



Universal Periodic Review Recommendations

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Gemma Namey, Laura Brown, Brenda Bailey

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; and
- 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 (then) 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 Industry and Investment NSW for its work on energy and water, 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.

PIAC's work on human rights

Much of PIAC's current and previous substantive work involves human rights issues. This includes work on privacy, discrimination, freedom of information, detention, government and democracy, and access to justice. As such, PIAC has extensive experience in the impacts of laws, policies, programs and conduct on human rights and on their social and economic situation. A significant number of PIAC's casework clients have direct experience of what it means to have their human rights infringed or not respected.

PIAC has provided responses to the various inquiries conducted across Australia in the last five years into human rights protection. For example, PIAC conducted a range of community consultations for the National Human Rights Consultation and worked closely with its diverse networks to encourage those least likely to respond to the Consultation to take part. This included working with people experiencing homelessness, people with mental illness, Indigenous people, prisoners and former prisoners, older Australians, people with disability, and migrant women. PIAC has also focused specifically on human rights training and policy development for a number of years. Since 2003, PIAC has had a project, *Protecting Human Rights in Australia*, as a core area of its work.

In February of this year, PIAC contributed to the preparation phase of the National Human Rights Action Plan (the Action Plan) and proposed several priority areas that the Action Plan should include.¹ The PIAC submission reflected key themes in the Universal Periodic Review (UPR) recommendations: legislative action to protect human rights in domestic law, improving awareness of human rights in Australia and implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. PIAC submits that the UPR recommendations that refer to these actions should be accepted by the Government and included in the Action Plan.

Approach to the UPR Recommendations

PIAC congratulates the Government for engaging with the international human rights community and for the Ministerial Statement² that accompanied the tabling of the draft report of the Working Group on Australia's Universal Periodic Review, which included the 145 recommendations.

PIAC submits that the Government should implement all the recommendations, providing that they are consistent with relevant United National Conventions and Declarations. In moving towards improving protection of human rights in Australia, the Government should include concrete actions in the Action Plan that will:

- have a clear time-frame;
- make realistic and practical steps towards achieving the goal;
- include dialogue with the community; and
- require regular reviews and reporting in Australia and to international bodies.

On 16 March 2011, the Attorney-General's Department representatives provided a briefing in Sydney about the progress the Department is making in reviewing the UPR recommendations. At that meeting, the Department representatives asked for specific suggestions about how the recommendations could be implemented in a way that could assist the drafting of the Action Plan. In view of this advice, PIAC provides specific comments on two areas in addition to the recommendations provided in the submission about the Action Plan - namely, equality and non-discrimination laws and Aboriginal and Torres Strait Islander people.

Equality and non-discrimination

PIAC has a long history of involvement with the operation of human rights and anti-discrimination law in Australia. This has included conducting test case litigation under both federal and NSW anti-discrimination statutes, proposing amendments to both substantive and procedural aspects of anti-discrimination laws and responding to proposals for reform to existing anti-discrimination legislation.

A number of member states made recommendations as part of the UPR process that Australia enact comprehensive equality legislation and enhance federal non-discrimination laws.³ These

¹ Brenda Bailey, *Human Rights Action Plan for Australia* (2011) PIAC <http://www.piac.asn.au/publication/2011/02/human-rights-action-plan-australia> at 31 March 2011.

² Attorney-General Hon Robert McClelland MP, *Ministerial Statement Universal Periodic Review*, (2011) Parliament House, Canberra.

recommendations focused on enhancing discrimination protection, promoting equality rights and expanding protection to all grounds of discrimination.

At a federal level, Australia has enacted a number of laws to prevent discrimination.⁴ However, these laws do not provide comprehensive protection of the right to non-discrimination. In particular, Australia's anti-discrimination laws are deficient in that they:

- are reactive and complaints-based;
- fail to expressly promote equality or address systemic discrimination;
- do not address all grounds of discrimination or intersectional discrimination; and
- are ineffective in areas that have been granted permanent exemptions.

The UN Human Rights Committee noted in their 2009 Concluding Observations on Australia that it remains concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law and recommended that Australia adopt legislation, covering all grounds and areas of discrimination to provide comprehensive protection to the rights to equality and non-discrimination. The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination have similarly recommended that Australia strengthen its anti-discrimination laws.

In April 2010, the Australian Government announced a commitment to harmonise and consolidate Commonwealth anti-discrimination laws.⁵ PIAC believes that Australia should use this process as an opportunity to implement the UPR recommendations. The consolidation process presents a practical way to implement the procedural and substantive recommendations relating to equality and non-discrimination.

The consolidation process should result in the enactment of a comprehensive Equality Act.⁶ PIAC recommends that the UPR recommendations be implemented in an Equality Act by:

- expanding protection to all relevant grounds of unjustifiable discrimination,⁷ including, sexual orientation;⁸ gender identity; irrelevant criminal record; homelessness; victims of domestic violence;⁹ religious belief and/or activity;¹⁰ political belief and/or activity; and, low socio-economic status;

³ See recommendations 86.23 (United States), 86.42 (United Kingdom), 86.43 (Pakistan) (India), 86.44 (South Africa), 86.45 (Argentina), 86.46 (Morocco), 86.47 (Vietnam), 86.48 (Islamic Republic of Iran), 86.66 (Columbia), 86.67 (Switzerland) and 86.68 (New Zealand).

⁴ *Racial Discrimination Act 1975* (Cth); the *Disability Discrimination Act 1992* (Cth); the *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth).

⁵ Attorney-General Hon Robert McClelland MP, *Address to the National Press Club of Australia-Launch of Australia's Human Rights Framework* (2010), Canberra

⁶ For further information on a comprehensive equality act, see NACLC Submission to the Commonwealth Attorney-General, *Access to Justice and Systemic Issues: Consolidation of Federal Discrimination Legislation*, March 2011.

⁷ UPR recommendations 86.42 (United Kingdom), 86.44 (South Africa), 86.45 (Argentina).

⁸ UPR recommendations 86.66 (Colombia), 86.67 (Switzerland), 86.68 (New Zealand).

⁹ UPR recommendation 86.47 (Vietnam), 86.73 (Islamic Republic of Iran), 86.72 (United States), 86.74 (Switzerland).

- enshrining Australian international human rights obligations into domestic law, including annexing all human rights instruments that Australia is a party to;
- including in the objects to the Equality Act that the object is to promote substantive equality and to enshrine Australia's international human rights obligations into domestic law;
- creating a positive duty of equality to be placed on public and private bodies. This should include measures requiring duty holders to assess, monitor, consult and take remedial action to address discrimination, where necessary;
- removing existing exceptions and exemptions and instead creating a single exception clause with a simple test, that is, a 'proportionate means of achieving a legitimate end or purpose';
- empowering the Australian Human Rights Commission to investigate a possible breach of standards or legislation and initiate proceedings without the need for a complaint from an individual; and
- including a provision that states that, so far as it is possible to do so consistently with their purpose, all Commonwealth statutory provisions must be interpreted in a way that is compatible with the requirement not to discriminate on any unlawful ground in the Equality Act.

Aboriginal and Torres Strait Islander people

PIAC's Indigenous Justice Program (IJP) aims to identify systemic wrongs by the state and its agents affecting Indigenous Australians and advocate for access to remedies and the elimination of those wrongs. The IJP also aims to improve access to essential services for Indigenous communities and strengthen the capacity of Indigenous Australians to engage in public policy making and advocacy.

PIAC has advised and represented members of the Stolen Generations since 1996. PIAC's work with members of the Stolen Generations involves working to obtain redress for the harm and abuses suffered as a result of forcible removals. PIAC has also worked on the issue of Indigenous Stolen Wages in NSW since 2003. During that time, PIAC has provided assistance to over 400 Aboriginal people including many members of the Stolen Generations to make claims to recover wages, child endowment payments and other monies held in trust accounts by NSW government agencies and never repaid.

PIAC fully supports all UPR recommendations that relate to increased support, recognition and rights for Aboriginal and Torres Strait Islander people in Australia. There are a number of recommendations that could be implemented by the Government by progressing processes already commenced, or supporting the implementation of other proposals currently before Parliament. For example, the UPR recommendations that focus on Constitutional reform and the Declaration on the Rights of Indigenous People should be part of the work that is undertaken by the newly established expert panel that will consult with the wider community and develop proposals for the Constitutional recognition of Indigenous people.

PIAC recommends that implementation of the Declaration, either in its entirety or in part, is considered as an important part of any Constitutional recognition proposal. Australia indicated its formal support of the Declaration in 2009, and although the Declaration, as a non-binding instrument, is designed to inform national law reform and policy, the current government has not

¹⁰ UPR recommendations 86.59 (Algeria), 86.65 (Russian Federation).

yet used it in this manner. UPR recommendations that focus on increasing the inclusion and protection of Aboriginal and Torres Strait Islanders in decision-making and development of legislation, could begin by using the Declaration as a basis for amendments to the *Racial Discrimination Act 1975 (Cth)* or the Constitution.

PIAC firmly supports the UPR recommendations that call for the establishment of a national compensation tribunal as recommended in the *Bringing them Home* report. There are many forms of reparation that are needed to assist Aboriginal and Torres Strait Islander individuals and communities to heal. PIAC found in its consultation with Aboriginal and Torres Strait Islander communities in 2001, which led to the report *Restoring Identity* (2002, 2009), that while compensation is an important part of any reparations package, other forms of reparation, such as guarantees against repeated or continuing abuses, rehabilitation and restitution are equally important.

The proposed Tribunal would have the power to award a large variety of reparations, in the form of resources for groups to provide culture and healing centres, community education programs, community genealogy programs, memorials, funding to counselling, health services, language and culture training and family reunions, as well as monetary compensation for affected individuals. It would allow for a process of truth and reconciliation, public discussion of previous damaging policies and practices, and community and cultural healing.

In 2008, the Stolen Generations Reparations Tribunal Bill was introduced into the Senate.¹¹ The Bill lapsed in 2010 and Senator Rachel Siewart re-introduced this bill on 30 September 2010. PIAC urges the Government to show its support for the introduction of a national tribunal by instigating debate on the Bill in the Senate, and giving serious consideration to the support of a national reparations tribunal, whether in its current proposal, or in an amended form.

¹¹ Stolen Generations Reparations Tribunal Bill 2008