairs Committee Inquiry into the Crime Amendment (Bail And Sentencing) Bill 2006

Index:

Indigenous Australians

Pope John Paul II, *Address to Aborigines and Torres Strait Islanders*, Blatherskite Park, Alice Springs (November 2006):

> For thousands of years this culture of yours was free to grow without interference by people from other places… You had a great respect for the need which people have for law, as a guide to living fairly with each other. So you created a legal system – very strict it is true – but closely adapted to the country in which you lived your lives. It made your society orderly. It was one of the reasons why you survived in this land. You marked the growth of your young men and women with ceremonies of discipline that taught them responsibility as they came to maturity.

Pope Paul VI in an address to Australian Indigenous people (1970):

> We know that you have a life style proper to your own ethnic genius or culture – a culture which the Church respects and which she does not in any way ask you to renounce… Society itself is enriched by the presence of different cultural and ethnic elements. For us you and the values you represent are precious. We deeply respect your dignity and reiterate our deep affection for you.

Australian Catholic Bishops Conference, *The Heart of Our Country: Dignity and justice for our Indigenous sisters and brothers – Reflections on Pope John Paul II's 1986 Address to Aborigines and Torres Strait Islanders*, Social Justice Sunday Statement, 24 September 2006:

> The message to give the original Australians a special place in our efforts at building a truly multicultural society was reiterated by Pope John Paul II in 2001 in his message to the Church in Oceania after the Synod in Rome. He wrote:
>
> > *it is the Church's task to help indigenous cultures preserve their identity and maintain their traditions.*
>
> He made special mention in this context of the 'Australian Aborigines whose culture struggles to survive' …
>
> John Paul II called [in 1986] for the 'just and proper settlement that still lies unachieved' in relation to the removal of children. He called specifically for 'just and mutually recognised agreements with regard to these human problems, even though their causes lie in the past'.

These 'human problems' continue to manifest themselves in social and economic disadvantage and community dysfunction that can be captured in statistics related to health, employment and incarceration. These statistics read like those from a Third World country. In 2001, the Indigenous population comprised 2.2 per cent of the total Australian population, yet they unemployment rate for Indigenous people was at least three times higher than the rate for non-Indigenous Australians. The statistics related to the health of Indigenous Australians are appalling: lower life expectancy, higher infant mortality, higher hospitalisation for preventable diseases, lower infant birth weights, alarming rates of death from diabetes and kidney disease. How can it be that in this land of plenty, the average life expectancy of Aboriginal and Torres Strait Islander people is 17 years less than for non-Indigenous Australians?

Behind the statistics are real human beings whose disadvantage in this area could be prevented with political will and relatively moderate resources applied in the right places…

In a nation that enjoys a vibrant economy, where governments boast of their careful financial management, the question remains: why have we not been able to eliminate these dire circumstances from the everyday experience of many Indigenous people"

As John Paul II commented 20 years ago:

> *What has been done cannot be undone. But what can now be done to remedy the deeds of yesterday must not be put off till tomorrow.*

It would seem that the remedies are well within our economic reach. The message delivered in Alice Springs continues to challenge us to positive, decisive action today.

Discrimination and racism

Guadium et Seps, Pastoral Constitution on the Church in the Modern World, Second Vatican Council, 1965 (at #29):

> But any kind of social or cultural discrimination in basic personal rights on the grounds of sex, race, colour, social conditions, language or religion, must be curbed and eradicated as incompatible with God's design.

Pontifical Commission on Justice and Peace, *The Church and Racism*, 1988:

> Some mention must also be made of ethnocentricity. This is a very widespread attitude whereby a people has a natural tendency to defend its identity by denigrating that of others to the point that, at least symbolically, it refuses to recognise their full human quality. This behavior undoubtedly responds to an instinctive need to protect the values, beliefs and customs of one's own community which seem threatened by those of other communities. However, it is easy to see to what extremes such a feeling can lead if it is not purified and relativised through a reciprocal openness, thanks to objective information and mutual exchanges. The rejection of differences can lead to that form of cultural annihilation which sociologists have called "ethnocide" and which does not tolerate the presence of others except to the extent that they allow themselves to be assimilated into the dominant culture. (#12)
>
> Equality does not mean uniformity. It is important to recognise the diversity and complementarity of one another's cultural riches and moral qualities. Equality of treatment therefore implies a certain recognition of differences which minorities themselves demand in order to develop according to their own specific characteristics, in respect for others and for the common good of society and the world community. (#23)

> Doctrine and examples by themselves are not sufficient. The victims of racism, wherever they may be, must be defended. Acts of discrimination among persons and peoples for racist or other reasons – religious or ideological – and which lead to contempt and to the phenomena of exclusion, must be denounced and brought to light without hesitation and strongly rejected in order to promote equitable behavior, legislative dispositions and social structures. (#26)
>
> Racism will disappear from legal texts only when it dies in people's hearts. However, there must also be direct action in the legislative field. Wherever discriminatory laws still exist, the citizens who are aware of the perversity of this ideology must assume their responsibilities so that, through democratic processes, legislation will be put in harmony with the moral law. Within a given State, the law must be equal for all citizens without distinction. A dominant group, whether numerically in the majority or minority, can never do as it likes with the basic rights of other groups. It is important for ethnic, linguistic or religious minorities who live within the borders of the same State, to enjoy recognition of the same inalienable rights as other citizens, including the right to live together according to their specific cultural and religious characteristics. Their choice to be integrated into the surrounding culture must be a free one. (#29)

"Option for the poor"

U.S. Catholic Bishops, *Economic Justice for All* (1986) (at #88):

> The primary purpose of this special commitment to the poor is to enable them to become active participants in the life of society. It is to enable all persons to share in and contribute to the common good. The "option for the poor," therefore, is not an adversarial slogan that pits one group or class against another. Rather it states that the deprivation and powerlessness of the poor wounds the whole community. The extent of their suffering is a measure of how far we are from being a true community of persons. These wounds will be healed only by greater solidarity with the poor and among the poor themselves.

Human dignity

Guadium et Seps, Pastoral Constitution on the Church in the Modern World, Second Vatican Council, 1965 (at #26):

> there is a growing awareness of the sublime dignity of human persons, who stand above all things and whose rights and duties are universal and inviolable. They ought, therefore, to have ready access to all that is necessary for living a genuinely human life: for example, food, clothing, housing, the right freely to choose their state of life and set up a family, the right to education, work, to their good name, to respect, to proper knowledge, the right to act according to the dictates of conscience and to safeguard their privacy, and rightful freedom, including freedom of religion.