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Chair's Introduction

On behalf of the Directors of the Public Interest Advocacy Centre, I am pleased to introduce the Annual Report for 2004-05: a period of some change and considerable accomplishment.

In June 2004, Andrea Durbach resigned as PIAC's Director to become an Associate Professor of Law and Director of the Australian Human Rights Centre at the University of NSW. As well as numerous other initiatives and achievements of PIAC under her directorship, Andrea worked tirelessly to redress injustice to Indigenous Australians. We thank her and wish her every success.

PIAC welcomed Robin Banks as its Chief Executive Officer in the middle of June 2004. Apart from her vision, strong commitment to human rights and her business skills, Robin brings extensive corporate and community legal experience.

The most tangible change this year was the move to the long-sought new premises after outgrowing the York Street office. After several years of patient searching, dashed hopes and declining working conditions, PIAC's ambitions for greater security of tenure and appropriate conditions have been well realised in the accessible and salubrious offices at level 9, 299 Elizabeth Street. Staff handled the inevitable disruption with their characteristic energy, competence and generosity. I also take this opportunity to extend the thanks of my colleagues on the Board, PIAC CEO and senior staff to Allens Arthur Robinson for their long-term assistance to PIAC in the lease negotiation processes. This has not only involved assistance with the successful move, but on two previous occasions where, due to circumstances beyond our control, the lease negotiations fell through. Thanks in particular to partners, Tim Manefield and Victoria Holt.

This Annual Report records the ways in which PIAC continues its contribution to a civil society. Its work draws on broad professional skills and experience and involves casework, advocacy, litigation, research, policy development, training, education, lobbying and forging co-operative alliances. PIAC shows itself to be flexible and effective in this process. Its training programs can enhance community skills, empowering people and organisations to meet new challenges. Public interest litigation seeks systemic change, but it also provides a service to the individual whose rights are affected.

This year the Board welcomed new Directors: Ben Slade in October 2004 and the Hon Kevin Rozzoli in May 2005. At the end of the financial year, the Board was finalising arrangements for Britta Bruce to join its numbers. We are grateful for the considerable contribution made by Joanna Kalowski and Phillip Bates who did not seek re-appointment at the last Annual General Meeting. The Hon Elizabeth Evatt AC retired as Chair of the Board of Directors in October 2004 after four years of distinguished, wise and gentle leadership.

With a vigorous Board and admirable staff I look forward PIAC's continuing its vibrant advocacy in the public interest.

Annette O'Neill
October 2005

About PIAC

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal and policy centre. PIAC seeks to promote a just and democratic society and to empower individuals and groups, particularly those who are disadvantaged and marginalised. Using legal, policy, communication and training initiatives, PIAC makes strategic interventions in public interest matters.

PIAC was established in July 1982 as an initiative of the Law Foundation of New South Wales with the support of the NSW Legal Aid Commission. Since that time it has grown from a staff of four to a paid staff at the end of the 2004-05 financial year of twenty-two, seven of whom work on a part-time basis. In addition to core staff, PIAC has a College of Law student on placement, a solicitor seconded to the Public Interest Law Clearing House (PILCH), a student from the University of Sydney one day a week and, from time to time, additional secondees, consultants and volunteers.

Whenever possible, to achieve its aims PIAC works co-operatively with other public interest groups, community and consumer organisations, community legal centres, private law firms, professional associations, academics, experts, industry and unions. PIAC provides its services free or at minimal cost.

What PIAC does

PIAC aims to:

- expose unjust or unsafe practices, deficient laws and policies;
- seek redress in public interest matters for those who are marginalised or unrepresented;
- promote accountable, transparent and responsive governance;
- facilitate, influence and inform public debate on public interest matters;
- promote the development of case and statutory law that better reflects the public interest;
- enhance the capacity of community organisations to pursue the interests of the communities they represent;
- promote and develop the protection of human rights; and
- maintain a national profile and impact.

PIAC Criteria

As demand for services often exceeds capacity and resources, PIAC must be selective in targeting the issues it will work on and matters or projects to be undertaken. PIAC gives priority to issues affecting identified groups within the general community where there is significant harm or adverse impacts being experienced by or likely to affect disadvantaged sectors of the community

The key questions asked by PIAC when selecting issues are:

- Is the issue consistent with PIAC's Charter and Strategic Plan?
- Can PIAC make a significant impact in the short to medium-term?
- Does PIAC have the capacity and resources to act effectively?
- Would PIAC be duplicating the efforts of others or can PIAC work in alliance with others?
- Can legal, policy, communication and training strategies be integrated?

Directors

The Hon Elizabeth Evatt AC	Retired as Chair on 28 October 2004 Continuing as a Director
Annette O'Neill	Appointed Chair on 28 October 2004 Nominee of the NSW Law and Justice Foundation to 26 October 2004
Philip Bates	Retired 28 October 2004 Barrister, Sir Owen Dixon Chambers
Alan Cameron AM	Management Consultant
Bill Grant	Nominee of the Legal Aid Commission of NSW Chief Executive Officer, Legal Aid Commission of NSW
Shauna Jarrett	Nominee of the Law Society of NSW Councillor of the Law Society of NSW
Joanna Kalowski	Retired 28 October 2004 Management / Training Consultant
Rodney Lewis	Partner, Dormers Legal Author, <i>Elder Law in Australia</i> , 2005 NSW Branch, International Commission of Jurists
Gary Moore	Director, NSW Council of Social Services
The Hon Kevin Rozzoli	Appointed 5 May 2005 Nominee of the NSW Law and Justice Foundation Former Member for Hawkesbury and Speaker of the Legislative Assembly
Ben Slade	Appointed 28 October 2004 Deputy Chair Principal/Partner, Maurice Blackburn Cashman
Merrilyn Walton	Associate Professor in Ethical Practice, University of Sydney

PIAC Staff

Robin Banks	Chief Executive Officer
Madeleine Bennison	Financial Manager
Jane King	Centre Co-ordinator
Simon Moran	Principal Solicitor
Pat Ranald	Principal Policy Officer
Jemma Bailey	Trade Justice Campaigner (commenced November 2004)
Alexis Goodstone	Senior Solicitor
Marion Grammer	Book-keeper
Elissa Freeman	Policy Officer (UCAP)
Ellena Galtos	HPLS Policy Officer (commenced January 2005)
Emma Golledge	HPLS Co-ordinator (commenced August 2004)
Carolyn Grenville	Training Co-ordinator
Anne Mainsbridge	Solicitor
Sarah Mitchell	Administrative Officer (returned from maternity leave June 2005)
Jason Mumbulla	Computer Systems Administrator
Melissa Pinzuti	Legal Secretary
Fabiola Rofael	Receptionist
Katharine Slattery	Policy Administrative Officer
Charmaine Smith	Solicitor (commenced March 2005)
Jane Stratton	Policy Officer (commenced January 2005)
Jim Wellsmore	Senior Policy Officer (UCAP)
Nya Gregor Fleron	HPLS Administrator (August 2004 to April 2005)
Annie Pettitt	Policy Officer (resigned March 2005)

Shaz Rind

Solicitor (resigned February 2005)

Cathy Sharp

Casual Trainer (resigned December 2004)

Louise Southalan

Fair Trade Campaigner (resigned December 2004)



PIAC Staff in May 2005

Front Row: (left-right) Jim Wellmore, Hugh O'Neill, Sarah Winter, Emma Golledge, Simon Moran

Middle Row: Pat Ranald, Charmaine Smith, Alexis Goodstone, Jemma Bailey, Robin Banks, Sandra Stevenson, Katharine Slattery, Melissa Pinzuti

Back Row: Carolyn Grenville, Fabiola Rofael, Ellena Galtos, Anne Mainsbridge, Jane King, Jane Stratton, Elissa Freeman

Absent: Madeleine Bennison, Marion Grammer, Sarah Mitchell, Jason Mumballa

PILCH Staff

Robin Banks	Director
Sandra Stevenson	Co-ordinator
Madeleine Bennison	Financial Manager
Melissa Pinzuti	Legal Secretary
Sarah Winter	Paralegal (February to June 2005)
Cath Duff	Project Officer (contract ended September 2004)

Consultants and temporary staff

Bernie Brown	Presentation Skills Training Dealing with Difficult Situations Training for HPLS Lawyers
Kathy Brown	Locum Administrator
Consumer Credit LC	Katharine Lane, Principal Solicitor Induction Training for HPLS Lawyers
Leonie Jennings	Records Management Consultant
Craig Johnston	Demand Management Water Pricing Research
Marrickville LC	Pip Davis, Solicitor Induction Training for HPLS Lawyers
Lynette Simons	Media Skills Training
Tenants Union of NSW	Simone Montgomery, Training Officer and Nick Eastman, Litigation Solicitor Induction Training for HPLS Lawyers
Urbis Key Young	Utilities Disconnection Project
WestWoodspice	HPLS Evaluation

Placements, Secondees and Volunteers

College of Law Placements

Ryan Verzosa	(May to September 2004)
Suzan Hanna	(September to December 2004)
Sophie Clarke	(December 2004 to February 2005)
Hugh O'Neill	(March to July 2005)

Student Placements and Volunteers

Kristin MacIntosh	University of Sydney Placement (August to October 2004)
Sarah Winter	Summer Clerk (January 2005)
Laura Thomas	University of Sydney Placement (March to June 2005)

PILCH Secondees

Catherine Capelin	Minter Ellison (June to September 2004)
Davyd Wong	Henry Davis York (October 2004 to January 2005)
Alex Newton	Malleson Stephen Jaques (commenced June 2005)

PIAC thanks the following for their assistance and support

Barristers who provided advice and representation

David Rofe QC	John Basten QC	Mark Best
Dr Geoffrey Flick SC	David Buchanan SC	Claire Howell
Stephen Gageler SC	Robertson Wright SC	Pat Griffin
Tom Molomby SC	Chris Ronalds SC	Rachel Pepper
Mark Boulton	Kevin Connor	Kylie Nomchong
Lucy McCallum	Ian Neil	Simeon Beckett
Daniel Brezniak	Nye Peram	Dr Kathy Sant
Kate Eastman	Geoffrey Kennett	Dr Sarah Pritchard
Grant Carolan	Matthew Darke	Jeremy Kirk
Kate Sainsbury	Lincoln Crowley	Sean Docker
Rachel Francois	Professor George Williams	

People who have provided HPLS or other training

Catherine Capelin, Senior Lawyer, Minter Ellison
Jackie Finlay, Solicitor, Welfare Rights Centre
Barry Frakes, Partner, Watts McCray
Harriet Grahame, Barrister
Peter McDougall, Legal Officer, Grants – Civil Law Section, Legal Aid Commission of NSW

PIAC thanks the following for their assistance and support

Kylie Nomchong, Barrister

Nick O'Neill, Former President, Guardianship Tribunal

Teresa O'Sullivan, Manager, Children's Legal Services, Legal Aid Commission of NSW

Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre

Organisations that have provided training facilities

Allens Arthur Robinson

Baker & McKenzie

Clayton Utz

PricewaterhouseCoopers

TressCox

Watts McCray

Government and Democracy

PIAC continued to focus on the issue of government accountability and ensuring a healthy and effective democracy. This is central to all of PIAC's work as a public interest organisation and much of its work in other areas touches on ways in which participatory democracy can be strengthened.

The opportunity arose to address issues of concern in relation to both federal and local government elections in the last year, with PIAC making a submission and giving evidence to the Joint Parliamentary Committee on Electoral Matters' Inquiry into the 2004 Federal Election, and assisting in cases under the *NSW Local Government Act 1993* (NSW) to challenge the validity of election results where irregularities were alleged.

Through its core training courses, *Work the System* and *Effective Advocacy*, PIAC continued to work with members of the community—both as individuals and through organisations—to develop the skills needed to be effective advocates.

PIAC was also concerned to ensure that changes proposed to the federal system of challenging government administrative decisions did not undermine the integrity and independence of that system.

Out of concern to ensure that active participation in community debate and public

protest is protected, PIAC was involved in public discussions about the impact of proposed uniform defamation laws on free speech and on the use of SLAPP (strategic litigation against public participation) suits. PIAC supported the approach being adopted by the state and territory governments to exclude corporations from a right to sue for defamation. This approach is in contrast to the position advocated by the Federal Attorney-General.

Federal Election 2004

After each Federal Election, the Joint Parliamentary Committee on Electoral Matters conducts a broad-ranging inquiry into the conduct of the election. For the first time this year, PIAC made a submission to the Inquiry.

Given PIAC's long-standing focus on accountability of government and the need to ensure an effective civil society, this Inquiry was seen as a prime opportunity to identify and comment on concerns with the electoral process and provide suggestions for change. PIAC had been particularly concerned about

renewed calls for the abolition of 'compulsory voting' based on the level of informal vote at the 2004 Federal Election.

In its submission, PIAC focused on:

- the duty and right to vote and requirement to do so;
- closing of the electoral rolls;
- postal and remote polling;
- disenfranchisement of prisoners;
- preferential voting systems;
- electoral terms; and
- truth in campaigning.

In relation to 'compulsory voting', PIAC observed the need to understand the myriad reasons an informal vote may be cast, rather than relying on a simplistic and politically opportunistic view that it is an expression of discontent with having to vote.

The submission also argued against any reduction in time between the issuing of the electoral writs and the closing of the electoral

rolls. This grace period is important for ensuring that transient and first-time voters are not excluded from the rolls.

Parliament had, prior to the Federal Election, removed the eligibility to vote from prisoners serving terms of three or more years. PIAC raised a potential constitutional objection to this legislation, as well as observing that it breaches Australia's international human rights obligation to ensure equal and universal suffrage.

PIAC argued that before Parliament legislates to actively disenfranchise any potential voter, it must have clear, cogent and compelling reasons to do so.

Focusing on improving voter confidence and understanding of the electoral process, PIAC also called for a clearer mechanism for the allocation of voter preferences, and for fixed, four-year terms for the Federal House of Representative.

PIAC subsequently gave evidence to the Joint Parliamentary Committee hearing and will continue to focus on a range of strategies to strengthen democratic processes and community participation in political and civil society.

Freedom of information and national security

PIAC is working on a joint project with the American Civil Liberties Union (ACLU) to bring into the public domain documents in relation to whether detainees held under the supervision of personnel of the Australian Defence Forces have suffered any torture or cruel or inhuman treatment. PIAC also sought protocols or guidelines for the treatment of detainees. To this end, PIAC made an application under Federal freedom of information legislation.

The ACLU, through a similar application in the USA, was been successful in obtaining a large number of documents. PIAC anticipates that there will be a number of difficulties that it will have to overcome to obtain the documents, such as the cost of paying for the finding, consideration and delivery of the documents and the exemptions relating to documents affecting national security, defence or international relations.

Advocacy Training

PIAC has been a Registered Training Organisation since 1999. It is now registered with the Vocational Education and Training

Accreditation Board to issue the training qualification *Undertake Systems Advocacy*.

The *Undertake Systems Advocacy* unit of competence is nationally recognised and can provide opportunities to complete Certificate IV and Diploma level qualifications. Participants who are not studying for a qualification in this field can still receive formal recognition of their skills in the area of systems advocacy.

Participants can gain this formal recognition of their skills by completing an assessment that consists of writing a report of an advocacy campaign with which they have been involved. Participants use an Assessment Booklet designed by PIAC to guide them through the assessment process.

Since PIAC achieved this registration, a small number of training participants have gained formal recognition of their skills by completing an assessment. We plan to boost these numbers by promoting our new assessment protocol during 2005-2006.

Of course, participants can still attend PIAC training without completing any assessment. Under these circumstances participants receive a certificate of attendance.

Work the System: an introduction to advocacy

PIAC's training program is an extension of its advocacy work in the public interest. PIAC training aims to provide opportunities for community workers and other advocates to improve their skills in advocacy to advance the interest of their clients groups. A key component of PIAC's training is to offer to the general public PIAC's accredited course, *Work the System: an introduction to advocacy*, and the more advanced, *Effective Advocacy Skills & Strategies*.

In 2004, PIAC continued the process of reviewing the course materials for *Work the system: an introduction to advocacy* course. The *Negotiation Skills* and *Media Skills* modules have been reviewed. Both these training modules now include role-play activities so participants have an immediate opportunity to practice the skills and strategies they are learning.

During 2004-2005, a total of 98 people attended *Work the System: an introduction to advocacy*, and 83 people attended PIAC's other public course, *Effective Advocacy Skills & Strategies*. Public courses were held in the Sydney CBD, Wollongong, and Penrith.

PIAC customises training to meet the learning needs of particular organisations, and delivers

training at times and locations that are convenient. During 2004-2005, PIAC delivered 27 in-house training courses, over more than 40 days to the following organisations:

- Far West Area Health Service Consumer Representatives (Dareton);
- Nature Conservation Council of NSW;
- Mount Druitt/Blacktown Learning Difficulties Support Group;
- Benevolent Society;
- Villawood Residents Group (and Villawood Food Action Group);
- Parks and Village Service;
- Mountains Community Resource Network;
- Chronic Illness Alliance;
- Australian College of Physical Scientists and Engineers in Medicine, NSW Branch;
- Vision Generation (World Vision);
- Marrickville Community Legal Centre;
- Southern Cross University Advocacy Summer School;
- TEAR;
- Warilla Community Advocate, Warilla Neighbourhood Centre;
- Official Visitors' conference, NSW Ombudsman;
- South West Disability Network.

Training partnerships

The year also saw PIAC continue its partnership with the Cancer Council NSW to train its consumer advocates, encouraging them to become active and effective advocates for improved health policies and systems. This involved PIAC presenting three two-day training courses in Sydney, the Hunter region and Wagga Wagga.

The New South Wales Council of Social Services (NCOSS) ran a training project for Emergency Relief Workers and engaged PIAC to deliver advocacy and lobbying training.

Volunteers perform the majority of service provision in the emergency relief area in NSW. The work of these volunteers is very challenging to say the least. They often have their hands full dealing with the very practical needs that their clients present on a daily basis. The NCOSS project aims to enhance the capacity of emergency relief workers and ensure the highest possible quality of service for their clients.

During 2004-2005, PIAC delivered two further training courses for people who provide emergency relief services for people in financial crisis in Byron Bay and Coffs Harbour.

PIAC also partnered with the Mountains Community Resource Network to present the *Effective Advocacy Skills and Strategies* workshop to a large group of Blue Mountains community workers and activists. Further workshops are planned for 2005-2006.

Maintaining effective administrative review

In January 2005, PIAC made a submission to the Senate Legal and Constitutional Committee's Review of the *Administrative Appeals Amendment Bill 2004*. PIAC was one of a small number of groups to make a submission and an even smaller number to appear before the Committee.

The Bill sought to amend a number of Acts that relate to administrative appeals. The majority of the amendments, related to the role, powers and functions of the Administrative Appeals Tribunal.

PIAC was concerned that a number of provisions in the Bill were hostile to the accessibility, authority, independence and status of the Tribunal. In particular, the Bill sought to:

- relax the qualification requirements for the President of the Tribunal;
- reduce tenure for Presidential, deputy

presidential and senior members; and

- empower the Federal Attorney-General to directly appoint members to panels.

PIAC was quoted at length in the Committee's report and the Committee accepted a number of its arguments, with the result that the Bill was amended to ensure that the President remained a Federal Court Judge and that tenure be retained for certain members. The Bill was subsequently passed.

Integrity in local government elections

On 27 March 2004, the NSW Local Government elections were held. Throughout the State, political parties and independent candidates vied for votes, producing advertising for the campaign period and to hand out on Election Day at polling booths. Deals were negotiated between political parties and individual candidates, and preferences were allocated accordingly. By and large, the election was completed without controversy.

However, PIAC received a number of requests for representation from individuals seeking to challenge the election of councillors on the basis that those councillors did not comply with certain requirements under *the Local*

Government Act 1993 (NSW) (the LGA) or the *Local Government (Elections) Regulation 1998* (the LGR). A successful challenge can result in a councillor being dismissed from office.

Examples of the types of breaches of the LGA and the LGR about which people sought advice from PIAC included: alleged misleading statements on vehicles relating to opposing candidates, alleged uses of unregistered 'How to Vote' cards, and alleged irregularities in vote recounts.

The relevant authorities in relation to section 329 of the LGA have created a two-limb test. The first limb is that there is an irregularity in the way in which the person was elected. The second limb is that the irregularity must make the election result uncertain.

The question of whether the first limb is established is relatively straightforward as there are clear provisions regulating the conduct of elections. The LGR sets out numerous offences in relation to the conduct of an election. Most relevant to the cases in which PIAC has advised is Regulation 109. This creates offences for publishing 'How to Vote' cards or electoral advertisements containing misleading information.

Applicants generally face greater difficulty with the test's second limb requirement that it

be established that the irregularity has made the result of the election uncertain. This requires evidence of the impact of the irregularity on the vote. A pragmatic approach has been adopted to this question, such that where an inference can be drawn from the evidence that a 'not insignificant number of voters' saw the irregularity and were influenced by it then uncertainty can arise.

Unfortunately, the current formulation of the test presents dangers to the integrity of our electoral system. The requirement of uncertainty focuses attention on the numbers of votes by which a candidate was successful and away from the seriousness of the responsibility for and the intention behind the irregularity. Ostensibly, this means that where a candidate has an overwhelming victory, their election cannot be considered uncertain, no matter the seriousness of any irregularity committed by them. A preferred approach, which would reinforce the integrity of the conduct of elections, would be to focus on the irregularity itself.

PIAC also acted in a matter involving a challenge to the election of a councillor, Ms Karin Cheung, on the basis that she was not a resident of the local government area in which she was elected and was therefore not eligible to be elected.

The case raises the issue of whether a person can have two residential addresses for the purposes of the relevant part of the Act. PIAC argued that the correct interpretation is that a person may be a 'resident' of only one place for the purpose of being elected as Councillor. The term 'resident' had not been considered in any previous cases. The hearing concluded in February 2005 and PIAC and the applicant, Ms Borsak, are awaiting the ADT's decision.

Liaison and publications

PIAC's Training Co-ordinator, Carolyn Grenville continued PIAC's participation in the NSW Office of Fair Trading's annual Fair Trading Awards as a judge for this year's Awards. Carolyn also participated in the Community Trainers and Assessors Group and on the Advisory Board of Community Services and Health Industry Training.

The following submissions are available on PIAC's website at
< <http://www.piac.asn.au/publications/> >:

- Submission to the Inquiry into the Administrative Appeals Amendment Bill 2004, 21 January 2005.
- Submission to the Joint Standing Committee on Electoral Matters, 30 March 2005.

Access to Justice

While PIAC does not maintain a generalist casework service, it does seek, through its work, to promote measures that will improve access to justice. This is achieved through a range of strategies including strengthening the work and capacity of legal aid and community legal centres, promoting access to *pro bono* legal services where legal aid and community legal centres are unable to assist, and challenging laws that limit access to justice.

PIAC also provides an opportunity for a College of Law student to complete their required practical legal training and, in doing so, is able to provide a telephone information and advice service that dealt with at least 555 calls in the last year.

The year saw the opportunity to consider the work of community legal centres in NSW in particular, and the role of PIAC as a Sydney-based specialist centre and its relationship with other centres across the State. It also provided an opportunity for PIAC to represent the NSW Combined Community Legal Centres' Group as *amicus* in the High Court in a challenge to a regulation that could severely limit the community education and information work of community legal centres in NSW.

PIAC's successful partnership with PILCH to present its biannual *Practising in the Public Interest* course to later-year law students continued to promote awareness among law students of the opportunities available and strategies used in public interest law.

PILCH is a major aspect of PIAC's work in promoting access to justice and this year has been no exception in terms of that work. The year saw the development of a new joint project, the Children in Detention Advocacy Project, the full implementation of the Homeless Persons' Legal Service, as well as work to enhance the levels of co-operation between PILCH, the Bar Association's Legal Assistance and Referral Scheme, and the NSW Law Society's Pro Bono Scheme.

Review of the NSW Community Legal Services Program

Following similar reviews in other states, community legal centres in NSW came under the microscope this year with the Joint Commonwealth/State Review of the NSW Community Legal Service Funding Program. PIAC participated in a focus group of specialist legal centres as part of the review and made an extensive submission to the consultants.

PIAC saw the review as an opportunity to reinforce the importance of accessible legal services available across the community that not only provide advice and casework services but that also are proactive in identifying and challenging laws and practices that infringe rights or limit opportunities, particularly for disadvantaged members of the community. The link between legal centres located in communities across the State and specialist centres based in Sydney is also vital and one that, when working effectively, ensures better service delivery and better law reform outcomes.

Advocating for communication about legal rights

PIAC is representing the NSW Combined Community Legal Centres' Group (CCLCG) and Redfern Legal Centre, both of which have been granted leave to appear as *amicus curiae* in *APLA & Ors v NSW Legal Services Commissioner & the State of NSW*. The Australian Plaintiff Lawyers' Association

(APLA) launched a legal challenge to the validity of regulations made pursuant to the *Legal Professions Act 1987* (NSW) that make it an offence of professional misconduct for a legal practitioner to publish advertisements that have a connection with personal injury. The CCLCG was concerned that the regulations significantly impede the work of its member community legal centres (CLCs), through preventing the solicitors working in CLCs from publicising their services. CLC solicitors provide legal advice and representation in a broad range of areas including discrimination, domestic violence and victims' compensation matters. All of these areas may have a connection with personal injury as defined. The case was heard by the High Court on 5 and 6 October 2004 with the decision reserved.

The primary issues in the case related to the freedom of communication on political and governmental matters guaranteed by the *Constitution*, the infringement of Chapter 3 of the *Constitution* and the freedom of interstate trade guaranteed by section 92 of the *Constitution*. John Basten QC, George Williams and Rachel Pepper generously agreed to act as counsel on a *pro bono* basis.

The case saw an exciting development in terms of the role of *amicus curiae* with leave being granted not only to make written submissions, but also to make oral submissions and submissions in reply.

The Public Interest Law Clearing House

PIAC continues to have a management agreement with the Public Interest Law Clearing House Inc under which PIAC employs staff to run PILCH's operations. The agreement involves the employment of one full-time permanent staff members, the PILCH Co-ordinator, as well as making available some of the capacity of other PIAC staff, including PIAC Chief Executive Officer in the role of PILCH Director, PIAC Principal Solicitor, PIAC Financial Manager, and PIAC's Legal Secretary. For part of the year, funding was also available to employ a Project Officer to develop PILCH's communications and project capacity. Vital to the capacity of PILCH is the secondment to PIAC of lawyers from PILCH member firms.

Since its establishment in 1992, PILCH has been able to expand its operations and maintain its services through the support it receives from its members. PILCH members include law firms, barristers and floor of barristers, corporate law departments, accounting firms, PIAC, the Law Society of NSW and the NSW Bar Association.

As at 30 June 2005, in addition to PIAC, the Law Society and the Bar Association, PILCH members comprised 29 law firms, 11 barristers,

eight floors of barristers, one corporate law department and two accounting firms. During the year PILCH welcomed two new member law firms, Swaab Attorneys and Banki Haddock Fiora.

During the year PILCH members continued to provide assistance across all areas of activity. Members provided *pro bono* legal assistance to 77 individuals and non-profit organisations referred through the PILCH assessment and referral scheme. Solicitors on four-month, full-time secondments from member firms undertook the day-to-day running of the scheme. Secondees are a critical resource for PILCH and we are grateful for their contribution. Secondees during the year were Catherine Capelin (Minter Ellison), Davyd Wong (Henry Davis York) and Alex Newton (Mallesons Stephen Jaques). PIAC also employed a paralegal, Sarah Winter, during a period when PILCH was unable to secure a secondee. During her time with PILCH Sarah was also working on a Court and Tribunal Fee Waiver Manual that PILCH proposes to publish and launch in late 2005.

Following an external review of its operations in 2003, PILCH has focussed on developing its project activity. The project strategy for the past year has been twofold: firstly, maintaining the involvement of its members in the two ongoing joint projects with PIAC; and second,

working on a new project in conjunction with PIAC and the NSW Legal Aid Commission.

The Homeless Persons' Legal Service (HPLS), a joint initiative of PIAC and PILCH, operates with the support of PILCH member firms Allens Arthur Robinson, Baker & McKenzie, Clayton Utz, Ebsworth & Ebsworth, Gilbert + Tobin, Henry Davis York and Minter Ellison. Lawyers from these firms are made available by the firms to attend the regular HPLS clinics to provide free legal services to homeless clients at welfare agencies in the inner city and Parramatta. Members also support the PIAC training program for HPLS lawyers.

Since late 2004, PIAC, PILCH and the Legal Aid Commission of NSW have been working on a joint project, the Children in Detention Advocacy Project (CID^{AP}), to address some systemic issues in the criminal justice system administration resulting in the unlawful detention of disadvantaged minors. The project aims to address the issues through litigation and policy/law reform strategies. PILCH members are supporting the project through assisting with individual referrals and also with the policy work of the project. (This project is detailed below at page 25 in the section on PIAC's Detention work.)

PILCH continued to maintain relationships with its counterpart organisations in Victoria

and Queensland. Board and staff members from the three PILCH organizations met nationally in Melbourne on 16 June 2005 to address a range of common issues and concerns.

Co-ordination of pro bono referral schemes

A major focus for PILCH during the second half of the year was a proposal, raised at its Annual General Meeting in November 2004, that PILCH explore the opportunities for greater co-ordination between the referral schemes of PILCH, the Law Society and the Bar Association and how these schemes might work together more closely, including the possibility of replicating the PILCH Victoria model of service delivery. The PILCH Board convened a Sub-committee to assist it to work on the proposal. This work is ongoing and will usefully inform the future planning and direction for PILCH.

Submission to the Law Reform Commission on Expert Witnesses

In February 2005, PILCH provided a submission in response to the New South Wales Law Reform Commission's Discussion Paper 25 on Expert Witnesses, which was released in November 2004.

The Commission's Terms of Reference, as directed by the Attorney General, required, in

summary, that the Commission inquire into and report on the operation and effectiveness of the rules and procedures governing expert witnesses in NSW. This was to be done having regard to recent developments in Australian and other jurisdictions, current mechanisms for accreditation and accountability of expert witnesses in court proceedings (including the practice of experts offering their service on a contingency basis), and the desirability of sanctions for inappropriate or unethical conduct by expert witnesses.

The PILCH submission dealt with the issue of a proposal to prevent experts from being engaged on a speculative basis. PILCH opposed this proposal on the basis that it would impact hardest on those ordinary litigants who are unable to meet the significant expenses involved in litigation. PILCH recommended that nothing be done to ban or discourage the use of contingency fees by experts until full consideration is given to the impact such action may have on access to justice for individual litigants, and that consideration be given to expanding legal aid funds in the event of such a ban being implemented.

Seminar and events

PILCH member, Allens Arthur Robinson, hosted a successful PILCH seminar, *Taxing Issues for Non-Profits*, on 2 December 2004. Speakers from Allens Arthur Robinson,

Pricewaterhouse-Coopers, the NSW Office of State Revenue, WorkVentures and NCOSS addressed over fifty participants from the non-profit sector.

On 28 January 2005, PILCH member firm Deacons hosted the annual PILCH function for summer clerks. This event provided an opportunity to talk to summer clerks about the opportunities to undertake *pro bono* work if they choose to go into private practice. Over 100 summer clerks attended from a number of PILCH member law firms.

A second PILCH seminar, *Not-for-Profits and the new Financial Reporting Standards*, was hosted and presented by PricewaterhouseCoopers and the PricewaterhouseCoopers Foundation on 24 June 2005. This seminar provided important information to not-for-profit organisations about their obligations under the Australian Equivalent of the International Financial Reporting Standards and what they need to do to bring their current financial reporting into line with the requirements. Representatives attended the seminar from organisations from as far afield as Broken Hill.

Practising in the Public Interest

During the year, PIAC worked in partnership PILCH, and the law faculties of the University of Western Sydney, Macquarie University and the University of Sydney to conduct *Practising*

in the Public Interest summer and winter schools. A total of 34 students from these three universities completed the one-week course. PILCH member firms Coudert Brothers and Baker & McKenzie hosted the two courses.

Other PILCH members supported PIPI through the provision of presenters and taking on placement law students participating in the course.

The Homeless Persons' Legal Service

The Homeless Persons' Legal Service (HPLS) has now been operational for just over one year, providing free legal services at clinics located in Sydney and Parramatta. For most of the year there were five clinics operating at host welfare agencies: The Station, Matthew Talbot Hostel, Parramatta Mission, Edward Eagar Lodge and Vincentian Village. Those clinics were staff by lawyers from six PILCH firms: Allens Arthur Robinson, Clayton Utz, Ebsworth & Ebsworth, Gilbert + Tobin, Henry Davis York and Minter Ellison. In May 2005, a sixth HPLS clinic was launched at the Salvation Army's Streetlevel mission with law firm, Baker and McKenzie, providing lawyers to staff the clinic. Through the clinics, HPLS provided assistance to 430 clients and opened 127 files during the year.

There can be no doubt that homeless people and people living in insecure accommodation are extremely disadvantaged in dealing with legal processes and enforcing their rights. The combined effect of lack of access to free legal services, the constant demand of securing accommodation, and negative experiences with the law and lawyers, often result in homeless people having multiple legal problems, some dating back many years.

Despite these barriers, HPLS has already had some notable successes: it had one client's name removed from a tenancy black list that prevented him from finding housing, a client who had been unfairly dismissed was reinstated, a woman wishing to see her grandchild was assisted in the Children's Court, and a man who owned a share in a property recovered his share of the proceeds of the sale of that property enabling him, for the first time in a number of years, to be in a financial position to secure housing.

The experience of HPLS to date emphasises the complexity of the experience of being homeless, and the multiple barriers to moving out of homelessness. A common theme in that experience is that for many people homelessness has resulted from events that were, to a large extent, outside their control. Stories of sudden illness, the death of a loved one, the loss of a job, or other traumatic events,

fill the narratives told to HPLS lawyers. The sense that these people's lives have changed in ways they had never imagined reveals that many homeless people are trying to grapple with the decline in their fortunes, and to deal with the inherent lack of independence, privacy and security that accompanies homelessness. Seen in this context, legal problems are tied to emotional displacement: clients are often trying to reclaim parts their life and search for ways toward independence; a 'normal life', an end to the social isolation they feel.

Providing legal advice in this context is about recognising personal experience; clients seeking assistance from HPLS often express this as 'wanting to get my life together' through engaging in wider legal and social processes. Tackling legal problems often symbolises the desire to 'meet obligations', to assert rights, to enforce entitlement, to move toward a pathway out of homelessness.

This important aspect of the HPLS utilises the law to enable homeless people to engage in processes and systems from which they are inherently excluded; locked out by poverty and social stigma. Talking about the law with lawyers is not just about receiving legal advice, but is also about practising social inclusion. The dialogue between the lawyer and the client is a crucial part of the project, irrespective of the advice or legal prospects in each case.

Access to the mechanisms of justice and to the language of rights and obligations provides a small window toward social inclusion. This contrasts sharply with the exclusion from 'normal life' faced by most homeless people.

For HPLS lawyers the dialogue they have with the client allows an understanding of homelessness as a human individual experience that challenges stereotypes.

A key aspect of HPLS is to articulate the need to reform social and legal practices that prevent people moving out of homelessness and achieving protection of their basic human rights. Homeless people often face difficulty moving out of homelessness; these difficulties are sometimes due to legal processes and systems that disadvantage them due to their homelessness and poverty. In January 2005, PIAC employed a part-time HPLS Policy Officer to identify and work to redress systemic issues affecting people at risk of, or experiencing homelessness. HPLS undertook policy work in relation to the issuing of fines against people experiencing homelessness, discrimination in employment on the basis of criminal record and access to mental health services for people experiencing homelessness.

PIAC is able to operate HPLS through the support of the Federal Department of Family and Community Services National

Homelessness Strategy and the Hon Bob Debus, NSW Attorney General through the Public Purpose Fund.

In addition to its contribution to several of PIAC's policy submissions, HPLS published three issues of its newsletter on homelessness and legal issues, *StreetRights NSW*. These were produced and distributed November 2004, and March and April 2005.

Liaison and publications

PIAC was represented on the Board of Management of the NSW Combined Community Legal Centres' Group by Principal Solicitor, Simon Moran. Simon was also the nominee of the Combined Community Legal Centres' Group on the Legal Aid Commission, where he is involved both at Commission level and on the Civil Law Sub-committee and the Community Funding Sub-committee. PIAC was represented of the National Pro Bono Resource Centre by former Director, Andrea Durbach, and on the National Children and Youth Law Centre Board by Simon Moran.

PIAC has the right to appoint two representatives on the PILCH Board. For the whole of the year, PIAC Director, Shauna Jarrett, filled one of these positions. PIAC thanks former PIAC Director, Kate Harrison,

for her representation of PIAC on the PILCH Board until the annual general meeting in November 2004. PIAC is currently considering possible nominees, looking in particular at ensuring representation from the community sector on the PILCH Board.

PILCH was represented by its Co-ordinator, Sandra Stevenson, on the LawAccess NSW Operations Committee. Sandra also represented PILCH on the Legal Aid Commission's Co-operative Legal Service Delivery Model Steering Committee.

During the year, PIAC made the following on issues relating to access to justice:

- Submission to the Joint Commonwealth/ State Review of the NSW Community Legal Service Funding Program, 24 December 2004.
- PILCH Submission to NSW Law Reform Commission on Expert Witnesses, 25 January 2005.
- Submission to the Senate Select Committee on Mental Health, 20 May 2005.
- Submission to the Parliamentary Inquiry on Dental Services in NSW, 10 June 2005.

These submissions, are available on PIAC's website at <<http://www.piac.asn.au/publications/>>.

PIAC staff also wrote the following articles for external publications:

- 'Running a Test Case', 1 December 2004, published in *Civil Procedure News*.
- 'The SAAP Act: Towards an Understanding of its Legal Requirements', February 2005, published in *Parity*.

The work of HPLS was highlighted in a number of articles in the media, including:

- 'New legal service for homeless people', Winter 2004, *Legal Aid News*.

- 'Sydney on a song or a prayer', 8 December 2004, *The Sydney Morning Herald*.
- 'Serving the homeless proves a stimulus and skill enhancer for young commercial lawyers', November 2004, *Law Society Journal*.
- 'Legal service for homeless a victory, now to win their trust', 27 September 2004, *The Sydney Morning Herald*.



HPLS client at the first birthday of the Homeless Persons' Legal Service and the launch of the new clinic.

While the year began with the main focus of PIAC's work in this area being on immigration detention, this has developed significantly over the twelve months and now PIAC has committed to a broader focus on legal rights and treatment in a range of other detention settings.

The decision of the High Court in the *Al-Kateb* matter in August 2004 meant a significant re-think on PIAC's strategy in relation to its work on indefinite immigration detention. Fortunately, PIAC along with a number of other advocacy groups across the country helped to persuade Federal MPs that the situation of indefinite detention was no longer tenable and changes were made to the detention regime that resulted in all of PIAC's clients in indefinite immigration detention being released.

Over the year, PIAC was able to focus its attention on other detention practices with the development of a project in conjunction with the NSW Legal Aid Commission and PILCH to respond to claims of unlawful detention of juveniles by the NSW Police and private security firms.

This area of work is likely to continue and develop as a major focus for PIAC with clear crossovers to other areas such as Indigenous Justice and Human Rights.

Immigration Detention and Procedures

Indefinite detention

PIAC represented a number of failed refugee applicants who faced detention for life as a result of the High Court decision in *Al-Kateb v Godwin* [2004] HCA 37 (*Al-Kateb*). In *Al-Kateb*, the High Court determined that it is constitutional and lawful under the *Migration Act 1958* (Cth) to keep a person in immigration detention indefinitely.

Mr Al-Kateb, a Palestinian asylum seeker, was born and spent most of his life in Kuwait. He arrived in Australia in December 2002 and was detained while his application for refugee status was determined. When his application was refused he asked to be removed from Australia back to Kuwait. However, attempts to obtain overseas' co-operation for his removal were unsuccessful. This meant that—and the parties before the High Court agreed—that Mr Al-Kateb was effectively stateless.

Mr Al-Kateb's counsel argued that where a person's removal from Australia is not reasonably practicable, detention under the Act must come to an end. This was based on the principle that, as a matter of statutory construction, a court should not interpret legislation to abrogate human rights or freedoms unless it is made clear by the use of unambiguous statutory language that this was the intention of the legislature. Counsel for Mr Al-Kateb submitted that there is no such language in the Act. This argument had succeeded before a single judge of the Federal Court, and the Full Federal Court.

On appeal, the majority of the High Court found that even where a person's removal is not reasonably practicable, the Act requires them to be detained, despite the fact their detention would continue indefinitely.

The majority's decision signalled a move away from interpreting legislation as far as possible in conformity with fundamental human rights and those international covenants that Australia has ratified. Freedom from arbitrary arrest or

detention is a core common law right as well as a human right guaranteed in Article 9 of the *International Covenant on Civil and Political Rights*. The United Nations Human Rights Committee has defined arbitrariness not merely as being against the law, but also as including elements of inappropriateness, injustice and lack of predictability.

The majority's decision results in a situation where someone who has committed no crime, who has requested removal, and who is co-operating with the Government, could be detained for the rest of their life because they are effectively stateless and cannot be removed.

This decision affected a number of PIAC's clients who have been, like Mr Al-Kateb, seeking release from immigration detention. Prior to that decision, PIAC had been successful in getting several detainees released. With the decision on the High Court blocking further legal challenges, PIAC called on the Federal Government to amend the law to effectively overturn the High Court's interpretation in *Al-Kateb*. The Hon Senator Amanda Vanstone, Minister for Immigration, initially announced that her approach would be to review the files of those people affected by the decision, and to use her discretion, on a case-by-case basis, to determine whether these people should be detained or granted a

substantive visa or a bridging visa until they could be removed.

The Minister's response failed to address the fundamental principle that the law currently allowed for the indefinite detention of people in immigration detention. Eventually, strong advocacy from community groups, including PIAC, and Liberal backbenchers, backbenchers Petro Georgiou, Judi Moylan and Bruce Baird, resulted in the Federal Government introducing a new class of visa, the Removal

Pending Bridging Visa. All of PIAC's clients remaining in detention have now been released on that visa following assistance from PIAC with the process. Of those clients, one—Peter Qasim—had initially been singled out by the Government as an exception because of his alleged failure to co-operate with Government efforts to deport him. However, Mr Qasim was finally released from detention on a Removal Pending Bridging Visa, following almost seven years in immigration detention.



Free at last: Peter Qasim, centre, is ready to start a new life with his adoptive parents David and Fay after almost seven years in detention

Picture: Sam Meay

Happy ending after long, winding road

Deportation on character grounds

PIAC has ongoing concerns about the exercise by the Government of its power to deport people who are determined to be of bad character. While this power is one that Governments understandably retain, it is vital that it be exercised with extreme caution. PIAC has been assisting the Multicultural Disability Advocacy Association with a client who is facing deportation due to a conviction for a criminal offence.

The young man has been in Australia since he was a very small child and has a disability that affects both his intellectual capacity and his physical health. Both his brothers are affected by the same condition and all require medication. He has no family in his country of origin and, if he were to be deported, his mother would be faced with the devastating choice of staying in Australia to care for her other sons or returning with all of her children to her country of origin to face the prospect of all of her sons' health deteriorating due to the lack of appropriate medical treatment.

Unfortunately, the young man's disability was not identified to the Magistrate at the hearing of the criminal proceedings against him. No evidence was available about how his disability may have affected his capacity to decide against getting involved in criminal activity.

While this young man has served the sentence imposed for his criminal conduct, he now faces a much more serious sentence: deportation, isolation from family and deterioration in his health.

Unaccompanied minors

PIAC continued to partner on a project being undertaken by Dr Mary Crock at the University of Sydney on the effectiveness of the legal process for unaccompanied minors seeking asylum.

During the year, PIAC also supervised a University of Sydney law student writing a research paper about the treatment of unaccompanied minors in asylum processes in overseas jurisdictions.

Deaths in custody and duty of care

The action for damages commenced by PIAC for its Indigenous client, Veronica Appleton, was determined successfully this year. This is reported in more detail in the Indigenous Justice section at page 41.

Children in Detention Advocacy Project

In February 2005, PIAC, PILCH and the Legal Aid Commission of NSW launched a project that aims to challenge unlawful and unnecessary detention of children in the criminal justice system. The Children in Detention Advocacy Project will provide *pro bono* legal representation to people who may have a cause of action arising from actions taken against them by law enforcement agencies and private security personnel when they were under 18, including false arrest, unlawful detention and/or the use of excessive force.

The cases have been identified by Legal Aid NSW and are being referred by PILCH to participating member firms. They include allegations of:

- minors being arrested on warrants where there are deficiencies in the warrant;
- minors being arrested for breach of bail conditions where there was no breach of bail;
- police using excessive force in arresting minors;
- minors visiting relatives in gaol being caught up in police investigations and strip-searched without reason; and
- malicious prosecution.

Legal Aid NSW approached PIAC and PILCH in late 2004 about what it had identified as a regular flow of applications from juveniles in similar circumstances. This suggested systemic deficiencies in the administration of the criminal justice system. The right to liberty is a fundamental human right. Considering the vulnerability of children and the negative consequences of any period of detention, it is in the public interest that these cases be resolved and repeats of such incidents be prevented. Together the three organisations developed the project strategy, which now involves other community legal centres, PILCH member law firms and barristers.

PIAC ran training for lawyers from PILCH member law firms on 28 April 2005. This half-day seminar covered issues such as the cause of action of false imprisonment, relevant criminal law, working effectively with minors, Legal Aid policies and litigating matters in the District Court. Training was generously provided by barristers, Kylie Nomchong and Harriet Grahame, Jane Sanders from Shopfront Youth Law Centre, Catherine Capelin from Minter Ellison, and Teresa O'Sullivan and Peter McDougall from Legal Aid NSW.

While legal challenges are one part of the strategy envisaged to challenge the practices

of the NSW Police, lawyers working on these cases will also meet regularly to identify the systemic practices resulting in the unlawful or unnecessary detention of children. This group will help inform and, where possible, be involved in associated policy work such as meeting with the Police and advocating for changes in Police procedures.

PIAC has taken on a couple of the more urgent cases, with one matter alleging false imprisonment, malicious prosecution and battery, set down for pre-trial conference in the District Court in July 2005. PILCH has begun the process of referring other matters to its members.

Police detention of adult

Through community awareness of PIAC's involvement in the Children in Detention Advocacy Project, PIAC was approached by a man who was arrested at the time of the Macquarie Fields Riots. The man alleged he was charged and spent six weeks in custody as a result of another person using his name. He alleges there were two people in custody under the same name at the same time and that his requests to be fingerprinted were refused. PIAC is considering the prospects of a claim for false imprisonment and malicious prosecution claim.

Detention and disability

PIAC continues to identify cases involving the detention of people with disabilities and concerns about the exercise of the power to detain and was involved in several cases this year that touch on this issue.

In one case, a woman sought advice and representation in relation to her concern that she had been wrongly detained under the *Mental Health Act 1990* (NSW). The detention was ordered on the basis that she posed a risk of harm to her own 'reputation'. In order to be detained under the Act, a person must have a mental illness and present a risk of serious harm to themselves or others. While damage to reputation used to be a basis for such detention, it was removed and should no longer be used.

Because of this reliance on an invalid ground, PIAC and counsel prepared the matter for an application to the Supreme Court. However, the client decided not to proceed with that application, but rather asked PIAC to look at her prospects of making a claim for damages claim for unlawful imprisonment. A false imprisonment claim would allege that these were insufficient reasons to deprive her of her liberty for two months.

In another case, PIAC is representing a woman with an intellectual disability in a

false imprisonment case. The woman was institutionalised for six years as a result of the Department of Community Services being unable to find her an appropriate community placement.

Liaison and publications

PIAC was represented on the national committee of Australians for a Just Refugee Program by Senior Solicitor, Alexis Goodstone. PILCH Co-ordinator, Sandra Stevenson remained a member of the Temporary Protection Visa Legal Working Group for much of the year.

There was significant media coverage of PIAC's work on the indefinite detention issue both at the time of the *Al-Khateb* decision and more recently around the moves to create the Return Pending Bridging Visa and the subsequent release of Peter Qasim. This included the following press coverage:

- 'Stateless detainees get a life sentence', 7-8 August 2004, *The Weekend Australian*.
- 'Immigration's limbo man set to walk free', 21 June 2005, *The Australian*.
- 'Broken spirit can't cope with real world', 21 June 2005, *The Sydney Morning Herald*.
- 'Free at last, but a prison still of his tortured mind', 21 June 2005, *The Sydney Morning Herald*.

PIAC's work on trade justice aims to make the Australian trade policy process more open and accountable, and to ensure that the content of trade agreements is consistent with UN human rights principles.

PIAC hosted and supported—under a funding agreement to provide key staff resources—the Australian Fair Trade and Investment Network (AFTINET). AFTINET is a national network of organisations and individuals concerned about trade justice. It has tripled its membership over the past five years to 90 community organisations. PIAC Principal Policy Officer, Pat Ranald, is the Convenor of AFTINET.

The main community campaigns in the past year have revolved around community education and lobbying on the Australia-USA Free Trade Agreement. (USFTA), the World Trade Organisation's General Agreement on Trade in Services (GATS), and the negotiations for an Australia-China Free Trade Agreement (China FTA).

The Australia-USA Free Trade Agreement

PIAC and AFTINET campaigned against the USFTA because the Government of the USA identified important Australian health, cultural and social policies as barriers to trade,

and sought to change them through trade negotiations. We advocated that such policies should be determined democratically through parliamentary process, not negotiated away in trade agreements.

After a widespread public campaign, the Federal Parliament passed the USFTA implementing legislation in August 2004. While not successful in all aspects of its campaign, it did prompt the Australian Labor Party in Opposition to move amendments in an attempt to protect current Australian policies on access to medicines and Australian content in audio-visual media.

Although community campaigning has limited the impact of the USFTA on social policies, unfortunately changes to the Pharmaceutical Benefits Scheme and to Australian patent law will increase the legal rights of pharmaceutical companies and could result in higher prices for medicines in the future. The USFTA also resulted in negative changes to copyright law and Australian content rules for future media, and placed limits on the ability of governments

at all levels to regulate essential services in areas like water, electricity and public transport.

PIAC and AFTINET continued to monitor the finalisation of the USFTA and assessed the achievements of the campaign, which clearly succeeded in changing public opinion. Polls conducted by Hawker Britton showed a steady decline in support for the USFTA, from 65% when negotiations started to 35% in February 2004 when the deal was concluded. This lack of support was confirmed by a Lowy Institute poll in February 2005, which showed that only 34% supported the USFTA. The public education process provided a good foundation for future campaigns on the impact of trade agreements on human rights and social policies.

The USFTA came into force on 1 January 2005. PIAC will continue working with health academics and other community organisations to monitor its on the price of medicines and other areas of social policy.

The World Trade Organisation and the General Agreement on Trade in Services

Australia is currently engaged in negotiations in the World Trade Organisation, including negotiations on trade in services. PIAC, through AFTINET, has expressed concerns about the ways in which the expansion of the Global Agreement on Trade in Services could limit the ability of governments to regulate and provide essential services in the public interest.

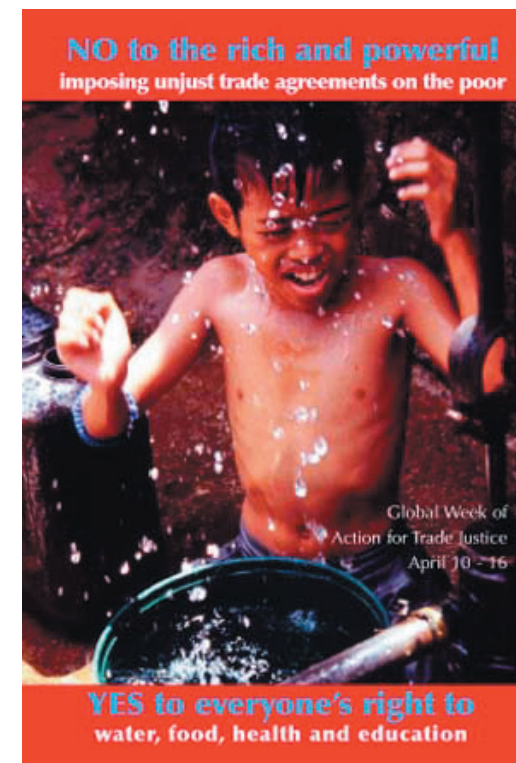
PIAC and AFTINET made a detailed submission to the Department of Foreign Affairs and Trade before the second round of GATS negotiations that began late in 2004. The Australian Government and other governments are under pressure to include essential services such as health, education water, postal and audio-visual services in GATS. PIAC continued to lobby for the Australian Government to keep to its previous commitments not to include such services. PIAC and AFTINET representatives also met with senior Australian trade negotiators and with the Director of the WTO Trade in Services Division, Hamid Mamdoubh.

PIAC attended a meeting of non-government organisations in Hong Kong in March 2005

to prepare for non-government conferences and lobbying to be undertaken at the WTO Ministerial Meeting in December 2006. This meeting also provided the opportunity to discuss the proposed Australia-China Free Trade Agreement with non-government organisations from Hong Kong.

In order to raise awareness of the risks of GATS being expanded to include essential services, PIAC and AFTINET participated in a Global Week of Action in April 2005 calling for trade justice. As part of this week of action, Sharan Burrow, Secretary of the Australian Council of Trade Unions and the President of the International Confederation of Free Trade Unions, launched a booklet, *Trade Justice*, by Suzette Clark and Pat Ranald, published by the Australian Catholic Social Justice Council.

PIAC and AFTINET also conducted a specific public education and lobbying campaign to persuade the Australian Government to exclude water for human use from its offers in the GATS negotiations. There was a public rally at Sydney Water in April and thousands of letters and postcards were sent to the Trade Minister. This campaign met with success in May 2005 when the Government's published second round offer in the GATS negotiations clarified that water for human use will not be included in its offer on environmental services.



Postcard produced as part of the community campaign to keep water out of GATS

Australia-China Free Trade Agreement

Australia is currently negotiating a free trade agreement with China. PIAC and AFTINET advocated that a preferential trade agreement with China should not be signed until there is full public and parliamentary debate about the human rights and environmental impacts of such an agreement, both in Australia and in China. In China's export processing industries there are frequent reports of poor environmental regulation and failures to comply with China's own labour laws and international labour standards. Workers often work 14 to 16 hour days, six or seven days a week in poor health and safety conditions and for falling real wages. We are also concerned about the social impact in Australia of such a free trade agreement, which could result in job losses in regional areas with already high unemployment.

PIAC and AFTINET have researched and written submissions outlining these concerns to the Department of Foreign Affairs and Trade and have met with representatives from the Department of Foreign Affairs and Trade.

We called for a Senate Inquiry to investigate the proposed China FTA and, in December, a Senate Inquiry on Australia's relationship with China was announced. PIAC made a

submission to this Inquiry and encouraged AFTINET members to also make submissions. The Senate Committee received many submissions expressing concern about the human rights impacts of a China FTA. In June, PIAC gave evidence before the Senate Committee on its concerns about the lack of transparency in the negotiations and the potential impact on human rights.

PIAC and AFTINET have undertaken extensive community education and lobbying around the proposed China FTA. In December, we held a public forum, attended by over 80 people, at which Sean Cooney and Sarah Biddulph from the University of Melbourne spoke about labour conditions and democracy in China, and Doug Cameron, the National Secretary of the Australian Manufacturing Workers' Union, spoke about the negative impact on workers' rights in Australia. We have also produced and distributed two publications detailing the concerns about the China FTA. All Federal MPs have been contacted about these issues and PIAC has also discussed them in meeting with a number of MPs.

An important part of this campaign has been making links with academics and members of civil society in China. PIAC was represented at the Asia-Pacific Research Network Conference in Hong Kong at which we presented a paper on bilateral trade agreements. PIAC took the

opportunity while there to forge and develop relationships with a number of academics, individuals and organisations working on human rights issues in China.

Other bilateral and regional trade agreements

PIAC and AFTINET also wrote brief submissions to the Department of Foreign Affairs and Trade on principles to be addressed in the negotiations for proposed free trade agreements with Malaysia, the ASEAN countries and the United Arab Emirates.

Liaison and publications

In pursuing a goal of achieving greater community awareness of the impact of free trade agreements on government processes, PIAC addressed a wide range of community forums and conferences on trade justice issues.

Community forums included those organised by the Catholic charity, Caritas, the National Union of Students, the Italian Migrant Workers' Federation, the Australian Services Union, Sydney Social Forum, Newcastle Trades Hall, the Perth Globalisation Roundtable, UTS Students Association, the NSW Combined

Community Legal Centres' quarterly meeting and retired maritime and mining unionists.

Conferences addressed included the Federal Attorney-General's Conference on International Trade Law, the Australian Lawyers and Social Change Conference at the Australian National University, the 2004 Oxfam National Conference, the 2004 Asia Pacific Nursing Congress, the 2005 Asia Pacific Research Network Conference, the 2005 Perth Social Forum, and the 2005 International Conference on US Global Strategies at Adelaide University.

PIAC and AFTINET received regular coverage of these issues in *The Australian*, *The Sydney Morning Herald*, *The Age*, *The Australian Financial Review*, on ABC, and SBS radio and television as well as commercial and community radio and television.

The following submissions and publications produced by PIAC are available on its website at < <http://www.piac.asn.au/publications/>>:

- Submission to the China Free Trade Agreement Task Force, 1 June 2005.
- 'Trading Away Social Policy? The impact of the Australia-US Free Trade Agreement on Australian domestic law and policy', 23 September 2004, 26th International Trade Law Conference.
- Submission to the Department of Foreign Affairs and Trade on the Global Agreement on Trade in Services Negotiations, 1 December 2004.
- Submission to the Asia Trade Task Force on the Australia-ASEAN-New Zealand Free Trade Agreement, 1 February 2005.

PIAC focussed significant attention and resources on a range of human rights protection and promotion activities during the year. A core human right recognised in international law is the right to equality and PIAC has undertaken both policy and casework on equality rights in the past year. It continues to be concerned to ensure that laws exist to effectively protect against discrimination on the ground of irrelevant characteristics.

To this end, PIAC has done policy work in relation to discrimination on the ground of criminal records and the changes to the compliance framework for preventing disability discrimination in employment. It has also been keen to test the law in relation to vilification, particularly on the grounds of homosexuality, as well as moves at Federal level to actively promote exclusions from marriage on this ground.

PIAC continues its work to promote the adoption on comprehensive and enforceable human rights protection through its Protecting Human Rights in Australia Project.

The year has also seen a continued debate about national security and the need to balance measures to ensure security with rights and democratic freedoms. PIAC has joined a number of NSW and national groups in calling for restraint and evidence-based law and policy reform in this area.

Equality rights for people with disabilities

Provision of insurance

PIAC has had a couple of matters in which insurance cover has been refused on the basis of disability.

In the first of these, PIAC represented a woman who had cancer as a child. Following a course of treatment, she was considered to have made a full recovery, and has been symptom-free since 1993. In September 2002, she applied for life insurance and instead of agreeing to provide full cover, the insurer offered a policy that excluded incapacity caused by cancer.

Proceedings were commenced in the Federal Court of Australia, alleging the imposition of the exclusion clause constitutes unlawful discrimination in the provision of services on the ground of a previous disability, contrary to the *Disability Discrimination Act 1992* (Cth) (DDA). In its defence, the insurer sought to

rely on section 46 of the DDA, which provides an exemption where discriminatory conduct is based on ‘actuarial or statistical data on which it is reasonable to rely’. There is little judicial authority on this provision, so the case could have set important precedent on the obligations of insurance providers when assessing risk.

This matter did not proceed to hearing with settlement achieved between the parties.

More recently, PIAC has taken on a second case alleging discrimination in insurance provision in which PIAC is representing a client with a psychiatric disability, again in the Federal Court. The client was refused life insurance on the basis of her disability and its treatment. The insurer refused to provide cover asserting that our client would be more at risk of suicide because of her condition. Relevantly the policy sought would have excluded a claim in the event of death by suicide. This case will test the defence of reliance on actuarial data available in section 46 of the *Disability Discrimination Act 1992*.

Education rights

People with disabilities, both adults and children, continue to experience discrimination in education across Australia. After almost ten years of negotiation, the Federal Attorney-General tabled the Disability Standard for Education made under section 31 of the DDA. The aim of the disability standards provisions in the DDA was to ensure the availability of a pro-active compliance mechanism within the legislative framework. This approach recognises the difficulties faced by individuals alleging discrimination in service provision where there are likely to be costs involved in responding to the needs of people with disabilities on an as needs basis. By empowering the Attorney-General to table disability standards in respect of various aspects of service delivery, including education, the Federal Parliament sought to ensure that a systemic approach could be taken to preventing discrimination occurring in the first place.

Unfortunately, the Disability Standard for Education fails to grasp this opportunity fully and instead requires that education providers have a mechanism for responding to individual requests for adjustments to aspects of education service delivery. It fails to set clear standards for all education providers to meet in respect of the provision of education generally. Also of great concern is the expansion of the public

health defence in the DDA to include not only discrimination to protect against potential spread of infectious diseases to include discrimination to protect both health and welfare no matter what the disability of the person involved.

PIAC worked with People with Disabilities Australia, the Institute of Family Advocacy and the National Children's and Youth Law Centre in an effort to prevent these aspects of the Standard being retained. Unfortunately, concerns about further delays to the Standard seem likely to ensure it becomes law in August 2005. PIAC will continue to monitor implementation of the Standard and seek to challenge any interpretation that narrows the protection of rights afforded by the DDA.

Equality rights for gays and lesbians

Vilification and free speech

In November 2004, PIAC was successful in the Administrative Decisions Tribunal (ADT) with the decision that John Laws, Steve Price and Radio 2UE had unlawfully vilified homosexuals in contravention of the *Anti-Discrimination Act 1977* (NSW). The vilification complaint was lodged by Gary Burns in 2003 after comments were made

on Radio 2UE by Laws and Price about the appearance of a gay couple on the Channel 9 program, *The Block*.

On 16 February this year, the ADT ordered that all of the respondents make public apologies. Laws and Price were ordered to make public apologies on air, and Radio 2UE was ordered to publish an apology in three major metropolitan newspapers and on its website.

The ADT also ordered that the respondents pay Mr Burns's legal costs. Legal costs are rarely ordered by the ADT. However, in this case the ADT found that because of the 'public interest' nature of the complaint, an order for costs was justified. The orders have been put on hold pending the outcome of an appeal lodged by John Laws, Steve Price and Radio 2UE.

The grounds of appeal include the Constitutional argument that the unlawful vilification provisions of the ADA are invalid or should be read down so as not to infringe the implied right of freedom of communication about government or political matters. Prior to the hearing of the appeal, the NSW Attorney General intervened, submitting that the ADT does not have jurisdiction to hear the Constitutional arguments put forward by the Respondents. The jurisdictional issue was heard on 21 June 2005 and the decision reserved.

Same-sex marriage legislation

In June 2004, the Marriage Amendment Legislation Bill 2004 was referred to the Senate Legal and Constitutional Legislation Committee. PIAC and the National Association of Community Legal Centres made a joint submission opposing all the provisions of the Bill.

The Bill sought to enshrine in legislation discrimination against gay and lesbian couples by specifically excluding them from the right to marry. The Bill specified that marriage means 'the union of a man and a woman to the exclusion of all others', and that same-sex marriages sanctioned in foreign countries would not be recognised in Australia. Before the Senate Committee completed its Inquiry these provisions were passed through the Federal Parliament in a separate Bill.

The other provisions in the Bill, which proposed to prohibit overseas adoption by same-sex couples, were not passed and lapsed following the announcement of the Federal election. To date, the Federal Government has not moved to re-introduce these lapsed provisions.

Discrimination and vilification on the ground of religious belief

PIAC continues to be concerned about the lack of protection against discrimination on the ground of religious belief. During the year, PIAC provided written advice in a matter relating to vilification on the grounds of religion in relation to an anti-Muslim radio broadcast.

Subsequently, PIAC wrote to the NSW and Federal Attorneys General, seeking their commitment to introduce legislation to prohibit religious vilification and discrimination. Responses were received from both, declining to do so.

PIAC is now working on promoting community discussion about the issue of vilification and discrimination on the ground of religion, with plans underway to host a forum in the near future. Speakers will be invited to address issues such as the tension between the right to freedom of speech and the right to live free from vilification, the experience in other Australian jurisdictions with the recent introduction of legislation prohibiting religious vilification, and the views of targeted communities, such as the Muslim community.

Equality for people with carer or family responsibilities

PIAC was involved in two cases involving alleged discrimination on the ground of care or family responsibilities.

PIAC represented Wendy Spencer in her case against her employer in which she alleged that she was discriminated against because of her carer responsibilities. For some years, Ms Spencer has had significant responsibilities in caring for her elderly parents—who are in poor health—and her sister, who had a stroke in 1999. Initially, the employer accommodated these responsibilities, allowing Ms Spencer to work her hours over four days. However, following a restructure the employer required her to revert to a five-day week. Ms Spencer alleged that this requirement was unreasonable, and that it was imposed on her without adequate consideration of the nature of her carer responsibilities.

The case was heard by the ADT in November 2004. The Tribunal found no discrimination but that the employer had victimised Ms Spencer for making a complaint to the Anti-Discrimination Board. Ms Spencer was awarded \$10,000.

PIAC has also been assisting several people who are parents in relation to alleged systemic

discrimination in employment on the grounds of caring responsibilities. The respondent organisation uses a seniority-based rostering system that significantly disadvantages more junior staff with carer or family responsibilities. Consideration is being given to a range of strategies to challenge this practice.

Discrimination in insurance on the basis of gender and marital status

PIAC is representing a single mother with one child who claims that she has been unlawfully discriminated against because she is required to pay the same health insurance premium as a couple with one or more children. The matter is being heard in the Administrative Decisions Tribunal in October 2005 and has already raised interesting Constitutional issues because of the interaction of the *National Health Act 1953* (Cth) with the obligation under the *Anti-Discrimination Act 1977* (NSW) to provide services, including insurance, on non-discriminatory terms.

Right: Cartoon from the Protecting Human Rights in Australia Community Education Kit
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Protecting Human Rights Project

PIAC's *Protecting Human Rights in Australia Project* progressed well into its second stage, with the development and delivery of train-the-trainer workshops across Australia. The first stage, which involved the development of a community education kit, was substantially completed in June 2004. However, a grant from

the NSW Law and Justice Foundation enabled PIAC to undertake the task of having the kit translated into three community languages: Arabic, Chinese and Vietnamese. This work should be completed early in the new financial year, with the translated materials available in electronic format, and a limited print run of the translated kits distributed to key community groups.



The Uniting Church provided a grant of \$8,000 to assist with the development and production of training materials for stage 2. PIAC aimed to have conducted at least one train-the-trainer workshop in each state and territory by the end of 2005. Workshops have been conducted in Perth, Adelaide, Melbourne, Canberra and Sydney. The next workshops will be held in Canberra and work is underway to develop partnerships with organisations in Queensland, Tasmania and the Northern Territory to enable training to be conducted by the end of 2005.

PIAC is beginning to plan an advocacy campaign to promote human rights compliance initiatives at the local government level and to support state and territory initiatives for comprehensive protection of human rights. PIAC believes that by engaging government and communities at a local level, it will begin to create a more sustainable culture of rights and an understanding of the value of human rights that will then lend support to the protection of human rights at a state, territory and federal level.

Anti-terrorism Legislation

In June 2004, the Federal Government introduced further anti-terrorism legislation: Anti-terrorism Bill (No 2) 2004 and Anti-terrorism Bill (No 3) 2004. These Bills

followed closely on the heels of the Anti-terrorism Bill (No 1) 2004, which was enacted on 30 June 2004. PIAC had made a submission to the Senate Legal and Constitutional Legislation Committee in relation to that first Bill and, having considered the extent of the proposals contained in the further Bills, decided to again make a submission when the Senate announced its inquiry into Bill (No 2). PIAC's submission focussed on the following matters:

- The breadth of definition of 'association' relating to the creation a new offence in the *Criminal Code Act 1995* of 'associating with terrorist organisations'. The definition failed to exclude some close family members, such as those related by marriage, aunts, uncles and cousins.
- The effect of these provisions when considered in light of the presumption against bail and minimum non-parole periods in relation to terrorism offences that were added to Anti-terrorism Bill (No 1) 2004 after the Senate Committee reported on that Bill.
- Amendment to the *Passport Act 1938* to grant certain authorities powers to demand and confiscate foreign travel documents where there is a belief that the person has committed particular offences either in Australia or overseas before an arrest warrant has been issued would result in an effective presumption of guilt and

imposition of a penalty prior to arrest. PIAC recommended that if this power was to be retained in the Bill, that it be amended to require judicial scrutiny prior to the seizure of travel documents.

- Amendments to the *Australian Security Intelligence Organisation Act 1979* to give authorities power to prevent people leaving Australia were too broad a power to be triggered merely on request for the issue of an ASIO warrant. Such powers should require the warrant to have been issued.

The Federal Parliament passed both Bills in August 2004.

Subsequently, PIAC made submissions to further Parliamentary inquiries that reiterate the need to ensure that any legislative or policy measures implemented in response to perceived terrorist threats not compromise Australia's democracy, human rights obligations or the limits properly imposed on the exercise of government power by the rule of law, including the separation of powers.

PIAC has been concerned to challenge the increasingly accepted wisdom that Australia is now in a 'new security landscape'. Certainly the Federal Government, in pursuing its suite of national security legislation, has relied on the logic that the world is a different place after 11 September 2001. This logic has been used

to justify the conferral on ASIO of powers to detain people without trial, charge or suspicion of criminal activity, the closure of public courts where 'national security information' might be prejudiced, and the creation of broad and amorphous terrorist offences in the *Criminal Code 1995* (Cth).

PIAC firmly resists the prevailing logic that any such 'fundamental shift' has occurred or that we are living in a 'new security environment'. This is not to say that there is no terrorist threat, but that this threat does not mark a brave new world that would justify the laws that the Federal Government has pursued.

It is easy to say that 'these are new and dangerous times', but the Australian response to terrorism ought not to be led by fear. PIAC is concerned to ensure that Australia not depart from its human rights obligations nor centuries-old principles of the rule of law enshrined in our common law system.

Criminal Record and Employment Discrimination

Many people with criminal records face serious barriers to finding work or receiving equitable treatment from employers. While in theory, doing the time and/or paying the fine is society's punishment for a criminal act,

in reality many ex-offenders continue to be subjected to further punishment in the form of discriminatory employment practices.

Without stable employment, a person is less likely to have access to other crucial elements of the rehabilitation process such as housing, education and health care, and is as a result more likely to re-offend. There is a clear public interest in ensuring that people with criminal records are not subjected to discrimination and stereotyping by employers.

In December 2004, the Human Rights & Equal Opportunity Commission (HREOC) published a discussion paper titled, *Discrimination in Employment on the Basis of Criminal Record*. HREOC called for public submissions 'to help develop practical solutions to the real problems faced by employers and employees in this sometimes confusing area of human rights law'.

Using its networks, and work done in the Homeless Persons Legal Service (HPLS) and the Indigenous Justice Project, PIAC prepared a submission in response to the HREOC Discussion Paper. PIAC's submission noted the particular disadvantages faced by Indigenous people with criminal records, and explored the relationship between homelessness and employment discrimination on the basis of criminal record. A key feature

of the submission was a number of case studies reflecting the personal experiences of people with criminal records who had been consulted by PIAC about their experiences of discrimination in the workplace.

PIAC recommended clear and consistent legislative prohibitions at the Federal, state and territory levels against discrimination in employment on the ground of criminal record. PIAC also called for a unification of the 'spent convictions' schemes across Australia, as these schemes currently cause confusion to both employers and to people with criminal records.

PIAC's submission also examined the interaction between privacy laws and discrimination laws, noting with concern the apparently high level of access to criminal records information currently being provided to employers both with and without a person's consent. This indicates serious breaches of existing privacy legislation as well as a lack of awareness by individuals of their existing rights under that legislation.

HREOC is yet to finalise the report of this inquiry. PIAC hopes to have opportunities in the coming year to work with HREOC and other organisations to develop strategies to reduce the incidence of discrimination on the basis of criminal record.

Productivity Commission Review of National Competition Policy

The Productivity Commission is conducting a ten-year Review of National Competition Policy, and its possible extension to additional areas such as social services and the labour market. PIAC's submission to the Commission emphasised the limitations and dangers of applying market economic theory designed for traded commodities to social services and human labour. The submission used evidence from the experience of PIAC's Utilities Consumer Advocacy Project and from the Productivity Commission's own study of the Job Network to argue that the inappropriate application of market principles to essential services can lead to higher costs and/or lower quality services for consumers.

Liaison and publications

PIAC continued to participate in two Federal Government forums on human rights with Principal Policy Officer, Pat Ranald, representing PIAC at the Department of Foreign Affairs and Trade Consultation Forum on International Human Rights Issues, and Chief Executive Officer, Robin Banks, representing it at the Attorney-General's Human Rights NGO Forum.

The year saw PIAC make a number of submissions to government inquiries on issues touching on human rights.

- Submission to the Inquiry into the Anti-Terrorism Bill (No 2), 23 July 2004.
- Submission to Parliamentary Joint Committee on ASIO, ASIS & DSD on banned 'terrorist' organisations, 28 January 2005.
- Submission to the NSW Attorney General on *Terrorism (Police Powers) Act 2002* (NSW), 11 February 2005.
- Submission to the Senate Legal and Constitutional Committee on the Inquiry into the provisions of the National Security Information Legislation Amendment Bill 2005, 1 April 2005.
- Submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD Review of Division 3, Part III of the *ASIO Act 1979* (Cth) – Questioning and Detention Powers, 8 April 2005.
- Joint Submission (with the NACLC) on the Marriage Amendment Bill 2004, 4 August 2004.
- Submission to the Anti-Discrimination Board on the Application made by ADI Limited for Exemption under section 126 of the *Anti-Discrimination Act 1977* (NSW), 18 November 2004.
- Submission to the Senate Inquiry into the Disability Discrimination Amendment (Education Standards) Bill 2004, 6 December 2004.
- Submission to the Human Rights and Equal

Opportunity Commission's Inquiry into Discrimination in Employment on the basis of Criminal Record, 1 March 2005.

- Comments on Productivity Commission's Discussion Draft on the Review of the National Competition Policy, 1 December 2004.

These submissions are available on PIAC's website at < www.piac.asn.au/publications/ >.

PIAC's *Protecting Human Rights in Australia: A Community Education Kit* is also available on the website.

PIAC's work in the area of human rights regularly received media attention, with the following being just some of the coverage:

- 'Kit highlights frailty of human rights protection', July 2004, *Law Society Journal*.
- 'Radio hosts vilified gays, tribunal rules', 23 November 2004, *The Sydney Morning Herald*.
- 'Laws and Price ordered to apologise', December 2004, *Sydney Star Observer*.
- 'Media Games: Burns takes Channel Nine to the ADB for Newman Comments', 9 December 2004, *SX Weekly*.
- 'Government failed to protect a citizen, say human rights groups', 13 January 2005, *The Sydney Morning Herald*.
- 'Protest, but don't come to our party', 25 March 2005, *Lawyers Weekly*.
- 'Human rights should not be casualties of the war on terrorism', 13 May 2005, *The Sydney Morning Herald* (opinion piece).

Indigenous Justice

PIAC's Indigenous Justice Project continued to go from strength to strength despite the decision by its inaugural Indigenous solicitor, Shazhad Rind, to move on in February 2005. Shaz was replaced by Charmaine Smith, who spent her first four months in the role balancing the demands of a busy legal practice with getting out into the community to promote awareness of the project and working on key law reform initiatives.

The focus of the project on civil law has ensured that PIAC does not cut across the vitally important work of Aboriginal legal services or legal aid. Increasingly, PIAC finds itself working side by side with these organisations to challenge the many ways in which the criminal justice system impacts disproportionately on Indigenous Australians.

PIAC's work since before the formal inception of this project has also led to a significant and, it is hoped, positive development for Aboriginal people in NSW with the announcement that the NSW Government will establish a scheme to pay money held in trust by the Government between 1900 and 1969.

In November 2004, PIAC was very pleased to receive confirmation from law firm, Allens Arthur Robinson, of its continuing funding for a further two years. The firm's contribution to PIAC's work in this area is vital and one that goes beyond simply providing funds. The partners at Allens Arthur Robinson demonstrate a keen interest in PIAC's work and provide access to the firm's resources.

Aboriginal trust fund repayment scheme

In June 2004, the NSW Government acted on its promise to investigate ways to repay monies held in trust for Aboriginal people in NSW between 1900 and 1969. A three-member panel was established, comprising Brian Gilligan, Terri Janke and Sam Jeffries, to report to the NSW Cabinet on the issues in relation to the repayment scheme and on a model for the scheme. The panel met with organisations, including PIAC, and Aboriginal communities in NSW to gather views on the scheme and the various issues that will affect its operation.

In July 2004, PIAC joined the Indigenous Law Centre (ILC), Link-Up and Australians for Native Title and Reconciliation at a meeting attended by Aboriginal and other people concerned to discuss issues relevant to the development of a scheme. At that meeting, PIAC outlined the core principles it considered essential to the operation of a scheme to enable the community to consider whether these

principles were sufficiently broad to address community concerns.

Following that meeting, PIAC finalised its statement of principles and a proposed model. In early September 2004, PIAC again met with the panel and other key stakeholders, including ILC, Link-Up and State Archives and PIAC outlined these principles and its proposed model.

Of the principles identified by PIAC, some were procedural, others substantive. These principles included that:

- the Scheme should be independent of Government, with a statutory base to ensure its independence;
- the Scheme should be proactive in advising people of their rights under the scheme, and undertaking research and investigation to determine who may have an entitlement to be paid;
- there should be a presumption in favour of finding a debt is owed, with the onus on the

NSW Government to provide evidence to discharge that onus;

- the monies held by the Board were and continue to be a debt owed to the individuals on whose behalf they were paid to the Board and discharge of this debt by the NSW Government should be considered simply repayment of that debt;
- the current value of the debt should be calculated to take account of inflation and interest accrued over the relevant period;
- there should be no cap on the funds available to the Scheme and the cost of administering the Scheme, and any costs arising through records searches, etc, should be borne by the Government separate from the repayment funds;
- where the person entitled to the money has passed away, that should be paid to the deceased estate and, through the estate, to the person's lawful heirs;
- the Scheme's decisions should be capable of review under the *Administrative Decisions Tribunal Act 1997* (NSW);
- there should be some mechanism for providing for an up-front payment to those who are elderly or in poor health;
- the emotional impact of the operation of the Scheme on Aboriginal people must be managed and minimised;

- the monies paid out should not be subject to income or other tax and should not impact on the income, government entitlements or other tax liability of the persons to whom monies are paid.

PIAC proposed a scheme based on an investigative rather than an application model. The model proposed had seven stages to enable investigation and research to take place, individuals to make claims, and those individual claims to be investigated. The focus of the early stages was on investigating the types of payments that were made to trust funds, the basis and amounts of those payments, as well as identifying those people who may have been eligible for any of those types of payment. Once eligibility for types of payments was established, the next stages of the Scheme would be to focus on determining the amount that should have been paid to into trust in relation to each of the eligible persons and when. Once a total entitlement was determined, then any valid payments made by out of trust would be deduced, leaving a net amount of entitlements. The final process under PIAC's proposed model was to determine the current value of the entitlement for each person and to make the payment to either the entitled person or to their heirs, where the person has passed away.

On 15 December 2005, the NSW Minister for Community Services held a media conference to announce the NSW Government's acceptance of the recommendations of the Aboriginal Trust Funds Repayment Scheme Panel. The Panel's report set out recommendations for the establishment of the Aboriginal Trust Fund Repayment Scheme to operate for five years to receive claims, undertake research, and determine payments owed. PIAC reviewed the report and considered that, while only some elements of PIAC's model had been included, much of what was recommended provided a workable and equitable solution.

On 31 May 2005, a Panel was appointed to oversee the Scheme and in early June 2005 PIAC met with the co-ordinator of the Scheme to discuss how the Scheme will operate and what PIAC can do to assist its many clients with claims.

The Scheme, which was due to commence operation on 1 July 2005, is behind schedule. PIAC has 120 clients with claims and is yet to determine the extent of its role once the Scheme has fully commenced its operation.

Policing & Corrections

A key issue for the Indigenous Justice Project is the impact of policing and corrections on Indigenous Australians. This includes advocacy work for clients with complaints against the NSW Police as well as an examination of the cultural awareness education and training the police receive.

As a first point of contact between Indigenous people and the justice system, the police service plays a pivotal role in Indigenous justice issues. Many police officers enter the force having had little or no contact with Aboriginal people and are uninformed and unprepared to deal with the particular social and cultural aspects of policing in Indigenous communities. This can contribute to a culture of systemic racism within the police service.

Police Complaints

PIAC filed a number of complaints with the NSW Ombudsman in relation to incidents involving unlawful arrest, use of excessive force, false imprisonment and unprofessional conduct of police officers. In such cases, PIAC prepares the written complaint on behalf of its client and liaises with the Ombudsman's office. PIAC then acts as an intermediary for its client when the police report verbally on the outcome

of the investigation, and provide advice to the clients on further avenues for redress where appropriate.

One of PIAC's cases involves a young Aboriginal man who sustained physical and psychiatric injuries as a result of being wrongfully imprisoned and assaulted. PIAC has sought a barrister's opinion about the prospects of bringing a successful civil action against the NSW Police Service for damages.

Cultural Awareness Training

PIAC is researching the cultural awareness training provided to the NSW Police Service as part of the Associate Degree in Policing Practice and by way of ongoing professional development. This information will provide the basis for an analysis of current practices to identify and develop opportunities to improve the outcomes associated with such programs and develop greater police understanding of Indigenous issues.

Retention rates of Aboriginal police

While Aboriginal people are being strongly encouraged to join the police force, the number of Aboriginal police officers remains below the Government target of two percent and statistics demonstrate a relatively low retention rate.

PIAC is representing an Aboriginal police officer in a race discrimination claim at the Human Rights and Equal Opportunity Commission for psychological injuries he has sustained as a result of ongoing racial harassment in the workplace from officers senior in rank to himself. This case highlights some of the issues for the NSW Police Service in recruiting and retaining Aboriginal police officers.

Death in custody – duty of care to parent established

In December 2005, PIAC acted for an Indigenous woman, Veronica Appleton in proceedings in the District Court of NSW in her claim for damages arising from the death of her 19-year-old son in the Cessnock Correctional Centre.

Ms Appleton's son had a history of psychiatric illness and previous attempts at self-harm which resulted in him being placed in the Acute Crisis Management Unit (ACMU) of the Centre. Upon his release from the ACMU, he was placed in a cell on his own, un-monitored, with a bed supported by four moveable milk crates and easy access to hanging points.

PIAC is seeking to establish that the Department failed in its duty of care not only to her son, but also to Ms Appleton. Of particular

concern is the way in which Ms Appleton became aware of her son's death and the manner in which she was shown his body.

The decision in the matter, heard by Justice Quirk, is reserved.

Our Strong Women – Speaking Up, Speaking Out

This year, PIAC once again partnered with the National Network of Indigenous Women's Legal Services Inc (NNIWLS) on a leadership and advocacy training project called *Our Strong Women – Speaking Up, Speaking Out*.

Following on from the success of the leadership training for Indigenous women conducted in 2002-03, the Federal Office for Women provided funding to NNIWLS to produce a version of the PIAC's *Work the System* training kit tailored to Indigenous women.

PIAC worked with a group of women from NNIWLS to design a customised two-day training program aimed at empowering and equipping Indigenous women to speak out on behalf of their communities. The training kit consists of a workbook for training participants, a training presenter's guide and overhead transparencies. PIAC and NNIWLS

road-tested the kit at five regional workshops around Australia: Moree, Townsville, Darwin, Broome and Port Augusta.

PIAC was pleased to once again have the opportunity of working with Network Co-ordinator, Denese Griffin, as well as the other members of the project working party: Libby Carney, Nancy Walke, June Lennon and Boni Robertson. This ongoing partnership between PIAC and the Network has enabled both organisations to further their own goals in relation to Indigenous justice.

It is anticipated that work to achieve funding for stage three of this project will begin in early 2006.

Reference Group

Work is underway to establish a Reference Group for the Indigenous Justice Project. It is anticipated that the Reference Group will help to identify key justice issues for Indigenous Australians and provide professional support to PIAC's staff working on Indigenous issues.



PIAC's Utility Consumers' Advocacy Program (UCAP) retained its place as a consumer advocacy body that is unique in Australia. After almost seven years of operation UCAP continues to address three essential services—electricity, gas and water—with its mandate to represent household consumers in NSW and an emphasis on the interests of low-income and disadvantaged groups. The capacity provided by PIAC for the project to combine advocacy, policy development, research and legal strategies has enabled UCAP to maintain its role as a key stakeholder in these industries.

The strong focus of UCAP on the interests of low-income and disadvantaged households was evidenced by its concerted work in relation to pricing determinations by the independent regulator and efforts to engage with the energy and water industries on issues of affordability and support for households facing financial hardship. This work was strengthened by two research projects commissioned from outside experts and published during the year. These examined some of the key factors behind financial hardship and assisted UCAP to identify a number of options for addressing these issues.

The 2004-2005 financial year concluded with a formal commitment by the NSW Government, through the Department of Energy, Utilities and Sustainability (DEUS) to provide funding for UCAP for a further two years.

Research

A highlight for UCAP was the publication of the major research report, *Cut off: The impact of utility disconnections*. This was produced by external consultants and funded by DEUS under the terms of its funding grant to PIAC for UCAP. Six of the major energy and water retailers in NSW participated in the research. The report examined a number of factors that lead to households facing difficulty in paying their energy and water bills, as well as the practices of the retailers in assisting consumers to manage those problems.

The findings indicate that the majority of households being cut-off from supply face serious financial difficulties. In many cases these are chronic in nature, which suggests the retailers need improved policies to assist customers rather than relying on disconnections or restrictions to deal with non-payment. The

nature of such programs and NSW Government Energy Accounts Payment Assistance (EAPA) scheme also need to take account of some of the significant differences between households who are 'working poor' and those more reliant on welfare payments for their income.

Following the publication of *Cut off*, UCAP initiated a campaign to encourage the NSW Government and the energy and water businesses to improve the existing hardship policies and programs for dealing with households facing difficulty in paying their utility bills. This campaign will continue into the coming year.

UCAP also published *Water pricing and vulnerable customers: profiling low-income households*. This is a study of the capacity of low-income households to respond to price signals contained in inclining block tariffs for water and the likely impact these higher prices

would have on larger households. The study was based on a more detailed analysis of some data collected by the Independent Pricing and Regulatory Tribunal (IPART).

Water and affordability also is the subject of a further research project commenced by UCAP during the year. With this research UCAP aims to develop a better understanding of the impact on rural households of changes in water pricing introduced by new NSW Government policy. As well as seeking to measure the social impact of inclining block tariffs on rural households it is hoped the research will reveal whether these tariff structures can deliver their promised water conservation benefits.

Affordability

UCAP continued to work with the energy and water industries, DEUS and regulators to promote affordability of essential services. A major focus was the pricing determinations undertaken by IPART for water prices in the wider Sydney region and the Hunter. Through UCAP, PIAC addressed a number of concerns with proposed new tariff structures. It also drew attention to concerns over proposals for significant increases in water prices on the NSW Central Coast, noting that this area contains a high proportion of socially disadvantaged households.

Affordability and the impact of price changes was the main focus of the successful UCAP conference, *The Price of Reform: Households and Essential Services*. As well as pricing, the speakers addressed topics such as the development of indicators of hardship for utilities' consumers and the likely impact of further industry reform.

UCAP also provided input to stakeholders on the design and delivery of hardship programs. These include the EAPA and the schemes operated by the individual energy and water suppliers.

Tariff reform

Considerable effort was devoted to tariff reform. Several utility companies introduced or proposed new inclining block tariffs. The concerns for UCAP continue to be the impact of these tariff structures on the bills to be paid by low-income and large households. It also was noted that there continues to be some confusion over the aim of these new tariffs and the likely size of any demand reduction that they may produce.

UCAP sought to give support to some innovations attempted by energy providers. The Country Energy trial of new metering technology was one such initiative. However, UCAP remains sceptical that consumers will

enjoy significant reductions in energy and water bills in the absence of more support for programs providing direct conservation of energy and water.

UCAP was pleased to support the proposal raised by EnergyAustralia of a new tariff for households facing financial difficulties. This tariff would see bills calculated without the standard 'fixed' component of prices and reward those households for any reduction in energy consumption they could achieve.

NSW Energy Directions White Paper

A major focus for UCAP was the NSW Government's *Energy Directions White Paper*. This raised a series of options for changes to the NSW electricity industry focussed on generation, retail prices, demand management and industry structure. Several submissions were made in response to the *White Paper* including a substantial paper produced in collaboration with the NSW Council of Social Service (NCOSS).

UCAP was at pains to argue for the importance of the retention of price protection for household users of electricity, as well as a continued role for public investment in this essential service industry. UCAP and NCOSS

also gave strong support to the proposed Energy and Water Savings Funds and their being given scope to provide energy and water savings for residential users.

Although the NSW Government established the Energy and Water Savings Funds in 2005 the community continued to wait for a formal decision on the other *White Paper* proposals.

National energy reform

The further reform of the energy industries in Australia continued to demand significant time and resources from UCAP. The moves by the Ministerial Council on Energy (MCE) to achieve further competition reforms and greater national consistency in the regulation of these industries were identified by UCAP as having the potential for significant impact on NSW households.

The MCE released several key initiatives of concern to UCAP during 2004-2005. These included an initial consultation paper on a range of changes to the regulation of electricity distribution and retail activities, and another outlining the options for the possible creation of a national body to advocate for the interests of energy end-users.

Together, distribution and retail activities account for roughly half the average household

electricity bill. UCAP provided a detailed response to the MCE paper on distribution and retail functions. Among the many points it addressed were the future role of competition in these industries, pricing principles, industry codes and licencing.

UCAP has commissioned a further research project to provide advice on 'best practice' in the content of utility licences and the enforcement of obligations imposed on the suppliers. This will have application to the national reforms and also to the operation of the licence regime in NSW.

The year also saw the agreement by Australian governments on the content of a new *National Electricity Law* (NEL). Of particular significance was the insertion of a new 'objects' clause into this statute, which provides much of the basic structure for regulation of the industry. This clause requires regulators to take account of the long-term benefit of consumers in the national energy market. At this stage, it is not clear how either regulators or industry will interpret this requirement.

PIAC joined with a large number of community, consumer and environmental groups to propose a raft of changes to the NEL. These were intended to clarify the position of consumers in such areas as affordability of

electricity, the right to supply and to challenge decisions of the regulators. These proposals were rejected by the MCE.

Reference Group

UCAP is greatly assisted in its policy development and advocacy by the members of its Reference Group. Funding provided by DEUS for specific representation of rural and Indigenous communities has continued to enhance the work of UCAP.

The Reference Group was comprised of representatives of:

- NSW Council of Social Service;
- Australian Consumers Association;
- Bourke Family Support Service;
- Council on the Ageing (NSW);
- Rural Women's Network;
- Park and Village Service;
- Combined Pensioners and Superannuants Association;
- Tenants' Union; and
- Institute for Sustainable Futures (UTS).

Liaison and publications

PIAC was represented on the Council of the Energy and Water Ombudsman of NSW by Senior Policy Officer, Jim Wellsmore.

In addition to its research publications and Occasional Policy Papers, UCAP continued to produce its specialist newsletter on utilities issues, *Well Connected*. Four issues were produced this year: in July and November 2004, and March and April 2005.

UCAP presented papers on utilities issues to a range of forums including IPART's public forum on water pricing, the NCOSS-Shelter conference on sustainability and the Australian review team of the International Energy Agency (IEA).

UCAP also provided briefings to the customer consultative groups of several energy and water companies. These covered the findings of the *Cut off* report as well as general utility industry issues.

During the year, the following submissions formed a core part of UCAP's work:

- Submission to the Review of Metropolitan Water Agency Prices, 14 January 2005.

- Joint Submission (with NCOSS) to the NSW Government on the Energy Directions Green Paper, 1 February 2005.
- Submission to the Independent Pricing and Regulatory Tribunal Investigation into water & wastewater provision in the greater Sydney region, 1 May 2005.
- Submission to the User-participation Working Group of the Ministerial Council on Energy (MCE) Consultation Paper on Regulation of Electricity Distribution and Retail, October 2004

These submissions, along with UCAP's two research papers:

- *Water pricing and vulnerable customers: profiling low-income households*, 4 January 2005, UCAP Occasional Policy Paper No 7; and
- *Cut Off: The Impact of Utility Disconnections*, 1 February 2005;

are available on PIAC's website at <<http://www.piac.asn.au/publications/>>.

PIAC Membership of management, advisory and working bodies

Attorney-General's Human Rights NGO Forum	Robin Banks
Australian Competition and Consumer Commission: Consumer Consultative Committee	Jim Wellsmore
Australian Fair Trade and Investment Network: Working Group	Pat Ranald
Australians for a Just Refugee Program: Board	Alexis Goodstone
Community Services and Health Industry Training Advisory Board	Carolyn Grenville
Community Trainers and Assessors Group	Carolyn Grenville
Department of Energy Utilities and Sustainability: Energy Accounts Payment Assistance Working Group	Elissa Freeman
Department of Foreign Affairs and Trade Human Rights Consultation Forum on International Human Rights Issues	Pat Ranald
Department of Infrastructure, Planning and Natural Resources: Demand Management Planning Stakeholder Reference Group	Jim Wellsmore
Energy Water Ombudsman NSW: • Council member appointed by the Minister • Finance Committee	Jim Wellsmore Jim Wellsmore
Federation of Ethnic Community Councils of Australia: Women's Policy Committee	Annie Pettitt
Independent Pricing and Regulatory Tribunal: Energy Industry Consultative Group	Jim Wellsmore
Indigenous Law Centre UNSW: Management Committee	Shaz Rind
LawAccess NSW: Operations Committee	Sandra Stevenson
Law Society of NSW: Human Rights Committee	Robin Banks

Legal Aid Commission: <ul style="list-style-type: none"> • Commissioner, representing community legal centres • Civil Law Sub-committee • Community Funding Sub-committee • Co-operative Legal Service Delivery Model Steering Committee: PILCH representative 	Simon Moran Simon Moran Simon Moran Sandra Stevenson
National Association of Community Legal Centres: National Human Rights Network	Annie Pettitt, then Jane Stratton
National Children's and Youth Law Centre: Board	Simon Moran
National Pro Bono Resource Centre: <ul style="list-style-type: none"> • Principal Solicitor • Board of Management 	Simon Moran Andrea Durbach
NSW Attorney General's Quarter Way to Equal Taskforce	Robin Banks
NSW Combined Community Legal Centres' Group: <ul style="list-style-type: none"> • Management Committee • Legal Aid Commission Sub-committee • Employment and Discrimination Sub-Group 	Simon Moran Simon Moran Anne Mainsbridge
NSW Legal Referral Forum: PILCH representative	Sandra Stevenson
Ngalya Aboriginal Corporation: Executive	Shaz Rind
Office of Fair Trading 2004 Fair Trading Awards: Judge	Carolyn Grenville
Public Interest Law Clearing House: Board	Shauna Jarrett Kate Harrison (to November 2004)
Temporary Protection Visa Legal Working Group: PILCH representative	Sandra Stevenson
University of Sydney Law Faculty Advisory Board	Robin Banks
Women's Rights Action Network Australia (WRANA)	Annie Pettitt
Women's Report Card (CEDAW) Project	Annie Pettitt