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Justice on-line: the right to down-load

Simon Moran, *Solicitor*

*"of course it's run by lawyers ...
get a life you dickheads ...
this kind of thing is just rubbish !!!"*

e-mail sent to PIAC from within one
of Australia's largest telcos

From our experience, when large organisations resist attempts to integrate people with disabilities into mainstream services, their resistance is based on neither time nor cost. Rather, as the above quote demonstrates, attitude is the problem.

We received this e-mail after Bruce Maguire's victory in relation to his complaint to the Human Rights and Equal Opportunity Commission (HREOC) that the Official Olympic Website was inaccessible to him. Mr Maguire is blind. HREOC found that the SOCOG website could be made accessible within a short period and at a low cost. It ordered SOCOG to make their website accessible to Mr Maguire. Unfortunately, SOCOG refused to comply with the orders.

Bruce Maguire uses JAWS, a screen-reader, a refreshable Braille display and Microsoft Internet Explorer 5 to access the world wide web. JAWS is the most powerful screen reader, with the most up-to-date facilities to read web pages. The screen reader, as its name suggests, reads the information that a sighted person would see on the screen and converts it to Braille that can be displayed on a touchpad. Bruce then reads this information on the Braille pad. In this way a sight impaired person can access the internet. This is only possible if the website is formatted in a manner that enables screen readers to read the information.

Web Content Accessibility Guidelines contain a blueprint for the construction of

websites accessible to people with disabilities. In addition, these guidelines can ensure better access for all users of the internet. The guidelines were developed and are maintained by the W3C Consortium, a global group of academics and internet professionals. The Web Content Guidelines have been adopted world-wide by government and industry as the authoritative reference on accessible website design and construction.

The official Olympic Games website was not designed according to these guidelines and was not accessible to Bruce Maguire. As a result he missed out on a huge amount of information about the Olympics that was not available to him in any other format which meant that he was unable to fully participate in this momentous event.

The internet is a cheap, quick and convenient method of accessing information. Most importantly, for people with disabilities, it is a way of accessing information independently without needing to rely on someone to read from a newspaper or describe television images.

A good illustration of the independence offered by the world wide web is the Woolworth's website. Bruce Maguire uses this site to do all his shopping. Sighted people take for granted being able to wander into a shop and look at a range of goods that they may wish to purchase. Visually impaired people do not have this luxury – they must firstly make their way to a shop and then discern which products are available. As Braille information is not available in shops, accessing, selecting and purchasing goods becomes an impossible task.

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From the Director

Andrea Durbach, *Director*

At the start of his address to a capacity audience attending the PIAC/PILCH Annual Dinner earlier this year, Justice Arthur Chaskelson, President of the South African Constitutional Court, issued a warning: "No one has greater responsibility for promoting and protecting human rights than judges and lawyers. If that protection is lacking, if institutions fail, the consequences can be catastrophic. This is what happened under apartheid in South Africa, and that history needs to be told and retold, for it is what could happen in any country where there is no respect for human rights and no control over the exercise of public and private power." South Africa under apartheid is perhaps a stark and extreme example against which to judge contemporary Australia, whose history of respect for human rights has been impressive. However, when one talks to refugees, to members of the Stolen Generations, to residents of institutions for people with disabilities and older people, to workers who fall victim to the dictates of the casualisation of labour, to disaffected youth and those addicted to drugs or to alcohol or gambling, our wavering commitment to human rights is seen as being increasingly at odds with our national characteristics of egalitarianism, tolerance, fairness and freedom. As the elected leaders of Australia continue to refuse to apologise to members of the Stolen Generations and then dismiss their very existence; as they deny refugees from cruel and harsh regimes basic care and safety or charge asylum seekers exorbitant "rent" for being unnecessarily locked in detention centres; as they decline commitment to the rights of women by refusing to sign the Optional Protocol to CEDAW and reject the UN Treaty System, they signal an insidious erosion of democratic values and ideals. Justice Chaskelson reminded us "that the first incursions into the protection of human rights are often the most dangerous, for they begin a process of erosion which is difficult to stop once it has begun". Too often, however, these incursions into

the protection of human rights remain hidden or are dismissed by those who seek to deride or devalue rights. What is critical to the promotion and protection of human rights is that the problems and needs of individuals or communities who live with socio-economic, cultural and/or political disadvantage, are articulated and made visible. The responsibility for guarding against such incursions upon human rights, rests, in the view of Justice Chaskelson, with judges and lawyers. A recent study by four inner city Sydney community legal centres has highlighted the vital role played by community legal centres in identifying community legal needs, the erosion of rights and the barriers which restrict or prohibit access to remedies. *Law for All* — an analysis of legal needs in inner Sydney today (published by Inner City Legal Centre, Kingsford Legal Centre, Marrickville Legal Centre and Redfern Legal Centre), demonstrates how CLCs remain central to exposing and addressing the problems faced by poor and marginalised communities that confront threats to their political, social, cultural and economic life as services are

reduced, resources diverted and channels for community participation and government accountability are narrowed. In the words of Justice Chaskelson, community legal workers "serve not only those communities, but the legal profession as a whole. They are the conscience of the profession, they give effect to its ideals and they deserve the active support and encouragement of us all."

As we look back over the activities of the past year which has seen PIAC seek to expose and address the needs of people with disabilities, the Stolen Generations, low-income consumers of essential services, indigenous women, communities concerned to limit the impact of free trade agreements and citizens of the Olympic city facing the introduction of draconian security legislation, we acknowledge the invaluable support and encouragement of our clients, our funders, community organisations, PILCH members, the media, our volunteers, our Directors of the PIAC and PILCH Boards and all who keep us on track. Your commitment and contribution allow us to give effect to PIAC's ideals. #

Justice On-line: the Right to Down-load *continued from p 1*

However, the Woolworths website allows Bruce to shop at his leisure by himself. The site contains all the products in their store and is configured in an accessible manner.

What is the cost of making the Woolworths' site accessible to disabled users? "Less than 1% of the time and cost of creating the original site", according to Jutta Treviranus, an academic at the University of Toronto and a member of the WC3 Consortium. Even the highest level of compliance with the guidelines would only "have taken less than 2%". The benefits of accessible websites are significant and the costs are comparatively minimal.

In addition to shopping via the web, Bruce is able to access academic journals and books to assist him with his studies.

Bruce Maguire fought for a year to ensure that the official Sydney Olympic Games website would be accessible. Although HREOC ordered the site be made accessible, SOCOG refused to comply and the site was not accessible during the Olympics. In a hearing in early November, SOCOG was ordered to pay damages of \$20,000 to Mr Maguire (see litigation report). Bruce may not have obtained the changes he desired — a great disappointment to sight impaired people — but he did raise awareness of the potential of the internet to give him and others in similar situations independence and accessible information that they might otherwise never obtain. #

The Gunner and Cubillo decision: *Implications for the Stolen Generations*

Alexis Goodstone, *Solicitor*

Justice O'Loughlin's decision in the Cubillo and Gunner case will not resolve the clamour for redress for the Stolen Generations. While a cruel blow to the claimants', the judgment underscores the need for a political solution to the continuing harm occasioned by removal policies.

Justice O'Loughlin acknowledges the widespread suffering of those removed under assimilationist policies:

No matter the legal consequences, no matter the motives or intentions or the policies that led to these separations – whether they be good or bad – one must have feelings of great regret for those who have so suffered [para 64].

The case also demonstrates the inherent impotence of the legal system to deal with mass wrongs perpetrated and authorised by government. As Justice O'Loughlin clearly states:

... the removal and detention of part Aboriginal children has created racial, social and political problems of great complexity... it must be left to the political leaders of the day to determine what, if any action might be taken to arrive at a social or political solution to these problems. [para 105]

The judgment concludes that there is not proof available that the removals of Lorna Cubillo and Peter Gunner were carried out other than in accordance with the prevailing law which provided that the Director of Native Welfare or Child Welfare could remove a child where it believed that it was "necessary or desirable to do so", irrespective of parental consent. This broad discretion was exercised in the context of the Commonwealth Government assimilationist policy, the purpose of which was to assimilate part

Reconciliation March – Sydney
Photo: Peter Murphy

Aboriginal children into non-Aboriginal society, as shown by passages from records of the time:

The separation of the full blood and half caste is desirable. It is quite obvious that if they are allowed to continue to mix, assimilation will be retarded ... Mixed blood children should be taken from native camps at the earliest possible age ... [para 112] ... half castes should be advanced to the standard of the white, instead of being thrust back to the misery and degradation of the aboriginal." [para 189]

We cannot expect the normal aboriginal mother to appreciate the reasons why her part aboriginal child should be taken from her. [para 222]

The fact that the law was cruel, brutal and misguided is not relevant. In court, the road is all uphill for the claimants. They must prove events that took place when they were young children. With many potential witnesses dead, much reliance is placed on documentary evidence. But records never existed or have been lost. In the Justice O'Loughlin's words, "there is a huge void". The Commonwealth can take refuge behind its own poor record-keeping. The onus is on the claimant's to

prove wrongdoing, not on the Commonwealth to prove it acted appropriately.

The Cubillo and Gunner decision shows the enormous hurdles faced by applicants in attempting to prove Stolen Generations claims to the requisite legal standard. It also reveals the racist assumptions that underpinned the Commonwealth's removal policies and demonstrates the continuing harm which those removed still suffer. As litigation is proving incapable of addressing the clear wrongs perpetrated against members of the Stolen Generations, PIAC's proposal for a Stolen Generations Reparations Tribunal is gaining support. The Myer Foundation have agreed to fund the next phase of this proposal which will see PIAC, together with project partners, ATSIC and the National Sorry Day Committee, consult with indigenous communities across Australia to seek their views on a preferred model for the provision of reparations. The results of these consultations will be the subject of a conference on reparations to be held in August 2001, which will feature international and Australian speakers. #



Electronic Health Records Take Off

Amanda Cornwall, Senior Policy Officer

Unprecedented funding for information technology in the health sector has resulted in a number of schemes to electronically link personal health records. The NSW and Federal Governments are implementing plans that will mean patient records are no longer a matter between the treating doctor or hospital and the patient. While there are obvious benefits in having a single, comprehensive patient health record, it raises many questions, such as:

- What will be in your electronic health record?
- How will your information be shared – who will see it and how it be used?
- How will the accuracy and security of the record be managed?
- Will electronically linked health records improve health outcomes?

Going electronic

In March this year the New South Wales Minister for Health released the *Report of the NSW Health Council*. The report put forward a set of recommendations to improve the quality of health care for the people of NSW. A key recommendation was the introduction of an Electronic Health Record based on a Unique Patient Identifier. This would allow the electronic transfer of health information between consumers and health professionals. At least four Area Health Services in NSW already have electronically linked health records, but the links are limited to within the hospital, or between hospitals in the Area. The plan is to link hospital, GP, specialist and all other records in NSW Health services.

At the Commonwealth level there are much more extensive and detailed plans:

- a national medication record scheme, the Better Medication Management Scheme, will be introduced in mid 2001 to link GPs and pharmacists records of patient medication. The

scheme will be extended to hospital records eventually.

- a staged plan for comprehensively linked national electronic health records, called *HealthConnect*, was agreed to by Australian Health Ministers earlier this year.
- computerisation of General Practitioners offices;
- the Health Insurance Commission's plans for consumer information products, to provide people with information held by the Commission to support their health care.

Who's protecting privacy?

An alarming aspect of these developments is that there is no comprehensive privacy law to protect patients' rights at a state or Federal level. As a result people may not have rights of access to information held in electronic health records, there are no clear rules about who else can have access to that information or how the security and accuracy of the information will be protected.

The Federal *Privacy (Private Sector) Amendment Bill 2000*, which is expected to be passed before the end of the year, will extend privacy obligations to the private health sector, but there are many flaws. In its submission to the House of Representatives inquiry into the Bill PIAC highlighted a number of problems. The 'light touch' approach to regulation in the Bill encourages industry codes that are not effective at protecting privacy rights. The provisions that ostensibly provide a right of access to personal health records include a long list of exemptions, giving health service providers many excuses for denying access to health records. These exemptions are much wider than rights of access to health records under FOI laws and health privacy laws in other OECD countries. The Bill also has inadequate

coverage of electronically linked health records.

In NSW since 1998 state privacy laws have imposed obligations on state government agencies and set out information privacy principles similar to the Federal Privacy Act. Privacy protection in the private sector is much more limited. As part of the implementation of the health information technology reforms announced in March this year, the NSW Minister for Health requested the Privacy Commissioner to chair an advisory committee on privacy and health information. The Committee is to develop effective strategies to ensure the NSW Health Department and its partners in health services delivery, ensure personal health information is collected, stored and used in accordance with NSW and Commonwealth privacy principles.

PIAC's submission to the review highlighted the need for a comprehensive privacy law framework for the health sector in NSW and the need for community participation in each stage of implementation of the plans. It recommended this would best be provided through a community participation project with three aspects — community development through consumer organisations, public consultation and community education.

The Health Consumers' Network (NSW) and PIAC have already established an informal support network for consumer representatives working on privacy and e-health issues. PIAC believes the network could be utilised as part of the proposed community participation project.

Perhaps in the near future, PIAC's 1996 proposal for a health privacy law, set out in its *Whose health records?* report, will be adopted nationally. In the meantime, it provides a model for the NSW Government to help protect personal health information and public confidence in the health system in an electronic age. #

Economic, Social and Cultural Rights: Compliance or Defiance?

Simon Moran, *Solicitor*

PIAC, in co-operation with several other NSW CLCs, participated in the Australian Social and Economic Rights Project (ASERP) submission to the UN Committee of Economic Social and Cultural Rights on its compliance with the UN Convention on Economic Social and Cultural Rights. The submission was developed with the input of over fifty non-government organisations from across Australia. NSW CLCs played a major role in the drafting of the final submission which covered rights to non-discriminatory practices, to work, to favourable conditions at work, to social security and to education.

The report was an independent response to the Australian Government's report to

the Committee. The ASERP report was compiled and edited over a six month period and cites significant evidence of the failure of both Commonwealth and State Governments to fulfil their obligations under the Covenant. Despite the Government's defensive stance towards the UN's treaty process, the alternative reports submitted by NGOs, were primarily made to ensure that Australian governments' commitments to international treaties are implemented and that they are accountable for their actions.

ASERP felt that this was a particularly important time to focus attention on the failure of Australia to uphold many of the rights contained in the Convention. Issues

which were highlighted in the report and at the hearings of the Committee in Geneva included:

- lack of assistance for unemployed people
- failure to provide social security to migrants
- reconciliation with indigenous Australians
- reduction in funding to state schools.

Six members of ASERP attended the hearings of the Committee in Geneva and the NSW Law Foundation provided funding for the attendance of a representative of NSW CLCs. The hearings were conducted on two separate dates with NGOs giving their addresses on one day and the Australian Government delegation on another. The Government's delegation was large, high level and extensively resourced. Despite the minimal resources available to ASERP collectively produced an authoritative report voicing the concerns of those whose rights are being overlooked and demonstrated its commitment to the process by attending the hearings in Geneva.

In their Concluding Observations the Committee, while noting many positive aspects of the Government's performance, also noted a range of concerns such as the failure to entrench the Covenant in domestic law and the continuing disadvantage of indigenous Australians in health, education and employment.

Regrettably, the Government has thrown into doubt its continued participation in the UN Committee system. CLCs are however committed to ensuring that Australia's human rights record is scrutinised both nationally and internationally. #

Olympics Report Card

Sydneysiders can be proud of hosting the "best ever" Olympics. As we bask in Olympic afterglow, we can now reflect on the value of the contribution made by the community sector to ensure a 'Peoples' Games.'

PIAC developed a set of 'Principles for a Peoples' Olympics' in 1996 to provide guidance for Games organisers in addressing social issues as part of planning and staging the Games. We decided to focus attention on the need for a fair ticketing policy that would allow maximum public participation in the Games events, and a fair policing policy that would respect civil liberties. PIAC was able to further its work on these issues as a member of the Olympic Social Impact Advisory Committee, established by the NSW Government in 1996.

PIAC worked with civil liberties groups, the NSW Law Society and community organisations to campaign for reasonable policing of public space during the Olympics. Briefing papers prepared by PIAC in February and August this year reviewed new security laws in NSW introduced in the name of the Olympics. After much public concern a low key approach to security and public policing was adopted during the Olympics – a key measure of the success of the Games identified by the International Olympic Committee.

Our focus on the fairness of the Olympic ticketing policy resulted in Games organisers commissioning a consultant's report reviewing the fairness of different approaches to ticketing. Regrettably, the advice from the consultants was ignored and the ensuing ticketing debacle almost inevitably followed.

While not always heard, the community voice, expressing concerns about fundamental issues of civil rights and fairness, was significant in achieving the spirit of egalitarianism and community involvement which was so central to the image of the Olympics and of Australia which the world applauded.

— Amanda Cornwall

Litigation Report

Greg Kirk, *Principal Solicitor*

Disability Discrimination

Disability discrimination continues to be one of the most active areas of PIAC's litigation practice. In July the Federal Court upheld HREOC's finding that the Hills Grammar School had unlawfully discriminated against Scarlett Finney, a young girl with spina bifida, in refusing her application for enrolment. Commissioner Innes subsequently made a substantial award of damages.

In the Maguire case (see story p. 1) HREOC found that the design of SOCOG's website was discriminatory as it failed to allow access to Olympic information. After a lengthy hearing which featured considerable expert evidence, Commissioner Carter rejected SOCOG's assertion that accessibility on the website "was and is too difficult, too onerous, too time consuming, too risky and too expensive" and ordered it to make the website fully accessible by the commencement of the Olympics. SOCOG chose to defy those orders and the damages were determined in early November. Commissioner Carter awarded \$20 000 to Bruce Maguire and said that SOCOG had been "dismissive of Mr Maguire's concerns from the outset of the complaint" and that that attitude had continued during the conduct of the Inquiry. He also said that Mr Maguire had a legitimate expectation that he would be able to access the Olympic website, particularly since he had achieved at a remarkable level in his professional and academic life through internet use. The Commissioner was satisfied that Mr Maguire had suffered feelings of considerable hurt, rejection and humiliation as a result of SOCOG's failure to take his claim seriously and ensure that the site was accessible.

In other discrimination matters, we had

success in the Federal Court on behalf of a blind woman who had been refused access to a shop because she was accompanied by her guide dog.

Initially, the case was heard before HREOC and an order for damages was made in favour of our client. The order was not complied with and the matter was re-heard by the Federal Court which awarded our client \$10 000.00. A further matter before the Federal Court sees PIAC representing a former student of Parramatta West Public School who has spina bifida which necessitated ready access to a toilet to avoid bladder and bowel accidents. Despite her condition and clear needs, our client was refused access to the school's disabled toilet.

Stolen Generations

The failure of the Joy Williams and Cubillo and Gunner cases (see story page 3) means the development of an alternative to litigation in order to secure compensation for members of the Stolen Generations is more important than ever. For Aboriginal children removed from their parents care who were subject to criminal conduct the Victims Compensation Tribunal (VCT) may provide an existing avenue for at least some compensation. PIAC currently has two VCT claims on behalf of members of the Stolen Generation, both of which involve allegations of sexual abuse.

Impact of Economic Restructuring

PIAC has sought to take on matters raising some of the harsh and unfair impacts of economic and industry restructuring. A common problem being

presented to us concerns the casualisation of employment. One such case which PIAC has undertaken involves a group of ten ATM security workers. Our clients had contracts with RGP, a small company, which in turn had contracts with the St George Bank for the conduct of its ATM security. Whilst their day to day role had most of the hallmarks of being employees of the Bank, their RGP contracts provided little if any security and they were terminated without notice when the relationship between RGP and St George broke down. Settlement discussions are underway and if unsuccessful, claims in unfair contracts will be lodged.

Another matter arises from changes in the mobile phone market. Pursuant to Federal Government arrangements, the analog network has been shut down. This results in problems for people with hearing impairments as digital phones generate interference with common hearing aides and which makes the phones effectively unusable. The Government's decision failed to take this access issue into account and hearing aide users were not adequately advised of the problem at the time of the change over. As a result, many people inappropriately bought digital phones prior to the introduction of the new CDMA network which is generally more compatible with hearing aides. We have had a constructive period of negotiation with the major carriers after a complaint to, and inquiry by, HREOC and we anticipate that a settlement will be achieved with appropriate compensation for those who have suffered loss. In addition, the availability of clear information in all retail outlets detailing the impact of the changes, appears likely. #

Policy Report

Dr Patricia Ranald, *Principal Policy Officer*

Health Consumers' Network (NSW)

PIAC is working with other health consumer advocacy groups in NSW to establish the Health Consumers' Network (NSW). The creation of HCN earlier this year brings NSW in line with other states and territories, and follows the model of the national Consumers' Health Forum. HCN has played an important role in co-ordinating and supporting community participation in reforms to the NSW health system, an Action Plan for Health, announced in March. HCN is planning to conduct a consumer representatives training program in 2001, and is confident of receiving funding from NSW Health later this year. Contact Amanda Cornwall, President of HCN, for further information.

Indigenous Women and Discrimination

PIAC and the Wirringa Baiya Aboriginal Women's Legal Centre have obtained funding from the NSW Department of Women to examine indigenous women's access to discrimination complaints mechanisms in NSW. The project will identify issues which influence indigenous women's responses to discrimination, including: (a) their understanding of their rights; (b) their access to discrimination complaints mechanisms; and (c) any barriers and conduits to such access.

The project will consult with indigenous women in NSW and will report findings and recommendations for consideration by complaints bodies, relevant government agencies, indigenous and women's organisations and Aboriginal Legal Services. The project is supported by the Human Rights and Equal Opportunity Commission (HREOC), the Anti Discrimination Board (ADB) and the Aboriginal and Torres Strait Islander Commission (ATSIC).

PIAC in Indonesia

PIAC's policy team visited Indonesia earlier this year. Amanda Cornwall presented in a three-day training workshop for public interest lawyers in Solo, Java jointly organised with YLBHI, the Legal Aid Institute of Indonesia. The workshop focussed on enforcement of consumer and environmental protection laws through class actions, and problems of evidence. It was funded by the Australia Indonesia Institute. Pat Ranald received funding from the NSW Law Foundation to present a paper on trade and human rights at the annual conference of the Asia Pacific Research Network in Jakarta. APRN is a regional network of non-government advocacy organisations working on trade, development and human rights issues. Conference papers examined the impact of the East Asian economic crisis, IMF programs and WTO agreements on income distribution and poverty in the region.

Administrative Decisions Tribunal and FOI

PIAC prepared a submission to the NSW Parliament's review of the Administrative Decisions Tribunal in August, and will appear before public hearings of the review in November.

PIAC's submission highlighted the lack of compliance with Freedom of Information laws by NSW government agencies, and the need for an agency to have responsibility for agency compliance. It proposed an Information Commissioner for NSW to take over the roles of the NSW Ombudsman and ADT, and fill the need for an FOI monitoring and compliance. A proposal for a NSW Information Commissioner was put to the NSW Parliament earlier this year in the FOI

(Open Government) Amendment Bill, introduced by the Leader of the Opposition, Mrs Chikarovski. PIAC supported the proposal but was critical of elements of the Bill. PIAC will also support the proposal for a Federal Information Commissioner, proposed by the Democrats in the FOI (Open Government) Bill.

Parliamentary Inquiry into the World Trade Organisation

The Federal Parliamentary Joint Standing Committee on Treaties is conducting a public inquiry into Australia's relationship with the World Trade Organisation, as a result of submissions from PIAC and other members of the Australian Fair Trade and Investment Network (AFTINET), a network of forty community organisations. The terms of reference include the transparency and accountability of WTO operations and decision making, and the relationship between WTO agreements and UN agreements on the environment, human rights and labour standards.

The PIAC and AFTINET submission, written by Pat Ranald, argues that trade policy must be more transparent and accountable at the national and international levels and recommends a review of WTO structures. These are far less transparent and accountable than those of the UN, yet WTO agreements and dispute findings are more legally binding than those of the UN. The submission also argues that WTO agreements should not over-ride UN agreements on the environment, health and safety and human rights. The Committee will hold public hearings in capital cities which will provide an opportunity for media and public debate. #

PILCH News and Views

Sandra Stevenson, *PILCH Solicitor*

Pro Bono Definitions Challenged at Canberra Conference

Hundreds of pro bono lawyers and advocates gathered in Canberra in early August to debate the delivery of pro bono legal services at the First National Pro Bono Law Conference, *For the Public Good*, hosted by the Commonwealth Attorney-General Daryl Williams. In a paper to the conference which challenged definitions of pro bono legal work, PIAC Director, Andrea Durbach, argued that as those most socially marginalised and economically disadvantaged are increasingly being exposed to costly and protracted legal proceedings, a welfare-based approach to pro bono must expand to accommodate the complex needs of the contemporary pro bono litigant. PIAC principal solicitor, Greg Kirk, addressed the need for a more strategic approach to the delivery of non-litigious or transactional services and the types of relationships with communities this approach necessitates.

The conference showcased an Information Exchange Gallery which displayed posters exhibiting the diversity of pro bono initiatives being undertaken throughout Australia. One of the aims of the Gallery was to provide a visual display to convey information, promote the exchange of ideas between conference delegates, encourage similar initiatives and acknowledge the contributions of pro bono projects and programs. PILCH staff and member firm Freehills developed a PILCH poster on the work undertaken by PIAC, PILCH and PILCH members on the Stolen Generations Project.

Following the conference, the Attorney General has convened a Pro Bono

Outcomes Advisory Group which will seek to continue the work of the conference in relation to issues such as best practice approaches, resources and quality assurance guidelines for pro bono legal services. PILCH coordinator, Andrea Durbach and Victoria's PILCH Director, Samantha Burchell, are members of the Advisory Group.

Secondees

Secondees continue to play a vital role in supporting and underpinning the services which PILCH provides. Since PILCH commenced operations in 1992, 26 solicitors from 10 PILCH member firms: have been seconded to the Clearing House. This represents an outstanding commitment from participating firms: Allen Allen & Hemsley, Freehills, Blake Dawson Waldron, Mallesons Stephen Jaques, Corrs Chambers Westgarth, Tress Cocks & Maddox, Gilbert & Tobin, Minter Ellison, Gadens Lawyers and Deacons.

Secondees undertake core assessment and

referral work which exposes them to a broad range of legal issues, considerable client contact and extensive case management. In addition, secondees assist with the educational and promotional activities of PILCH. Opportunities also exist for secondees to undertake litigation and policy work with PIAC. Minimal resources encourage secondees to initiate projects and refine administrative practices – useful skills for private practice.

The current PILCH secondee is Rebekah Mansour from Mallesons Stephen Jaques. Rebekah describes her experience with PILCH to date:

"Working at PILCH has been a wonderful learning experience as it has given me exposure to a variety of interesting matters and areas of law. I have also been able to experience how a community legal centre operates – which will give me a new perspective when I return to private practice. I will return to private practice with a commitment to pro bono work that I will try and spread throughout the firm".

Extract from address to Law Society Pro Bono Award lunch by Ruth McColl SC, President PILCH

In previous years, PILCH has nominated one of its members to receive an award. This year, we considered that all of the members of PILCH make such an extraordinary commitment to pro bono public interest work, that it would be unfair to single one out over the other.

The words of Mr Charles Patterson, recipient of an award at the American Bar Association's Pro Bono Publico Awards in July this year, expresses this sentiment:

"I am deeply honoured by this award, but I cannot accept it if it implies that I have done anything more than my responsibility as a lawyer. ... The performance of pro bono publico service honours the profession of the law more than the individual lawyer who performs a service. For the individual it is that rare occasion of passion in the profession which has increasingly been concerned with money; an opportunity to stand for something other than the economic interests of a client. I accept this award as an honour to the profession of law".

I thank and congratulate all PILCH members and our staff for their dedication to our work. I encourage any of you who are not already members to join.

Rebekah will be followed by a solicitor from Allen Allen & Hemsley who will be on secondment until the end of February 2001. Clearing House member Minter Ellison has also agreed to provide a secondee commencing March 2001.

Secondees are now being sought for the second half of 2001. Secondments are for 3 months on a full time basis. If you can assist or have any queries in relation to secondments please contact Andrea Durbach or Sandra Stevenson at the Clearing House.

Summer School

Following the success of the pilot winter school, held in conjunction with the University of Western Sydney in June 2000, PIAC and PILCH will be running a *Practising in the Public Interest Summer School* in conjunction with the University of Sydney and the University of New South Wales from 12-16 February 2000. See Training Report.

The training component of the Winter School was hosted by PILCH member firm Deacons, and Mallesons Stephen Jaques will be hosting the Summer School training. Placements of students for the Winter School were offered by PILCH member firms Blake Dawson Waldron, Gilbert & Tobin, RL Whyburn & Associates, Freehills, Allen Allen & Hemsley and Corrs Chambers Westgarth. Placements are currently being finalised for the summer school students and will include PILCH member firms, Clayton Utz, the NSW Legal Aid Commission, the NSW Bar Association, the Law Society of New South Wales, PIAC and the Clearing House.

For details of the course, please contact PIAC's Training Coordinator, Cathie Sharp or PILCH Solicitor, Sandra Stevenson.

Translation of PILCH Brochure

PILCH member firm Blake Dawson Waldron has provided funding for the PILCH Information Brochure to be translated into nine key non-English languages. The brochures will be available

for distribution in November 2000. The project has been developed by PILCH in consultation with peak organisations, migrant resource centres and the NSW Legal Aid Commission

Human Rights and Corporate Responsibility

Over 50 representatives from PILCH members, business and community organisations attended a PIAC/PILCH seminar in October, hosted by PILCH firm Corrs Chambers Westgarth and supported by the NSW Law Foundation. Professor David Kinley of Monash University, Mr John Simpson of Shell Australia and Dr Patricia Ranald, PIAC's Principal Policy Officer, discussed the responsibilities of corporations in relation to human rights and the environment. Discussion focussed on the effectiveness of voluntary guidelines developed through bodies like the OECD, and on voluntary codes of conduct developed by companies. The seminar also explored various forms of legislation to enforce minimum standards now under discussion in the USA, Europe and Australia, including the draft Corporate Code of Conduct Bill recently tabled in the Senate by the Democrats. Copies of the seminar papers are available from PIAC.

Law Society Pro Bono Awards

The annual NSW Law Society Pro Bono Awards were presented at a Law Society luncheon in mid-November 2000. As in previous years PILCH participated in the

Society's initiative which acknowledges the contribution by lawyers to pro bono work.

This year there was a departure from the usual individual firm awards for PILCH members. PILCH President, Ruth McColl SC, delivered an address acknowledging the contribution of all PILCH members to pro bono work through their support of a wide range of PILCH activities. These include membership of and commitment to PILCH, undertaking pro bono referrals, providing solicitors on secondment, funding PILCH projects and hosting seminars and functions, offering placements to students providing pro bono legal and accountancy advice and assistance to the PILCH Board.

Membership

PILCH welcomes new members – law firm Coudert Brothers and 5th Floor Wentworth Chambers. The Clearing House now has 71 members comprising law firms, barristers, floors of barristers, accountancy firms and mediators.

PILCH Visits to CLCs

PILCH staff have recently visited some metropolitan community legal centres to provide information on the services which PILCH offers. These visits have provided insights into work being undertaken by centres and provided an opportunity for PILCH to identify areas where PILCH assistance can be offered.

If you would like a representative from PILCH to visit your centre, please contact Sandra Stevenson or Andrea Durbach. #

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Sandra Stevenson Clearing House Solicitor

Madeleine Bennison Clearing House Financial Manager

Melissa Franklin Clearing House Administrator

Training in the Public Interest

Cathie Sharp, PIAC Training Coordinator

Training Friends and Students in the Public Interest

Encouraging wide use of key public interest strategies and procedures and exposing young lawyers to the possibilities of public interest law and pro-bono work has been an aim of PIAC's for many years. This key objective was realised this year with the introduction of two exciting initiatives; a pilot winter law school for students and intensive training in the use of amicus curiae for staff of the Human Rights and Equal Opportunity Commission.

Encouraging student lawyers to practice for the common good

"The course was inspirational and a great success."
"Probably the best course I have done in law yet."

Comments from two student participants

The first of these initiatives, a training program, *Practising in the Public Interest* was instigated late last year by Carolyn Sappideen, Dean of the Law Faculty at the University of Western Sydney (Nepean), who invited PIAC and the Public Interest Law Clearing House, to present the program in partnership with the Faculty. PIAC devised a program which was provided to senior law students during their winter break in July this year. The aim of *Practising in the Public Interest* was to introduce students to systems advocacy and public interest law and to expose them to law firms and organisations that are directly involved in public interest and pro-bono litigation.

The program was run over five days with three days training and two days placement with a PILCH member law firm. Topics delivered in the training component included: public interest legal strategies; campaigning and lobbying; motivating decision-makers; accessing political and bureaucratic processes; using human rights principles and conventions and public policy analysis. Students also heard from representatives from the NSW Legal Aid Commission, community legal centres, the

NSW Law Society and Bar Association. During their placements with PILCH member law firms, students engaged in a variety of activities. They interviewed partners and lawyers involved in pro-bono work; discussed issues raised by conducting public interest pro bono cases; attended pro-bono committee meetings and "shadowed" pro-bono coordinators; sat in on client interviews and teleconferences; attended court; and participated in the firms external pro-bono initiatives, including volunteering at legal centres and attending sessions of the NSW Community Legal Centre Conference.

Practising in the Public Interest will be run during the university summer vacation in February 2001 with the University of Sydney and the University of New South Wales.

Training human rights advocates on how to be friends

Our second successful pilot for 2000 was the development and delivery of a training program in the use of a specific public interest legal procedure, amicus curiae. Amicus curiae interventions facilitate individuals or groups who have an interest in the outcome of litigation but who not a party to it, to intervene in the proceedings where they can demonstrate that the issue in dispute and its final determination, has consequences for the wider community beyond the interests of the parties to the litigation.

Recent amendments to the Human Rights and Equal Opportunity Commission Act (HREOCA), which see the hearing function of the Commission transferred to a special division of the Federal Court, make provision for HREOC Commissioners to intervene in proceedings as amicus curiae to assist the Court in its determination of certain matters. Given its experience as an amicus curiae intervener in public interest cases over the years, PIAC was invited by HREOC to conduct a one day training program for their complaint handling, legal and policy staff.

The program explored theoretical issues such as differences between third party interveners and amicus curiae, the relevant amending legislation and its rationale and reasons for intervening. By reference to case studies, participants worked through applications for leave to intervene, the collation of evidence and the drafting of submissions.

Other work

Training this year has also undertaken a significant amount of in-house work with Home and Community Care (HACC) groups who are currently targeting advocacy skills as one of their key performance areas. We also continue to offer our very popular accredited course *Work the System* both publicly and in-house. For information about PIAC's training courses, contact Cathie Sharp.

UWS Students at the Practising in the Public Interest Winter School



PIAC in the Public Eye

In addition to the litigation, policy work and training undertaken by PIAC, staff participate in a wide range of communication activities which combine to expose us to the public interest in its many forms and guises. A selection from our calendar for the last few months follows.

- Amanda Cornwall, Alexis Goodstone and Andrea Durbach addressed the **Senate Inquiry into the Stolen Generations** on PIAC's proposal for the establishment of a Stolen Generations Reparations Tribunal. The PIAC proposal was endorsed in many of the submissions made to the Inquiry and received extensive media coverage. Andrea Durbach and Pat Ranald addressed the NSW Legislative Council Standing Committee on Law and Justice on the Inquiry into a **Bill of Rights for New South Wales**. The address was based on a submission to the committee prepared by Pat.
- Trish Benson addressed a UCAP conference on *Contestability and the Small Consumer*, opened by the NSW Minister for Energy and Utilities, Kim Yeadon. The conference brought together a wide range of representatives from utility providers, government departments and consumer organisations. UCAP's Jim Wellsmore was invited to address a major conference in Johannesburg, **South Africa** organised by the Centre for Applied Legal Studies at the University of the Witwatersrand. The *Law and Transformation* conference, launched a research project exploring opportunities and limitations in relation to the rights granted under the new SA constitution. Jim's paper outlined the evolving regulatory framework in the NSW electricity industry (see article on page 6). He also met with a number of public interest legal bodies and non-government organisations working in the area of public utilities.
- At the **National CLC Conference** held in August in Alice Springs, Alexis Goodstone delivered a paper on the Stolen Generations Reparations Tribunal proposal and co-presented two workshops on "Building a Human Rights Agenda". Andrea Durbach presented a paper to the NSW Community Legal Centres Conference in Sydney on *Underpinning Justice: the Importance of Policy and Law Reform Work*.
- Amanda Cornwall addressed the public hearings of the House of Representatives Inquiry into the *Privacy (Private Sector Amendment) Bill 2000* and presented a paper on **FOI and Democracy** to the annual conference of the Australian Institute of Administrative Law.
- Pat Ranald delivered a paper to the Annual Conference of the Industrial Relations Society of Australia and New Zealand on the use of individual workplace contracts and the **impact of casualisation and reductions in employment conditions** on services delivered by Employment National.
- Greg Kirk presented a paper on **Pro bono litigation in the public interest** to the Attorney-General's First National Pro Bono Conference held in Canberra in August (see PILCH Report on page 8) and Andrea Durbach addressed a seminar of faculty staff of the newly created School of Law at the **University of Victoria**, Melbourne to discuss opportunities for public interest and pro bono initiatives within the framework of legal training.
- Pat Ranald delivered a training session on **policy development and advocacy** to an Australian Council for Overseas Aid (ACFOA) training course for members of Indonesian non-government organisations and Cathie Sharp conducted a session on advocacy training and public interest interventions with representatives from East Timorese community organisations and Community Aid Abroad.
- In the lead up to the **Sydney 2000 Olympics** and following PIAC's analysis and publication of a briefing paper on Olympic security legislation and extended policing powers, Amanda Cornwall presented a number of papers on olympic security issues, including to a conference on Protests and the Olympics at UTS and to a forum at the Institute of Criminology at Sydney University. These laws were not invoked during the Olympics but remain on the statute books and in force.
- Pat Ranald chaired the public lecture in Sydney by Maude Barlow, Chairperson of the Council of Canadians on the WTO and NAFTA at Sydney University and presented a paper on the **WTO, Democracy and Accountability** at the ACFOA Conference on *Development Challenges in the Global Economy* in Melbourne.
- Amanda Cornwall participated in a specialist workshop conducted by Royal Women's Hospital and Health Issues Centre in Melbourne on **consumer information** concerning the **performance of health services**. #

Ideology and Regulation: *Competition Reform in Electricity*

Jim Wellsmore, UCAP Policy Officer

Competition in the NSW electricity industry will reach residential consumers on 1 January, 2002. Such reforms are commonly justified in simplistic terms — public ownership prevents innovation; competition is more efficient; consumers will see lower prices. Instead, restructuring is forcing the NSW Government into the difficult role of balancing competing interests.

Many government services throughout Australia have had competitive models imposed on them. In the NSW electricity industry, the vertically integrated public monopoly has been broken down into a number of corporatised public entities. 'Full retail contestability' will open up the industry to privately owned participants. Consumers have been promised that these changes will create significant benefits, particularly financial benefits.

The State will continue for the foreseeable future to have a major role in the supply of electricity. Yet, the corporatised public businesses are required by law to 'operate at least as efficiently as comparable businesses'. At the same time, the Government is committed by its pro-competition approach to give recognition to the commercial interests of private entrants in the industry.

Trade-offs in consumer protection

The Government needs to demonstrate the impact of its reform policies with effective competition. The basis of its strategy is consumers being able to choose between retailers. Over-riding this is the political imperative that no consumer shall be worse off than under

the current arrangements. This creates a policy tension between market design which encourages greater 'churn' — the rate of transfer between competing retailers — and that which protects the rights of consumers.

A mechanism for capping 'default' prices is needed to protect low-income and low-consumption households. The Government has committed to introducing such a mechanism. However, if the capped or 'default' prices are set at a level too close to current prices there will be little incentive for people to churn and competition will be limited. A successful policy means avoiding a situation where the majority of households opt out of competition. It seems the Government is sympathetic to the arguments from all incumbent and prospective retailers for substantial price increases to 'encourage' households to seek out competitive or 'market' supply contracts.

New commercial contracts

These contracts are portrayed by industry as the centrepiece of competition. 'Innovation' in the services offered by retailers is argued to be facilitated by the capacity of households to negotiate specific terms of supply. Currently, domestic consumers are parties to 'standard form' contracts whose contents are stipulated in broad terms by the *Electricity Supply (General) Regulation*. The Government intends to retain default supply contracts for some period of time. Market contracts will be regulated through licence requirements for a mix of core terms and non-core terms, the latter open to alteration by agreement between a customer and a

retailer. Consumers and industry differ as to how far these protections might be subject to 'alteration by agreement'. Facilitating competition mitigates against too stringent a regulatory approach. Yet, the likely use of high default prices to force consumers to take-up market contracts in turn increases the importance of an effective regulatory framework for residential energy supply contracts.

Benefits and costs of competition

A further issue is whether the promised benefits of retail competition will be devoured by the 'up-front' costs. PIAC's Utility Consumer Advocacy Program (UCAP), has argued consistently that such costs should be borne only by those who will benefit from the new arrangements. However, the Government's own figures reveal that treating retail competition costs in this way will make the option of churning prohibitively expensive for all but the most excessively wealthy families. Since this would be fatal for the policy of extending retail competition to residential consumers, it appears likely costs spread across all households — requiring low-income households to share the costs of contestability when they will have little capacity to participate in retail competition. #

From a paper presented by Jim Wellsmore, Policy Officer, UCAP, to the Law and Transformation Conference August 2000, Centre for Applied Legal Studies, University of the Witwatersrand, South Africa

UCAP Report

Trish Benson and Jim Wellsmore, *UCAP Policy Officers*

Full speed ahead for full retail contestability

The timetable for the introduction of full retail contestability in electricity and gas for residential consumers, has generated a surge of activity from UCAP staff. The Government intends to table enabling legislation for the new electricity market in the Spring Session and there is still a large number of policy issues to resolve. Naturally, PIAC has been concerned to have strong and coherent arguments advanced for the interests of residential users of these utilities, especially low-income and disadvantaged consumers.

The Government's industry based advisory group, the Market Implementation Group, released a number of discussion papers and convened several working groups. The key areas in which PIAC made formal input include:

- the content of a retail marketing code of practice;
- the minimum protections for consumers who enter into new 'competitive' energy contracts;
- dispute resolution processes;
- the measurement of household consumption and whether competition should utilise new technology meters or survey-based consumption profiles;
- the basic rules for individual customers transferring between competing retailers; and
- commonality of consumer protection provisions between electricity and gas.

The Government has taken a lesser role in the introduction of competition to the gas industry where the sole incumbent retailer is a private company. The Ministry of Energy and Utilities has convened a Gas Retail Project Steering Committee since early 1999. Discussions at present are

The Hon Kim Yeadon, Minister for Energy, at the UCAP Conference, June 2000

centring on the formation by industry of a proposed Gas Retail Marketing Board. With gas due to enter full contestability by July 2001, and electricity in January 2002, this work will continue to occupy considerable resources from the UCAP project.

PIAC is pleased by the move from the State Government to pursue price protection for electricity customers under retail competition. The Minister for Energy and Utilities, Kim Yeadon, committed the Government to protection for low-use consumers at a UCAP conference held in June. The Independent Pricing and Regulatory Tribunal has been directed to investigate price regulation for 'default' customers and report to Government by the end of November. The concern is that some consumers will be unwilling or unable to 'shop around' for competitive energy contracts. In particular, some households will not be commercially attractive to new competing retailers. This captive base of 'default' customers may be exposed to price exploitation unless some form of price cap is in place.

Unfortunately, it appears from the Tribunal's public consultations that competition design issues will take precedence over consumer protection. It seems likely that prices for default

customers will rise significantly with the introduction of contestability. This is explained as necessary to encourage households to take up product and service offerings of new private retailers entering the market.

The good news on price has been the Tribunal's determination on prices for water and sewerage services provided by the four metropolitan agencies. Hunter Water has had imposed a real reduction of 1.5% for each year of the determination period. The other three agencies will have their prices set by a CPI-X formula. This will restrict price movements and see some customers face smaller bills at least for next year. Sydney Water had proposed a 6% increase in usage charges over the next 4 years. UCAP staff were pleased to see that the Tribunal, in responding to Sydney Water, echoed the key points of our submissions to the determination process. These had focussed especially on:

- Sydney Water's major program of staff shedding in order to reduce its operating costs; and
- the expected fall in prices for water as Sydney Water implements its program to reduce per capita consumption of water in future years (whereas the Corporation had argued lower demand should result in higher prices).



PIAC People

Board News

We are delighted to announce that at our AGM held in October 2000, the Hon Elizabeth Evatt AC was elected as the new Chairperson of the PIAC Board of Directors. Until recently, Elizabeth served as Australia's representative to the UN Human Rights Committee. She was previously the Chief Judge of the Family Court of Australia, the President of the Australian Law Reform Commission and is currently a judge of the World Bank Administrative Tribunal.

Our thanks go to Jeremy Campbell, previously of the Australian Law Reform Commission who left the ALRC and regrettably resigned from the PIAC Board to pursue a new career. Jeremy's knowledge of financial affairs was an invaluable resource for PIAC and we wish him well in his new venture.

Staff News

In August we were delighted to welcome Jane King, formerly of the NSW CLC Secretariat to PIAC as Centre Co-ordinator.

College of Law

Our thanks go to our College of Law placements this year: Phillipa Hetherington, who is now working at the Human Rights and Equal Opportunity Commission and Matthew Zurstrassen, who recently joined us and will be with PIAC until January 2001.

Student university placements and volunteers

PIAC student placements and volunteers over the last 6 months have made a significant and valuable contribution to

the centre's operations. Paula Fitzlyon (University of Sydney placement), Kelly Fung, Neil Glaser, Ben Golder, Michael Mavromatis, Natalie Rouillon, Patricia Rossi, Julian Schimmel, Giri Sivaraman have all donated their time to PIAC on an ongoing basis.

PILCH Secondees

In the last 6 months we have had the assistance of the following secondees from PILCH member firms. Our thanks to Belinda Jones from Minter Ellison, Ralph Grayden from Freehills and Rebekah Mansour from Mallesons Stephen Jaques.

PIAC Staff

From Left to Right:

Back Row: Christopher Johnstone (locum solicitor), Simon Moran, Jane King, Jim Wellsmore, Matthew Zurstrassen, Greg Kirk, Sarah Mitchell

Middle Row: Sandra Stevenson, Alexis Goodstone, Rebekah Mansour (PILCH Secondee), Melissa Franklin, Pat Ranald, Cathie Sharp

Front Row: Trish Benson, Andrea Durbach, Marie Manaema



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