

1. Rollback all of the Unjustified 'Counter-Terrorism' Provisions

Many privacy-hostile measures have been enacted, on the pretext that they are somehow necessary to protect public security. Changes are needed. All accesses by all agencies, including all national security and law enforcement agencies, require prior justification and a judicial warrant.

Labor makes no apology for its support for strong anti-terrorism measures. However we recognise the importance of ensuring that anti-terrorism measures do not impinge inappropriately on the protection of individual privacy and personal freedom.

Labor's first priority is the defence and security of our nation and its people, ensuring Australians are free and safe to go about their daily lives.

Every piece of legislation on the issue of national security or law enforcement needs to strike a balance between the legitimate rights of the community to safety and security, and the rights and civil liberties of individuals.

Labor has advocated the following key principles when considering these laws:

- *Special anti-terrorist laws that would not normally be adopted in a free and open society such as ours must be subject to a meaningful sunset clause;*
- *The detention of any citizen for an extended period of time must be based only on sound intelligence of a credible threat and be authorised by a judge, not a bureaucrat or politician;*
- *The operation of these laws should be as transparent as is possible including regular reporting to Parliament of the application of anti-terrorism laws and;*
- *Accountability of those involved in covert activities to well resourced oversight bodies such as the Inspector-General of Intelligence and Security (IGIS) and the Parliamentary Committee on Security and Intelligence is essential.*

This has been our approach both in government and in opposition.

However, since the Howard Government has gained control of the Senate, it has used its numbers to force through new laws without regard to the concerns raised by Labor and others.

In 2005, a first draft of the Anti-Terrorism Act (No. 2) was produced which did not meet the balance between national security and civil liberties – it contained draconian and ill-adapted laws on sedition, effectively no judicial scrutiny on control orders, no merits review of preventative detention and only a distant review clause.

The preferred legislation of the Prime Minister at that time effectively authorised administrative detention, allowing politicians and public servants to decide who was to be detained and jailed.

Labor opposed the first draft of the Bill, ultimately forcing the Howard Government to go back and rewrite the legislation to accommodate many of our concerns. Very

substantial changes were made between the first and second draft of the Bill. The revised draft included – for instance – much greater scope for judicial scrutiny on control orders.

2. Cancel the 'KYC' Requirements Imposed on Businesses

Under the guise of anti-money-laundering provisions, so-called AML-CTF legislation is about to come into effect. It substantially widens and deepens requirements of business enterprises to 'Know Your Customer', far beyond the '100-point check'. The enlistment of companies as State informers is not consistent with a free and open society, but rather with East Germany under the Stasi.

Labor recognises the tensions between individual privacy and tracking down terrorist financing and money laundering. Labor has supported the AML-CTF legislation as a tough but necessary measure. This measure is essential in Australia meeting its international Financial Action Task Force obligations to combat terrorist financing and money laundering.

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In Parliament, Labor has consistently criticised the raft of delays and drafting errors which plagued the first tranche of the Anti-Money Laundering and Counter-Terrorist Financing legislation. The legislation was first promised in 2003 – and the first tranche was not even introduced until four years later.

The government mismanaged the process so badly that – in mid-2005 – the then-Minister for Justice and Customs was forced to redraft the legislation, after a consistent failure to properly consult with industry on the legislation.

Labor supports AML-CTF legislation, but we believe that these laws should be worked through with all stakeholders and worked through in a deliberative and consultative framework – not in the slipshod manner that has plagued their implementation to date.

3. Declare a Moratorium on All Biometrics and RFID-Tagging of Humans

The Biometrics industry is immature, is plagued by high error-rates and misinformation, and is creating profound risks for the future of personal information security. A significant number of grossly intrusive projects are in progress. They need to be halted, pending public information and consultation processes, followed by enactment of strong and enforceable laws regulating the use of all such technologies by all agencies and corporations.

Labor recognises the substantial privacy concerns raised by biometric technologies and RFID tags. Labor does not support RFID tagging of humans. We note that the

ALRC review is examining the option of Privacy Impact Statements and will properly assess the ALRC recommendations on this issue, when they are released.

4. Establish Standards and Guidelines for Public Consultation

Many major government initiatives have substantial negative impacts on privacy and other interests. But agencies are avoiding the involvement of the public in their conception, design and implementation. Authoritative documents need to be negotiated that set minimum standards, and that guide the more enlightened agencies in the conduct of effective consultation processes.

We note that the ALRC review is examining the option of Privacy Impact Statements, and note also that there is growing international recognition of this as an effective way of ensuring that personal privacy concerns are taken into account in the process of government decision making and implementation of new systems, technologies and programs. Labor will properly assess the ALRC recommendations on this issue, when they are released.

5. Prevent the Inappropriate Export of Personal Data

Many countries have even less protection for personal data than Australia. There is supposed to be a prohibition against the export of personal data to such countries. Yet corporations and government agencies are releasing data to places like India and the USA. The Government and the Privacy Commissioner must fulfil their responsibility to get those data flows back under control.

Federal Labor has strongly criticised the failure to protect Australians' privacy in the Privacy Act.

*In 2006 Labor announced that we will require organisations that send personal data overseas for processing that they must inform their customers. The Member for Chisholm, Anna Burke, presented the **Privacy Protection for Off-shoring Bill 2007**, a Private Member's Bill to Parliament on June 18 2007, to require notification to customers of offshore data transfer. This legislation stated that "if a corporation transmits personally identifiable information to entities for processing outside Australia, at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a corporation must provide a clear and conspicuous disclosure to such consumer in writing or in electronic form of the corporation's policies and practices with respect to the transmission of personally identifiable information".*

We will examine the results of the Australian Law Reform Commission's current review of privacy, due to be released in March 2008. Labor will properly assess the ALRC recommendations on this issue.

6. Establish an Open Appointment Process for the Privacy Commissioner

Successive Privacy Commissioners have been appointed in secret by the Attorney-General. They have been captured by the bureaucracy and by industry associations. The position must be openly advertised, appointment criteria must be transparent, the selection committee must be representative of the public rather than of the organisations the appointee is meant to regulate, and the appointee must be attuned to the interests of the public rather than those of government and business.

Federal Labor strongly supports transparent and accountable appointment process. Under the Howard Government, too many senior appointments have been made on the basis of loyalties to the Liberal Party rather than on the basis of merit.

Labor does not have a specific policy on the process of appointing the Privacy Commissioner. However we refer you to our announcements on similar appointments relating to the ABC Board and Fair Work Australia as indicators of our priority of ensuring greater transparency in public appointments.

On June 5 Kevin Rudd announced that a Labor Government will restore the integrity of institutions like the ABC by adopting a new selection process for ABC Board candidates based on the United Kingdom's Nolan Rules. ABC Board nominations will be considered by a panel established at arms length from the Communications Minister. The panel will provide a recommended shortlist to the Communications Minister. Should the Minister choose a candidate not on the shortlist, the Minister would be required to give their reasons for doing so to Parliament. The ABC Chairman would be nominated by the Prime Minister and endorsed by the Leader of the Opposition.

Similarly, Labor has announced a new process for appointments to Fair Work Australia (the body that will replace the Australian Industrial Relations Commission and four other Howard Government industrial relations agencies). Under Labor, candidates will be scrutinised by a panel of senior officials from the Department of Workplace Relations; the Australian Public Service Commission; and, from each State and Territory department of industrial relations. We will also consult the Opposition spokesperson for industrial relations and the head of Fair Work Australia to consider the short-list of candidates.

7. Strengthen Controls over Telemarketing

The valuable Do Not Call Register initiative has been seriously weakened by government compliance with lobbying by industry and by political parties. These weaknesses must be overcome.

The Do Not Call register sprang from consistent lobbying efforts led by Labor backbencher Anna Burke, including her Private Members Bill to create such a register. The Howard Government was strongly critical of the idea of a Do Not Call Register but finally surrendered to strong community opinion in 2006.

Labor supports the Do No Call Register and we have opposed measures to water it down. Labor will ensure that the Do Not Call Register works effectively so that Australians can enjoy time with their family and to themselves without unwanted intrusions from telemarketing calls.

8. Withdraw the Access Card Proposal, Make Appropriate Use of Smartcards

The 'Access Card' project has been shown up as an attempt to impose a national identification scheme and an ill-conceived waste of taxpayers' money. The project must be abandoned. A new project should be commenced to upgrade the Medicare card, using smartcards to protect privacy as well as to assist agencies' operations and support their social control objectives.

Labor has always been concerned about the Access Card, because it poses unacceptable risks to Australian's privacy and could make it easier for people intent on committing identity fraud to do so.

Labor is also concerned that this project could cost more than it will save. It was recently revealed that the Australian National Audit Office (ANAO) intends to conduct an audit into the proposed Access Card, because of the potential for cost blow-outs and the delays in the tender process. This is another vote of no-confidence in the Access Card project, which has become an expensive debacle.

Australians are rightly nervous about the amount of personal information that is compulsory for display on the Access Card, and what may be added to the chip or register over time. Labor has serious concerns about the information that would be stored on the chip particularly, because it appears the chip can be read by anyone who purchases a \$10 smartcard reader from their local electronic store.

Labor will not support half-baked proposals that could end up costing the taxpayer much more than they save or put Australians' privacy at risk.