

Journal of the Public
Interest Advocacy Centre

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PIAC BULLETIN

PIAC

WHAT'S DRIVING ELECTRICITY PRICES?

**Expanding services
to homeless people**

**MENTAL ILLNESS
and homelessness**

**CONSUMER WIN:
dodgy funeral
directors**



Levelling the playing field

Working for a fair, just & democratic society

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Public Interest Advocacy Centre Ltd
 Level 7, 173-175 Phillip Street
 Sydney NSW 2000
 DX 643 Sydney
 Phone: +61 2 8898 6500
 Fax: +61 2 8898 6555
 Web: www.piac.asn.au

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Cover: Vivian Bligh & Anne Bowkett
 Photo: Sarah Bassiuoni

CEO REPORT

My sporting career was not glorious. But I did pick up a lot of sporting clichés. One of them is the importance of a 'level playing field'.

Lawyers like the level playing field image. But what would a truly level playing field look like for our legal system? It would probably have two main characteristics. Every legal dispute would be resolved according to its legal merits. Secondly, justice would be tempered with mercy.

It's trite to observe that Australia's justice system doesn't always look like legal nirvana. We know only too well that a litigant's success (or otherwise) is affected by factors that should be extraneous, such as their capacity to afford a high-priced legal team, as well as their ability to navigate the legal system.

This edition of the PIAC Bulletin focuses particularly on how we at PIAC do our bit, and how we work with others, to level the legal playing field, reducing as much as possible the inequities that can make justice difficult to attain.

The first thing we do is we try to help some of the most disadvantaged people in our community. We are particularly proud to be expanding our Homeless Persons' Legal Service, precisely because this allows us to reach some of the people who find it most difficult to obtain the legal assistance they need to enjoy their legal rights.

In this edition, you will also read about PIAC's work with others who are among the most vulnerable members of our community. PIAC recently represented the family of Tracey-Lee Brannigan, who died of a heroin overdose in prison. This case has prompted some important practical changes that will reduce some of the risks faced by inmates in a prison system that remains awash with illicit drugs.

Similarly, you can read about PIAC's work with at-risk young people, and Aboriginal communities who



Edward Santow, PIAC Chief Executive

have been exploited by unscrupulous businesses seeking to gain an unfair advantage.

The work of community legal centres like PIAC, as well as our partners in the legal assistance sector like Legal Aid and the Aboriginal Legal Service, is crucial in ironing out some of the kinks in the legal playing field. But we can't do this work alone. So, in this edition, we also showcase some of the partnerships that help to achieve these positive results.

PIAC brings together over 400 lawyers from the commercial law firms and Legal Aid NSW, who give pro bono legal help to homeless people. We also have a number of partnerships with law firms - most notably, Minter Ellison and King & Wood Mallesons - that provide some of their best young lawyers to work with PIAC on 6-month stints... at no charge to PIAC.

But one of the biggest barriers in a vulnerable person vindicating their legal rights can be the risk of going to court, but losing on a technicality, and then facing an adverse costs order that could cripple them financially. Our partnership with the litigation funder, Bentham IMF, has been crucial in ensuring that many clients in that position are indemnified in the event that they lose their case.

Edward Santow,
 PIAC Chief Executive Officer.

Homeless Persons' Legal Service to expand

PIAC has recently secured one-off funding from the Australian Government to support the expansion of the Homeless Persons' Legal Service (HPLS) outside the inner-Sydney area.

HPLS already runs 11 clinics for people who are homeless or at risk of homelessness at support agencies, mostly in the inner city. This additional funding will support the establishment of new clinics in areas of particular need, including areas west and north of Sydney CBD.

'This is an exciting time in the history of HPLS,' said senior lawyer, Roslyn Cook. 'We're celebrating our 10th anniversary this year, and our service continues to grow.'

HPLS is a collaborative venture that brings together community sector organisations with pro bono legal services delivered by ten commercial law firms and Legal Aid NSW.

PIAC trains and supervises more

than 400 lawyers who provide pro bono legal advice at HPLS legal clinics.

The clinics and the HPLS Solicitor Advocate provide a dedicated point of contact for people who are homeless or at risk of homelessness to access legal advice and representation.

Our newest clinic, staffed by solicitors from Maddocks, opened at the Mission Australia Centre in Surry Hills in February 2014.

'The Mission Australia Centre clinic has been a real success this year. We look forward to partnering with other new agencies and new law firms as we expand,' said Roslyn.



From left: Bob Zuro (MAC), Emily Lau (Maddocks), Sunil Sharma (MAC), Rachel Francois (MAC), Rosanna Van Keieken (Maddocks). Photo: Gemma Pearce

'Since HPLS started in 2004, we have provided legal assistance in more than 8000 matters. Our innovative, flexible practice helps clients overcome the barriers clients face in daily life,' Roslyn said.

More information about HPLS can be found in the 'projects' section of PIAC's website www.piac.asn.au.

Focus on young lawyers - Sarah Evans

From civil to criminal law, Minter Ellison secondee, Sarah Evans, talks to us about the human face of law.

'I've been assisting with a variety of civil and criminal matters and to date my background has been civil law. So, working for PIAC's Homeless Persons' Legal Service (HPLS) has been a refreshing experience.'

'Representing homeless people is also a change from my previous role as a commercial lawyer and this exposure to the more human side of the law is engaging, challenging and satisfying.'

'I'll often meet a client for the first time at one of the local CBD courts. Many HPLS clients struggle with complex and chronic conditions involving substance use and mental illness. Obtaining clear instructions

can often be challenging. Trying to obtain the best outcome for a client who doesn't show up for court is a continuing uncertainty in this line of work.'

Sarah says that being able to see a client's comfort when a good outcome is achieved on their behalf is incredibly rewarding.

'One of my most memorable moments was obtaining a "no conviction" order for two HPLS clients as they were both young, around my age, and both were very excited at the prospect of moving on with their lives without the burden of a criminal conviction threatening their future employment or travel opportunities.'

'Another bonus of being seconded to PIAC has been the improvement in my advocacy, negotiation and com-

munication skills, and my familiarity with the concepts underpinning criminal law. More importantly, I've been able to see how textbook criminal concepts are reconciled with the realities of the daily practice of law in the fast paced local court environment.'

'I would say to any young lawyer thinking about this type of work, if a firm offers opportunities to engage in *pro bono* work, creating the time to assist will often give you the chance to run your own files while simultaneously improving your own legal skills and reducing somebody else's hardship. And that's a combination too good to pass up.'



Energy network prices spark debate

In NSW, the cost of transporting or 'distributing' electricity around the state to households and businesses makes up around 50% of household electricity bills. The distribution companies are proposing that the costs of building and maintaining poles and wires and financing their operations in 2014 should be two to three times what they were in 2004.

PIAC recently made a submission to the Australian Energy Regulator's (AER) revenue determination for the three NSW electricity distribution networks (Ausgrid, Essential Energy and Endeavour Energy).

Given the scale of the proposed increases and the financial burden this will place on consumers (especially those on low incomes), it's no surprise that they have been carefully scrutinised and challenged by consumer advocates, including PIAC's Energy + Water Consumer Advocacy Program.

In short, PIAC is not convinced that networks' revenue needs to continue to be so high and is very concerned about many of the assumptions made in their proposals.

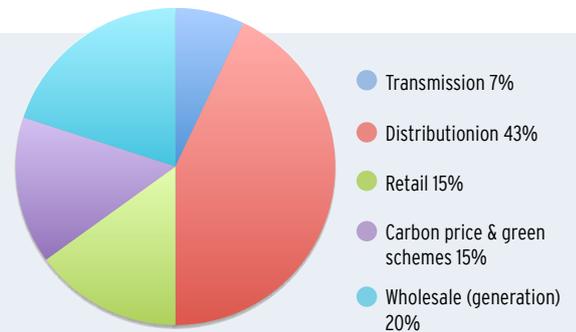
Already, recent price increases have made it more difficult for many people to afford their power bills and price increases have been accompanied by spikes in disconnections. For example, in 2012/13, nearly 25,000 households had their electricity disconnected for not paying their bill, an increase of almost sixty per cent since 2009/10. Further increases would undoubtedly result in even more disconnections.

These concerns have made electricity prices a key political issue. In response, Australian governments made changes to the National Electricity Law, which governs network planning and spending.

The changes led to the AER producing the Better Regulation Guidelines, which cover how networks should prepare various aspects of their spending proposals. While

Your bill

When combined with TransGrid's charges, network charges make up about 46% of your bill. On average, prior to the abolition of the carbon tax, customers electricity bills are made up of the components shown here.



the guidelines are not binding, if networks choose not to follow them, the AER has greater discretion to amend the spending proposals.

However, the networks have chosen to ignore crucial outcomes of the Better Regulation program. In response, PIAC opposes the network spending plans in areas including capital expenditure, borrowing costs and efforts to bring down electricity consumption to reduce future investment. Two of these key issues are outlined below.

If PIAC's recommendations are accepted by the AER, it could mean consumers pay hundreds of dollars less on electricity bills.

The AER will make a draft determination by the end of November this year, with a final determination due by 30 April 2015. New prices will come into force from 1 July 2015.

Capital expenditure - how much is too much?

Electricity networks earn their profit through a 'regulated rate of return'. The regulator (the AER) sets a rate at which networks are allowed to earn a return on the money they invest. Put simply, this means that the more networks spend, the greater their profit. This creates an obvious incentive for networks to spend as much as they can.

To guard against this, the AER must closely scrutinise network spending proposals to determine what is (or is not) necessary investment. The networks propose spending \$9.6 billion on capital expenditure over five years.

PIAC contributes to this scrutiny through its own submission. While PIAC has identified savings, this is a huge task for a community organisation and there is a risk of being 'outgunned' by dint of the networks' resources. The networks' submissions to the AER were more than 44,000 pages long.

To give a sense of the scale involved, if all that paper were piled on top of itself, it would measure almost 4.5 metres. That's taller than most buses (and about half the height of a telegraph poll).

Borrowing costs overestimated

It has been estimated that up to half network changes (or 25% of the final bills we pay) are for interest on money previously borrowed to invest in the network.

This means that the interest rate at which networks borrow money is very important for households. The AER has the difficult task of trying to estimate what the networks' borrowing costs will be, and setting the price based on that estimate. If the networks then borrow money more cheaply than the allowance, they retain the difference.

For this price determination, the networks have proposed a borrowing cost of 8.83%. In doing so, they have chosen largely to ignore the relevant Better Regulation guideline. PIAC estimates that if they had followed the guideline, the proposed rate of return would be around 7.7%.

PIAC's submission, *Moving to a new paradigm*, is available at www.piac.asn.au/publications.

The facts on rising gas bills



If you use gas at home for cooking or heating, you might have noticed your last bill was higher than you expected. This is because gas prices in NSW increased by up to 20% on 1 July 2014.

Unlike electricity prices, gas prices are still regulated in NSW by IPART. Consumers have the option of paying the regulated price or seeking a 'market contract' with any of the energy retailers who supply to their area. The market price generally provides a discount on the regulated price. So, when the regulated price goes up, market contracts generally go up as well.

Gas prices are rising because gas producers will soon be able to export Australian gas to the world. Exporting gas requires huge machines that cool gas to a liquid, so it can be loaded onto ships.

Three of these facilities (known as 'trains') are being built in Queensland. This means that for the first time, Australians will be paying the international price for gas (as we do for petrol).

As a result, it's estimated that prices for wholesale gas will triple, from \$3-4 per gigajoule (GJ) to \$10-12 a GJ. Customers in areas of North Asia are prepared to pay up to \$15 GJ (Japan is desperate

for alternative sources of energy, following the Fukushima nuclear disaster). Customers in Australia will be charged the same price, less the cost of transporting gas overseas.

While all analysts agree that prices will go up, PIAC argued to IPART that there was still some uncertainty surrounding the timing and size of the increases. PIAC, therefore, said that IPART should not allow consumers to be slogged with such large and immediate price increases. IPART disagreed, accepting the prices that were proposed by big gas retailers like Origin and AGL.

What remains to be seen is whether prices will stay high or go back down. Australia has abundant gas reserves, but extraction is a lengthy and costly process. There is also considerable community concern about mining techniques for extracting coal seam gas, such as hydraulic fracturing (or fracking).

The NSW Government is actively exploring options to take pressure off gas supplies (and prices). However, there's no easy or immediate

solution. Whatever happens, expect gas prices to stay high for the next few years at least.

Paying less for gas

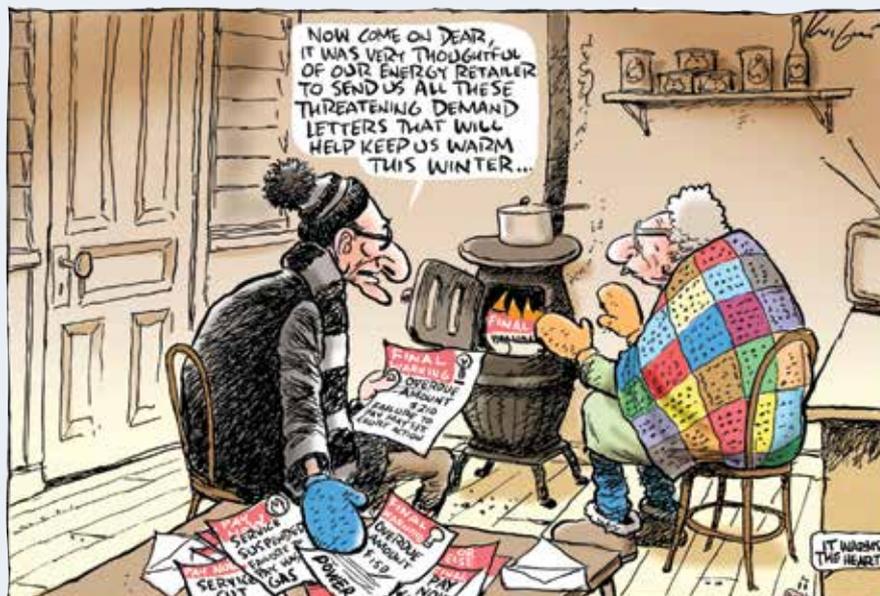
To make sure you're on the best gas or electricity contract, use the Australian Government's independent price comparator service. Beware of other comparator services that earn a commission and may not have all available offers displayed.

The service is called Energy Made Easy (www.energymadeeasy.gov.au). Search results often contain a lot of detailed information, so it can take time to find what you want.

The service is also available over the telephone, for the cost of a local call. Call 1300 585 165. It's helpful (but not essential) to have a copy of a recent power bill with you.

Remember to look out for contract terms like hefty late payment fees or contract termination fees. Some discounts are also only available when you pay your account on time.

For more information, visit the EWCAP page at www.piac.asn.au.



Cartoon: Mark Knight.

NCAT decision puts dodgy funeral directors on notice

In June, PIAC's Indigenous Justice Program (IJP) took up the case of Vivian Bligh, a Kingaroy woman who was significantly overcharged for the funerals of her two brothers in 2010 and 2012.

'We had heard anecdotally that the Aboriginal community in Moree had been experiencing difficulties with a particular funeral company,' said IJP Senior Solicitor Sarah Bassiuoni.

'Unfortunately, we have also heard about other cases where funeral services have attempted to take advantage of people in Aboriginal communities.

'Ms Bligh came to PIAC after years of frustrating negotiations with the company about a range of issues relating to the way they had dealt with her brothers' funerals.

'Some of their practices were quite dodgy. In one case, Ms Bligh received multiple invoices for the same funeral services, the last charging almost \$1500 more than the original quoted price.

'In addition, in both cases,



From left: Jay Underwood, Lois Underwood, Esther Ralph, Vivian Bligh, Anne Bowkett
Photo: Sarah Bassiuoni.

headstones have only recently been erected - years after the death of her brothers, despite the accounts being paid in full, causing significant distress for the family,' said Sarah.

Goater Funerals in Moree were ordered to pay Ms Bligh almost \$1500 following a decision at the NSW Civil and Administrative Tribunal (NCAT).

'This decision is a significant win for the Moree community,' said Sarah.

'Charging large sums of money without providing the services that have been promised is not only illegal

and unscrupulous, it is a blatant attempt to exploit people when they are at their most vulnerable.

Sarah travelled to Moree in June to attend a commemoration service for Ms Bligh's brothers.

'I would encourage anyone buying funeral services to make sure they understand what is and isn't included in the fee, and that they get an itemised quote in writing.'

Complaints about unscrupulous business practices can be made to NSW Fair Trading on 13 32 20.

The Good Service Mob visit the Northern Rivers

Earlier this year, PIAC joined the Good Service Mob, a collaboration of NSW consumer organisations that seeks to ensure members of Aboriginal and Torres Strait Islander communities are aware of their rights as consumers and the free services that are available to help them.

Since 2005, the Good Service Mob has hosted

community information days across New South Wales. At these events, attendees hear from Indigenous and non-Indigenous staff from a range of agencies that can help resolve disputes.

These agencies include the Australian Securities and Investment Commission, the Anti-Discrimination Board of NSW, the Energy & Water Ombudsman NSW, the Financial Ombudsman Service, Legal Aid NSW, and NSW Fair Trading.

In July, PIAC's Indigenous Justice Program Senior Solicitor, Sarah Bassiuoni, presented at the Good Service Mob's roadshow in the Northern Rivers region, visiting Muli Muli, Tabulam and Casino.

PIAC's presentation covered the work of the Indigenous Justice Program in assisting Aboriginal clients accessing their superannuation and asserting their consumer rights. Sarah also spoke about representing Aboriginal clients combating discrimination and asserting their rights to be treated fairly by the police.

For more information, or to find out about upcoming events, visit www.goodservicemob.com.au.



Photo: Nani Ross

Human face of 'endemic' prison drug problem

A coronial inquest into the death of a 41 year-old woman from a heroin overdose in a NSW prison has highlighted the problem of drugs in prisons, and the need for reform.

PIAC represented the family of Tracey-Lee Brannigan, who died in Dillwynia Correctional Centre in February 2013, during a 17-hour lock-in period in a "high needs" cell. Sadly, she was just three months shy of being eligible for release.

'Tracey Brannigan's story is tragic,' said PIAC Senior Solicitor Jane Leibowitz, who represented the Brannigan family at the inquest.

'Like 80% of the population entering adult custody, Tracey had a history of drug use and many of the problems that addiction usually entails.'

'Tracey's heroin use in jail was well known to staff at the correctional centre - she had overdosed in custody at least three times prior to her fatal overdose.'

In taking the case on, PIAC helped Tracey Brannigan's family to raise proposals for reforms that might reduce the chances of similar deaths in future. The Coroner examined the role of Corrective Services NSW when placing Ms Brannigan in the 'high-needs' cell.

The Court heard that prisoners are routinely left in these cells without monitoring from 3.30pm until 8.15am - a period of almost 17 hours. Ms Brannigan's cellmate found her body at 5am on 25 February, during the lengthy lock-in period.

PIAC emphasised the need for non-intrusive monitoring procedures for inmates held in the high needs unit for drug-related infractions, to enable officers to check the welfare of inmates during the course of the 17 hour lock-in period.

However, in doing so, PIAC emphasised that the monitoring procedures should balance the need to increase surveillance of inmates

Doing more to address the drug and alcohol issues of known offenders would not only save lives, but have positive flow-on effects for the whole community.

who are particularly vulnerable to self-harm, with the rights of inmates to be treated with humanity, dignity and respect while in detention.

Significantly, the Coroner recommended that 'random searches of cells at, or shortly after, the afternoon lockdown' be considered, especially for 'cells occupied by inmates that are known, or reasonably suspected, to be users of illicit substances whilst in custody.'

Deputy State Coroner MacMahon also found that the availability of illicit substances in correctional facilities is an 'endemic problem'.

PIAC submitted that Corrective Services must make better efforts to stem the supply of drugs into prisons.

This means better drug detection and anti-trafficking protocols, and more training for staff in identifying signs of intoxication.

WEDNESDAY, JUNE 11, 2014 THE SYDNEY MORNING HERALD
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Death in custody Inquest into inmate

Prisons for women are 'awash' in illicit drugs

Rachel Olding
Crime

Women's prisons in NSW are awash with illicit drugs that are fuelling "drug parties" and fatal overdoses, an inquest has revealed.

The death in custody of mother-of-three Tracey Brannigan from a heroin overdose should serve as a watershed moment that exposes the "callous indifference" of correctional services and staggering drug abuse within prisons, prisoner advocate Brett Collins said.

Officers at Dillwynia Correctional Centre had placed Brannigan, 41, on "sanctions" for her continual drug use, yet were unable to stop her having a "drug party" in a high-needs cell that she shared with another known drug user, the inquest heard on Tuesday.

Detective Inspector Gary Jones said he believed Brannigan and her cellmate took prescription drugs and heroin one night in February last year, accidentally killing Brannigan just three months shy of her possible release.

Brannigan, a career criminal and long-term drug addict, had previously overdosed three times in prison, yet freely obtained drugs, which are often thrown over the back fence of the semi-rural prison near Windsor, the inquest heard.

Counsel assisting the coroner, Paul Bush, said the inquest will question whether Corrective Services NSW and Justice Health breached their duty of care by allowing Brannigan to continuously abuse drugs or by not giving her adequate supervision and treatment when she was high.

Her death has led to calls for an overhaul of the prison system to stem the flow of drugs.

Public Interest Advocacy Centre solicitor Jane Leibowitz, who is representing Brannigan's family, has called for better drug detection, better staff training and a stronger focus on therapeutic programs for drug addicts rather than custodial sentences.

One correctional officer, Robert Eastwood, told the inquest of a "drug party" in about 2010 in which illicit drugs flooded the prison and a whole "unit" had to be treated for intoxication.

The security manager of Dillwynia, Leanne O'Toole, said drugs were more readily available in female facilities than in male facilities and she estimated 75 per cent of inmates were abusing drugs.

"There is no time that I would ever guarantee that there are no drugs in our facilities," she said.

Regular searches and crackdowns are conducted but there is no X-ray machine or high perimeter fences at Dillwynia and prisoner rights had to be balanced with invasive searches, she said.

Outside the court, Brannigan's mother, Sandra Kelly, and her daughter's partner, Carlos D'Amico, said they were devastated by her death and questioned how well-resourced rehabilitation programs were if 75 per cent of inmates are



Overdose: Tracey Brannigan, and below, her partner Carlos D'Amico and mother Sandra Kelly.



'It's not going to help my daughter but her legacy will be to help other prisoners who need it.'

Sandra Kelly, on the need for more well-resourced drug rehabilitation programs

using drugs. "It's not going to help my daughter but her legacy will be to help other prisoners who need it," Ms Kelly said.

Mr Collins said Brannigan had expressed interest in working on prisoner advocacy and was a delegate on an inmate development committee. He said she wanted to complete a business degree but was not given permission and had been refused access to education classes and computers; a claim denied by the prison.

Doing more to address the drug and alcohol issues of known offenders would not only save lives, but have positive flow-on effects for the whole community.

The inquest was covered widely in the print and broadcast media. Links to some of these reports, including the ABC's 7:30 program, are available on PIAC's website www.piac.asn.au.

Doing justice at a social

Professor Peter Cashman, one of the founders of PIAC and current Chair, hosted a reception at his home in May to support PIAC.

The special event was held to raise awareness of PIAC's social justice work with guests keen to hear firsthand about PIAC's programs from board and staff members. The night also highlighted the need for philanthropic funds to ensure PIAC can continue its work providing legal support for disadvantaged and vulnerable people.

In his address, CEO, Edward Santow, said that PIAC has never been more successful in achieving social justice.

'We have recently celebrated major wins in the anti-discrimination area, in our war crimes work, in homelessness and in protecting the rights of children who have been unlawfully detained.

'We are very fortunate to have legal firms such as Allens supporting our Indigenous Justice Program. However, now more than ever, we are in need of philanthropic generosity if we are to continue meeting PIAC's objectives of working for a fair, just and democratic society.'

Allens' Partner and Chair of its National Pro Bono Committee, Phillip Cornwell, spoke of the importance of PIAC's work within the community and the positive impact of its work on so many people who 'might not otherwise have access to justice'.

Reflecting on the response to his appeal, Edward Santow said, 'the generosity of our donors, both new and current, has been inspiring. I sincerely thank everyone who has generously supported PIAC. It really does make a difference.'



Phillip Cornwell.

Photos: Gemma Pearce



Alexis Goodstone, John and Sue Yiannikis.



Robert Ishak, Oliver Derum, Lou Shetzer.



Joellen Riley, Peter Cashman, Stuart Clark.



Michelle Cohen, Emilee Fairlie, Camilla Pandolfini.



Annmarie Lumsden, Alan Kirkland, Polly Pickles.



Shauna Jarrett.



Edward Santow, Deirdre Moor, Alexandra Rose, Georgina Perry, Daniela Gavshon.



Helen Sham-Ho, Alexis Goodstone.

War crimes and justice: a continued focus on Sri Lanka

In February 2014, PIAC's International Crimes Evidence Project (ICEP) released *Island of impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war*. ICEP is continuing this investigative work and gathering key evidence to assist in seeking accountability, including through a mechanism established through the United Nations Human Rights Council.

This winter, PIAC co-hosted a course with the Institute for International Criminal Investigations (IICI) focusing on evidence, interviews and witnesses in international investigations. It was the first such course to be run in Australasia and provided a significant opportunity for lawyers working with ICEP to hear and learn from experts in the field.

IICI is a non-profit international organisation, based in The Hague, and led by John Ralston. John Ralston is also the Chair of ICEP's Committee of Experts, a specialist group that provides advice and input into ICEP's work. IICI trains international criminal investigators and related professionals in the techniques of investigation of international crimes and serious violations of international humanitarian law.

PIAC and IICI brought together a range of world-renowned experts to present at the course. Included among these presenters was Brenda Hollis (pictured), Prosecutor of the Special Court for Sierra Leone and the Residual Special Court for Sierra Leone.

Ms Hollis was the lead prosecutor in the case against former Liberian President Charles Taylor. She is a retired military officer of the United States Air Force, and has had a long and distinguished career including as

an international criminal prosecutor, working at the UN ad hoc tribunals for the former Yugoslavia and Rwanda.

At an event hosted by Henry Davis York, Ms Hollis addressed members of the Sydney legal community and supporters of ICEP. Ms Hollis expressed her firm support for the international and hybrid courts and tribunals established to provide accountability for the commission of war crimes, crimes against humanity and genocide.

'These crimes are truly deserving of an international response; they are horrific in nature, massive in effect and in scale - numbering in the tens, hundreds of thousands, impact not only the individual victims, but also their communities, countries and regions, and threaten international peace and security.'

In Sri Lanka, and internationally, there has been no criminal accountability for the alleged crimes that occurred during the final stages of the conflict. Until this happens, civil society organisations like PIAC have an important role to play in collecting evidence, helping key decision makers to gain an accurate picture of what took place, and in

maintaining the momentum towards accountability.

Ms Hollis acknowledged the considerable role played by civil society organisations in seeking to realise the ideals of international criminal justice.

'All of these international or hybrid criminal courts have come into existence in large part because of persistent and often perilous efforts and commitment of civil society to bring some measure of accountability for horrific wrongs done to civilian populations of their countries. It is the courage of the civil society members that have initiated the process that has brought us the international justice we have today.'

As ICEP continues its investigation into the final months of the Sri Lankan civil war, PIAC thanks its many supporters whose ongoing pro bono and financial assistance is so vital to this important work. King & Wood Mallesons, Hicksons, Ashurst, Herbert Smith Freehills and Henry Davis York generously funded the course.



Living with mental illness without a home

People who experience mental illness often have difficulties accessing stable accommodation. For others, maintaining that accommodation and sustaining a tenancy can be extremely challenging.

As a result, people with mental illness make up a high proportion of the homeless population, and are often vulnerable to becoming homeless.

This has been confirmed by several studies in Australia over the last 10 years and is also reflected in the casework of the Homeless Persons Legal Service (HPLS) and the HPLS Solicitor Advocate. People with mental illness are also significantly over-represented among those who come into contact with the criminal justice system.

In 2013, HPLS and StreetCare commenced a series of projects looking at the difficulties experienced by homeless people living with mental illness in applying for and sustaining accommodation.

These projects also consider the over-representation in the criminal justice system of people who are homeless and live with mental illness. They have involved a careful study of HPLS casework as well as direct consultations with homeless people and those in unstable accommodation living with mental illness.

Somewhere over the rainbow - The opinions and experiences of people living with mental illness in getting housing, is the third in this series of reports. The report documents the views and opinions of

homeless people, hearing from them in their own words of the difficulties and challenges they faced in exiting homelessness. It records the real-life experiences of members of this vulnerable community.

Earlier reports in the series have examined the relationship between mental illness, homelessness, accessing stable housing and the criminal justice system.

Somewhere over the rainbow... found that without on-going support, many formerly homeless people living with mental illness consider returning to the streets, rather than tackling the social and administrative challenges of living in high-density social housing.

This latest report is the result of consultations facilitated by members of PIAC's consumer advisory group on homelessness, StreetCare, with thirty people with a history of mental illness who had recently experienced a period of homelessness. The project received financial support from StreetSmart, through its Community Small Grant Scheme.

The overwhelming response from participants across the consultations was that they experienced difficulty in exiting homelessness into accommodation. The cultural, environmental and social shift for people with mental illness coming

off the streets is enormous. People recounted how they suddenly felt alone, isolated, lacking support, and subject to judgment and stigma from neighbours and housing officials. They felt out of place.

'We found that some people living with a mental illness were struggling to cope with the new set of pressures that comes with living in social housing. They reported needing more on-going support than is currently available to maintain their tenancy,' said Lou Schetzer, Senior Policy Officer at the Homeless Persons' Legal Service.

The processes involved in applying for housing, negotiating a lease, paying a bond, paying rent in advance, and signing a lease agreement were a daunting and confusing ordeal.

For some participants, a failure to understand what they were signing immediately placed their accommodation at risk. For others, the biggest frustration involved lengthy waiting periods to obtain stable, low-cost accommodation.

For many participants in this research, the most significant difficulties in sustaining their accommodation are driven by living in areas where there is a considerable lack of social cohesion, high crime, poor amenities, or problem neighbours. Some participants stated that when these problems combined with a lack of services or public transport, the result is a sense of isolation and loneliness, causing high levels of stress, anxiety

We get treated by Housing like we're second class citizens. Like we shouldn't have a place in this world. And that's how I've been treated in the past... Like we come out of the gutter or something, you know.



PIAC's consumer advisory group, StreetCare, with HPLS staff.

and depression.

'Negotiating with government bureaucracies, problem neighbours, or other difficulties arising from high-density social housing are so severe that many of the people we spoke to said they had considered returning to the streets,' said Lou Schetzer.

Most participants spoke of the importance of having high quality support assistance to make the transition from living on the streets or couch surfing, to living in stable accommodation. Support workers and case workers were identified as being vital in helping to secure housing, and to negotiate the complex and often confusing processes involved in applying for social housing.

Once in housing, several participants expressed that they needed on-going, long-term support

from case-workers to identify their further support needs, and to facilitate ongoing support to help them maintain their tenancy, including financial counselling, mental health services, other counselling services, medical services and social activity programs.

'Long-term casework support, community programs and counselling services are essential to assist this vulnerable group to avoid returning to homelessness,' said Lou Schetzer.

For nearly all of the participants, the most important thing for them after a life of homelessness, housing instability, anxiety and depression, was the knowledge that they had a place that they could call 'home'. For many participants, 'home' meant safety, security, privacy, being close to amenities, being part of a community, and being able to look after themselves without being judged or hassled.

Scan the QR code to read 'Somewhere over the rainbow - The opinions and experiences of people living with mental illness in getting housing'



Previous reports produced by HPLS that looked at homelessness and mental illness were:

- *Sentencing contradictions - Difficulties faced by people living with mental illness in contact with the criminal justice system* - this publication looks at the interrelationship between mental illness, homelessness and criminal offending, and considers alternative strategies in responding to the needs of homeless people with mental illness.
- *Skating on thin ice - Difficulties faced by people living with mental illness accessing and maintaining Social Housing* - this looks at the close relationship between homelessness and mental illness, and considers alternative strategies to respond to the needs of homeless people with mental illness who are reliant on social housing for their accommodation.

Focus on young lawyers - Michael Jessup



Before commencing his secondment at PIAC, Michael Jessup's experience was largely in commercial law, working in the litigation team at King & Wood Mallesons. Michael spoke with the *Bulletin* about his experience at PIAC.

'I've really enjoyed my time with the PIAC litigation team. They are an extremely bright and dedicated group of people, focused on helping vulnerable people. I felt very welcome from the moment I arrived here and am very sad to be leaving,' said Michael.

'At PIAC I have been exposed to a broad range of legal issues. When working within a practice team at a corporate firm, you are often asked to focus on a very discrete issue as part of a large matter. At PIAC, I consider a number of different areas of law in the matters I'm involved with.

'I'm managing my own files here and the most important lesson I've learned is that you cannot be too organised or over-prepared. The skills I've learned in those areas I will take with me in future practice of the law.

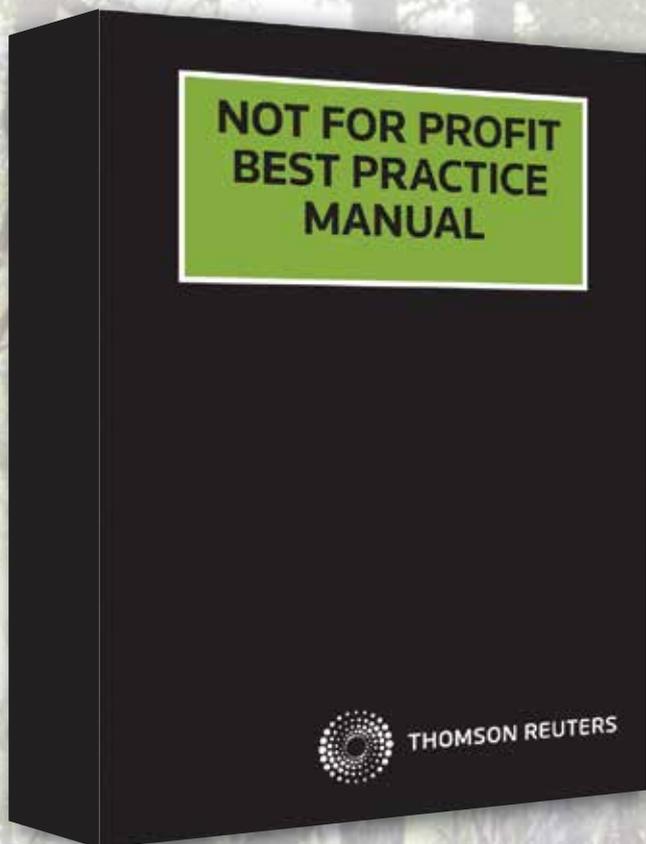
'PIAC's mission of advocacy, social justice and public interest is extremely important - it gives people a voice and allows it to be heard. By taking on matters of public interest, PIAC is able to make the public more aware of social justice issues facing the community.

'For those young lawyers wanting to work in the social justice sector I would urge them to get involved in as many matters as they can. Working in the social justice sector provides exposure to an incredible range of legal work. Being involved in many different matters is the best way to develop your skills.

'I think the fact that you're also in a position to help someone is also very powerful and fulfilling.'

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Walking the talk: Bentham IMF and PIAC

If you have limited means, the threat of an adverse costs order can discourage you from enforcing your legal rights - even if you have suffered a serious injustice and have a strong legal case.

This challenge is particularly acute for public interest test cases in the discrimination jurisdiction, such as the ones undertaken by PIAC, because it falls to the people who suffer discrimination to take on the risk involved in litigation. Put simply: losing one's case could give rise to a costs order that means the client also losing their home.

Australia's largest litigation funder, Bentham IMF Limited (Bentham IMF), has supported PIAC since 2011 through sponsorship, and by providing costs indemnities in high-profile discrimination cases.

Where it provides such an indemnity, Bentham IMF is removing a significant barrier to a person being able to enforce their rights. Executive Director of Bentham IMF, John Walker, recently spoke with the Bulletin about civil justice, pro bono work and why they support PIAC.

Bentham IMF's first case with PIAC was Greg Killeen's disability discrimination complaint about many of Sydney's supposedly wheelchair-accessible taxis. The case came about after Greg Killeen, who has quadriplegia, noticed that many taxis licensed in NSW as wheelchair-accessible taxis were unsafe for wheelchair passengers and too small

to access.

The case was successful, and in January 2011 the Federal Court found that the Disability Standards had been breached. As a result, the Department of Transport issued a new Wheelchair Accessible Taxi Measurement Protocol, increasing the minimum amount of useable space required for all new wheelchair-accessible taxis. Since 1 October 2011, all new wheelchair-accessible taxis must meet the new guidelines to be licensed.

'When you have identified that there is discrimination and the relevant organisations are not acknowledging the norm that should be enforced, PIAC becomes one of very few that will take that organisation to task,' explained John Walker.

'That's why we are proud to assist applicants by promising to pay the respondent's costs in the unfortunate case that they lose and are ordered to pay.'

Bentham IMF has also provided adverse costs indemnities in two other major discrimination cases.

The first was Julia Haraksin's case against Murrays Australia Ltd, a landmark case enforcing the rights of wheelchair users to use buses. The second was Graeme Innes' case



John Walker, Executive Director Bentham IMF

against Sydney Trains, which has improved the use of audible next-stop announcements on trains for the benefit of people like Mr Innes, who is blind.

While the partnership between Bentham IMF and PIAC clearly has been very successful in facilitating public interest litigation, John Walker has also noticed some benefits for Bentham IMF itself.

'Bentham IMF is a change agent in the sense that we created the litigation funding market in Australia. We deal with a broad range of stakeholders, including regulators, courts, lawyers, journalists, and capital markets. People need to learn to trust you, so living what you are saying is important.

'PIAC specialises in working for social justice, which is different from our work - so if IMF can provide some resources for PIAC to do its job better, then we feel like we've been able to give back to the community too,' added John Walker.

For more information about PIAC's cases, or to find out about supporting PIAC, visit www.piac.asn.au.

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'Proactive' policing : doing more harm than good?

In some Aboriginal communities, so-called 'proactive' policing has had the unintended consequence of exacerbating historical hostility and mistrust between young people and the police. This makes it even harder for authorities to have a positive impact on the lives of young people.

In the two years to March 2014, crime rates dropped in almost every category, according to the NSW Bureau of Crime Statistics and Research. Yet, despite this encouraging news, PIAC's Indigenous Justice Program has observed that policing activity in some areas of NSW seems to have been intensifying. This can have dangerous consequences, particularly in Aboriginal communities.

For a number of years, the NSW Police Force has embraced proactive policing practices that have involved targeting crime hotspots and monitoring people who the police believe to be potential offenders, because of their history or association with known criminals.

While proponents of this 'intelligence-based' approach argue that it is an effective way of reducing



crime, it can have serious and long-lasting impacts on people targeted and their families.

PIAC's Indigenous Justice Program currently has two matters before the court involving alleged unlawful arrests of young people that stem from this style of policing.

As part of this proactive approach, NSW police have been undertaking extensive monitoring of young people who are at liberty on bail, by conducting bail curfew compliance checks. This significantly increases the contact these young people have with the police.

Some young people describe police coming to their homes several times a day, including late at night, and waking the entire household, in order to be satisfied that the young person is at home. As a result of this surveillance, families report anxiety, broken sleep patterns and an increase in household friction.

This monitoring is of particular concern because the police record-keeping system for bail conditions has been found to be unreliable. PIAC, together with Maurice Blackburn, is conducting a class action on behalf

of young people who have been unlawfully arrested as a result of problems with the computer system used by the NSW police.

Bail curfew compliance checks are especially problematic for young Aboriginal people who live in a household with a number of relatives who have no criminal record and who should be entitled to live free from police interference.

These practices in NSW are in stark contrast with many other jurisdictions, where police only arrest young people for breach of bail if they are actually seen out in public after their bail curfew. In fact, in Victoria, the majority of arrests for breach of bail are executed only where the young person is charged with an offence.

PIAC has noted that a large number of matters referred to us are from western Sydney and regional areas (particularly western NSW). This may indicate a more severe approach is being adopted by some NSW Police Local Area Commands compared with others.

For more information about PIAC's Indigenous Justice Program, visit www.piac.asn.au.



Scan the QR code to watch the videos.

Have you seen HPLS' 'In Their Words' videos?

Since they were released last year they have been viewed more than 15,000 times on Youtube and in forums and training throughout the community and legal sector.

In Their Words is a digital project from the Homeless Persons' Legal Service and its consumer advisory group, StreetCare.

The project presents a series of short videos

in which StreetCare members talk about their experiences. The stories point to the benefits of involving homeless consumers in advocacy, training and service design.

The videos have been distributed to Housing NSW, NSW Police and Legal Aid NSW. StreetCare thanks Maddocks, Something in Common, and the Law and Justice Foundation of NSW.

Law students learn on the job with PIAC



Sixteen law students from Macquarie University and the University of Wollongong took part in PIAC's Practising in the Public Interest (PIPI) Winter Law School 2014, a program designed to introduce students to systems advocacy and public interest law while gaining experience in public interest and pro bono litigation.

PIPI, a partnership between PIAC, Justice Connect and participating legal practices, holds schools in February and July each year. Each course runs over five days consisting of three days training, and two days placement at two legal practices that undertake public interest and pro bono work.

The training sessions focus on formal decision-making processes, legal and policy strategies and the elements of advocacy. Each student is placed for one day each with a law

firm and a legal organisation that undertakes public interest litigation and/or has an established pro bono practice.

The students then discuss their placement experiences by examining and evaluating the organisation's internal and external public interest initiatives while considering its relationship with other public interest services and agencies. Sessions exploring community legal practices and case studies are also included.

PIAC Senior Training Officer, Sarah Ludowici, says that at the end of the PIPI program the students are able to discuss a range of issues involved in systems advocacy, demonstrate knowledge of advocating within formal decision-making structures, recognise the benefits and uses of public interest litigation and outline a range of strategies that further the practice of public interest law.

'This is one of the most dynamic and eye-opening programs for students interested in public interest law. The experience gained working on real case studies and strategies, coupled with on-the-ground experience in legal practice provides a valuable experience for students interested in public interest law,' said Sarah Ludowici.

PIPI presenters and facilitators include PIAC staff as well as guest speakers and the occasional guest lecturers from participating universities. It's this mix of informal lectures, interactive discussions, case studies, small group exercises, panel presentations and video that really appeals to the students.

University Law Faculties seeking more information should contact Senior Training Officer, Sarah Ludowici on 8898 6506 or email: sludowici@piac.asn.au.

Focus on young lawyers - Emilee Fairlie

From studying European Politics in Germany (and in German!) to trekking through India and Nepal and volunteering at orphanages along the way, to finishing off final law assessments by candlelight as Hurricane Sandy lashed New York City, Emilee Fairlie, a secondee from our partner law firm Minter Ellison, is definitely not averse to new experiences. We caught up with Emilee to see how PIAC compares.

'I've always had a long-standing interest in social justice and human rights. I'd also experienced some of the types of matters that PIAC's Homeless Persons' Legal Service (HPLS) takes on through Minter Ellison and decided to get more involved, so the PIAC secondment was a unique opportunity.

'I think there's a huge need for community legal centres (CLCs) like PIAC. Because of its social justice focus PIAC has been able to assist



a variety of people from different backgrounds with their legal issues.'

Emilee says that another important aspect of PIAC is the ability to take on novel matters that are guided by what's in the public interest rather than monetary outcome.

'CLCs are able to push the

envelope and, through bringing interesting cases before the courts, are able to shape the development of the common law in favour of the public. This kind of work cannot be undervalued.

'I recently represented PIAC at the University of Sydney Law School's Publicly Interested Careers Fair and many students were interested in volunteering or doing their Practical Legal Training placement at PIAC.

Emilee says during her secondment she has seen a significant improvement in her own practical skills, particularly in practice management.

'I've learnt much more about the areas of law that PIAC often deals in, particularly intentional torts. These skills and knowledge are transferrable to any legal setting. I know I will carry them with me throughout my career and I definitely have PIAC to thank for that.'



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