



public interest
ADVOCACY CENTRE LTD

Achieving an inclusive society through human rights and social justice: Comments on the ALP 2009 Consultation Draft National Platform

5 June 2009

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

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 Services 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.

Focus of these comments

PIAC welcomes the opportunity to comment on the Australian Labor Party (ALP) Policy Platform. In this submission, PIAC focuses on issues of public interest in which it has experience and expertise. PIAC's public interest work is informed by the principles of human rights and social justice, which also inform many aspects of the Policy Platform.

PIAC also emphasises the need to ensure that consumer voices are properly represented in policy process through open, transparent and genuinely representative processes. Through these comments, PIAC seeks to update, clarify and in some cases extend the application of these principles in the Platform.

Comments on the 2009 Consultation Draft National Platform

Chapter 2: securing our future with responsible economic management

Improving corporate regulation for a stronger economy

Not-for-profit organisations improve their governance arrangements and disclosure ¹

The not-for-profit sector in Australia is large and diverse, and is increasingly important to both governments and communities as a key provider of community services, sporting activity and representation of collective interests.

Governing legislation reflects the diversity and historical development of the sector. In its 2007 *Assessment of Charitable Status in Australia*, the National Roundtable of Nonprofit Organisations identified 15 Commonwealth Acts and 163 State and Territory Acts 'under which entitlement to a benefit or some other legal outcome turns on the charitable purpose or status of an organisation'.

The National Roundtable also found:

- 19 Commonwealth, State and Territory governmental entities are regularly involved in determining the charitable status of organisations, and a further 74 entities may be called on to make such determinations from time to time.
- The processes for determining the charitable status of organisations vary significantly between government agencies, with little coordination among agencies within and among jurisdictions, and a high degree of inconsistency and duplication.
- These processes impose substantial unnecessary administrative burdens on charities and the relevant regulators.²

The lack of a consistent approach, and the absence of clear, agreed definitions are at the heart of the problems with governance regimes for charities and not-for-profit organisations. The diversity of the sector, and in the size, purpose and activity of its constituent organisations, means that there is no 'one size fits all' solution. An accountability framework needs to be tailored and proportionate to risk. This will result in a reduced compliance burden and will promote the provision of information that allows stakeholders to assess the extent to which an organisation is achieving its purpose. Not-for-profit organisations need to be partners in the development of options, assisted through the transitional process with funding and advice.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will prioritise the reform of governance and regulatory arrangements for not-for-profit organisations and ensure that the reform is proportionate to risk, and is designed and implemented in consultation with the sector.'

¹ Australian Labor Party, *Consultation Draft National Platform* (2009) [Ch 2, para 95] <<http://www.alp.org.au/platform/2009draft.php>> at 4 June 2009.

² National Roundtable of Nonprofit Organisations, *Assessment of Charitable Status in Australia, Submission to Senate Economics Committee, Inquiry into the Disclosure regimes for charities and not-for-profit organisations, Attachment C* (2008) <http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/submissions/sublist.htm> at 3 June 2009.

Chapter 6: Preparing Australia for the health needs of the future

PIAC has undertaken a considerable amount of work on patient or health care rights over its 25 years, in particular around the development of an Australian Health Consumers' Charter. In 2008, PIAC welcomed the endorsement of the Australian Charter of Healthcare Rights by the Australian Health Ministers. Previously, PIAC participated in the consultation process that led to the Australian Commission on Safety and Quality in Health Care's draft charter, including providing a written submission in response to the Commission's Consultation Paper on the draft charter.

PIAC has noted the absence of any direct comment on or commitment to health consumer's rights in the draft platform, and the absence of any reference to the Australian Charter of Healthcare Rights in particular.

Recommendation:

PIAC suggests the following additions to the draft platform:

'Labor recognises that for the health system to maximise the safety and quality of the health care provided, healthcare providers must act in partnership with consumers in the provision of care and treatment, with a recognition that health consumers have both rights and responsibilities about their healthcare.'

'Labor therefore supports the Charter of Healthcare Rights adopted by Australian Health Ministers in 2008 and will look to ways of having the Charter recognised and having substantive effect at all levels of the provision of healthcare in Australia. The level of adherence to the Charter of Healthcare Rights should, alongside the traditional criteria of maintenance of professional standards, be a benchmark on which the conduct and competency of health professionals and health providers are measured.'

'Health consumers must have faith in the health system, not only to provide an appropriate and safe level of care, but also to have the capacity to hear their questions and answer their concerns about their health care. Labor therefore recognises the importance of effective communication and open disclosure in health settings, and that robust and independent healthcare complaints mechanisms are essential to maximise safety and quality in health outcomes.'

The health system of the future

To drive better use of new technologies, Labor will work, in collaboration with state and territory governments to:

- Build information technology and communication infrastructure and systems that improve the decisions made by consumers, clinicians and health service managers about care, service delivery and policy.
- Ensure that appropriate privacy and security protocols are implemented to protect consumers' rights.
- Work towards the delivery of a universal electronic personal health record.
- Where possible, implement technological solutions to help combat the isolation that is sometimes a factor in delivering health services in rural and regional areas.³

PIAC does not object to the roll out of e-Health records and notes the clear benefits for health consumers in e-Health records.

PIAC, however, also strongly endorses the statement in the draft platform with regard to privacy and security issues.

³ Australian Labor Party, above n1, Ch 6, para 57.

Recommendation:

PIAC suggests these issues be highlighted in the platform because of their importance and suggests the following new paragraph:

'Labor supports the introduction of national and state- and territory-based electronic health records with the following privacy and security safeguards:

- *Only individuals who opt and consent to be included are included (the 'opt-in' principle).*
- *All individuals participating should clearly understand how the system works, including who can access particular information and in what circumstances.*
- *Individuals have control over their records to the extent that they can control who can see which parts of their health records (with an exception for life-threatening emergencies).*
- *The system should only collect information that is relevant to an individual's health care.*
- *The system must ensure that information technology systems, procedures and policies are in place to minimise unauthorised access, modification disclosure or deletion.*
- *Individuals must have access to their record to ensure the information is correct and assigned to correct person and have the ability to have corrections and/or annotations made if they find mistakes.*
- *The system must strictly limit circumstances where health care providers can disclose health information.*
- *The system must not impinge on a person's right to seek healthcare anonymously.'*

Chapter 7: Securing an inclusive future for all Australians

Strengthening Australia's communities

A national compact⁴

PIAC notes the commitment of the Australian Government to deliver a compact with the not-for-profit sector as a first step towards building 'a new and stronger relationship with the not-for-profit sector'.⁵

While a compact has the potential to be of benefit both to the Government and to the sector, PIAC's experience in NSW (supported by independent research⁶) indicates that this is not necessarily the case. For a compact to be effective it needs ongoing commitment from all parties, and to be central to all aspects of the relationship between the parties. It needs to be part of a whole-of-government commitment to working in partnership with not-for-profits, not just contracting them to provide delivery of government services. It must reflect the diversity of the not-for-profit sector and ensure that it has substantive effect on the way in which governments design programs in which the not-for-profit sector are key participants and ensure that the funding of such programs reflects real costs of delivery.

Recommendation:

PIAC suggests the following addition to the draft platform:

⁴ Australian Labor Party, above n1, Ch 7 paras 11, 78.

⁵ Federal Department of Families, Housing, Community Services and Indigenous Affairs, *An Australian Compact* (2008) <http://www.socialinclusion.gov.au/A_National_Compact.htm> at 8 September 2008.

⁶ John Casey, Bronwen Dalton, Rose Melville and Jenny Onyx, "An Opportunity to Increase Positive Results" or "So Disappointing After So Much Energy"? A Case Study on the Long Gestation of Working Together for NSW: Working Paper Series No 79 (2008).

'Labor will ensure that any national compact is part of a whole-of-government commitment to working in partnership with the not-for-profit sector and recognises the unique and valuable contribution of the sector to program and policy development and delivery.'

Closing the gap in Aboriginal and Torres Strait Islander life outcomes

... a more trusting and respectful relationship between Aboriginal and Torres Strait Islander people and other Australians... Labor will work towards a lasting settlement with Indigenous Australians.⁷

PIAC welcomes the commitment to a lasting settlement, and urges the ALP to base this settlement around a reparations tribunal. Later in 2009, PIAC will launch a new edition of its 2002 report, *Restoring Identity*.⁸ The report and its recommendations were the culmination of PIAC's national community consultation project, *Moving forward*, that sought the views of members of the Stolen Generation and their communities about PIAC's model to provide reparations for the members of the Stolen Generations, their families and communities.

The *Moving forward* consultations highlighted a significant feature of reparations: that effective redress of historical injustice deals with not only the actual harm of past practices but also the contemporary effects of these past wrongs. The focus of the proposed reparations package was not monetary compensation, but instead included guarantees against the repetition of forcible removal policies, measures of restitution including the establishment of language and cultural centres, and rehabilitation measures such as counselling.

Broad and meaningful reparations are required for members of the Stolen Generations, their descendants and communities to redress the long-term and intergenerational impacts of forcible child removal. Acknowledging past wrongs, through the apology delivered by the Prime Minister in Federal Parliament on 17 February 2008, is just the first step in doing what is necessary to address this very important issue. A full and just reparations package is the next.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will work towards a lasting settlement with Indigenous Australians through the implementation of a comprehensive reparations package.'

Providing opportunities for people with disabilities

Labor believes governments have a responsibility to support and empower people with disabilities.⁹

PIAC welcomes the commitment in the Platform to providing opportunities for people with disability. PIAC notes that people with disability continue to face significant individual and systemic barriers to full inclusion and participation in Australian communities and the social, economic and cultural life of the nation.

Programs and policies often fail to identify the contribution that people with disability can and do make to the economic, social and cultural well being of Australia. Rather, they tend to wrongly characterise people with disability as passive recipients of care and of services. Progress in this important area will only be fully achieved when people with disabilities are seen as central to the development of policies and programs that directly affect them, and are seen as equal partners with the rest of the community in broader public policy development.

⁷ Australian Labour Party, above, n1, Ch 7 paras 26, 79.

⁸ Public Interest Advocacy Centre, *Restoring Identity* (2002) <http://www.piac.asn.au/publications/pubs/restore_20020927.html> at 29 May 2009.

⁹ Australian Labor Party, above n1, Ch 7 paras 67, 84.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will work towards a more positive and inclusive relationship with all people with disability and seek to ensure that all programs and laws that impact on people with disability (both specialist and generalist laws and programs) are developed with the active involvement of people with disability.'

Community and not-for-profit sectors

... encourage the development of a national regulatory framework for 'not for profit' organisations ...¹⁰

PIAC welcomes the support for the not-for-profit sector implicit in the Platform and would welcome a national regulatory framework.

Over the past 15 years there have been five major Commonwealth inquiries into charities and not-for-profit organisations.¹¹ There have also been numerous academic research papers, journal articles and books and major reports by state governments. Very few of the recommendations of these inquiries and reports have been implemented. They represent a valuable body of knowledge and a considerable commitment of resources, both from government and the not-for-profit sector. PIAC encourages the ALP to support the implementation of past recommendations rather than conduct more research.

Any new framework needs to take into account the diversity of the sector and the need for reform to be proportional to size and risk. Reporting systems must be designed to improve accountability to all stakeholders—internal, governmental and local community or population group—and incorporate non-financial information and the reforms should be developed and implemented by a national body, in consultation with a body representing the diversity of the not-for-profit sector. The compliance costs involved in reform, including transitional costs, need to be acknowledged and provided for in funding agreements.

Recommendation:

As recommended above (in response to Chapter 2), PIAC suggests the following addition to the draft platform:

'Labor will prioritise the reform of governance and regulatory arrangements for not-for-profit organisations and ensure that the reform is proportionate to risk, and is designed and implemented in consultation with the sector.'

¹⁰ Ibid, Ch 7 paras 79, 85.

¹¹ The Industry Commission inquiry into Charitable Organisations in Australia (1995) <<http://www.pc.gov.au/ic/inquiry/45charit>> at 4 June 2009; Inquiry into the Definition of Charities and Related Organisations (2001) <<http://www.cdi.gov.au/html/report.htm>> at 4 June 2009; the Board of Taxation consultation on the draft Charities Bill 2003 (2003) <<http://www.taxboard.gov.au/content/charities.asp>> at 4 June 2009; the Treasury consultation on Financial Reporting by Unlisted Public Companies (2007) <<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1269>> at 4 June 2009; and the Senate Inquiry into the Disclosure regimes for charities and not-for-profit organisations (2008) <http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm> at 23 April 2009.

Homelessness

Homelessness and the housing crisis have been neglected for too long in Australia. Labor will deliver a new approach that tackles the underlying causes of homelessness, improves crisis services, helps people to get long term secure housing and stops the cycle of homelessness.¹²

PIAC and the Homeless Persons' Legal Service¹³ welcome and fully support the Rudd Government's White Paper¹⁴ initiatives to address homelessness in Australia.

PIAC is concerned, however, that the draft Platform does not recognise the critical need for consumer participation in the development of policies and programs that directly affect the lives of homeless people.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor recognises the need for effective and respectful consumer participation in implementing the White Paper on Homelessness initiatives and will consult with homeless people on all issues that directly affect them.'

Labor will improve and expand homelessness services, giving particular emphasis to improving the connections between homeless shelters and mainstream services and getting the homeless into work.¹⁵

PIAC is also very concerned with the implication that 'getting the homeless into work' is a key factor in addressing homelessness. Employment is secondary and an irrelevant measure for the success of the Government's White Paper initiatives.

Research shows that the major pathways into homelessness and preventing permanent exit from homelessness are:

1. housing crisis, that is, a dire lack of accommodation which is affordable, safe, secure and accessible;
2. mental illness;
3. domestic violence;
4. youth;
5. substance use.¹⁶

PIAC is concerned that unless homeless people are given well co-ordinated, appropriate, long-term and consistent support to deal with these issues, there will be little success for many homeless people in sustaining employment.

¹² Australian Labour Party, above n1, Ch 7 para 80.

¹³ The Homeless Persons' Legal Service (HPLS) is a joint initiative of PIAC and the Public Interest Law Clearing House (PILCH).

¹⁴ Australian Government, *The Road Home: A National approach to reducing Homelessness* (2008).

¹⁵ Australian Labour Party, above n1, Ch 7 para 82.

¹⁶ Guy Johnson, Hellene Gronda and Sally Coutts, *On the Outside, Pathways in and out of homelessness* (2008).

Recommendation:

PIAC recommends Paragraph 82 be rewritten:

'Labor will improve and expand homelessness services, giving particular emphasis to improving the connections between homeless shelters and mainstream services, including by providing well co-ordinated, appropriate, long-term and consistent support to homeless people.'

Ensuring Justice in the Community

Labor is committed to providing national leadership to resource our system of legal aid in partnership with the states and territories. Labor will continue to support general and specialist community-based legal services...¹⁷

As a specialist community legal centre (CLC), PIAC has a long history of working to achieve access to justice for marginalised and disadvantaged clients. PIAC has pursued this goal by developing and piloting models for responding to unmet legal need (such as the legal needs of homeless people, the legal needs of children and young people and children, and the legal needs of people with mental illness), exploring and promoting innovative ways of funding and progressing public interest law and identifying, challenging and preventing systemic barriers to access to justice.

The Final Report of the Senate Legal and Constitutional Affairs Committee's 2004 Inquiry found that CLCs are a crucial part of providing access to justice for all Australians, but noted that CLCs appeared to be facing a funding crisis.¹⁸

Apart from the additional one-off funding provided to CLCs in April last year and again in May this year, there has been no significant injection of new funding into the sector by the Commonwealth since 1999-2000.

In its funding submission to the Federal Attorney-General in January 2008, the National Association of Community Legal Centres said:

CLC funding has not kept pace with increased costs. CLCs have experienced an 18% reduction in funding over the last 10 years in real terms. This impacts on outcomes for clients, placing unsustainable stress on the organisations' ability to deliver service. CLCs have had to cut back on staff, service hours and other expenses that support innovation and growth of services¹⁹.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will continue to support general and specialist community-based legal services by providing a genuine increase in ongoing funding that ensures that CLCs are able to respond to unmet legal need, to secure and retain skilled staff, and to engage in holistic service delivery and preventive legal strategies.'

¹⁷ Australian Labor Party, above n1, Ch 7 para 106.

¹⁸ Senate Legal and Constitutional Affairs Committee, *Legal Aid and Access to Justice* (2004) 218.

¹⁹ National Association of Community Legal Centres, *Community Legal Centres Across Australia – An investment worth protecting, Funding Submission to the Commonwealth Government 2007-2010* (2008) 1.

Labor is committed to the ongoing process of law reform...²⁰

One particular aspect of the justice system that requires an urgent response is the failure of successive governments to commit to conducting and responding to legal aid impact assessments of new laws and policy. This failure is of particular concern in light of the fact that the Council of Australian Governments (COAG) has agreed on and implemented principles for best practice regulation that require consideration to be given to the impact of new regulation on business.²¹ This process ensures impacts are considered, yet there is no equivalent process in place to consider the impact of new laws and policies on legal needs generally or for particularly disadvantaged communities. This results in the situation currently facing CLCs and Legal Aid Commissions of increasing demand for legal assistance and representation because of increased legislative activity affecting members of the general community and particular groups.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will to commit to conducting and responding to legal aid impact assessments of new laws and policy initiatives.'

Custody and sentencing

PIAC notes the policy references to custody and sentencing in Chapter 7, paragraphs 109-113. PIAC supports the principles set out in these paragraphs.

PIAC, however, believes that additional statements on the importance of rehabilitation, education and training of prisoners and on the prevalence of significant numbers of people from socially and economically disadvantaged sectors of the community, including people with a mental illness, Aboriginal and Torres Strait Islanders, women and people with intellectual disability in prisons, would enhance the existing platform items.

Recommendation:

PIAC suggests two additional paragraphs be added to the draft platform:

'Labor supports the principle that rehabilitation is the primary goal of correctional services. Labor supports the principle that all prisoners should have access to educational and training appropriate to their needs and that prison industries should complement prisoners' education and training needs. Prison industries should not exploit prison labour and should comply with ILO Convention No 29.'

'Labor recognises that prisons and other forms of detention, particularly the detention of minors, must be seen as a last resort and that the continuing high levels of incarceration of Aboriginal and Torres Strait Islanders, people with mental illness, people with intellectual disabilities and women demonstrate ongoing failures of government policy and programs that must be addressed as a matter of urgency. Labor will prioritise the development of alternatives to imprisonment that are suitable and available to offenders from these groups.'

Labor supports the sentencing principle of prison as a last resort and the appropriate use of non-custodial sentencing options for all offenders.²²

PIAC notes that in all states and territories, there is an overrepresentation of people with mental illness in prison.

²⁰ Australian Labor Party, above n1 Ch 7 para 108.

²¹ Department of Finance and Deregulation, *COAG Requirements* (2008) <<http://www.finance.gov.au/obpr/proposal/coag-requirements.html>> at 15 May 2009.

²² Australian Labor Party, above n1, Ch 7 para 110.

An Australian Institute of Criminology study pointed out that of the roughly 15,000 people with major mental illnesses in Australian institutions during 2001, around one-third were in prisons.²³ The Rudd Government's Green Paper on Homelessness, *Which Way Home*, referred to the Australian Institute of Criminology's finding that homeless people in the prison system were more likely to have been admitted to a psychiatric hospital in the past 12 months.

'This was the case for one in three (31 per cent) homeless detainees, compared to around one in six (15 per cent) for non-homeless detainees.'²⁴

This is clear evidence of a complex inter-relationship between mental illness, homelessness and offending behaviour.

The Rudd Government's White Paper on Homelessness concluded:

People leaving prison are also at risk of homelessness. In 2006–07, 1.3 per cent of homelessness service clients reported that they had spent time in the criminal justice system immediately before entering Supported Accommodation Assistance Programme (SAAP). People leaving gaol may not have any housing to go to or may return to live with family and friends in situations that are not sustainable.

Seven per cent of prisoners reported that they were homeless at the time of their arrest.²⁵

Recommendation:

In the light of these conclusions, PIAC recommends that the ALP platform also state, under the heading of Custody and Sentencing, that:

'Labor recognises the prevalence of people with a mental illness or an intellectual disability within the Australian prison population. Labor recognises the general principle that prison is not the most appropriate location for people with a mental illness and that less restrictive therapeutic settings are preferable. Labor recognises the need for special programmes and services for serving prisoners with an intellectual disability or a mental illness, as well as the particular need for well-funded post-release services, including sustainable housing services, for these prisoners, with the goal of breaking the cycle of mental illness and/or intellectual disability, homelessness and imprisonment.'

²³ James RP Ogloff, Michael R Davis, George Rivers and Stuart Ross, *The identification of mental disorders in the criminal justice system* (2007) 2.

²⁴ Australian Government, *Which Way Home: A new approach to Homelessness* (2008) 27.

²⁵ Australian Government, above n14, 9.

Human rights and discrimination

Labor is committed to a just and tolerant society, which fully protects the rights and freedoms of all Australians.²⁶

The recognition of human rights actively contributes to building a more inclusive society.

...

Labor will adhere to Australia's international human rights obligations and will seek to have them incorporated into the domestic law of Australia and have them taken into account in administrative decision making.

Labor will act to eliminate all forms of discrimination...²⁷

Labor has established a national consultation process to ensure all Australians can have their say on how best to recognise and protect human rights.²⁸

PIAC has previously congratulated the Rudd Government for the implementation of its policy to consult the Australian people on the issue of human rights protection in Australia and is an active participant in the current consultation process chaired by Father Frank Brennan SJ.

PIAC would, however, expect that Labor would still maintain its existing commitment to the principle of adherence to international human rights instruments, regardless of the outcome of the current consultation process. This commitment has clearly been reflected in the Rudd Government's decision to ratify the *Convention on the Rights of Persons with Disabilities* and the Government's recent decision to ratify the United Nations *Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Punishment or Treatment*. Labor's commitment to human rights has also been reiterated by the Federal Attorney General, The Hon Robert McClelland, many times since he assumed office in 2007, and in particular in his leadership on the establishment of the consultation process about human rights protection for Australia.

PIAC notes that there is a relatively short statement regarding Human Rights in Chapter 1 of the draft policy, which reflects this commitment as well as the policy statements in Chapters 7 and 11.

PIAC submits that, although it has no quibble with the content of the statements in the draft platform, it is important that the ALP platform comprehensively declares Labor's commitment to human rights principles and to the effective protection, promotion and fulfilment in Australia of human rights for all under one heading of Human Rights, either in Chapter 7 or in Chapter 11

PIAC notes that the existing (2007) platform states that:

Labor is committed to supporting the international human rights instruments to which Australia is a signatory including:

- The *Universal Declaration of Human Rights*;
- The *International Covenant on Civil and Political Rights*;
- The *International Covenant on Economic, Social and Cultural Rights*;
- The *Convention for the Elimination of All Forms of Discrimination Against Women*;
- The *Convention on the Rights of the Child*;
- The *Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively*;
- The *Convention concerning Freedom of Association and Protection of the Right to Organise*;

²⁶ Above n 1 Chapter 1 paragraph 23.

²⁷ Ibid Chapter 7 paragraphs 122- 124.

²⁸ Ibid, Ch 11 paras 29-32.

- The Convention concerning Forced or Compulsory Labour;
- The Convention concerning the Abolition of Forced Labour;
- The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value;
- The Convention concerning Discrimination in Respect of Employment and Occupation;
- The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention Relating to the Status of Refugees; and
- The Convention Against Torture and Other Cruel, Inhumane or Degrading Punishment or Treatment.

Labor will continue to support properly funded Human Rights and Equal Opportunity Commission (HREOC) as an independent body advising on, and inquiring into, the protection and advancement of human rights in Australia.

Labor will cooperate with the States and Territories to ensure that comprehensive and consistent human rights protection and enforcement mechanisms are available to all Australians.

Labor supports both the promotion of human rights internationally and the development of international standards and mechanisms for the protection and enforcement of these rights. Labor will adhere to Australia's international human rights obligations and will seek to have them incorporated into the domestic law of Australia and taken into account in administrative decision making.

Labor recognises the fundamental rights and entitlements of Aboriginal and Torres Strait Islander Australians as the original owners of this land.

An awareness and understanding of the human rights enjoyed by all Australians is essential to their maintenance and protection. Labor will promote an awareness and understanding of human rights that should be enjoyed by all Australians and provide education to all Australians about the significance of, and the need to respect, human rights.²⁹

PIAC notes that this provide an important statement of Labor's commitment to human rights and needs to be substantively retained, and amended and updated to ensure accuracy and currency.

PIAC notes with strong approval that the Rudd Government has issued a statement of support of the United Nations *Declaration on the Rights of Indigenous Peoples*.

In relation to accuracy, PIAC notes that it is more accurate to say that Australia supports the *Universal Declaration of Human Rights*, and to this can now be added the United Nations *Declaration of the Rights of Indigenous Peoples*. The statement should also be strengthened by noting that Australia is not only a signatory to many human rights treaties, but has also ratified many of them. These ratified treaties should be specifically identified.

Further, the renewed commitment to the United Nations system of human rights protection is reflected in the changed attitude of the Australian Government to the ratification of optional protocols to human rights treaties and this should be reflected in the statement.

PIAC is concerned about the current funding levels of the Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission) and believes that Labor needs to strengthen its commitment to the role of the national human rights institution through a stronger statement of support.

²⁹ ALP National Platform and Constitution 2007 < <http://www.alp.org.au/platform/index.php> > at 4 June 2009.

Recommendation:

PIAC calls for the statements on human rights from the 2007 Platform to be included (with amendments) in Labor's renewed Platform. The amendments should include:

- (i) *a separate statement recognising Labor's support for the Universal Declaration of Human Rights and the principles in the United Nations Declaration on the Rights of Indigenous Peoples;*
- (ii) *the inclusion of the Convention on the Rights of Persons with Disabilities to the list of human rights instruments to which Australia is a signatory;*
- (iii) *a statement identifying Australia's ratification of the various human rights instruments, as well identifying those of the Optional Protocols that Australia has signed and/or ratified;*
- (iv) *a statement recognising the importance of the international human rights treaty body system and Labor's commitment to the active participation of Australia in that system.*
- (v) *a statement recognising the central role of the Australian Human Rights Commission as the national human rights institution and its particular expertise both in implementing the rights of equality-seeking groups (including people with disability, Aboriginal and Torres Strait Islanders, women, racial minorities, children and young people, and older Australians) and in effective protection and promotion of human rights through law and policy programs.*

In making this submission, PIAC acknowledges that the commitment reflected in the recent support of the United Nations *Declaration on the Rights of Indigenous Peoples* is also made in Chapter 7, paragraph 27 of the draft Platform. However, PIAC submits that Labor's commitment to the Declaration should sit side by side with its commitment to other international human rights instruments.

PIAC submits that there should be a separate statement of commitment to the maintenance of anti-discrimination legislation as well as a general commitment to work towards the eradication in Australia, and globally, of all forms of discrimination.

Chapter 9: Tackling climate change and our environmental challenges

Implementing a Carbon Pollution Reduction Scheme

Labor will use all funds raised by the sale of pollution permits to transition to a low pollution economy³⁰

Low-income households will bear a disproportionate share of the adjustment to the Carbon Pollution Reduction Scheme (CPRS) through price increases for essential goods and services such as energy and food. Investment in energy efficiency programs that specifically assist low-income households to adjust their energy use is essential. Financial compensation must also be provided to the extent that these households are unable to reduce their energy use and to counter price increases for other goods and services. This support must be sufficient to ensure that low-income households are not worse off as a result of the CPRS both at its inception and throughout the life of the scheme.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will assist low-income and vulnerable households to adjust to the Carbon Pollution Reduction Scheme by providing energy efficiency programs and adequate financial compensation.'

³⁰ Australian Labor Party, above n1, Ch 9 para 20.

Chapter 11: New ways of governing for a stronger democracy

Simplifying and harmonising legislation

Labor will establish a mechanism for ongoing legal harmonisation across Australia...³¹

In principle, PIAC supports harmonising laws across Australia but stresses that the harmonisation must not weaken existing rights and consumer protections, nor make it more difficult to adapt to changes, develop innovative and effective responses and respond to new challenges.

PIAC is concerned that the implementation of harmonisation could have a negative effect on citizens by reducing the flexibility of a jurisdiction to respond to conditions peculiar to that jurisdiction that are adversely affecting consumers.

In addition, PIAC does not think it necessary to limit the scope of best practice provisions in new or revised laws to the highest common denominator of existing laws. Whilst the term 'highest' is the right approach, the term 'common' suggests that the law must be a feature of more than one jurisdiction. This is an undesirable limitation as the best practice provision may have only been implemented in one jurisdiction or that may be able to be applied from overseas jurisdictions.

For example, the Commonwealth's *Spam Act 2003* is not reproduced in any other jurisdiction. In another example, the Victorian *Fair Trading Act 1999* provides protection against unfair contract terms and extensive grounds for a consumer to cancel an off-business premise sale (door-to-door trader).³² Although they are not mirrored in other jurisdictions, the Victorian laws are clearly best practice. Applying the highest common denominator process in forming the harmonised consumer law could see these excellent consumer protection provisions disappear from the legislative framework and a consequent reduction in consumer protections in Victoria.

PIAC urges that the test for legislative inclusion should not be based on the provision's popularity, but the effectiveness of the policy in promoting the welfare of citizens.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor will ensure that harmonisation does not weaken existing rights or consumer protections, nor make it more difficult to adapt to particular conditions in one jurisdiction or implement reforms that have proven to be effective in overseas jurisdictions.'

Enhancing our democracy with real electoral law reform

Labor will improve the integrity of the electoral system and, most urgently, restore transparency, openness and accountability to the funding and disclosure regime.³³

The principles of equal representation, and equal opportunity for citizens and parties to participate in political life must be central to any consideration of political financing, as must the principle of ensuring that elected members are free to work in the public interest, unencumbered by undue influence, conflict of interest or

³¹ Ibid, Ch 11 para 28.

³² *Fair Trading Act 1999* (Vic) Part 4, Division 2.

³³ Australian Labor Party, above n1, Ch 11 para 42.

corrupt practice. Any arrangements that compromise these principles must be regarded as serious threats to the public interest and representative democracy.

Clearly there is significant concern in Australia that current arrangements for the financing of the political process are failing to meet basic standards required in a healthy representative democracy. While the relationship between big business and politicians grabs many headlines, so increasingly do allegations of inappropriate use of public funds for partisan purposes by parties controlling government. It is important to avoid a piecemeal approach, and review all aspects of political financing mechanisms because different players are privileged through different funding sources and disclosure requirements. For example, if measures to limit private funding were agreed to and implemented but inappropriate spending of public money through electoral allowances and government advertising and funding programs were not also better regulated, incumbents would remain inappropriately privileged.

Recommendation:

PIAC supports the principles set out in the draft platform, and urges that reform be undertaken without delay.

Extending Freedom of Information (FOI)

Labor will promote transparency and accountability by strengthening FOI and promoting a pro-disclosure culture across Australian Government agencies.³⁴

PIAC has a long-standing interest in the operation of the *Freedom of Information Act 1982* (Cth) (the FOI Act). For over fifteen years, PIAC has utilised freedom of information legislation on behalf of clients.

PIAC wishes to congratulate the Government on its exposure draft Freedom of Information Reform Bill (the FOIR Bill) and the Information Commissioner Bill (the IC Bill), which implement many of the recommendations made in the ALRC Report 77. The draft Bills have also incorporated many of the intelligent and pragmatic recommendations made by the Queensland Independent Review Panel in its 2008 report.³⁵

PIAC is concerned that in a number of areas the Government's reforms do not go far enough, and at times, fall short of the recommendations made in ALRC Report 77—which the Government had previously indicated would form the basis of its reforms.³⁶ For example, while the FOIR Bill repeals some exemptions, it does not trim the excessive number and breadth of existing exemptions and also retains an almost entirely untouched Schedule 2 of the FOI Act. PIAC believes that leaving these exemptions and exclusions in their current form leaves the door open for agencies to rely too heavily on exemptions when responding to FOI requests.

In addition, PIAC notes that in relation to two key aspects of the FOI Act, namely, access to and amendment of one's own personal information and the imposition of processing charges for FOI requests, the Government has refused to introduce any significant changes, instead leaving these issues to be dealt with as part of 'future reviews'. This is notwithstanding the fact that these issues were dealt with in ALRC Report 77 along with the other areas of the FOI Act that the Government has dealt with as part of the current reforms. PIAC can see no justification for leaving these aspects out of the current reforms and considers that this may also undermine the 'sea change' that the reforms are intended to create.

³⁴ Australian Labor Party, above n1, Ch 11 para 45.

³⁵ Freedom of Information Independent Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act* (2008).

³⁶ See, for example, The Hon Senator John Faulkner, 'Open and Transparent Government – the Way Forward' (Speech delivered at the Australia's Right to Know, Freedom of Speech Conference, Sydney, 24 March 2009) <http://www.australiasrighttoknow.com.au/image/RTK%20SPEECH_Senator%20Faulkner.pdf> at 20 April 2009.

Furthermore, PIAC is disappointed by the Government's move to exclude from the FOI Act all 'intelligence agency' documents and certain Department of Defence documents that are not currently excluded. PIAC believes that these exclusions are not warranted and contrary to the spirit of the reforms.

Finally, PIAC wishes to emphasise that the Government must not only get the words of the freedom of information legislation right, but also ensure that the prevailing attitude of agencies and Ministers towards publishing and providing information is redressed. In PIAC's experience, the single most significant factor that influences an applicant's experience of making an FOI request to government is the attitude of the agency.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor supports the principle that an FOI request must commence from the position that, on the face of it, the applicant has a right to obtain the requested information. Labor will continue to review the Freedom of Information Act to ensure that the exemptions under the Act do not undermine this principle.'

'Labor will also review processing charges under the FOI legislation to ensure that all Australians, regardless of their financial circumstances, are able to reasonably access information under FOI.'

Protecting Privacy

Labor believes the individual's right to privacy is a fundamental political, civil and human right that must be protected.³⁷

PIAC commends the ALP on the draft Platform statement cited above and the measures indicated in the draft Platform. PIAC notes, however, that the current legislative protection in this area is limited effectively the protection of personal information and does not extend more broadly to privacy protection at large. One significant reform that would be consistent with Labor's stated belief about the fundamental nature of the right to privacy would be to include a commitment to establishing a cause of action for breach of privacy or similar.

Recommendation:

PIAC suggests the following addition to the list in paragraph 51 of Chapter 11 of the draft platform:

'Work to develop and implement across all Australian jurisdictions a cause of action for breach of privacy.'

Regulating political lobbying in the public interest

PIAC commends the Rudd Government for establishing the Federal Lobbying Code of Conduct, but believes it could be strengthened in several important respects.

Lobbying is an important and influential aspect of a healthy participatory democracy but it can have a corrupting influence and damage public trust in the Parliament and Public Service if it is not governed by high standards, and seen to be accountable, ethical and fair in terms of access to and influence on decision makers. Responsibility for ensuring such high standards lies not only with the lobbyists but also with all public office holders.

PIAC believes the case for excluding Opposition and Cross Bench members from complying with the Code of Conduct fails to recognise that all members can be the target of intense lobbying because their vote can be

³⁷ Australian Labor Party, above n1, Ch 11 para 48.

critical. This is particularly the case where the Government does not hold a majority in both Houses and balance of power is held by other Members of Parliament, and is also the case before an election when a change of government is possible. If integrity of the process is a key aim of the Code then it should apply to all Members of Parliament.

Similarly, PIAC does not support the exemption of organisations that lobby on their own behalf (rather than for a client) from aspects of the Code of Conduct not relevant to the Register. Neither does PIAC support the exemption of the charitable and not-for-profit entities. The argument for inclusion of these groups is essentially the same. If it is desirable for lobbying activity to be guided by a set of high standards then such high standards must apply to all those involved in the lobbying.

Recommendation:

PIAC suggests the following addition to the draft platform:

'Labor is committed to ensuring the Lobbying Code of Conduct is extended to cover all Members of Parliament and all lobbyists.'