



**St Vincent de Paul Society**  
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*good works*

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Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait  
Islander Peoples  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**Submitted electronically**

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Submission to the Senate Select  
Committee on Constitutional Recognition  
of Aboriginal and Torres Strait Islander  
Peoples

## 1. Background

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. Our work in Australia covers every state and territory, and is carried out by more than 60,000 members, volunteers, and employees. Our people are deeply committed to social assistance and social justice, and our mission is to provide help for those who are marginalised by structures of exclusion and injustice. Our programs assist millions of Australians each year, including people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, and people experiencing poverty.

In addition to working with Aboriginal and Torres Strait Islander (ATSI) Peoples through the Society's wide range of general projects for excluded and marginalised Australians, the Society is also engaged in some projects that are specific to Indigenous Australians. We are proud to stand in solidarity with ATSI Peoples in our national advocacy positions,<sup>1</sup> and to listen to and learn from the First Peoples of this land.

The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples has called for submissions on steps that can be taken to progress towards a successful referendum on recognition of Indigenous peoples in the Australian Constitution. The Society welcomes the opportunity to contribute to this inquiry.

## 2. Executive Summary

**The Society supports acknowledgement of Australia's First Peoples in the Constitution, as well as the removal of racially discriminatory provisions, and recommends public education to support these amendments.**

The St Vincent de Paul Society works to build a just and more compassionate society. The Society is concerned with alleviating immediate need, as well as identifying and reforming the structures that cause poverty and disadvantage. We understand disadvantage to be an outcome of systemic factors, not individual failings. We are called to stand as equals with all people who find themselves pushed to the margins of society and to treat them with dignity, respect, love and compassion. In particular, the Society shares a vision of an Australia in which ATSI perspectives, languages, philosophies and cultures penetrate the marrow of our institutions, our organisations, our communities and the lives of all Australians.

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<sup>1</sup> For example, submission on the Constitutional Recognition Bill 2012 ([vinnies.org.au/icms\\_docs/168684\\_Submission\\_to\\_the\\_Inquiry\\_into\\_Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Peoples\\_Recognition\\_Bill\\_2012.pdf](http://vinnies.org.au/icms_docs/168684_Submission_to_the_Inquiry_into_Aboriginal_and_Torres_Strait_Islander_Peoples_Recognition_Bill_2012.pdf)); Stronger Futures submission ([vinnies.org.au/icms\\_docs/182629\\_Submission\\_to\\_Senate\\_Community\\_Affairs\\_Committee\\_re\\_Stronger\\_Futures\\_in\\_the\\_Northern\\_Territory\\_Bill\\_2011\\_and\\_two\\_related\\_bills.pdf](http://vinnies.org.au/icms_docs/182629_Submission_to_Senate_Community_Affairs_Committee_re_Stronger_Futures_in_the_Northern_Territory_Bill_2011_and_two_related_bills.pdf)); and submission on Constitutional recognition to YouMeUnity (2011) ([recognise.org.au/uploads/have\\_your\\_say/f51056e82a3a9ff3f5a1.docx](http://recognise.org.au/uploads/have_your_say/f51056e82a3a9ff3f5a1.docx)).

We principally support recognition of the First Australians in the Constitution: our founding document of law and government. We recommend the inclusion of a statement of recognition of the first settlement of the continent by ATSI peoples. This statement should acknowledge their continuing relationship with the land, and acknowledge and respect their continuing cultures, languages and heritages. Additionally, the Society emphatically recommends that ss 25 and 51 (26) of the Constitution, commonly called the ‘race powers’, be repealed. We further propose that the path to recognition must involve significant and respectful engagement with ATSI Peoples’ leaders and communities. We believe that their diverse perspectives and wishes need to be considered and reflected in any future wording.

Finally, the Society proposes that, ahead of a referendum, there should be a public education and awareness campaign. This campaign should inform Australians as to the nature of any proposed changes and the reasons for them, as well as main arguments for and against the reforms.

### 3. Historical Context

**Aboriginal and Torres Strait Islander Peoples have endured staggering discrimination and disempowerment since colonisation, often through policies ostensibly designed to “help” them.**

In considering meaningful recognition of Aboriginal and Torres Strait Islander Peoples in our Constitution, it is first crucial to reflect on the historical treatment and exclusion this group has experienced since white colonisation.

Between 1788 and 1900, a combination of introduced disease, loss of land and direct conflict reduced the Indigenous Australian population by an estimated 80% or more.<sup>2</sup> Of these deaths, it is estimated that at least 20,000 Aboriginal people were killed as a direct result of colonial violence during this period; this is ten times as many as the coloniser deaths from conflict.<sup>3</sup> This began a long trend of discrimination and injustice, the impact of which is still felt by Indigenous Australians today.

The beginning of the twentieth century saw the ‘protection era’: a policy introduced by colonial authorities following the devastation of the Indigenous population. Legislation was enacted under which Aboriginal people effectively became wards of the state. They were subjected to policies that gave Government the power to determine where the First Australians could live, who they could marry, and where they could work.<sup>4</sup> The ultimate effect of these policies was to deny Indigenous people control over almost every aspect of their lives; to disconnect them from their culture, land, and family.

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<sup>2</sup> John Harris, ‘Hiding the Bodies: the myth of the humane colonisation of Australia’, *Aboriginal History*, Vol. 27 (2003) 81 at [press.anu.edu.au/wp-content/uploads/2011/05/ch0550.pdf](http://press.anu.edu.au/wp-content/uploads/2011/05/ch0550.pdf).

<sup>3</sup> *Ibid*, 83-85.

<sup>4</sup> Museum of Australian Democracy, *Aboriginal Protection Act 1869 (Vic)* at [foundingdocs.gov.au/item-did-86.html](http://foundingdocs.gov.au/item-did-86.html).

Another feature of protection legislation was the establishment of government reserves and delegated Christian missions. While the proclaimed intent was to shelter Indigenous people from colonial violence, the outcome was a system which again facilitated extensive government control over the lives of the First Australians, stripping them of their autonomy, self-sufficiency, and any sense of empowerment. Aboriginal people were frequently removed by force from their own land to live in the reserves and missions, and in the process lost much of the sense of community, heritage, and language tied to their country.<sup>5</sup>

Protection era legislation was also used to justify the forcible separation of Indigenous children from their families. This is one of the greatest crimes and deepest shames in our nation's history: the Stolen Generation. It has been reported that 'between 1 in 3 and 1 in 10 Indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970'.<sup>6</sup>

The disenfranchisement and disempowerment of ATSI Peoples was further reinforced by the *Commonwealth Electoral Act* (1902): under s 4 of that Act, voting rights were negated for Aboriginal people not enrolled to vote in State elections. This part of the Act was interpreted very narrowly: only those whose names were already on the electoral roll for their State elections would be able to vote in the Commonwealth elections.<sup>7</sup> It was not until 1962 that the *Commonwealth Electoral Act* was amended to permit all Indigenous people to enrol to vote in federal elections if they desired.<sup>8</sup>

#### 4. Current situation

**Today, the outcome of such grave mistreatment is vast disadvantage for many Aboriginal and Torres Strait Islander Peoples. This inequality is often complex and intersectional, and reinforces the gap between Indigenous and non-Indigenous Australians.**

The historic abuses of Australians based on their indigeneity are a deep scar on our nation's psyche. The wounds that have been either intentionally or negligently inflicted on the First Australians continued to have highly damaging impacts for decades to come.

For example, the long-term impact of Indigenous children's being removed from their communities was explored in a wide-reaching study conducted by Dr Jane McKendrick during the 1980s. That study revealed significant differences for Indigenous Australians

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<sup>5</sup> Australian Broadcasting Corporation, Film Victoria & Koorie Heritage Trust, 'Missions and Reserves: Background', *Mission Voices* (2004) at [abc.net.au/missionvoices/general/missions\\_and\\_reserves\\_background/default.htm](http://abc.net.au/missionvoices/general/missions_and_reserves_background/default.htm).

<sup>6</sup> Australian Human Rights Commission (AHRC), *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) 31 at [humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](http://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf).

<sup>7</sup> Australian Enrolment Commission (AEC), *History of the Indigenous Vote* (August 2006) 5 at [aec.gov.au/Education/files/history\\_indigenous\\_vote.pdf](http://aec.gov.au/Education/files/history_indigenous_vote.pdf).

<sup>8</sup> *Ibid*, 8.

removed in their childhood and those who were raised by their families and communities. Those removed were much less likely to have stable living conditions; less likely to have undertaken a post-secondary education; and less likely to have a strong sense of their Aboriginal cultural identity, traditional practices, or beliefs. They were also twice as likely to report current use of illicit substances; twice as likely to report having been arrested by police and having been convicted; and three times as likely to report having been in gaol.<sup>9</sup>

More generally, in 2014, the experience of people who identify as Aboriginal or Torres Strait Islander is still characterised by enormous social and economic disadvantage compared to non-Indigenous Australians. The most recent Australian Bureau of Statistics Census revealed that the median weekly income for ATSI individuals was \$362, or just 62.7% of the broader population's average income.<sup>10</sup> The same census exposed the disparity in education outcomes, with just 25% of Indigenous Australians completing year 12 or equivalent, compared to 49.2% of the wider population.<sup>11</sup> Furthermore, a 2014 COAG Reform Council report revealed an Indigenous Australian unemployment rate of 21.6%, more than four times the rate for non-Indigenous Australians.<sup>12</sup> The same report pointed out that, despite the introduction of the 'Closing the Gap' campaign, the gaps in employment, labour force participation and unemployment had only widened since 2008.<sup>13</sup> Inadequate access to housing is another major issue for Indigenous Australians: despite making up 2.5% of the Australian population in 2011, ATSI people accounted for a disproportionate 25% of all persons who were homeless on census night.<sup>14</sup> Indigenous Australians are also highly overrepresented in prisons, making up 27% of Australia's prison population in 2013.<sup>15</sup>

Many of these issues are linked to ongoing racism and discrimination prevalent in Australia, another major source of marginalisation for Indigenous Australians. According to the 2008 National Aboriginal and Torres Strait Islander Social Survey, more than one-quarter (27%) of ATSI people aged 15 years and over reported experiences of discrimination in a 12 month

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<sup>9</sup> Dr Jane McKendrick, cited in Australian Human Rights Commission (AHRC), *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) 12 at [humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](http://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf).

<sup>10</sup> Australian Bureau of Statistics, *First Release media fact sheet: Aboriginal & Torres Strait Islander Peoples (National)* (June 2012) 9 at [abs.gov.au/websitedbs/censushome.nsf/home/mediafactsheetsfirst/\\$file/Census-factsheet-Indigenous-national.doc](http://abs.gov.au/websitedbs/censushome.nsf/home/mediafactsheetsfirst/$file/Census-factsheet-Indigenous-national.doc).

<sup>11</sup> Australian Bureau of Statistics, above n 10, 13.

<sup>12</sup> Council of Australian Governments (COAG) Reform Council, *Indigenous Reform 2012-2013: Five years of performance* (April 2014) 66 at [coagreformcouncil.gov.au/sites/default/files/files/Indigenous%20Reform%202012-13%20Five%20years%20of%20performance%2030%20April%202014.pdf](http://coagreformcouncil.gov.au/sites/default/files/files/Indigenous%20Reform%202012-13%20Five%20years%20of%20performance%2030%20April%202014.pdf).

<sup>13</sup> *Ibid.*

<sup>14</sup> Australian Bureau of Statistics, 'Summary of findings', 2049.0 - *Census of Population and Housing: Estimating homelessness, 2011* (November 2012) at [abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Main%20Features22011](http://abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Main%20Features22011).

<sup>15</sup> Australian Bureau of Statistics, 'Aboriginal and Torres Strait Islander Prisoners', 4517.0 - *Prisoners in Australia, 2013* (December 2013) at [abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0main+features62013](http://abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0main+features62013).

period.<sup>16</sup> This is substantially higher than the broader population's experience of discrimination, which was at 10% in 2009.<sup>17</sup> Discrimination on such a large scale has been shown to feed into a vicious cycle as research reveals that Indigenous Australians who have experienced discrimination are more likely to have high levels of psychological distress, to drink alcohol and to take illicit drugs.<sup>18</sup>

One of the more alarming indicators of disadvantage is health, as shown by a persistent 10-year gap in life expectancy between Indigenous and non-Indigenous Australians.<sup>19</sup> Worryingly, since 2009 this gap has only been reduced by 0.8 years for Indigenous males and 0.1 years for Indigenous females.<sup>20</sup> In addition to historic factors, this health gap has been linked to more contemporary structural and social problems. The social determinants of health include individuals' education, employment, income, housing, access to services, experiences of racism, and incarceration.<sup>21</sup> As seen in the figures above, ATSI Peoples experience significant disadvantage across every one of these measures – combined with discrimination faced by Indigenous Australians in accessing healthcare, the compounding of measures of social disadvantage leads to these disproportionately negative health outcomes.

In addition to disadvantage in employment, health, housing, and facing discrimination, historic disenfranchisement and modern exclusion have led to Indigenous participation in mainstream Australian democratic processes being worryingly low, as demonstrated by voter turnout rates. Australia's election divisions with the highest proportion of Indigenous population (Lingiari, NT and Kalgoorlie, WA) demonstrate turnout rates of 81.6% and 85.3% respectively, far below the national average of 95.2%.<sup>22</sup> Along with social and logistical factors, this has been attributed to feelings of 'scepticism, anxiety and distrust'<sup>23</sup> regarding

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<sup>16</sup> Australian Bureau of Statistics, 'Social and emotional wellbeing: discrimination', 4704.0 - *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Oct 2010 (February 2011) at [abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter450Oct+2010](http://abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter450Oct+2010).

<sup>17</sup> Professor Andrew Marcus, 'Mapping Social Cohesion 2013: The National Report', *The Scanlon Foundation Surveys* (2013) 22 at [scanlonfoundation.org.au/wp-content/uploads/2014/07/mapping-social-cohesion-national-report-2013.pdf](http://scanlonfoundation.org.au/wp-content/uploads/2014/07/mapping-social-cohesion-national-report-2013.pdf).

<sup>18</sup> Yin Paradies, Ricci Harris, and Ian Anderson, 'The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda', *Discussion Paper Series No. 4* (March 2008) 3 at [lowitja.org.au/sites/default/files/docs/Racism-Report.pdf](http://lowitja.org.au/sites/default/files/docs/Racism-Report.pdf).

<sup>19</sup> Australian Institute of Health and Welfare (AIHW), *Mortality and life expectancy of Indigenous Australians: 2008 to 2012* (2014) 14 at [aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129548468](http://aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129548468).

<sup>20</sup> Australian Government, *Closing the Gap Prime Minister's Report 2014* (February 2014) 12–13 at [health.gov.au/internet/main/publishing.nsf/content/B92E980680486C3BCA257BF0001BAF01/\\$File/health-plan.pdf](http://health.gov.au/internet/main/publishing.nsf/content/B92E980680486C3BCA257BF0001BAF01/$File/health-plan.pdf).

<sup>21</sup> Australian Indigenous HealthInfoNet, *Overview Of Australian Indigenous Health Status, 2013* (2014) 3 at [healthinfonet.ecu.edu.au/uploads/docs/overview\\_of\\_indigenous\\_health\\_2013.pdf](http://healthinfonet.ecu.edu.au/uploads/docs/overview_of_indigenous_health_2013.pdf).

<sup>22</sup> Joint Standing Committee on Electoral Matters, *Report on the Conduct of the 2007 Federal Election And Matters Related Thereto* (June 2009) 148 at [aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=em/elect07/report2/final.pdf](http://aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=em/elect07/report2/final.pdf).

<sup>23</sup> Independent Schools Council Australia, *Submission to Joint Standing Committee on Electoral Matters Inquiry into Civics and Electoral Education* (June 2006) 6 at [aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/education/subs/sub089.pdf](http://aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/education/subs/sub089.pdf).

the political process, and an enduring belief within Aboriginal communities that they are not part of the Australian nation and do not have a stake in white elections.<sup>24</sup> The disenfranchisement of Aboriginal peoples over the years has been so absolute as to take away their sense of influence on the nation around them, even today.

## 5. Impact of current policies

**More recent policies have continued the assault on Indigenous Australians' dignity, by robbing them of their right to self-determination and disregarding ATSI perspectives on their own situation.**

It is clear that white colonisation of Australia directly caused deep harm to the First Australians who had already settled here, by attempting directly and indirectly to destroy them as Peoples. Moreover, these policies of assimilation and disenfranchisement have continued over the past two centuries, and have had a predictable effect: many Indigenous Australians today face a large range of structural barriers to participation, which result in large-scale exclusion for ATSI Peoples in Australia today.

While many modern policies do good work in reversing this trend, there remains a pattern of government initiatives which disempower and patronise Indigenous Australians. We believe that these policies add to the trauma endured by ATSI Peoples since colonisation.

### Northern Territory National Emergency Response

We believe the denial of ATSI Peoples' self-determination and agency, first seen in the early 'protection' policies and voting ineligibility, has been an alarmingly recurrent theme in Government "interventions" aimed at Indigenous Australians. In 2007, the Northern Territory National Emergency Response (NTER) legislation was enacted, with the stated aim of protecting Indigenous children in the Northern Territory from family violence and sexual abuse. The five Acts composing the NTER legislation introduced restrictions on access to alcohol and pornographic materials; welfare reforms to restrict the way in which welfare money was spent; the linking of income support and family assistance payments to school attendance; and increased policing levels.<sup>25</sup> Moreover, the legislation also exempted its provisions, and any acts done 'under or for the purposes of those provisions', from Part II of the *Racial Discrimination Act 1975* (which makes it unlawful to discriminate against a person

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<sup>24</sup> Cited in William Sanders, 'The Tasmanian Electoral Roll Trial in the 2002 ATSI Elections', *Discussion paper* 205/2003 (2003) 9 at [caepr.anu.edu.au/sites/default/files/Publications/DP/2003\\_DP245.pdf](http://caepr.anu.edu.au/sites/default/files/Publications/DP/2003_DP245.pdf).

<sup>25</sup> Aboriginal & Torres Strait Islander Social Justice Commissioner, 'The Northern Territory 'Emergency Response' Intervention – A Human Rights Analysis', *Social Justice Report 2007* (February 2008) 199 at [humanrights.gov.au/sites/default/files/content/social\\_justice/sj\\_report/sjreport07/pdf/sjr\\_2007.pdf](http://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf).

on the basis of their race).<sup>26</sup> Naturally, the discrimination and disempowerment embedded in this policy attracted strong criticism from within Australia and the international community. Special rapporteurs for the UN Human Rights Council expressed concern that “these measures would arbitrarily limit the exercise of [Aboriginal Australians’] individual rights on an equal basis with other sectors of the national population, thus amounting to discrimination prohibited under international and domestic law/legislation”.<sup>27</sup>

Specific provisions within the legislation have been identified as likely to cause profound long-term damage to individuals and communities. A report by the Australian Indigenous Doctors’ Association warned strongly against compulsory income management and external control by government, finding that these measures would negatively impact on “psychological health, social health and wellbeing and cultural integrity” as well as the “ability of government to work with Aboriginal communities to achieve shared objectives”.<sup>28</sup> Further, the report argued that restriction of alcohol and pornographic materials were unlikely to achieve sustainable outcomes as they were not based on evidence of which interventions are effective or likely to bring about long-term change in Aboriginal communities.<sup>29</sup> Notably, in each of these cases, the report encouraged closer collaboration with communities themselves, whether through investing in existing community-driven initiatives or developing plans together with the communities and their local leadership.<sup>30</sup> The NTER formally ended in August 2012, but many of its key components continue today under the Building Stronger Futures policy package.

## **School Enrolment and Attendance through Welfare Reform Measure**

The Society believes that such punitive and coercive approaches to Aboriginal and Torres Strait Islander communities will never deliver sustainable results. This is further demonstrated in a recent study of the School Enrolment and Attendance through Welfare Reform Measure (SEAM). The measure was aimed at increasing school attendance and learning achievement among Indigenous children in the Northern Territory. For Indigenous students in the Northern Territory, participation in the NAPLAN reading and numeracy tests showed an initial spike in the first year (from 67% to 86% in reading, and 68% to 85% in numeracy) which was all but lost three years later (down to 74% for reading and 72% for

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<sup>26</sup> Australian Human Rights Commission (AHRC), *The Suspension and Reinstatement of the RDA and Special Measures in the NTER*, (November 2011) 14 at [humanrights.gov.au/sites/default/files/content/racial\\_discrimination/publications/rda-nter/NTERandRDAPublication12%20December2011.pdf](http://humanrights.gov.au/sites/default/files/content/racial_discrimination/publications/rda-nter/NTERandRDAPublication12%20December2011.pdf).

<sup>27</sup> James Anaya, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People* (June 2010) 27 at [unsr.jamesanaya.org/docs/special/2010\\_special\\_australia\\_en.pdf](http://unsr.jamesanaya.org/docs/special/2010_special_australia_en.pdf).

<sup>28</sup> Australian Indigenous Doctors’ Association (AIDA) and Centre for Health Equity Training, Research and Evaluation, UNSW, *Health Impact Assessment of the Northern Territory Emergency Response* (2010) x at [aida.org.au/pdf/HIA/AIDA\\_HIA.pdf](http://aida.org.au/pdf/HIA/AIDA_HIA.pdf).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

numeracy).<sup>31</sup> Over the same period, the percentage of Indigenous students achieving a pass rate in numeracy tests actually fell from 48% (before implementation of SEAM) to 43% (four years after implementation), compared to the non-Indigenous rate of around 96–97%. Similarly, Indigenous students achieving above the minimum standard result in numeracy tests increased from 32% to 38% in the first year, before waning to 30% four years later.<sup>32</sup> This suggests that the experience of coercion did not ultimately lead to better outcomes in the longer term. The researchers called for an approach that would instead focus on directly increasing parents' and children's appreciation of the value of schooling.<sup>33</sup>

## 6. A New Approach

**Engagement with Aboriginal and Torres Strait Islanders is crucial for the success of future policies. The Society works to involve Indigenous Australians in its own operations, and to affirm their expertise on their own needs.**

When we consider the various policies which have been imposed on Aboriginal Australians, it is all too clear that where autonomy and self-direction are stripped away grave disadvantage is often entrenched. Measures that ignore Indigenous Peoples' own values result in modest outcomes at best, and have proven to have a harmful impact on health, education, social and economic outcomes. Moreover, a history of paternalistic approaches to welfare have pushed many ATSI-identifying people away from engaging with broader society, leading to feelings of disenfranchisement. A new approach is required, in which our leaders truly engage with Indigenous people, and listen to them with respect. Collaboration is essential when developing policies that aim to produce long term benefit for ATSI Peoples.

The Society aims to make this meaningful engagement a part of its own operations. For example, for the past decade, we have run an "Immersion Program" that gives volunteer participants the opportunity to experience a little of what it is like to live in a remote community and to have discussions about what it means to be Indigenous in Australia today. This program fosters greater understanding of Aboriginal society in our volunteers, which we believe is crucial for constructive dialogue to take place.<sup>34</sup> We are also proud that Aboriginal people have chosen to be part of, and contribute to, our organisation as volunteers and Conference members. Finally, across our many services, we emphasise empowerment (giving people a hand up, rather than a hand out) for all those we engage

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<sup>31</sup> Moshe Justman and Kyle Peyton, 'Enforcing Compulsory Schooling by Linking Welfare Payments to School Attendance: Lessons from Australia's Northern Territory', *Melbourne Institute Working Paper Series Working Paper No. 19/14* (August 2014) 11 at [melbourneinstitute.com/downloads/working\\_paper\\_series/wp2014n19.pdf](http://melbourneinstitute.com/downloads/working_paper_series/wp2014n19.pdf).

<sup>32</sup> Ibid.

<sup>33</sup> Above n 31, 24.

<sup>34</sup> For more information on the Immersion Program, see [vinnies.org.au/page/Our\\_Impact/Indigenous\\_Australia/Immersion\\_Program/](http://vinnies.org.au/page/Our_Impact/Indigenous_Australia/Immersion_Program/).

with. This approach is embedded in the Society's governing document – *The Rule* – which stresses that Society members empower those experiencing disadvantage “to help themselves whenever possible, and to be aware that they can forge and change their own destinies and those of their local community.”<sup>35</sup> This principle naturally applies to Indigenous Australians whose circumstances bring them in contact with the Society. Our policy is always to emphasise their own strengths and voice in finding solutions to their individual situations.

## 7. Constitutional Recognition

**Amendments to the Constitution need to genuinely involve Aboriginal people and Torres Strait Islanders, if we are serious about upholding their important place in the country. The Government should consider previous recommendations made by the Expert Panel, amongst others, and engage the public prior to referendum to raise awareness of the issue.**

The Society believes that Constitutional Recognition of the First Peoples is an essential step on the road to healing the deep wounds that we, the colonisers, have inflicted. Reflecting the central place of Indigenous Australia in our foundational legal document is crucial if we are serious about embracing ATSI Peoples and cultures, and weaving our shared histories together.

The Society believes that, if the Government is fully committed to working towards Constitutional recognition, there needs to be significant and respectful engagement between governments, Indigenous communities, professionals and leaders along the way. Any new wording involving Australia's First Peoples must reflect their own perspectives and values in order to truly affirm the important place they have in this country. Failure to do this would be a continuation of the paternalistic policies that have excluded and disempowered Aboriginal peoples since colonisation. The vast disadvantage and structural barriers experienced by many Indigenous Australians today demonstrate how destructive it is when policy-makers presume to know what is in the best interests of ATSI Peoples. At the same time, we realise not all Indigenous groups share the same views on Constitutional recognition. Research suggests that some may not see its relevance to themselves or have an interest in being included in the Constitution. This may be seen as further indicative of the deep divide that past and present policies have created between Indigenous and non-Indigenous Australians. Given the plurality of views across Australia, we believe consultation and engagement must take place broadly and over an appropriate length of time in order to capture the diversity of perspectives across Indigenous and non-Indigenous Australia.

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<sup>35</sup> The St Vincent de Paul Society, *The Rule of the St Vincent de Paul Society in Australia – Seventh Edition* (September 2012) 17 at [vinnies.org.au/icms\\_docs/168122\\_The\\_Rule.pdf](http://vinnies.org.au/icms_docs/168122_The_Rule.pdf).

As a starting point, the Society strongly recommends the Government consider the 2012 Report produced by the Expert Panel, which widely consulted with Indigenous community leaders, constitutional experts and parliamentarians on this issue. Specifically, the Report urges the removal of discriminatory provisions found in ss 25 and 51(xxvi).<sup>36</sup> Section 25 legitimises provisions of state law that may discriminate based on race, and 51(xxvi) enables the federal government to make laws that discriminate based on race. The Society believes that any legal capacity to discriminate based on race is completely antithetical to the Australian value of respect regardless of social or ethnic background.<sup>37</sup> We further support that Report's proposed addition of new content in the Constitution, recognising Aboriginal and Torres Strait Islander Peoples as the first occupiers of the land; acknowledging their continuing relationship with their traditional land and waters; and affirming their continuing languages, cultures and heritage.<sup>38</sup>

In moving towards a referendum on the issue, the Society also recommends the Government allocate funding and resources for a public education and awareness-raising campaign. This campaign should be aimed at both the Indigenous and non-Indigenous populations. An effective democratic referendum requires an active and informed citizenry, but there is a great lack of constitutional awareness within the Australian community. A 1994 report by the Civics Expert Group revealed that only 18% of Australians have some understanding of what our Constitution contains.<sup>39</sup> Additionally, the Australian electorate has historically been cautious and conservative when it comes to referenda: only 8 of our 44 referenda have carried, and none since 1977.<sup>40</sup> To overcome this hurdle and achieve a successful referendum, it is crucial to engage Australians, and provide them with information so that they understand the reasoning behind any proposed changes.

## 8. Conclusion

The historic treatment of Indigenous Australians remains a deeply shameful theme in our nation's past. The shame is made greater still by the continuance of harmful and controlling policies today. The alarming trend of denying Indigenous Australians a say in their own lives and futures can be traced back to the 1890s, when Australia's Constitution was formed

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<sup>36</sup> Expert Panel, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (January 2012) xviii at [recognise.org.au/wp-content/uploads/shared/uploads/assets/3446\\_FaHCSIA\\_ICR\\_report\\_text\\_Bookmarked\\_PDF\\_12\\_Jan\\_v4.pdf](http://recognise.org.au/wp-content/uploads/shared/uploads/assets/3446_FaHCSIA_ICR_report_text_Bookmarked_PDF_12_Jan_v4.pdf).

<sup>37</sup> The St Vincent de Paul Society, above n 39, 3.

<sup>38</sup> Expert Panel, above n 36, xviii.

<sup>39</sup> Civic Experts Group, cited by Australian Local Government Association in *Submission to the Joint Select Committee on the Constitutional Recognition of Local Government* (December 2012) at [aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jsclg/localgovt/subs/sub89.pdf](http://aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsclg/localgovt/subs/sub89.pdf).

<sup>40</sup> Australian Electoral Commission (AEC), *Referendum dates and results* (October 2012) at [aec.gov.au/elections/referendums/Referendum\\_Dates\\_and\\_Results.htm](http://aec.gov.au/elections/referendums/Referendum_Dates_and_Results.htm).

without input from the country's original occupants.<sup>41</sup> The Society contends that the same logic that excluded Aboriginal and Torres Strait Islander voices from the drafting and approval process is closely related to the logic that led to the paternalistic policies that were imposed over the following century.

There is a long way to go before equality and self-determination become a reality for Australia's First Peoples. By reflecting their values and perspectives in the Constitution, we will be taking a necessary and long overdue step on the path to true reconciliation. Wide consultation and engagement will need to be undertaken for meaningful amendments to be made and then approved by the public, and careful use of this historic opportunity is vital.

In the final analysis, recognition is about more than righting some of the wrongs we have inflicted and continue to inflict on Aboriginal and Torres Strait Islander Peoples. Constitutional recognition is an indicator of who we are as a nation, and will reflect our vision of an Australia that is just, diverse and inclusive. Let us work together to make this vision a reality.

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<sup>41</sup> Parliamentary Education Office, *Indigenous Australians and the Constitution* (December 2013) at [peo.gov.au/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=225&cntnt01returnid=146](http://peo.gov.au/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=225&cntnt01returnid=146).