



**public interest**  
ADVOCACY CENTRE LTD

## **Submission to the Federal Treasurer 2008-2009 Federal Budget**

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# The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

## Introduction

In making this submission for the 2008-2009 Federal Budget, PIAC aims to highlight specific areas of Federal Government responsibility where moderate and targeted expenditure can improve social justice outcomes for individuals and communities in Australia. This submission is in response to the experience within PIAC of redressing the problems of those most in need in the community, many of which arise from fundamental administrative flaws or gaps in services.

Costings are not included for the Recommendations but PIAC is happy to provide further information if requested.

The focused nature of this submission has its grounding in the knowledge PIAC has gained in representing and advocating for individual clients and on public interest issues. PIAC clients experience gaps in government programs that could, if rectified, have prevented detrimental effects on low-income or at-risk groups in the community; fulfilled social justice outcomes; and improved the efficiency of government and judicial systems.

Projects from which PIAC has drawn recommendations include:

The **Homeless Persons' Legal Service** (HPLS), which operates nine free legal clinics based in community support centres visited by homeless people within the Greater Sydney metropolitan area. HPLS also has a research and policy function, which initiates and responds to emerging issues;

for example, a response was provided to the Red Tape Reduction investigation by the NSW Office of State Revenue.

The **Public Interest Law Clearing House** (PILCH) co-ordinates an assessment and referral service to link individuals with public interest cases and non-profit groups that work in the public interest with *pro bono* legal services delivered by PILCH members. PILCH is co-located and works closely with PIAC. Ongoing joint projects include the Homeless Persons' Legal Service (see above) and the Stolen Wages Referral Scheme, which works with Aboriginal applicants to the NSW Aboriginal Trust Fund Repayment Scheme. PILCH also co-ordinates the Predatory Lending Project, a project focused on assisting individuals who have become victims of predatory home loans and undertaking policy and law reform work to end the practice of offering predatory home loans.

**Children in Detention Advocacy Project** provides legal assistance to children who claim to have experienced false arrest, unlawful detention, or malicious prosecution. The project also involves the investigation and development of policy solutions to systemic problems that lead to these detentions.

The **Mental Health Legal Services Project** aims to research and pilot mechanisms to effectively respond to unmet legal need for people with mental illness, including the development of new service delivery options and the training of existing legal assistance providers to enable them to better meet these needs.

The **Our Strong Women** project aims to empower Indigenous women across Australia with the knowledge and skills to be effective leaders and advocates for their communities. The project involves working with the National Network of Indigenous Women's Legal Services to develop and deliver to Indigenous women a two-day advocacy and leadership training program, and train them to run the advocacy and leadership training in their own communities.

The **Stolen Wages** project aims is to recover debts owed to Indigenous people as a result of the holding of money on trust by the Aboriginal Welfare Board and the Aboriginal Protection Board. The project also involves preparation of a submission to the NSW Government about the NSW Aboriginal Trust Fund Repayment Scheme on figures, findings and awards, strengths and weaknesses of the Scheme and its processes. PIAC is also working with groups in other states and territories to consider models for similar schemes across Australia and the broader issues of compensation for under-payment and non-payment of wages for work and other labour exploitation practices that have particularly affected Indigenous Australians.

The **Protecting Human Rights in Australia** project aims to promote community discussion and awareness of human rights and their protection in Australia. This has included the development of a kit of fact sheets that has been widely distributed, and a national train-the-trainer program. As part of this project, PIAC is hosting and supporting the NSW Charter Group, which seeks to promote community consultation about and the adoption of a Charter of Human Rights for NSW. Support for the NSW Charter Group involves assisting in the development of a network of supporters, providing community education in human rights, maintaining a website and developing information tools specific to the needs of the NSW community.

PIAC's **Energy and Water Consumers' Advocacy Program** (EWCAP) is an independent voice for low-income and other domestic and small consumers in the NSW energy and water sectors, as well as the national electricity market. EWCAP makes submissions to public inquiries, contributing a consumer perspective; conducts research; works with industry, other consumer and community

groups with a view to ensure equitable and sustainable delivery of water and energy to domestic and small consumers.

The **Accessible Public Transport** project supports people with disabilities and organisations representing people with disabilities with discrimination cases and systemic advocacy. This includes co-ordinating a submission to the national review of *Disability Standards for Public Transport 2002* (Cth) in August 2007. The submission focused on airline travel and based its recommendations on over 100 case studies, mostly complaints about airline service and infrastructure.

# Summary

## Housing and Homelessness

Fund the development and implementation of a National Homelessness Strategy, with each relevant Department including a budget item to meet the outcomes of the Strategy.

Fund State and Territory Governments to expand the Supported Accommodation and Assistance Program (SAAP) to ensure that every Australian experiencing homelessness can access a SAAP service.

## Human rights and equal opportunity

Fund a national public consultation and community education program as part of the inquiry into the adoption of a national Charter of Rights.

Fund the implementation of a comprehensive response to the recommendations of the *Bringing Them Home Report* and the establishment of a reparations process.

Fund the development and implementation program for the recommendations in the Review of the Disability Transport Standards.

## Mandatory detention and asylum seekers

Fund alternatives to mandatory detention of asylum seekers and ensure that any detention regime is limited to the absolute minimum necessary to undertake initial health and security checks.

Transfer the budget from the temporary protection visa system to the administration of applications for permanent residency status. This will be possible if all asylum seekers who are found to be genuine refugees are granted permanent residency.

## Building Energy Capacity

Allocate funding to ensure that consumers are protected in the new national energy environment, and ensure access by consumers to competitively priced and affordable energy services, regulation of the national energy market and viable dispute-resolution mechanisms.

## Commonwealth, State and Territory Disability Agreement (CSTDA)

The next CSTDA should include indexation of at least CPI each year for the life of the next five-year agreement.

## Consumer Policy Framework

Consistent with Draft Recommendation 9.6 of the Productivity Commission Draft Report of the Review of Australia's Consumer Policy Framework, provide enhanced support for individual consumer advocacy through increased resourcing of legal aid, the Community Legal Services Program and the financial counselling services, especially for vulnerable and disadvantaged consumers.

Provide resources to implement other key recommendations and to ensure an effective implementation process for the full report.

# Recommendations

## Housing and homelessness

The aim across all Government Departments should be to reduce the incidence of homelessness across Australia, to assist Australians out of homelessness and to insulate Australians against falling into homelessness. The budget should provide for the development and implementation of a National Homelessness Strategy, with each relevant Department including a budget item to meet the outcomes of the Strategy.

The budget should at a minimum provide for the implementation of the following components of a Strategy:

- Investment by Commonwealth and State Governments in the Commonwealth-State Housing Agreement (CSHA). The agreement should provide funding to meet targets at both State and Territory level for the reduction in current public housing waiting lists.
- National Tenancy Standards, which includes obligations on public housing landlords to support vulnerable and marginalised groups such as tenants with mental illness.
- Development of National Tenancy Standards for caravan park residents, boarders and lodgers.
- Establishment of independent review mechanisms for public housing authorities.
- An affordable housing strategy to operate in conjunction with a National Homelessness Strategy.
- An expansion of the Supported Accommodation and Assistance Program (SAAP) to at least meet current demand, and to expand the program to ensure that every Australian experiencing homelessness can access a SAAP service.

## Human rights and equal opportunity

### ***Australian Charter of Rights***

Following the full implementation of the *United Kingdom Human Rights Act 1998* by the Blair Labor Government, Australia is now the only industrialised democracy that does not have either legislated or constitutional human rights protection laws. Both the UK and New Zealand have followed a legislative model, while Canada adopted a legislative model as a transition to constitutional change, with the constitutional Canadian *Charter of Rights and Freedoms* enacted in 1982.

It is encouraging that the media has reported that the Federal Attorney-General, the Hon Robert McClelland, on being appointed announced he would undertake an inquiry into the adoption of a Charter of Rights in the Government's first term. Funding should be allocated to implement a national public consultation and community education program as part of the inquiry process.

### ***Implementation of the Bringing them Home Report***

Members of the Stolen Generations have made legal claims against the federal and state governments in an effort to seek redress, at great personal expense and pain. The courts have made it clear that they are reluctant to find governments liable for acts that occurred so long ago. Some

courts have stated that the issues raised by these cases would be better resolved in the political arena. The Commonwealth Government spent over \$12 million defending these legal claims.

The cases tend to focus on technical legal issues and fail to acknowledge the racism and broader consequences of the policies. Litigation is not available to many members of the Stolen Generations because of lack of documentary evidence and the statutory time limits on legal claims. The adversarial nature of litigation means that members of the Stolen Generations who have already suffered emotional and psychological harm, are subject to further trauma.

Funding should provide for the implementation of a comprehensive response to the recommendations of the *Bringing Them Home Report* and the establishment of a reparations tribunal building on the research and development work done by PIAC in partnership with the Human Rights and Equal Opportunity Commission and the former Aboriginal and Torres Strait Islander Commission and on the experience of similar tribunals in Canada and South Africa.

### **Commonwealth Disability Standards for Accessible Public Transport**

The Minister for Transport and Regional Development recently released the draft response to the Review of the Disability Transport Standards. Transport is an essential service that directly impacts on the access people have to work, education and training, maintaining family contact, access to health services and the tourist industry.

The recommendations of this report are wide ranging and to fully implement them funding should be provided. In particular, funding needs to be allocated:

- to public transport service providers for equipment and training;
- to establish compliance monitoring services; and
- to enable HREOC to action its proposed new power to take complaints of Standards breaches direct to the Federal Court.

### **Mandatory detention and asylum seekers**

The vast majority of asylum seekers are found to be genuine refugees. Mandatory detention has been demonstrated to cause severe psychological damage to adults, with even harsher effects on children. There are extraordinary and unjustified powers given to Department of Immigration officials, and to the private contractors employed by the Department, to override the basic human rights of people placed in detention. These abuses of power have been highlighted by the inquiries into the wrongful detention of Australian citizens.

Funding should be provided to implement alternatives to mandatory detention of asylum seekers and ensure that any detention regime is limited to the absolute minimum necessary to undertake initial health and security checks.

The temporary protection visa system places unnecessary difficulties in the way of asylum seekers who are found to be genuine refugees. Such visas prevent them from gaining long-term employment and living productive lives in Australia, making them more dependent on government services. They also create an expensive and unnecessary administrative system for periodic re-assessment of visas. The budget for immigration matters would benefit with the removal of the temporary protection visa system, and granting permanent residency status to asylum seekers who are found to be genuine refugees.

## **Building Energy Capacity**

The development of the National Energy Market poses a number of risks to consumers. As an essential service, it is a public policy imperative that energy services are universally accessible, affordable and that competitive markets are well regulated.

International experiences have demonstrated the limited capacity of competitive energy markets to deliver affordable energy. In the United Kingdom, home to the most mature energy markets, competitive prices have not alleviated fuel poverty concerns.

Funding should be allocated to ensure that consumers are protected in the new national energy environment, and ensure access by consumers to competitively priced and affordable energy services, regulation of the national energy market and viable dispute resolution mechanisms. This should include funding programs through State/Commonwealth agreements that ensure:

- The social impact of tariffs are taken into consideration in the economic regulation of distribution and retail businesses.
- Community Service Obligations are incorporated into legal obligations imposed on energy retailers.
- Demand-management programs are targeted to low-income households as well as large businesses.
- Disconnection procedures do not unfairly target households in short-term financial hardship.

## **Commonwealth, State and Territory Disability Agreement (CSTDA)**

Commonwealth-state arrangements, especially the CSTDA (and the upcoming Housing Agreement) directly affect the ability of people with disabilities to live independently. States and Territories require a viable indexation in the agreement in order to meet increasing demand. The proposed 1.8% by the previous Government is totally inadequate and will see many disability services actually reducing services to stay viable. Indexation should be at least be equivalent to the CPI increase each year for the life of the next five year-agreement.

The next CSTDA should be accompanied by a proper investment in disability services. The Senate Inquiry into Disability Services (2006) identified a number of priorities that would form the basis of the agreement. Ranked high on this list was the burgeoning unmet need in disability supported accommodation. In NSW, if existing promises are met from both the Commonwealth and State, in 2012 there will be 1,570 new supported accommodation places. In June 2007, the Australian Institute of Health and Welfare identified that in NSW in 2005 the unmet need for disability supported accommodation was 7,000 places at a minimum. This estimate is considered in the industry to be underestimated by about 3,000 places.

A planned investment strategy agreed by Commonwealth and state could see people providing planned transition for people and not simply *at crisis level*.

## **Consumer Policy Framework**

As you will be aware the Productivity Commission is in the final stages of its Review of Australia's Consumer Policy Framework and is due to report in April 2008.

The Draft Report of that Review (PC Draft Report) makes a number of important recommendations to improve consumer policy in Australia. The Commission believes that its package of reforms would deliver net benefits to the community in the order of \$1.5 billion to \$4.5 billion a year.

Some of the Commission recommendations will, if accepted, have budgetary implications. Most of these are non-controversial and in PIAC's submission should be considered by the Federal Government in the current budget cycle rather than being delayed. In addition, PIAC supports the position that, given some State-Federal interface issues that will need to be resolved it will be useful to establish and resource a taskforce to implement the Review recommendations under the supervision of COAG. Such funding is not contemplated by the Productivity Commission in the PC Draft Report.

PIAC submits that in the current budget funding or increased funding should be allocated as follows:

- increased ongoing funding to improve and extend the current network of financial counselling services;
- increased ongoing funding to improve and extend legal aid services (including community legal centres) available for consumer matters;
- new ongoing funding to support operational and policy advocacy functions for a representative peak consumer body and the networking costs of consumer organisations; and
- once-only funding to support a taskforce to implement the recommendations of the Productivity Commission once accepted by governments;
- supporting the Commission's recommendations for the Commonwealth to play the lead role in relation to product safety and for increased research on the extent of product-related injuries.

### ***Financial counselling and legal aid services in consumer matters***

Draft Recommendation 9.6 of the PC Draft Report provides as follows:

Australian Governments should provide enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counselling services, especially for vulnerable and disadvantaged consumers.

The Commission notes in the PC Draft Report at page 172 that '[w]hile ombudsman and ADR schemes provide significant support for non-judicial redress, there is relatively little assistance for legal aid in consumer disputes'. As the Commission notes, that assistance that is currently available is mostly through community legal centres rather than legal aid commissions. Consumer matters make up only 20% of the total activities of community legal centres, and that from a small \$40m program nationally (partly funded by the states).

In 2007, in its *New National Policy for Legal Aid in Australia*, National Legal Aid identified as the second of six priority issues for funding for legal aid in Australia being to 'support ... Australians at risk of social exclusion due to poverty'. That recommendation encompassed support for legal assistance in relation to consumer legislation especially in relation to credit and debt as one of the four civil law areas covered.

PIAC supports enhancements to legal aid funding that include:

- support for specialist Consumer Law capacity in each State along the lines of the existing centre; and
- increased ongoing funding for casework and community legal education services to be allocated through legal aid commissions and/or local community legal centres depending on jurisdiction-specific circumstances.

The Productivity Commission's support for increasing resources to financial counselling services reflects the importance of providing free and conflict-free financial counselling services that are able to provide information, support and advocacy for low- to moderate-income people dealing with debt and related financial issues.

The Commission's support also reflects the fact that the resourcing of financial counselling, predominantly provided by governments, is currently inadequate. There are between 450 and 500 free and conflict-free financial counsellors—many part time—for the entire country.

### ***Funding for consumer advocacy***

The PC Draft Report concludes there is a case for government support for consumer advocacy to enhance consumer input into public policy development in relation to consumer protection. It provides evidence of situations where the lack of input from consumer organisations into public policy development has limited policy development: PC Draft Report, 217-226.

The Productivity Commission also provisionally concludes that additional funding is needed for consumer research to help establish 'a better information base to anchor future policymaking'. The Commission emphasises the importance of evidence-based policy making. PIAC supports the Commission's view that there is need for greater levels of research into consumer issues.

Draft Recommendation 11.3 in the PC Draft Report provides:

The Australian Government should provide modest additional funding to support:

- specified research on consumer policy issues, distributed on a contestable basis;
- the basic operating costs of a representative national peak consumer body; and
- the networking and policy functions of consumer groups.

Such additional funding should be subject to appropriate guidelines and governance arrangements to help ensure that it is used effectively.

PIAC supports this recommendation subject to two comments.

Firstly, the most effective way to fund consumer policy advocacy would be to ensure that the national peak consumer body has the ongoing capacity to undertake research, consultation and give effective input to public policy development processes. This requires the commitment of more than core operating costs.

Second, the contestable research fund model proposed by the Commission is not necessarily the best model for the allocation of all research funds and PIAC will be supporting a consumer-sector submission in support of at least part of the research budget being used by a standing consumer policy advisory body, which might be similar to the UK National Consumer Council.

### ***Support for a taskforce to implement the PC Draft Report recommendations***

The PC Draft Report presents a package of reforms likely to have significant benefits for Australian consumers and the Australian economy. There will be significant transition work required to successfully implement those recommendations. PIAC will be supporting a recommendation to the Commission that it acknowledge this work and recommend the best way to ensure implementation. PIAC supports the view that a representative taskforce, reporting to COAG, should be established and fully resourced to guide implementation.

### ***Funding required to implement recommendations on defective products***

In 2005, the Productivity Commission undertook a comprehensive *Review of the Australian Product Safety System*. Its key recommendations, reiterated in the current review, include that:

... the ACCC alone should be responsible for regulating the uniform product safety regime that is currently being developed under the auspices of MCCA.

This will require some significant financial support from the Commonwealth to ensure that the ACCC can expand its activities to protect all Australian consumers affected by defective products. Other recommendations that would require resourcing include a 'one-stop shop' Internet Portal, a national clearinghouse and a comprehensive study of consumer product-related injuries. PIAC supports all these recommendations.