



Law Council  
OF AUSTRALIA

# **FEDERAL ELECTION 2010**

## **KEY ISSUES: RESPONSES**



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## Introduction

In July 2010, the Law Council of Australia invited major political parties contesting the 2010 Federal Election to provide their views on key national issues of relevance to the Australian legal profession.

The Law Council prepared a document containing a list of issues and questions, and requested major political parties provide the details of their policy platform in relation to these key areas by 28 July 2010.

The key issues addressed in the document were:

1. Access to Justice
2. Legislative Standards
3. Improved Protection for Human Rights
4. Asylum Seekers
5. Reform of Anti-Terror Laws
6. Recruitment and Retention of Lawyers in Rural, Regional and Remote Areas
7. Family Law
8. General Issues including:
  - a. Improving protections against gender equality and discrimination;
  - b. Workers compensation; and
  - c. Indigenous issues.

The Law Council received responses from the Australian Labor Party, the Coalition and the Greens.

Overall, the Law Council was disappointed by the responses it received from Labor and the Coalition for failing to commit to addressing many of the key policy areas of concern.

The following document contains summaries of the responses to the Law Council's questions as well as the parties' full responses.



# **Federal Election 2010: Responses to Key Issues**

Summary of Questions  
and Responses

## Summary of Questions and Responses

### Access to Justice

| Question  | Labor Party                                    | Coalition  | Greens |
|---|--|--|--------|
| Do you agree that the legal assistance sector is at present so underfunded as to prevent it from providing proper access to justice?  | Response did not address the specific question | Supports increased funding but will not commit to providing it | Yes    |
| Are you committed to developing a National Partnership Agreement with the States/Territories that is based on national goals, as distinct from Commonwealth or State goals? | Yes  | No   | Yes    |
| Will you restore the Commonwealth share of Legal Aid Commission funding to 50%?   | Response did not address the specific question | No   | No     |
| Will you ensure that any Commonwealth legal aid funding increase is conditional on States/Territories maintaining their funding levels?                                     | Response did not address the specific question | Nil response   | Yes    |
| Will you provide a commitment to recurrent increases in Commonwealth funding of community legal centres and Aboriginal and Torres Strait Islander legal services?           | Response did not address the specific question | Nil response   | Yes    |
| Will you work towards adequate ongoing resourcing of the federal courts and tribunals to ensure access to justice?  | Yes  | Nil response   | Yes    |

### Legislative Standards

| Question  | Labor Party  | Coalition   | Greens  |
|---|--|---|---|
| What will you do to address declining legislative standards?                                    | Will develop clearer laws and practical measures to reduce volume and complexity of legislation  | Will restore full cabinet processes and establish a Parliamentary Budget Office | Will advocate for more time to debate private senator's bills and for more sitting days to adequately deal with legislation |
| Will you adhere to the consultation standards in the <i>Best Practice Regulation Handbook</i> ? | Yes  | Yes   | Response did not address the specific question  |
| Will you establish any new mechanisms to report to Parliament on legislative standards?         | Currently considering recommendations by the House of Representatives Procedures Committee and will consider recommendations by the Senate Scrutiny of Bills Committee | No  | Response did not address the specific question  |

| Question   | Labor Party                             | Coalition                                      | Greens   |
|--|---|--|--|
| Will you move to amend the timetables for Committee inquiries to allow for longer time periods for consultation? | Only after consultation with Committees | Response did not address the specific question | Response did not address the specific question |
| Will you move to amend the Legislation Handbook to allow for longer time periods for consultation on Bills?      | Only after consultation with Committees | Response did not address the specific question | Response did not address the specific question |

## Improved Protection for Human Rights

| Question  | Labor Party   | Coalition  | Greens |
|---|---|--|--------|
| Will you consider introducing a Human Rights Act as part of the planned review of the Human Rights Framework in 2014, if not earlier?   | Will not preempt the outcome of the review                  | No   | Yes    |
| Will you adopt recommendations in the National Human Rights Consultation Report, which can be implemented without a Human Rights Act?   | Yes, but only those contained in the Human Rights Framework | Will consider seriously the recommendations of the National Human Rights Consultation Report | Yes    |
| In particular, will you: <ul style="list-style-type: none"> <li>Immediately compile an interim list of rights for protection and replace this interim list with a definitive list within two years?</li> </ul>                              | Response did not address the specific question              | Response did not address the specific question   | Yes    |
| <ul style="list-style-type: none"> <li>Use the lists for the preparation of Statements of Compatibility for draft legislation and as guidance for a Joint Parliamentary Committee on Human Rights to review all new legislation?</li> </ul> | Response did not address the specific question              | Response did not address the specific question   | Yes    |
| <ul style="list-style-type: none"> <li>Amend the <i>Administrative Decisions (Judicial Review) Act 1975</i> to make the definitive list of human rights a relevant consideration in Government decision-making?</li> </ul>                  | No  | Response did not address the specific question   | Yes    |
| <ul style="list-style-type: none"> <li>Require Federal departments and agencies to develop human rights action plans and report on compliance in their annual reports?</li> </ul>   | Response did not address the specific question              | Response did not address the specific question   | Yes    |
| <ul style="list-style-type: none"> <li>Amend the <i>Acts Interpretation Act 1901</i> to require all Commonwealth legislation to be interpreted consistently with the lists of rights?</li> </ul>  | No  | Response did not address the specific question   | Yes    |
| <ul style="list-style-type: none"> <li>Expand the definition of 'human rights' in the <i>Australian Human Rights Commission Act 1986</i>?</li> </ul>  | Currently under review                                      | Response did not address the specific question   | Yes    |
| <ul style="list-style-type: none"> <li>Provide for a 'Statement of Impact on Aboriginal and Torres Strait Islander peoples', to suspend the <i>Racial Discrimination Act 1975</i> or to institute a special measure?</li> </ul>             | No  | Response did not address the specific question   | Yes    |

## Asylum Seekers

| Question  | Labor Party  | Coalition                                      | Greens   |
|---|--|--|--|
| Will you legislate to implement a policy of detention as a last resort and for the minimum period possible to undertake health, identity and security checks?   | Yes – persons will be detained only if the need is established | No   | Yes  |
| Will you legislate to ensure that children are not detained in Immigration Detention Centres and that families with children are not detained in such centres?  | Yes  | Response did not address the specific question | Yes  |
| Will you legislate to restore full rights of judicial review for asylum seekers, including those arriving by boat?  | No – no plans to change current legislation                    | No   | Yes  |
| Will you support legislation in relation to complementary protection claims by asylum seekers?  | Yes  | Response did not address the specific question | Response did not address the specific question |
| Will you reverse the suspension of the processing of claims by Afghan asylum seekers announced on 9 April 2010?   | No – the decision will remain under review                     | Response did not address the specific question | Response did not address the specific question |
| Will you provide increased access to legal advice and assistance for asylum seekers?  | No additional commitments beyond current access                | Response did not address the specific question | Yes  |
| Will you support offshore processing of asylum claims? If so: <ul style="list-style-type: none"> <li>What protections will you put in place to ensure that asylum seekers are not returned to a situation where they face persecution?</li> <li>Will you detain asylum seekers and what forms of detention will you use, particularly for families and children?</li> <li>What processing regime will you apply and will you provide for review of decisions not to grant visas?</li> <li>What services will you provide to asylum seekers and will you provide access to legal advice and assistance?</li> </ul> | Response did not address the specific question                 | Response did not address the specific question | No – do not support off-shore processing       |

## Reform of Anti-Terror Laws

| Question   | Labor Party  | Coalition | Greens |
|--|--|-----------|--------|
| Will you allow anti-terror measures to remain on Australia's statute books even though they have attracted widespread and international criticism and proven unnecessary?  | No – committed to review of laws through independent monitor | Yes       | No     |
| Will you ensure that the Independent National Security Legislation Monitor is adequately resourced to fulfill his or her mandate and will you undertake to respond promptly and fully to his or her recommendations? | Yes  | Yes       | Yes    |



## Recruitment and Retention of Lawyers in Rural, Regional and Remote Areas

| Question  | Labor Party | Coalition | Greens  |
|---|-------------|-----------|---|
| Will you support initiatives to: <ul style="list-style-type: none"> <li>Provide legal practitioners with monetary allowances and bonuses for working in a RRR area?</li> </ul>                        | No          | No        | Prepared to consider a range of initiatives to encourage lawyers into RRR communities |
| <ul style="list-style-type: none"> <li>Ensure that fringe benefits tax liabilities on RRR employer payments of employee benefits are waived?</li> </ul>   | No          | No        | Prepared to consider a range of initiatives to encourage lawyers into RRR communities |
| <ul style="list-style-type: none"> <li>Ensure that HECS-HELP (or FEE-HELP) liabilities of law graduates and legal practitioners who work in RRR areas are repaid, completely or partially?</li> </ul> | No          | No        | Prepared to consider a range of initiatives to encourage lawyers into RRR communities |
| <ul style="list-style-type: none"> <li>Provide further funding for clinical placements in RRR areas for law students and graduates?</li> </ul>  | Yes         | No        | Prepared to consider a range of initiatives to encourage lawyers into RRR communities |

## Family Law

| Question   | Labor Party  | Coalition                                      | Greens   |
|--|--|--|--|
| Will you ensure that the current number of judicial officers will not be reduced and that retiring judicial officers will be replaced promptly?                          | Response did not address the specific question                   | Response did not address the specific question | Will ensure sufficient judicial officers in family courts          |
| Will you act promptly to implement the recommendations of the Family Violence Courts Review conducted by Professor Chisholm, including the proposed legislative reforms? | Currently considering the recommendations of the Chisholm review | Strongly support the shared parent regime      | Generally supportive of the recommendations of the Chisholm review |
| Will you ensure that the integration of the two Family Law Courts is implemented promptly?   | Yes  | Response did not address the specific question | Response did not address the specific question                     |

## Improving Protections Against Gender Equality and Discrimination

| Question   | Labor Party  | Coalition  | Greens  |
|--|--|--|---|
| What steps will you take to overcome existing practical barriers for achieving gender equality in the workforce, and in particular, how do you plan to ensure Australian men and women enjoy equal pay for equal work?                 | Steps include equal pay, paid parental leave, pension and superannuation forms | Support equal pay for equal work. The paid parental scheme will give women more rights at work | Support moves to ensure pay equity is considered in award processes |
| Will you conduct a public inquiry into the merits of replacing existing federal anti-discrimination Acts with a single <i>Equality Act</i> and introduce positive duties and other measures to address systemic discrimination issues? | Consultation will be undertaken with key stakeholders on the proposed law      | No   | Yes   |
| What measures will you take in response to the 2009 review of the <i>Equal Opportunities for Women in the Workplace Agency Act</i> ?   | Currently considering submissions  | Did not respond to the specific question   | Would like to see a strengthening in the EOWW Act                   |

## Workers Compensation

| Question   | Labor Party  | Coalition | Greens |
|--|--|-----------|--------|
| Will you commit to including representation of the legal profession on the special interest group for workers compensation harmonisation under Safe Work Australia?                          | No, but Safe Work Australia can add experts as required                        | No        | Yes    |
| Will you commit the Commonwealth to supporting a harmonised workers compensation framework which ensures fair benefits for injured workers and reasonable access to common law entitlements? | A draft Workers' Compensation Action Plan will be considered on 16 August 2010 | No        | Yes    |
| Will you commit to protecting injured workers' rights to legal representation in any workers compensation claims process, tribunal or court proceedings?                                     | A draft Workers' Compensation Action Plan will be considered on 16 August 2010 | No        | Yes    |

## Indigenous Issues

| Question  | Labor Party   | Coalition | Greens   |
|---|---|-----------|--|
| Will you support the immediate, full and unconditional reinstatement of the <i>Racial Discrimination Act 1975</i> in the Northern Territory?  | Committed to the compliance with the RDA                                | No        | Yes  |
| Will you commit to reform of the <i>Native Title Act 1993</i> to provide for a “presumption of continuity”, or presumption against native title extinguishment?   | No  | No        | Yes  |
| Will you commit to funding the mandatory provision of Indigenous language interpreter services for Aboriginal and Torres Strait Islanders subject to police interviews or court proceedings, where required or requested?   | Yes   | No        | Yes  |
| Will you commit to implementing the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> in Federal law and policy, if necessary by legislative amendments?  | No  | No        | Yes  |
| Will you commit to developing better legislative protection for Indigenous intellectual and cultural property rights, including rights over traditional knowledge, artistic designs and communally owned cultural property? | Yes   | No        | Yes  |
| Will you commit to considering areas in which Aboriginal customary law might be incorporated into the Australian legal system, as recommended by the Australian Law Reform Commission?                                      | Will continue to monitor this issue to determine if change is necessary | No        | Yes  |
| Will you commit to greater funding towards alternative justice mechanisms directed at Aboriginal offenders, including Aboriginal courts?  | No  | No        | Response did not address the specific question |
| Will you commit to the development of lasting equitable settlements between Indigenous Australians and the Australian Government, including through the negotiation of treaties and other constructive agreements?          | No  | No        | Response did not address the specific question |



# **Federal Election 2010: Responses to Key Issues**

Full Text of Questions  
and Responses

## Access to Justice

The Commonwealth Government's recent increase of \$23 million per annum for four years for Legal Aid Commissions falls short of the \$43 million per annum which the Law Council has said is required to restore per capita funding to 1997 levels. Community Legal Centres and Indigenous Legal Services also remain underfunded despite increases in the 2010-11 Budget.

### The Law Council asks

- ▶ Do you agree that the legal assistance sector is at present so underfunded as to prevent it from providing proper access to justice? If so, what do you intend to do in Government to redress the situation?
- ▶ Are you committed to developing a National Partnership Agreement (NPA) with the States/Territories that is based on national goals, as distinct from Commonwealth or State goals? If so, will you work to ensure that Commonwealth funds are, under such NPA, made available for the legal representation of persons for whom the Commonwealth has special responsibility such as indigenous Australians, new migrants and those in receipt of Commonwealth benefits?
- ▶ In 1992, the Commonwealth contributed 50% of the national legal aid commission funding, it now contributes 32%. Will you restore the Commonwealth share of Legal Aid Commission funding to 50% (up from 32%), which would require an additional recurrent expenditure of approximately \$200 million? If you are not prepared to commit to 50% Commonwealth funding what steps will you take in Government to adequately resource the legal assistance sector?
- ▶ Will you ensure that any Commonwealth legal aid funding increase is conditional on States/Territories maintaining their funding levels?
- ▶ Will you provide a commitment to recurrent increases, in line with CPI and increasing demand, in Commonwealth funding of community legal centres and Aboriginal and Torres Strait Islander legal services?
- ▶ Will you work towards adequate ongoing resourcing of the federal courts and tribunals to ensure access to justice?

## Responses

### Australian Labor Party

- ▶ Do you agree that the legal assistance sector is at present so underfunded as to prevent it from providing proper access to justice? If so, what do you intend to do in Government to redress the situation?

Publicly funded legal assistance was significantly underfunded by the former Coalition Government.

Federal Labor is committed to ensuring that legal assistance programs are appropriately resourced. We are making the largest and most significant injection of new funding into the legal assistance sector for well over a decade.

Additional funding of \$154 million over four years in legal assistance programs will improve access to justice in the community. It includes:

- \$92.3 million over four years for legal aid.
- \$34.9 million over four years for Indigenous legal services.
- \$26.8 million over four years for community legal services programs.

This investment takes Federal Labor's total funding for legal assistance services to over \$1.2 billion over four years.

We have also injected an additional \$70 million in one-off funding for legal assistance programs over the last three years.

- ▶ Are you committed to developing a National Partnership Agreement with the States/Territories that is based on national goals, as distinct from Commonwealth or State goals? If so, will you work to ensure that the Commonwealth funds are, under such NPA, made available for the legal representation of persons for whom the Commonwealth has special responsibility such as indigenous Australians, new migrants and those in receipt of Commonwealth benefits?

On 2 July 2010 Federal Labor announced the commencement of the new National Partnership Agreement on Legal Assistance Services.

Under the Agreement, States and Territories will receive \$785 million over four years to deliver federally funded legal aid services, including more than \$92 million in additional funding from the 2010-11 Budget. All States and Territories have now indicated that they have become, or are in the process of becoming, a party to the new Agreement.

The Agreement gives States and Territories greater flexibility in service delivery to achieve quicker and better outcomes for legal aid clients. Key features of the agreement include promoting early intervention services, which avoids the need for litigation, and more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion. The new Agreement provides greater flexibility for Legal Aid Commissions to provide preventative and early intervention services regardless of whether the matter comes within Federal, State or Territory law. Commissions will have the flexibility to use Federal funds for grants of aid for State law matters where a child's welfare or an applicant's safety is at risk and there is an overlapping family law matter.

The Agreement will support resolving disadvantaged Australians legal problems early before they escalate, and provide clients with better targeted services to address legal issues.

- In 1992, the Commonwealth contributed 50% of the national legal aid commission funding, it now contributes 32%. Will you restore the Commonwealth share of legal aid commission facing up to 50% (up from 32%), which would require an additional recurrent expenditure of approximately \$200 million? If you are not prepared to commit to 50% Commonwealth funding what steps will you take in Government to adequately resource the legal assistance sector?

Federal Labor is making the largest and most significant injection of new funding into the legal assistance sector for well over a decade.

Additional funding of \$154 million over four years in legal assistance programs announced in the 2010 Budget will take Federal Labor's total funding for legal assistance services to over \$1.2 billion over four years.

In 2010-11, the Gillard Labor Government will provide 52 per cent of overall ongoing Government funding for all legal assistance programs compared to total contribution of funding by States and Territories. This includes funding for Legal Aid Commissions, 138 Community Legal Centres across Australia, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services. As part of a range of measures to enhance access to justice, Federal Labor has also announced that it will establish a new National Legal Assistance Advisory Body to help develop national responses to critical challenges affecting the legal assistance sector.

- Will you ensure that any Commonwealth legal aid increase is conditional on States/Territories maintaining their funding levels?

Access to additional funding in the 2010-11 Budget was contingent on the States and Territories signing the new National Partnership Agreement on legal assistance services. The Agreement signals a new partnership between the federal Government, States and Territories to provide legal assistance services. It will encourage greater collaboration between service providers and governments to ensure effective delivery of legal assistance programs.

At a recent meeting of the Standing Committee of Attorneys-General, all Ministers agreed to the importance of providing sustainable legal assistance and a number of States and Territories, along with the Commonwealth, also provided additional funds in their respective budgets for legal assistance programs. The Advisory Body will provide advice on issues such as the coordination and integration of services, improved access and availability, and early intervention. It will inform and be informed by work undertaken by States and Territories outlined in the National Partnership Agreement.

- Will you provide a commitment to recurrent increases, in line with CPI and increasing demand, in Commonwealth funding of community legal centres and Aboriginal and Torres Strait Islander legal services?

As part of its broader Access to Justice package, providing additional funding for legal assistance services to improve access to justice in the community, Federal Labor provided:

- An additional \$26.8 million over four years for Community Legal Centres in the 2010-11 Budget.
- An additional \$34.9 million over four years for the Indigenous legal aid services. These services are delivered by Aboriginal and Torres Strait Islander Legal Services (ATSILS) across Australia. The additional funding will assist in meeting increasing demand and improve access to justice for Indigenous Australians across Australia. These goals support key priorities for the Gillard Labor Government, including social inclusion and closing the gap on Indigenous disadvantage. In 2010-11, Federal Labor has allocated over \$63.7 million for Indigenous legal aid services through the ATSILS, and for law reform and community legal education activities.

The Gillard Labor Government is also providing \$80.3 million over four years for Family Violence Prevention Legal Services, which provide culturally sensitive assistance to Indigenous victims of family violence and sexual assault through legal assistance, court support, casework and counselling.

Ministers discussed Indigenous legal services funding at the May 2010 meeting of the Standing Committee of Attorneys-General. Federal Labor, in consultation with the States and Territories, will undertake a review of the delivery of legal services for Indigenous Australians by legal aid commissions and Indigenous legal service providers.

- Will you work towards adequate ongoing resourcing of the federal court and tribunals to ensure access to justice?

The Gillard Labor Government is committed to access to justice. We have adopted an *Access to Justice Framework* based on five key principles of accessibility, appropriateness, equity, efficiency and effectiveness. These principles will guide future policy development.

As part of an effective and accessible justice system, the Gillard Labor Government supports adequate funding for the federal courts and tribunals and is providing over \$295 million in 2010-11. We will continue to monitor the ongoing resourcing of funding for the federal courts and tribunals.

## The Coalition

The Coalition is a strong supporter of legal aid services. Australia has an excellent legal system and we want as many Australians as possible to have fair access to it when they need it. In government we will always ensure that funding for our justice system is adequate and keeps pace with community expectations.

Indeed, the Coalition supports greater funding for services that improve Australians' access to justice. Improving access to justice is a cause very worthy of increased federal government support.

But the Labor government has run the federal budget into the ground. Last year we had a \$57 billion deficit, and this year the government expects another budget deficit of \$40 billion. In these circumstances the Coalition cannot promise to increase funding for legal aid programs, nor can we stipulate a particular fraction of total legal aid funding that will come from the Commonwealth. We want to restore prudent financial management to Australia's public finances. Our first priority in government will be to pay down Labor's debt and deficit.

The Coalition will work with States and Territories in government to ensure access to justice programs are effective and adequately funded. We want the division of responsibilities between the States and Territories and the federal government to be clear.

We are proud of our record supporting and initiating measures that improve Australians' access to justice. When last in government the Coalition provided more than \$650 million over four years to legal aid commissions across the country. In the Coalition's last budget in 2007-08 we allocated \$163.8 million to the Legal Aid Scheme, which included \$19.7 million of new funding.

On top of our contributions to Legal Aid, we generously funded Community Legal Centres around Australia to the tune of \$24 million in 2007-08. Our contribution was greater than the sum of all State and Territory contributions.

We provided extra resources to Indigenous legal aid services too. The Coalition provided more than \$68 million in funding for Indigenous Legal Services in 2007-08, and we allocated an extra \$2 million under the Northern Territory Emergency Response.

## The Greens

- Do you believe that the legal assistance sector is at present so under funded as to prevent it from providing proper access to justice? If yes, what do you intend to do in Government to redress the situation?

The Australian Greens acknowledge that the legal assistance sector in Australia is currently significantly under funded and has been for more than a decade.

Since entering the Senate in June 2008 Senator Ludlam, Attorney General Spokesperson for the Greens, has focused on the issue of Access to Justice and initiated a Senate Legal and Constitutional Affairs References Committee Inquiry into the issue. The inquiry received a large number of submissions (71) and hearings were held in four Australian cities (Melbourne, Canberra, Sydney and Perth). The Committee process highlighted the poor plight of Australia's Legal Aid Commissions, the Community Legal Sector and Aboriginal and Torres Strait Islander Legal Services, a plight the Australian Greens are determined to remedy. The committee process was successful in highlighting the need for improved legal services in certain areas of legal advice, certain geographic locations and amongst certain demographics. We are committed to ensuring that the 31 recommendations of the inquiry are acted



upon and in addition the Australian Greens made five additional recommendations.

We believe that an increase in funding is required to redress the current areas of unmet legal need. As research highlights for every dollar spent on the community legal sector the result will be a \$100 saving at later points in the justice system. Further, the current lack of access to legal services is costing the Australian community both directly through the increased cost of crime, policing and incarceration, and indirectly through substance abuse, mental illness, suicide, domestic violence and homelessness.

To redress this situation the first priority of the Australian Greens would be to increase Legal Aid funding to ensure that family and civil law advice is accessible. At present Legal Aid Commissions have been forced to turn away those seeking family law advice unless the welfare of children is a concern. Further, Legal Aid only has the resources to provide legal advice in a limited number of civil law areas and with current levels of funding these cases have been further restricted to the most serious cases. Current funding levels have therefore left Legal Aid Commissions predominantly (if not solely) with criminal matters where the penalty may be imprisonment.

A second priority of the Australia Greens would be an increase in funding to Community Legal Centres (CLCs) which have been placed under a great deal of pressure as a direct result of the under-funding of Legal Aid and the stringent means testing that Legal Aid's funding has forced them to adhere to. The increase in funding for CLCs will aim at creating pay parity between CLC employees and Legal Aid employees. At present the remuneration level of CLC employees is considerably lower than their Legal Aid counterparts. A report in 2006 called for an immediate 10% pay rise, at a minimum, for CLC employees and an even greater increase for Principal Solicitors and Managers. The current low level of remuneration is reflected in the short retention periods of CLC employees.

The Australian Greens would also ensure that CLC funding is tenured on a three year basis to allow for more effective planning and recruitment of staff. The Access to Justice Inquiry noted a National Association of Community Legal Centres estimate in 2007 that baseline funding of \$500,000 per CLC as being an appropriate figure for overcoming the current crises. This figure was repeated on multiple occasions during the committee process. The Australian Greens would deliver this amount to each CLC to ensure that the

decade of chronic under funding comes to an end rather than merely providing a 'band aid' solution.

Finally, of particular concern to the Australian Greens is the plight of Aboriginal Australians under the current legal assistance sector funding arrangement. Whilst each state and territory has an Aboriginal Legal Service the funding provided to these organisations does not reflect the higher cost of providing legal services to Aboriginal Australians. In addition to Aboriginal Australians suffering from high rates of incarceration, the cost of providing legal services to Aboriginal Australians is also higher as a result of factors such as language, literacy, remoteness and socio-economic disadvantage. We are highly concerned with the present levels of funding provided to Aboriginal Legal Services for civil, family and human rights law matters because criminal law matters where the potential penalty is imprisonment takes priority. This means other important services are neglected. For example civil and human rights law services are non-existent in rural, regional and remote areas of Western Australia and family, civil and human rights law services are only restrictively provided in the ALSWA Perth office.

The Australian Greens would therefore ensure funding for the expansion of family, civil and human rights law services in city, regional, rural and remote areas. Funding for the expansion of these services to regional, rural and remote areas will also be accompanied by incentives for Aboriginal Legal Service employees to move to work in these locations. Funding will also be provided for a greater level of Family Violence Prevention Legal Services in remote areas with the aim of providing for the demand from Aboriginal women who are said to be the most disadvantaged demographic in Australian society.

- Are you committed to developing a National Partnership Agreement (NPA) with the States/Territories that is based on national goals as distinct from Commonwealth or State goals? If so will you work to ensure that Commonwealth funds are, under such NPA, made available for the legal representation of persons for whom the Commonwealth has special responsibility such as indigenous Australians, new migrants and those in receipt of Commonwealth benefits?

The Australian Greens are strongly committed to a National Partnership Agreement (NPA) for the legal assistance sector to ensure that the burden of funding the legal assistance sector is shared evenly by State and Commonwealth governments, and so that the sector is adequately funded so that Legal Aid, CLCs

and Aboriginal Legal Services may make plans beyond annual budgets.

The Australian Greens welcomed the Australian government's recent announcement that an NPA to replace the purchaser/provider arrangement (which resulted in the Federal/State divide) had commenced. This change to the NPA was much needed as the purchaser/provider funding arrangement has been blamed for the current Legal Aid funding crises as the Commonwealth's share of Legal Aid funding has declined from 64% in 1996/97 to 45% in 2006/07. The need to replace the purchaser/provider arrangement was recommended by the Legal and Constitutional Committee in 2004 and was also recommended by the Australian Greens in their additional comments to Senator Ludlam's 2009 Access to Justice Inquiry.

In addition to supporting the NPA the Australian Greens are committed to continuing to provide Commonwealth funding for indigenous Australians, new migrants and those in receipt of Commonwealth benefits over who the Commonwealth has special responsibility.

- In 1992, the Commonwealth contributed 50% of the national legal aid commission funding, it now contributed 32%. Will you restore the Commonwealth share of Legal Aid Commission funding to 50% (up from 32%) which would require an additional recurrent expenditure of approximately \$200m? If you are not prepared to commit to 50% Commonwealth funding what steps will you take in Government to adequately resource the legal assistance sector?

The Australian Greens believe that the Commonwealth should share with the States and Territories the burden of the funding for Legal Aid Commissions.

Unfortunately under successive federal governments over the last two decades federal funding has not kept in line with that of the States and Territories and this funding inadequacy has been largely the result of the purchaser/provider funding arrangement opposed by the Australian Greens as mentioned above.

The current Legal Aid funding crisis will hopefully in part be remedied by the NPA to ensure that the Commonwealth will contribute funds to Legal Aid regardless of whether the legal matter concerns Commonwealth law or State/Territory law.

- Will you ensure that any Commonwealth legal aid funding is conditional on States/Territories maintaining their funding levels?

The Australian Greens would make additional Commonwealth legal aid funding conditional on the funding levels of State and Territory governments remaining at their current levels.

Such conditional funding will ensure that additional Commonwealth funding will lead to improved Legal Aid services rather than simply allow the State to reduce its funding levels and Legal Aid services continuing to remain under funded. Also where required the Australian Greens believe that the Commonwealth should enter into dialogue with state and territory governments to increase their level of Legal Aid expenditure where state and territory Legal Aid funding levels are inadequate and disproportionate to their laws and policies which may be contributing to an increase in demand for legal assistance services.

- Will you provide a commitment to recurrent increases, in line with CPI and increasing demand, in Commonwealth funding of community legal centres and Aboriginal and Torres Strait Islander Legal Services?

The Australian Greens will commit to recurrent increases in funding in line with the CPI and increases in demand due to economic and political factors which result in increases in demand as witnesses during the worst of the global financial crisis.

- Will you work towards adequate ongoing resourcing of the federal courts and tribunals to ensure access to justice?

Senator Ludlam's Access to Justice Inquiry included an investigation into 'the cost of delivering justice', 'measures to reduce the length and complexity of litigation and improve efficiency' and 'alternative means of delivering justice'. These terms of reference aim at finding ways in which to reduce the case load of the courts by encouraging disputing parties to negotiate and settle before court or negotiate and narrow the issues prior to a matter going to trial to ensure that the resources of the courts are used most efficiently. The Australian Greens support any attempt to divert parties away from court however we acknowledge that in many cases settlement is not possible. As such we will work to ensure that the federal courts and tribunals are sufficiently funded to deliver justice in a timely and affordable manner.

## Legislative Standards

The Law Council has raised concerns with both the present and previous Government about declining legislative standards. Some of these concerns relate to:

- Inadequate timeframes for consultation and debate on draft legislation;
- Regular lack of adherence to the Government's *Best Practice Regulation Handbook* which recommends 12 weeks consultation periods for highly significant proposals;
- Introduction of draft legislation at times which limit the opportunity for public debate;
- Cursory explanatory memoranda and second reading speeches; and
- Summary dismissal of Parliamentary Committee recommendations.

### The Law Council asks

- What will you do to address declining legislative standards?
- Will you adhere to the consultation standards in the *Best Practice Regulation Handbook*?
- Will you establish any new mechanisms such as a Parliamentary Legislative Standards Committee or a Legislative Standards Adviser to report to Parliament on legislative standards?
- Will you move to amend the relevant House of Representatives and Senate Standing Orders for the timetables for Committee inquiries to allow for longer time periods for consultation?
- Will you move to amend the Legislation Handbook to allow for longer time periods for consultation on Bills?

## Responses

### Australian Labor Party

- What will you do to address declining legislative standards?

Since the commencement of its term, Federal Labor has worked hard to improve the operation of the House of Representatives in the Federal Parliament and to allow the community to re-engage with the legislative process. The Parliament examines a range of bills each year, and, depending on whether the year is an election year or not, the House is likely to pass between 100 and 180 bills, with the Senate passing slightly more than that number.

The Gillard Labor Government is also committed to ensuring that we develop clearer laws and practical measures to reduce the volume and complexity of legislation. That is why we have supported the development of an action plan to ensure Federal laws are clearer and easier to understand. This includes legislating only where necessary, clarifying our laws and encouraging the evaluation and their review to reduce complexity. This commitment will have a long term positive effect on the overall accessibility of our justice system.

The Office of Parliamentary Counsel (OPC) is a professional body with the skills and resources to maintain standards of drafting for legislation. OPC has been active in encouraging the use of plain language in legislation and plain language drafting has been incorporated into all of its work.

Federal Labor has established clear guidelines and processes to allow for the voices of concerned citizens to be heard on important matters and legislation, and to have their concerns addressed by Ministers.

The establishment of the Petitions Committee now means that when Australians lodge a petition of concern to the Federal Government, their voices are clearly heard. This formal mechanism allows for greater Ministerial accountability to petitions and now means that once lodged, concerns of citizens are no longer ignored, as was the case under the former Coalition Government.

The Senate scrutinises legislation extensively, with eight legislation committees covering the range of Federal Government portfolios, together with the Scrutiny of Bills Committee. This robust committee system is fully supported by the Gillard Labor Government. The committees examine the standard of legislation and also consult with the community on issues covered by legislation. Recommendations from committees on the form and content of legislation are routinely accepted by the Gillard Labor Government.

The Scrutiny of Bills Committee examines all bills which come before the Parliament and reports to the Senate whether such bills:

- Trespass unduly on personal rights and liberties.
- Make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.
- Make rights, liberties or obligations unduly dependent upon non-reviewable decisions.

- Inappropriately delegate legislative powers; or insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Gillard Labor Government takes the reports of this committee seriously and accepts many of its recommendations.

Federal Labor's *Human Rights Framework* will also enhance the legislative consideration of human rights principles. The ability of the planned Joint Committee on Human Rights to conduct public hearings will itself contribute to greater participatory democracy.

- Will you adhere to the consultation standards in the best practice Handbook?

Federal Labor fully endorses the application of the Legislation Handbook across all portfolios. The Legislation Handbook was issued by the Department of the Prime Minister and Cabinet. This Department also has responsibility to ensure that the requirements of the Handbook are met as legislation is developed and introduced into the Parliament, and as amendments are made to legislation.

The operations of the House of Representatives and the Senate are determined by the relevant Standing Orders and guided by the House of Representatives best practice, and Odgers' Australian Senate Practice. These documents cover, respectively, the operation of the House and the Senate and each Chamber's processes for considering legislation.

- Will you establish any new mechanisms such as a Parliamentary Legislative Standards Committee or a Legislative Standards Adviser to report to parliament on legislative standards?

The House of Representatives Procedure Committee has released a report with several recommendations on the effectiveness of the House of Representatives committee system. The Gillard Labor Government is currently considering the recommendations made by the Committee and will respond to Parliament in due course.

In the Senate, the Scrutiny of Bills Committee is currently considering its future direction, with 35 submissions made to its inquiry. Federal Labor will consider the recommendations arising from this inquiry when it presents its final report.

- Will you move to amend the relevant House of Representatives and Senate Standing Orders for the timetables for committee inquiries to allow for longer time periods for consultation? Will you move to amend the Legislation Handbook to allow for longer time periods for consultation on Bills?

Federal Labor considers that the current framework is sufficient to fulfil its legislative agenda while allowing for detailed consideration of legislation by House and Senate committees. Any amendment to the current framework should be considered in partnership with those committees.

## The Coalition

The Coalition understands the great importance of maintaining high legislative standards.

We will restore full cabinet processes to the nation's government. Significant government decisions should be considered by cabinet before they are announced rather than subsequently presented as "done deals".

Too often under this Labor government decisions have been made by a 'kitchen cabinet' or a handful of ministers in secret without appropriate deliberation. This practice has had a deleterious effect on the quality of government legislation. This has been obvious enough from observing the long list of failed Labor government programs, the pink batts program and the school halls buildings program being the most notable.

In addition to the restoration of cabinet government, the Coalition will establish a Parliamentary Budget Office that will provide a rigorous new layer of scrutiny to major new spending proposals. This independent statutory body will put greater pressure on government ministers, and members of parliament more generally, to produce better quality legislation.

We support the efforts of the Office of Best Practice Regulation, and the principles outlined within its publications.

## The Greens

The Greens have pushed, through the Senate Committee on Procedure, for a procedure whereby bills that rely on delegated legislation for their operation would be deferred until the delegated legislation is tabled. An increasing number of bills are being brought before the Senate which rely heavily on delegated legislation for their implementation. The bills are being brought on for debate without these regulations being tabled or drafts being made available to Senators.

Recent examples of bills presented to the Senate without corresponding regulations are: the *Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009*, *Carbon Pollution Reduction Scheme Bill 2009*, *Renewable Energy (Electricity) Amendment Bill 2009*, *Migration Amendment (Immigration*

*Detention Reform) Bill 2009, Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Therapeutic Goods Amendment (2009 Measures No.2) Bill.*

Whilst we recognise the legitimate use of regulations for administrative efficiency, the frequency with which legislation is presented without corresponding delegated legislation is unacceptable.

Furthermore, the Greens have improved the functioning and effectiveness of the Senate by:

- Reforming question time – we negotiated to tighten the rules requiring Ministers to answer questions in question time. Question time plays an essential role in keeping the government accountable.
- Reforming the Senate committee system – we effected a return to the committee system, undermined by the Howard government, which provides a greater role for the opposition and cross bench to scrutinise government legislation.
- Advocating for more time to debate private senator's bills – the Senate spends a majority of time dealing with government business ie legislation they introduce. The Greens want to see more time to seriously debate and vote on private senator's bills to ensure that ideas which are avoided by the major parties are properly addressed in the Senate.
- Consistently arguing for more sitting days to allow adequate time to deal with legislation.

## Improved Protection for Human Rights

The Law Council is concerned that there are gaps in the legal protections available for human rights at the federal level. This gap in human rights protection was confirmed in the *2009 National Consultation on Human Rights* Report.

In its response to the National Consultation Report, the Commonwealth Government made it clear that it will not enact a Human Rights Act.

Instead the Government committed to a Human Rights Framework including human rights education initiatives; establishing a Parliamentary Committee on Human Rights and requiring that all new legislation be accompanied by statements of compatibility with human rights. The Framework is to be reviewed in 2014.

Other key recommendations contained in the National Consultation Report were not adopted, including some recommendations that can be implemented in the absence of a Human Rights Act.

The Law Council is of the view that a Human Rights Act is the best way to address the current gaps in human rights protections. If a Human Rights Act is not adopted, it is critical that all recommendations of the National Consultation Report are implemented.

### The Law Council asks

- Will you consider introducing a Human Rights Act as part of the planned review of the Human Rights Framework in 2014, if not earlier?
- Will you adopt recommendations in the National Human Rights Consultation Report, which can be implemented without a Human Rights Act?
- In particular, will you:
  - Immediately compile an interim list of rights for protection, drawn from Australia's international human rights commitments, and replace this interim list with a definitive list within two years?
  - Use the lists for the preparation of Statements of Compatibility for draft legislation and as guidance for a Joint Parliamentary Committee on Human Rights to review all new legislation?
  - Amend the *Administrative Decisions (Judicial Review) Act 1975* to make the definitive list of human rights a relevant consideration in Government decision-making?

- Require Federal departments and agencies to develop human rights action plans and report on compliance in their annual reports?
- Amend the *Acts Interpretation Act 1901* to require all Commonwealth legislation to be interpreted consistently with the lists of rights as far as it is possible to do so consistently with the legislation's purpose?
- Expand the definition of 'human rights' in the *Australian Human Rights Commission Act 1986*?
- Provide for a 'Statement of Impact on Aboriginal and Torres Strait Islander peoples' when legislation is introduced exclusively for those peoples, to suspend the *Racial Discrimination Act 1975* or to institute a special measure?
- Requiring that each new Bill introduced into Parliament is accompanied by a statement of compatibility with our international human rights obligations.
- Combining federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly.
- Creating an annual NGO Human Rights Forum to enable comprehensive engagement with non-government organisations on human rights matters.

The Coalition have committed to discontinuing the Australian Human Rights Framework as it "does not believe this campaign is an effective use of taxpayer funds."

- Will you immediately compile an interim list of rights, drawn from Australia's international human rights commitments, and replace this interim list with a definitive list within two years?
- Will you use the lists for the preparation of Statements of Compatibility for draft legislation and as guidance for a Joint Parliamentary Committee on Human Rights to review all new legislation?

Federal Labor introduced the *Human Rights (Parliamentary Scrutiny) Bill* into Parliament on 2 June 2010. The Bill strengthens parliamentary scrutiny of new laws for consistency with Australia's human rights obligations and encourages early and ongoing consideration of human rights issues in policy and legislative development.

The Bill includes the establishment of a new Parliamentary Joint Committee on Human Rights and introduces requirements for new legislation to be accompanied by Statements of Compatibility, which will set out how the new laws meet Australia's obligations under the seven core United Nations human rights treaties. These obligations provide the reference point for the rights and freedoms considered by the new Parliamentary Committee and the Statements of Compatibility. These reforms will enhance the role that the Executive and the Parliament play in considering the potential impact that laws and policies may have on the citizens they represent.

The Coalition has committed to discontinuing the Australian Human Rights Framework as it "does not believe this campaign is an effective use of taxpayer funds."

- Will you amend the *Administrative Decisions (Judicial Review) Act 1975* to make the definitive

## Responses

### Australian Labor Party

- Will you consider introducing a Human Rights Act as part of the planned review of the Human Rights Framework in 2014, if not earlier?

Federal Labor has decided not to enact a Human Rights Act at this time. We will not pre-empt the outcomes of the review of the Human Rights Framework. The review of the Framework provides an opportunity to consider what measures are working well and what needs to be strengthened.

- Will you adopt recommendations in the National Human Rights Consultation Report, which can be implemented without a Human Rights Act?

On 21 April 2010, the Attorney-General introduced Australia's Human Rights Framework, enacting key recommendations of the National Human Rights Consultation Committee.

The Framework demonstrates Federal Labor's commitment to positive and practical action in relation to human rights, through a number of key commitments, including:

- Investing over \$12 million in a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community.
- Establishing a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with our international human rights obligations.

list of human rights a relevant consideration in Government decision-making?

The Federal Government is required to comply with anti-discrimination legislation in relation to its administrative decisions.

In addition, the planned Parliamentary Joint Committee on Human Rights and the introduction of Statements of Compatibility for new legislation (see above) will ensure that new laws meet Australia's obligations under United Nations human rights treaties.

Federal Labor believes that current avenues for review of government decision making will also be complemented by its injection of funding for public sector education on human rights and an increased focus on human rights in the development and implementation of federal Government policies and practices.

The President of the Australian Human Rights Commission will also be made an ex officio member of the Administrative Review Council, further enhancing consideration of human rights principles.

- Will you require Federal departments and agencies to develop human rights action plans and report on compliance in their annual reports?

Federal Labor has allocated \$3.2 million for public sector education and training, which will lead to an increased focus on human rights in the development and implementation of Federal Government policies and practices.

Federal Labor is also committed to updating Australia's National Action Plan, which sets out the priority areas to enhance the enjoyment of human rights in Australia. The National Action Plan will reflect activity across Federal, State and Territory governments. A re-elected Gillard Labor Government will consult the States and Territories, and NGOs, in the development of the National Action Plan.

The Coalition has committed to discontinuing the Australian Human Rights Framework as it "does not believe this campaign is an effective use of taxpayer funds."

- Will you amend the *Acts Interpretation Act 1901* to require all Commonwealth legislation to be interpreted consistently with the lists of rights as far as it is possible to do so consistently with the legislation's purpose?

The *Acts Interpretation Act 1901* currently provides courts with the ability to consider ancillary Parliamentary material when construing ambiguous legislation.

Federal Labor introduced the *Human Rights (Parliamentary Scrutiny) Bill* into Parliament on 2 June 2010. The Bill sought to establish a new Joint Parliamentary Committee on Human Rights and require all new laws to be accompanied by a statement of compatibility on human rights.

The well-established principles of statutory interpretation, which permit a court to have regards to ancillary parliamentary documentation, will include the proposed Statements of Compatibility and any report of the new Parliamentary Committee on Human Rights.

Federal Labor believes that the existing powers used in respect to these documents will provide the courts with the appropriate tools to undertake their role, including interpretation of Parliament's intention for enacting legislation in the context of Australia's human rights obligations.

- Will you expand the definition of 'human rights' in the *Australian Human Rights Commission Act 1986*?

As part of its commitment in Australia's Human Rights Framework, Federal Labor in April 2010 announced its intention to streamline federal anti-discrimination legislation into one single comprehensive law. As part of this commitment, the role and powers of the Australian Human Rights Commission will be considered.

- Will you provide a Statement of Impact on Aboriginal and Torres Strait Islander peoples' when legislation is introduced exclusively for these peoples, to suspend the *Racial Discrimination Act 1975* or to institute a special measure?

Federal Labor introduced the *Human Rights (Parliamentary Scrutiny) Bill* into Parliament on 2 June 2010. The Bill includes the requirement for all new legislation to be accompanied by statements of compatibility on human rights with reference to Australia's obligations under the seven core United Nations human rights treaties, including the *United Nations Convention on the Elimination of All Forms of Racial Discrimination*.

Federal Labor has reinstated the *Racial Discrimination Act 1975* in the Northern Territory Emergency Response. Labor is committed to compliance with the *Racial Discrimination Act* in the development of policies relating to Indigenous Australians.

## The Coalition

In government the Coalition provided strong support for the Human Rights and Equal Opportunity Commission in the interest of promoting its important role in raising community awareness about human rights and responsibilities.

In government we will consider seriously the recommendations of the National Human Rights Consultation Report. We continue to support the *Australian Human Rights Commission Act 1986*.

But the Coalition will not introduce a Human Rights Act, amend any legislation to incorporate, or instruct government departments to consider, a pre-determined list of human rights. We would support in its place a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation from a human rights perspective.

The Coalition hopes that such a Committee would have sufficient regard to the substantial body of human rights that can be found within our own common law tradition, statute law and the Constitution, rather than from such international instruments as *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

Unlike the Labor party, which has dithered and dissembled on the issue of the need for a human rights act, the Coalition has a clear view. We believe Australians have always had their human rights respected; they are protected by parliament, the common law and an independent judiciary.

We do not believe a bill of rights, whether constitutional or statutory, will ensure Australians' rights are respected any more than they are now. Rather, a human rights act will unnecessarily burden our legal system, increase the power of unelected judges and magistrates, and commensurately reduce the power of our elected representatives.

## The Greens

Universal human rights must be respected and protected in all countries. The Greens support a Charter of Rights which would adopt Australia's international human rights obligations into domestic law.

There is no current requirement for law makers to consider human rights principles when making or applying laws, meaning human rights are not considered in a systemic or effective way. The current speed and volume at which new laws are made leaves little time for consideration of human rights

implications. A charter would provide an improved framework for the design and delivery of essential public services to those Australians most at risk of human rights abuse, including Indigenous Australians, those with mental illness, the elderly and people with disability. A charter would also raise awareness amongst decision makers and the public of human rights and responsibilities.

The Greens believe the Government's Human Rights Framework is a welcome step in the right direction but the government has ignored the key recommendation of the Human Rights Consultation Report by refusing to consider a Human Rights Act. Human rights in Australia will continue to be dealt with in an ad hoc manner. For example, the statements of compatibility will not apply retrospectively so legislation such as the Northern Territory Intervention will not be addressed and the statements don't offer any protection from government decisions such as the suspension of asylum claims from Sri Lankans and Afghans.

The Greens would consider introducing a Human Rights Act in the next term of parliament. We would support the adoption of the National Human Rights Consultation Report, including the compilation of a list of rights for protection, requirement of Federal agencies to develop human rights action plans and report on their compliance and other necessary amendments to Acts or Regulations to ensure the effective operation of the Framework.



## Asylum Seekers

The Law Council considers that mandatory, indefinite and non-reviewable detention of asylum seekers is a fundamental breach of human rights. While recognising some improvements in Government policy in the last few years to redress these aspects of detention, more remains to be done to ensure that the human rights of asylum seekers are respected.

### The Law Council asks

- ▶ Will you legislate to implement a policy of detention as a last resort and for the minimum period possible to undertake health, identity and security checks?
- ▶ Will you legislate to ensure that children are not detained in Immigration Detention Centres and that families with children are not detained in such centres?
- ▶ Will you legislate to restore full rights of judicial review for asylum seekers, including those arriving by boat?
- ▶ Will you support legislation in relation to complementary protection claims by asylum seekers?
- ▶ Will you reverse the suspension of the processing of claims by Afghan asylum seekers announced on 9 April 2010?
- ▶ Will you provide increased access to legal advice and assistance for asylum seekers?
- ▶ Will you support offshore processing of asylum claims? If so:
  - What protections will you put in place to ensure that asylum seekers are not returned to a situation where they face persecution?
  - Will you detain asylum seekers and what forms of detention will you use, particularly for families and children?
  - What processing regime will you apply and will you provide for review of decisions not to grant visas?
  - What services will you provide to asylum seekers and will you provide access to legal advice and assistance?

## Responses

### Australian Labor Party

- ▶ Will you legislate to implement a policy of detention as a last resort and for the minimum periods possible to undertake health, identity and security checks?

Federal Labor in July 2008 announced a suite of reforms to Australia's immigration detention policy. The *New Directions in Detention* reforms are reflected in Federal Labor's 2010 National Platform.

Under Federal Labor's policies, the presumption will be that persons will remain in the community while their immigration status is resolved. Persons will be detained only if the need is established. Labor's humane and risk-based immigration detention policies and practices will be guided by seven key immigration detention values:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
  - a. All unauthorised arrivals, for management of health, identity and security risks to the community.
  - b. Unlawful non-citizens who present unacceptable risks to the community.
  - c. Unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable. The length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

Federal Labor introduced the *Migration Amendment (Immigration Detention Reform) Bill* in the House of Representatives on 25 June 2009 to give legislative effect to Federal Labor's policy. The Bill sought to

amend the *Migration Act* by introducing a statement of principle in Part 1 of the Act that, first, a non-citizen must only be detained in an immigration detention centre as a measure of last resort and secondly, that if a non-citizen is detained in an immigration detention centre, detention will be for the shortest practicable time.

Other amendments in the Bill provided that if a person was detained, an officer must make reasonable efforts to ascertain the person's identity; identify whether the person is of character concern; ascertain the health and security risks to the Australian community of the person entering or remaining in Australia; and resolve the person's immigration status.

- ▶ Will you legislate to ensure that children are not detained in Immigration detention Centres and their families with children are not detained in such centres?

In accordance with Federal Labor's seven key Immigration Detention Values, as reflected in Federal Labor's 2010 National Platform, our policy is not to detain children or their accompanying family members in Immigration Detention Centres.

The *Migration Amendment (Immigration Detention Reform) Bill* (see above) strengthened the existing principle in section 4AA of the *Migration Act* that the detention of a minor is a measure of last resort by providing that a minor, including a person reasonably suspected of being a minor, must not be detained in a detention centre established under this Act; and if a minor is to be detained, an officer must for the purposes of determining where the minor is to be detained, regard the best interests of the minor as a primary consideration.

- ▶ Will you legislate to restore full rights of judicial review for asylum seekers, including those arriving by boat?

The Gillard Labor Government has no plans to change current legislation with respect to judicial review for asylum seekers.

- ▶ Will you support legislation in relation to complementary protection claims by asylum seekers?

Federal Labor introduced the *Migration Amendment (Complementary Protection) Bill* in the House of Representatives on 9 September 2009. The Bill sought to amend the *Migration Act* to introduce complementary protection arrangements that allow all claims that may engage Australia's non-refoulement obligations to be considered under a single protection visa application process. The Bill

responded to recommendations of the Senate Legal and Constitutional References Committee's reports *A Sanctuary under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes and Administration and operation of the Migration Act 1958* and the Senate Select Committee report *Ministerial Discretion in Migration Matters*.

Federal Labor's commitment to complementary protection through the protection visa framework is reflected in our 2010 National Platform.

- ▶ Will you reverse the suspension of the processing of claims of Afghan asylum seekers announced on 9 April 2010?

The Prime Minister indicated on 6 July 2010 that the Gillard Labor Government will not be immediately ending the suspension on processing of Afghan asylum seekers. However, the Government will continue to monitor evolving conditions in Afghanistan and keep the decision under review in the coming weeks and months.

- ▶ Will you provide increased access to legal advice and assistance for asylum seekers?

The Gillard Labor Government funds the Immigration Advice and Application Assistance Scheme (IAAAS) to provide professional assistance free of charge to the most vulnerable visa applicants, prospective visa applicants and sponsors. Assistance includes help with the completion and submission of visa applications and advice on complex immigration matters. IAAAS services can help people present their claims for protection to enable an assessment of Australia's obligations under the Refugees Convention.

Federal Labor has also established the Community Assistance Support (CAS) Program, which provides community care and assistance to Department of Immigration and Citizenship clients who have been assessed as being highly vulnerable, with complex needs requiring additional support. It includes community assistance, information and counselling, to achieve an effective resolution of their immigration status. The program builds on and continues the work of the successful Community Care Pilot and Community Resolution Trial, both of which were introduced by the former Coalition Government.

Commencing in 2009-2010, Federal Labor has provided an additional \$750,000 to fund an expanded IAAAS to assist more eligible clients. This includes \$100,000 for cases under the CAS program.

We have also introduced fairer arrangements for asylum seekers on Christmas Island, including access to migration advice.

## The Coalition

The Coalition has always been committed to a strong immigration policy including a generous refugee and humanitarian intake. Australians reasonably expect these policies to be implemented in a context of rigorous border protection, not according to the agenda of people-smugglers.

The Coalition is committed to migration policies which are sustainable, orderly and fair to those in desperate situations waiting in refugee camps around the world for asylum in Australia. The Coalition's border protection policy is based on denying people smugglers the ability to sell permanent residency to Australia.

The Coalition supports the existing system of mandatory detention of illegally arrived non-citizens in Australia until their status can be determined. We will not support new legislation that would make seeking asylum in Australia more attractive than it already is.

We would restore strong border protection policies to deter the people smugglers.

We support offshore processing of asylum seekers in a neighbouring country. And we will give the immigration minister greater discretion over asylum decisions.

A Coalition Government will give priority to resettlement of refugees who have made offshore applications to Australia's refugee and humanitarian visa program. To achieve this goal, the Coalition will increase the number of resettlement places made available through the UNHCR for offshore applications each year by 1,500 persons from 6,000 to 7,500 places.

Labor's abandonment of the Coalition's border protection policies, which has resulted in over 7,000 unauthorised arrivals, is anything but compassionate. It has led to at least 170 reported deaths of people trying to reach Australia over the open sea and there are now over 560 children being detained, compared to just 21 when the Coalition left office.

The Coalition will pilot the Canadian refugee sponsorship program to enable groups in Australia to sponsor refugees over and above our regular intake on a fully bonded basis.

This would be for temporary and permanent protection visas for refugees in overseas camps.

The sponsorship program would enable community groups, approved by the government, to provide

sponsorship to people assessed as refugees by the UNHCR offshore.

The pilot would be introduced in the first term of Coalition Government with a view to establishing a permanent program in a subsequent term. The private sponsorship program would therefore enable Australia to lift our refugee intake to 15,000 within three years.

## The Greens

The Greens are committed to a fair and just immigration system that upholds Australia's commitment and obligations to international law and human rights.

We believe refugees should be treated fairly and compassionately and oppose an approach that demonises asylum seekers with the cruel, expensive and unnecessary policies of mandatory detention and offshore processing.

The Greens call for an end to off-shore detention and mandatory detention of asylum seekers; we want a system in which asylum seekers have health and security checks conducted speedily and then live in the community while their refugee claims are properly assessed.

The Greens believe that the people smuggling trade exploits vulnerable and desperate people and Australia should play a key role in combating the global rise in the numbers of asylum seekers fleeing their homelands by addressing the causes rather than just focusing on the effect. The Government's policy of detaining asylum seekers on Christmas Island is a breach of Australia's international obligations to under the Refugee Convention.

This 'out of sight out of mind' approach to asylum seekers detained on Christmas Island is not only highly inappropriate and impractical, but also a financial burden. For example, it costs \$10 million just to maintain the facility, not including staff or detainee costs. It is clear that the presence of asylum seekers on the Australian mainland is neither a security risk nor a policy catastrophe. The Greens will continue to call for Christmas Island to close down and for asylum seekers to immediately be brought to Australia for their claims to be dealt with quickly, fairly and humanely.

The Greens will:

- abolish mandatory detention while ensuring that full health and security checks are conducted;
- end offshore processing of asylum seekers' claims;

- ensure asylum seekers have the right to legal aid and judicial review of decisions that affect them;
- increase the intake of off-shore refugees and humanitarian entrants;
- provide greater support to specialised refugees and asylum seeker services;
- introduce a new visa category for people displaced by climate change.

The Greens continue to oppose offshore processing on Christmas Island. This approach creates two sets of rules for asylum seekers – one for those who arrive by plane, and another for those arriving by boat. Asylum seekers arrive in Australia seeking refuge on planes as well as boats. In fact, around 95% of all claims for asylum are made by people who arrive by plane. Yet it is those who arrive by boat, who become pawns in political spin around border security.

The Greens are opposed to Temporary Protection Visas because the restrictions on family reunions imposed by TPVs are a breach of the human rights of children and leave people who have been assessed and accepted as refugees living a state of uncertainty and fear. The restrictions on social security support means that refugees are reliant on charity for their basic needs. Previously, TPVs did not discourage people from seeking asylum; in fact the policy simply condemned the world's most vulnerable people to an uncertain future, compounding their trauma and suffering.

## Reform of Anti-Terror Laws

Since September 11, 2001, over 40 pieces of anti-terror legislation have been introduced to Parliament. Despite their purported urgency and necessity many of the most extreme measures that were introduced, such as the preventative detention regime, the control orders regime and the provisions granting ASIO secretive questioning and detention powers have never or very rarely been used.

Several independent domestic and international reviews have now been conducted of Australia's anti-terror laws and the list of recommended reforms continues to grow. With the appointment of an Independent National Security Legislation Monitor this appears likely to continue.

While the Government has signaled an intention to act on some of these recommendations with the introduction of the National Security Legislation Reform Bill, the proposed reforms generally involve tinkering at the edges of the current legislative regime and do not involve the repeal of a single extraordinary offence provision or Executive power.

## The Law Council asks

- Will you allow anti-terror measures – such as of control orders and secretive questioning and detention by ASIO – to remain on Australia's statute books even though they have attracted widespread and international criticism and proven unnecessary?
- Will you ensure that the Independent National Security Legislation Monitor is adequately resourced to fulfill his or her mandate and will you undertake to respond promptly and fully to his or her recommendations?

## Responses

### Australian Labor Party

- Will you allow anti-terror measures to remain on Australia's statute books even though they have attracted widespread and international criticism and proven unnecessary?

Australia's national security is a top priority for Federal Labor, which is why we consider that strong national security and counter-terrorism laws are a vital part of ensuring the security of Australians.

Federal Labor initiated and launched the 2010 Counter Terrorism White Paper "Securing Australia, Protecting Our Community", which highlighted that terrorism, and in particular home-grown terrorism,

poses a threat to Australia's national security. The White Paper noted that 38 people in Australia have been or are being prosecuted as a result of counter-terrorism operations. As the White Paper makes clear, our policy delivers an effective and balanced approach that further strengthens our domestic counter-terrorism efforts and makes a strong contribution to international counter-terrorism efforts.

To address concerns and recommendations contained in a number of independent reviews of national security and counter-terrorism legislation, Federal Labor has recently introduced legislation implementing a number of key changes to Australia's national security and counter-terrorism laws. The *National Security Legislation Amendment Bill* was introduced following a public consultation on the proposed changes.

Key amendments enacted by the Bill included:

- A specific right of appeal against a decision to grant or refuse bail relating to terrorism and serious national security offences.
- Ensuring accountability through additional parliamentary oversight of the Australian Federal Police and the Australian Crime Commission.
- Extending the role of the Inspector-General of Intelligence and Security to inquire into intelligence or security matters relating to Federal Departments and agencies.

Federal Labor's changes to Australia's national security and counter-terrorism legislation provide important safeguards and accountability mechanisms.

In addition, we recently established the position of the National Security Legislation Monitor to review and report on the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an ongoing basis. The Monitor will also be responsible for considering if counter-terrorism and national security laws remain necessary and proportionate to the threat of terrorism.

Federal Labor is committed to getting right the difficult balance between ensuring Australia has strong counter-terrorism laws that protect the security of Australians and preserving Australia's values and freedoms.

- Will you ensure that the Independent National Security Legislation Monitor is adequately resourced to fulfill his or her mandate and will you undertake to respond promptly and fully to his or her recommendations?

Federal Labor recently established the position of the National Security Legislation Monitor to review and report on the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation on an ongoing basis.

Federal Labor will ensure that the National Security Legislation Monitor is adequately resourced to fulfill his or her mandate and will commit to respond promptly and fully to his or her recommendations.

## The Coalition

The Coalition has no plan for material alterations to the anti-terrorism legislation that the Coalition introduced in government after September 11 2001.

The Coalition is determined to protect Australians from terrorism, and will do everything it can reasonably do to ensure their safety.

The Coalition supported the introduction of the Independent *National Security Legislation Monitor Act 2010* and, in fact, introduced private members' bills for such a measure in both Houses well in advance of the Government's introduction of the legislation. The Coalition is committed to ensuring INSLM is adequately resourced and will engage fully with his or her recommendations.

## The Greens

- Will you allow anti-terrorism measures – such as of control orders and secretive questioning and detention by ASIO – to remain on Australia's statute books even though they have attracted widespread and international criticism and proven unnecessary?

The Australian Greens are committed to ensuring that Australia's anti-terrorism legislation does not compromise fundamental freedoms and civil liberties in the interest of national security. We believe that many of the current anti-terrorism measures extend too far and are in breach of fundamental civil liberties which form the foundation of a strong democratic political system. We also oppose any anti-terrorism measures that are in breach of Australia's international human rights obligations as continues to be the case.

The Australian Greens have been highly critical of the egregious anti-terrorism laws that have been used by both Coalition and Labor governments in response to terrorism since September 11, 2001. Senator Ludlam has been very active on this issue and in 2009 introduced the *Anti-Terrorism Laws Reform Bill* which aimed to repeal some of the most concerning aspects of Australia anti-terrorism laws that did not

deserve to remain on the statute books and subject the laws to review by the Independent National Security Legislation that was established following the passing of the *National Security Legislation Monitor Bill 2009*.

In reference to the control orders (Division 104 of the Criminal Code) and preventative detention orders (Division 105 of the Criminal Code), the Australian Greens remain concerned about the continued existence of these provisions. Unfortunately the *National Security Legislation Amendment Bill 2010* which recently was subject of a Senate inquiry failed to address some of the most controversial aspects of Australia's anti-terrorism legislation such as the control orders and preventative detention orders. This was despite widespread recommendations for the provisions to be amended during the consultation stage of the Exposure Draft of last August. In the end the Bill failed to either amend the provisions or provide a clause in the Bill that these powers be referred to the Independent National Security Legislation Monitor once it begins its workload. These powers raise serious concerns regarding freedom from arbitrary detention (article 9 of the ICCPR), the presumption of innocence and the right to a fair trial (article 14 of the ICCPR) as noted by the UN Committee Against Torture. Control orders and preventative detention orders are to be reviewed by the Council of Australian Governments, beginning in December 2010. It is our view that these measures should not wait until COAG but rather should be immediately referred to the Independent National Security Legislation Monitor upon it beginning its workload.

The Australian Greens are opposed to the excessively broad secretive questioning and detention powers that ASIO has which extends to 'non suspects'. Under the *Australian Security Intelligence Organisation Act 1979* (Cth) a person, including a non-suspect, can be detained without charge under an ASIO warrant for up to 168 hours or seven days. A second warrant can be issued at the end of that period if a new material justifies it. Therefore a person may be held in detention indefinitely for rolling periods of seven days which is undoubtedly in breach of the right to freedom from arbitrary detention (article 9 of the ICCPR). The *Anti-Terrorism Law Reform Bill 2009* put forward by Senator Ludlam aimed to restrict the maximum length that ASIO could detain a client for questioning to one day rather than seven days which reflects the Australian Greens belief that the right to freedoms from arbitrary detention is of the upmost importance especially against an organisation such as ASIO which does not have the same accountability mechanisms as an ordinary police force.

The Australian Greens are committed to ensuring that our anti-terrorism legislation respects fundamental civil liberties and our international human rights obligations. Therefore any anti-terrorism laws that restrict civil liberties or breach our international obligations should be subject to review by the Independent National Security Legislation Monitor.

- ▶ Will you ensure that the Independent National Security Legislation Monitor is adequately resources to fulfil his or her mandate and will you undertake to respond promptly and fully to his or her recommendations?

The Australian Greens have been long time supporters of the establishment of an independent monitor to review Australia's anti-terrorism legislation. We played an integral role in ensuring that the Independent National Security Legislation Monitor would have stringent and transparent reporting requirement under which they are required to report directly to parliament annually, as well as being required to report on specific investigations. This was a major improvement on the initial government proposal under which the Office of the Monitor was only required to produce sanitised annual reports that were to be edited by the Prime Minister's department. The Australian Greens do however have concerns at the current resources available to the office of the monitor.

Unfortunately the Australian government believes it is sufficient for the position to be a part-time role and to be supported by just two staff members. It was also suggested by the Attorney General's Department in a Senate Estimates hearing on May 27 that the two support staff roles will be seconded from the Department of Prime Minister and Cabinet and that these two individuals will have other duties outside their roles of assisting the independent monitor. We are eagerly anticipating a response to the questions on notice by the Attorney General's Department concerning the staffing arrangements of the office. The Australian Greens believe this to be thoroughly inadequate especially given the initial workload of the Office of the Monitor will be considerable since it will have the painstaking task of reviewing almost nine years worth of anti-terrorism legislation, ironically due to the considerable delay in its establishment.

## Recruitment and Retention of Lawyers in Rural, Regional and Remote Areas

The Law Council is concerned that ongoing problems in recruiting and retaining legal practitioners in rural, regional and remote (RRR) areas are negatively impacting on access to justice. While welcoming recent funding of \$1.1 million announced by the Attorney-General to implement measures in collaboration with the legal profession to attract and retain lawyers in RRR areas, the Law Council considers that a whole of Government approach is required similar to the approach used to ensure health services in RRR areas.

### The Law Council asks

- Will you support initiatives to:
  - Provide legal practitioners with monetary allowances and bonuses for working in a RRR area?
  - Ensure that fringe benefits tax (FBT) liabilities on RRR employer payments of employee benefits are waived?
  - Ensure that HECS-HELP (or FEE-HELP) liabilities of law graduates and legal practitioners who work in RRR areas are repaid, completely or partially?
  - Provide further funding for clinical placements in RRR areas for law students and graduates?

### Responses

#### Australian Labor Party

- Will you support initiatives to provide legal practitioners with monetary allowances and bonuses for working in a RRR area?

Federal Labor does not propose to provide monetary allowances or bonuses to legal practitioners working in rural, regional and remote areas. However, we recognise that access to justice in regional Australia is an issue.

Federal Labor recently announced a package to improve access to justice. This included investing \$1.6 million to work in collaboration with the Law Council of Australia to attract and support lawyers working in rural, regional and remote areas. This funding will improve support for legal services to coordinate recruitment and provide mentoring or professional support to lawyers in regional areas, as well as a

dedicated website and technological resources to help overcome the problem of recruitment and retention of lawyers in rural and remote areas of Australia.

- Will you support initiatives to ensure that fringe benefits tax (FBT) liabilities of RRR employer payments of employee benefits are waived?

Federal Labor does not propose to waive FBT on benefits provided to legal practitioners in rural, regional and remote areas. FBT is an important component of the tax system which ensures fairness by taxing all employee benefits and income, regardless of occupation or geographical location. Providing exceptions for specific professions or employees working in certain locations would increase complexity and undermine the important principle of fairness and treating all employee benefits and salaries the same. Rather than changes to the tax system, direct funding such as Federal Labor's \$1.6 million package of initiatives to help address the problem of recruitment and retention of lawyers in regional Australia is a more effective way of addressing the issue of attracting and retaining legal practitioners to regional areas.

- Will you support initiatives to ensure that HECS-HELP liabilities of law graduates and legal practitioners who work in RRR areas are repaid, completely or partially?

Federal Labor does not propose to repay HECS-HELP debts of legal practitioners who work in RRR areas. The HECS-HELP benefit is primarily targeted at graduates of courses which lead to employment in occupations with skills shortages such as nursing, mathematics and science.

- Will you support initiatives to provide further funding for clinical placements in RRR areas for law students and graduates?

Federal Labor supports measures to encourage clinical legal education, including placements in RRR areas.

We have allocated \$240,000 over four years for a feasibility study project for law graduates in recognition Community Legal Centres. This project is being undertaken by the National Association of Community Legal Centres. The project's aim is to encourage law graduates to work in remote, rural and regional Community Legal Centres for their Professional Legal Training work experience, with the aim of encouraging them to consider careers in these areas.

As part of the 2010-11 Budget, Federal Labor allocated an additional \$1.4 million over four years for family law focussed clinical legal education projects

in seven locations, including partnerships with universities in regional Australia. This brings total ongoing funding to \$3.4 million over four years for clinical legal education.

### The Coalition

The Coalition recognises the difficulty some people in Australia have accessing legal services.

That is why in government we increased funding to legal aid services and committed over \$8 million over four years in the 2007-08 budget for the Regional Innovations Program for Legal Services. This program aimed to rebuild the capacity of private firms to deliver family law services in regional Australia.

Because the Labor government has left the public finances in a parlous state, we cannot commit to any new funding initiatives to encourage more lawyers to practise in rural and regional areas. However, the Coalition will seek to ensure that legal practitioners in the smaller States, and in regional centres, receive appropriate consideration in allocating the legal work of local Commonwealth departments and agencies.

We have no plans to change existing fringe benefits tax regulations, nor do we intend to change the existing HECS-HELP repayment rules.

### The Greens

The Greens appreciate the difficulties faced by rural and regional communities and the problems associated with recruiting and retaining professionals such as lawyers. We are fully prepared to consider a range of initiatives to encourage lawyers into rural and regional communities, including tax incentives, HECS/HELP waivers and additional funding for student placements.

## Family Law

Family Law Courts provide a vital resource for those members of the community who are unable to resolve the issues which may arise on the breakdown of family relationships through non-court-based interventions. Difficulties continue to be experienced in the family law system, particularly in relation to increasing delays in some regions, and the important challenges in dealing with cases where family violence is an issue.

### The Law Council asks

- ▶ Will you ensure that the current number of judicial officers will not be reduced and that retiring judicial officers will be replaced promptly?
- ▶ Will you act promptly to implement the recommendations of the Family Violence Courts Review conducted by Professor Chisholm, including the proposed legislative reforms?
- ▶ Will you ensure that the integration of the two Family Law Courts is implemented promptly?

## Responses

### Australian Labor Party

- ▶ Will you ensure that the current number judicial officers will not be reduced and that retiring judicial officers be replaced promptly?

A re-elected Gillard Labor Government will continue to work closely with the federal courts to ensure appropriate judicial resourcing. An appointments process is currently underway for the Family Court in Queensland and the Federal Magistrates Court in Newcastle. In line with the transparent and merits based appointments process that has been introduced by Federal Labor, the Attorney-General has written to stakeholders inviting them to suggest the names of persons they consider would be suitable for appointment. The Gillard Labor Government encourages the Law Council to be involved in this process.

In addition, the creation of the Military Court of Australia will bring the possibility of new judicial appointments to that court, which may also hold dual commissions with other federal courts.

- ▶ Will you act promptly to implement the recommendations of the Family Violence Courts review conducted by Professor Chisholm, including the proposed legislative reforms?



Federal Labor is committed to strengthening the ability of the family law system to address family violence and protect children, and promote the early resolution of family disputes including through encouraging alternatives to court-based resolution. Federal Labor is currently considering the findings and recommendations of the 'Family Courts Violence Review' by Professor Richard Chisholm AM and the 'Evaluation of the 2006 Family Law Reforms' by the Australian Institute of Family Studies, as well as the report of the Family Law Council on these matters. We will outline our response in the coming months.

- ▶ Will you ensure that the integration of the two Family Law Courts is implemented promptly?

The *Access to Justice (Family Court Restructure and Other Measures) Bill* was introduced into Parliament on 24 June 2010. The Bill will implement the restructure of the Family Court as announced by Federal Labor on 5 May 2009, to make the Family Court of Australia the single court dealing with family law matters.

The Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee. Submissions on the Bill were due on 13 August 2010 and public hearings were scheduled for 27 August 2010. The Committee was due to report on the Bill on 21 September 2010 but the Bill has lapsed with the proroguing of Federal Parliament. If re-elected, Federal Labor will re-introduce this Bill and if referred again for inquiry, encourages the Law Council to participate in this process.

A re-elected Gillard Labor Government will continue to work with the federal courts and other stakeholders including the Law Council to ensure that this important reform for the future of Australia's federal courts is implemented promptly.

## The Coalition

The Coalition wants our justice system to operate efficiently and effectively. The Family law courts are especially important, as they are the point at which many Australians have their first exposure to the legal system.

The courts administering justice through that system need to be efficient, prompt, responsive and pragmatic. A Coalition government strongly supports the shared parent regime, which seeks to ensure that children affected by family breakdown are able to maintain a strong relationship with both of their parents.

## The Greens

The Greens are concerned to ensure there are sufficient judicial officers in the family law courts around the nation. We recognise the importance of minimising delays in people having matters considered and would be further concerned if the re-structure of the family law courts results in any detrimental impact on access to the family law system. The Greens are generally supportive of the recommendations of the Chisholm Review. Senator Rachel Siewert called on the Attorney-General to amend the *Family Law Act* as a matter of priority in light of the findings of the Chisholm report and noted that the Greens opposed the Howard Government's amendments at the time because of these concerns around family violence.

## Improving Protections Against Gender Equality and Discrimination

### The Law Council asks

- What steps will you take to overcome existing practical barriers for achieving gender equality in the workforce, and in particular, how do you plan to ensure Australian men and women enjoy equal pay for equal work?
- Will you conduct a public inquiry into the merits of replacing existing federal anti-discrimination Acts with a single Equality Act and introduce positive duties and other measures to address systemic discrimination issues?
- What measures will you take in response to the 2009 review of the *Equal Opportunities for Women in the Workplace Agency Act*?

### Responses

#### Australian Labor Party

- What steps will you take to overcome existing practical barriers for achieving gender equality in the workforce, and in particular, how do you plan to ensure Australian men and women enjoy equal pay for equal women?

Federal Labor strongly believes in pay equality based on our values of fairness and equity. Australian women still earn over 17 per cent less than men in weekly terms – and this is not fair.

By abolishing WorkChoices, Federal Labor got rid of industrial laws that weakened the rights of female employees and widened the gender pay gap. By creating a decent safety net, a stronger set of minimum national employment standards, a right to collective bargaining, increased superannuation and a fairer system for minimum wage increases, we are ensuring a fairer go for women workers.

In addition, through the *Fair Work Act*, Federal Labor has extended equal remuneration provisions to include the right of employees to equal pay for work of equal or comparative value – a more generous test that allows comparisons between comparable categories of work where the female-dominated category may have been historically under-valued.

Federal Labor has taken other important steps to address women's economic security.

The Paid Parental Leave scheme will give children the best start in life and prepare Australia for the economic and social challenges of the future.

Pension and superannuation reforms to ensure that more Australian women have greater financial security in their retirement will help women enjoy a decent retirement.

- Will you conduct a public inquiry into the merits of replacing existing federal anti-discrimination Acts with a single Equality Act and introduce positive duties and other measures to address systemic discrimination issues?

As part of its commitment to Australia's Human Rights Framework, Federal Labor in April 2010 announced its intention to streamline federal anti-discrimination laws into one single comprehensive law, to remove unnecessary regulatory overlap and make the system more user-friendly.

As part of this project to harmonise and consolidate federal anti-discrimination laws, there will be an opportunity to examine gaps in our laws and the effectiveness of remedies. Federal Labor will undertake consultation with stakeholders on the proposed single anti-discrimination law.

- What measures will you take in response to the 2009 review of the *Equal Opportunities for Women in the Workplace Agency Act*?

Federal Labor is currently considering submissions to the review of the *Equal Opportunities for Women in the Workplace Agency Act* and will respond in due course.

#### The Coalition

The Coalition strongly believes men and women should be paid the same amount for equal work. Business that unjustly discriminate against women, or any other group, would be not only falling foul of the law, but preventing their own businesses from attracting the best staff.

We have no plans to conduct formal inquiries into Commonwealth or State anti-discrimination legislation, but recognise that amendments to Commonwealth legislation may be necessary in respect of discrimination on the basis of sexual orientation.

The Coalition's paid parental leave scheme will give women more rights at work. For the first time Australian women will have access to a decent paid parental leave scheme after the birth of their child, which will provide women with full pay for six months including superannuation (up to an annual income of \$150,000).

## The Greens

The Greens have a long interest in issues of pay equity. In the debate on the *Fair Work Transitional Bill*, we moved amendments to ensure pay equity was specifically considered during the award modernisation process. Unfortunately, the amendments were not supported by the Government. The Greens fully support the current application by SACS workers for a pay equity order before Fair Work Australia, and hope it provides a useful precedent for achieving pay equity in other professions and industries.

Senator Hanson-Young participated in the recent Senate Committee Inquiry into the *Sex Discrimination Act* and supported the recommendation for a public inquiry to examine the merits of replacing the existing federal anti-discrimination acts with a single Equality Act. We appreciate the need for better legal mechanism to address systemic discrimination. We would like to see a strengthening of the EOWW Act so that it is better focused on achieving equality for women in the workplace.

## Workers Compensation

### The Law Council asks

- Will you commit to including representation of the legal profession, as a key stakeholder, on the special interest group for workers compensation harmonisation under Safe Work Australia?
- Will you commit the Commonwealth to supporting a harmonised workers compensation framework which ensures fair benefits for injured workers and reasonable access to common law entitlements?
- Will you commit to protecting injured workers' rights to legal representation in any workers compensation claims process, tribunal or court proceedings?

### Responses

#### Australian Labor Party

- Will you commit to including representation of the legal profession on the special interest group for workers compensation harmonisation under Safe Work Australia?

The Workers' Compensation Strategic Issues Groups (SIGs) membership, like all other SIGs, reflects the membership of Safe Work Australia (SWA). While the Law Council is not represented at this time, SWA has the capacity to add other experts as required.

- Will you commit the Commonwealth to supporting a harmonised workers compensation framework which ensures fair benefits for injured workers and reasonable access to common law entitlements?

The Workers' Compensation SIG will meet on 16 August 2010 to consider a draft Workers' Compensation Action Plan.

The draft Action Plan was developed out of a forum conducted by SWA earlier this year at which the Law Council was represented.

Currently, the main focus of SWA on Workers' Compensation is research and analysis.

- Will you commit to protecting injured workers' rights to legal representation in any workers compensation claims process, tribunal or court proceedings?

The Workers' Compensation SIG will meet on 16 August 2010 to consider a draft Workers' Compensation Action Plan.

The draft Action Plan was developed out of a forum conducted by SWA earlier this year at which the Law Council was represented.

Currently, the main focus of SWA on Workers' Compensation is research and analysis.

### The Coalition

We have no plans to change the existing workers' compensation arrangements.

### The Greens

The Greens agree it is important in the process of the Commonwealth moving towards harmonising workers compensation laws that the legal profession is included as a key stakeholder along with others and the outcomes of any harmonisation process ensures fair benefits for injured workers and rights to legal representation.

## Indigenous Issues

### The Law Council asks

- ▶ Will you support the immediate, full and unconditional reinstatement of the *Racial Discrimination Act 1975* in the Northern Territory?
- ▶ Will you commit to reform of the *Native Title Act 1993* to provide for a "presumption of continuity", or presumption against native title extinguishment?
- ▶ Will you commit to funding the mandatory provision of Indigenous language interpreter services for Aboriginal and Torres Strait Islanders subject to police interviews or court proceedings, where required or requested?
- ▶ Will you commit to implementing the United Nations Declaration on the Rights of Indigenous Peoples in Federal law and policy, if necessary by legislative amendments?
- ▶ Will you commit to developing better legislative protection for Indigenous intellectual and cultural property rights, including rights over traditional knowledge, artistic designs and communally owned cultural property?
- ▶ Will you commit to considering areas in which Aboriginal customary law might be incorporated into the Australian legal system, where compatible with Australia's international human rights obligations, as recommended by the Australian Law Reform Commission?
- ▶ Will you commit to greater funding towards alternative justice mechanisms directed at Aboriginal offenders, including Aboriginal courts, as a demonstrated effective means of reducing rates of recidivism and increasing Indigenous community involvement in and ownership of the justice system?
- ▶ Will you commit to the development of lasting equitable settlements between Indigenous Australians and the Australian Government, including through the negotiation of treaties and other constructive agreements?

## Responses

### Australian Labor Party

- ▶ Will you support the immediate, full and unconditional reinstatement of the *Racial Discrimination Act 1975* in the Northern territory?

Federal Labor is committed to compliance with the *Racial Discrimination Act* in the development of policies relating to Indigenous Australians. The new income management scheme came into effect on 1 July 2010 and will be rolled out across remote, regional and urban areas of the Northern Territory. A comprehensive evaluation in 2011-2012 will inform further rollout to disadvantaged areas around Australia.

Federal Labor has reinstated the *Racial Discrimination Act* in the Northern Territory Emergency Response. The Gillard Labor Government's welfare reforms are designed to be non-discriminatory and do not rely on the suspension of the *Racial Discrimination Act*.

- Will you commit to reform of the *Native Title Act 1993* to provide for a "presumption of continuity", or presumption against native title extinguishment?

Federal Labor understands that land and water are the basis of Indigenous spirituality, law, culture, economy and well-being. Native title and land rights are both symbols of social justice and valuable economic resources to Indigenous Australians.

The Gillard Labor Government supports land rights and native title as property rights under Australian law and will work to accelerate the resolution of outstanding land and native title claims in partnership with other stakeholders. We believe that negotiation produces better outcomes than litigation and that land use and ownership issues should be resolved by negotiation wherever possible.

Federal Labor is committed to ongoing reform of Australia's native title system. We will continue to work to ensure that it evolves to meet the needs of users, and encourages the effective and efficient resolution of native title claims by shifting the focus from process to outcome. Federal Labor has:

- Implemented institutional reforms, which give the Federal Court a central role in managing native title claims aimed at achieving quicker and more flexible settlements.
- Begun a process of consultation on reforms aimed at promoting leading practice in the governance of native title payments and in agreement making.
- Begun a process of consultation on reforms to the tax arrangements for native title payments.

- Will you commit to funding the mandatory provision of Indigenous language interpreter services for Aboriginal and Torres Strait Islanders subject to police interviews or court proceedings, where required or requested?

The Gillard Labor Government agrees that access to interpreter services is vital to ensuring that individuals understand their rights and responsibilities and, in particular, matters relating to law and justice.

There is currently a Memorandum of Understanding between the Federal Government and the Northern Territory Government for interpreter services to Indigenous Australians. The funding provided under the agreement supports law and justice agencies in the Northern Territory and allows free access to interpreters for Indigenous legal aid providers, Family Violence Prevention Legal Services units and Community Legal Centres. Interpreter services will receive a total of \$1.8 million in 2010-11.

Funding allocated under the Closing the Gap initiative in the Northern Territory assists with meeting the increased demand for interpreter services as a result of the Northern Territory Emergency Response. This increased support allows legal assistance service providers to assist Indigenous people in understanding their rights and obligations.

Additionally, under the Remote Service Delivery National Partnership Agreement, Federal Labor is contributing \$19.8 million over six years for Indigenous translation and interpreting services, and the States will be contributing \$18.9 million. The Gillard Labor Government will be working with the States and the Northern Territory to develop and introduce a national framework for the effective supply and use of Indigenous language interpreters and translators.

- Will you commit to implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in Federal law and policy, if necessary by legislative amendments?

In April 2010, the Federal Labor indicated its formal support for the *UN Declaration on the Rights of Indigenous Peoples*. While the Declaration is non-binding and does not affect existing Australian law, it sets important international principles for nations to aspire to and our support for the Declaration underlines the Gillard Labor Government's desire to work in good faith with Indigenous people.

- Will you commit to developing better legislative protection for Indigenous intellectual and cultural property rights, including rights over traditional

knowledge, artistic designs and communally owned cultural property?

Australia's Indigenous peoples represent the oldest continuing cultures in human history.

Australia's Indigenous cultures enrich the nation and are integral to our national identity making Australia unique in the world. Federal Labor recognises that the preservation and revitalisation of endangered Indigenous languages is a critical issue. We will work to ensure adequate protection of Indigenous cultural heritage and intellectual property.

In 2009, the Gillard Labor Government ratified the *United Nations Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. The convention outlines which outlines protective measures for cultural goods, services and activities and encourages countries to take these measures to protect and promote their culture. It also promotes international dialogue and cooperation in protecting cultural expressions, particularly those in immediate danger or at risk of extinction.

- Will you commit to considering areas in which Aboriginal customary law might be incorporated into the Australian legal system, where compatible with Australia's international human rights obligations as recommended by the Australian Law reform Commission?

In November 2009, the Federal Labor requested that the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs look into the high involvement of young Indigenous children and young adults in the criminal justice system.

One of the issues that was subsequently referred to the Committee for consideration was the question of customary law. The Committee received a number of submissions and undertook public hearings. This inquiry lapsed with the 42nd Parliament but Federal Labor will continue to monitor the sentencing of Indigenous Australians to determine whether change is necessary.

- Will you commit to greater funding towards alternative justice mechanisms directed at Aboriginal offenders, including Aboriginal courts, as a demonstrated effective means of reducing rates of recidivism and increasing Indigenous community involvement in and ownership of the justice system?

Federal Labor is concerned about the disproportionate number of Aboriginal and Torres Strait Islander people in custody.

We have made an unprecedented investment in measures aimed at Closing the Gap between Indigenous and non-Indigenous Australians.

While criminal justice matters, including policing and corrections, are largely State and Territory responsibilities the Gillard Labor Government is working closely with States and Territories to address the issues that impact on the high level of contact with the justice system.

A National Indigenous Law and Justice Framework has also been developed. This Framework represents the first nationally agreed approach to tackling Indigenous law and justice issues.

The Framework has been supported by an investment of over \$33 million to fund night patrol services in 81 Indigenous communities and additional police officers in remote Northern Territory communities.

In addition, the Gillard Labor Government recently announced it will provide \$3.4 million for additional police officers to be located in eight remote Northern Territory Indigenous communities. The additional police will focus on community engagement to build trust and confidence in the justice system in order to strengthen local safety and security.

- Will you commit to the development of lasting equitable settlements between Indigenous Australians and the Australian Government, including through the negotiation of treaties and other constructive agreements?

Federal Labor is committed to a more flexible, less legalistic, approach to native title that delivers practical outcomes, including opportunities for Indigenous Australians and certainty for landholders and industry.

To this end we have supported the process of negotiation which has led to the introduction of the Victorian Government's Traditional Owner Settlement Bill in their Parliament and will provide support for future settlements.

We have also invested over \$50 million to build a more efficient native title system and provided the Federal Court with powers to manage native title claims from start to finish, allowing opportunities for negotiated settlements to be more effectively identified and progressed.

We have also demonstrated a preparedness to negotiate Regional Partnership Agreements canvassing service delivery arrangements such as the agreement on Groote Eylandt in the Northern Territory.

## The Coalition

A Coalition Government will accelerate action to replace the inaction of the Labor Government on Indigenous affairs. We will end Labor's overly bureaucratic processes and deliver the support and infrastructure that Indigenous Australians were promised but failed to receive under Labor.

The Coalition will not alter the current law to incorporate elements of any other legal system. The Coalition will not countenance the creation of a parallel court system with the power to make determinations affecting the broader rights of individuals or property interests and, in particular, any parallel system that conflicts with domestic legislation.

We will not incorporate any aspects of the *United Nations Declaration on the Rights of Indigenous Peoples* into domestic law or regulations.

We have no plans to amend native title legislation.

The Coalition will take meaningful and effective action to improve the lives of Indigenous Australians. We do not intend to pursue any 'treaties' or agreements with Indigenous people, which we believe will divide Australian people rather than unite them.

The Coalition supported the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill* in the Senate, which repealed provisions in the *Northern Territory Emergency Response Act 2007* that limited the application of the *Racial Discrimination Act 1975* and State and territory anti-discrimination laws.

When last in government, the Coalition took decisive action to end the isolation and disadvantage experienced by Indigenous people. The intervention launched in the Northern Territory was an example of the Coalition's resolve to improve the health, education and employment outcomes for Aboriginal and Torres Strait Islander Australians living in the Northern Territory.

After delivering the historic apology to Indigenous Australians there was an expectation that the Labor Government would honour their promises to build houses, reduce unemployment and address the chronic health conditions suffered by many Aboriginal and Torres Strait Islanders.

The Labor government's two *Closing the Gap* Reports to Parliament have confirmed that no meaningful progress has been made by Labor on reducing Indigenous disadvantage. The achievements of the previous government progress have been lost.

Similarly the 2009 Productivity Commission report, 'Overcoming Indigenous Disadvantage' showed evidence of worsening social indicators for Indigenous Australians.

## The Greens

The Greens opposed the suspension of the RDA in the NTER and have consistently supported the reinstatement of the RDA in the Northern Territory. Senator Rachel Siewert introduced a Private Senators Bill to immediately, fully and unconditionally reinstate the *Racial Discrimination Act* in the Northern Territory. The Government did not support the Bill being debated.

Senator Siewert has circulated amendments to the *Native Title Act* providing for a presumption of continuity. The amendments are yet to be debated in the Senate.

The Greens are committed to the implementation of the *United Nations Declaration on the Rights of Indigenous People*. We support funding for the mandatory provision of Indigenous language interpreter services for police interviews and court proceedings and alternative justice mechanisms. We also support considering appropriate areas for the recognition of customary law.

We are committed to developing better protection for Indigenous intellectual and cultural property rights. In the recent parliamentary debate on legislation establishing a resale royalty rights scheme, the Greens moved amendments to recognise Indigenous communal ownership of the resale royalty right. The amendments were not supported by the Government.

The Greens' *Aboriginal and Torres Strait Islander Peoples policy* acknowledges the prior occupation and sovereignty of Aboriginal and Torres Strait Islander people and the their right to be partners in the development and implementation of public policies, programs and services. We are committed to a treaty that recognises the prior occupation and sovereignty of Aboriginal and Torres Strait Islander peoples and to reparations for the Stolen Generations.



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