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Reparations tribunal

Amanda Cornwall, *Senior Policy Officer*

For 2 days in August, PIAC co-hosted a conference which brought together indigenous and non-indigenous Australians to consider and debate how to address the harm experienced by individuals and communities affected by Australian Government sponsored forcible child removal policies. The *Moving forward* conference held at the University of New South Wales, discussed proposals to meet the outstanding claim for reparations for the stolen generations.

The Aboriginal and Torres Strait Islander Commission (ATSIC), the Human Rights and Equal Opportunity Commission (HREOC) and the Public interest Advocacy Centre (PIAC) organised the conference. Those bodies have been working in close consultation with the National Sorry Day Committee and stolen generations groups to find a way forward on the issue of reparations. Consultations were held earlier this year with members of the stolen generations to ascertain their views about a reparations tribunal and how it might operate. An interim report based on these consultations, also entitled *Moving forward*, was presented to the conference as the basis for discussion.

The reparations tribunal would help to avoid the costly individual litigation that is now the only option for victims and enable governments to address the ongoing disastrous effects of removal policies. An imaginative system of reparations as proposed by the tribunal would provide benefits for those affected and spare them the personal and other costs of litigation.

Speakers from Canada, USA, New Zealand, and South Africa spoke about the experience of those countries. While sharing with Australia a similar legacy of abuse and ill treatment of Indigenous people, those countries have gone much further down the road of reparation and reconciliation.

Dumisa Ntzebeza, barrister and former Commissioner of the South African Truth and Reconciliation Commission, warned the conference that countries that choose to ignore their history by seeking to bury harmful legacies, risk its re-emergence; "Like toxic waste," he said, "the past reappears and often at the most inconvenient times".

The experience of these countries demonstrated that with goodwill and commitment it is possible for the perpetrators and victims to join together to confront and acknowledge the wrongs of the past and find ways to deal with them in the present and future. That experience strongly supports the case for Australia to provide reparation and healing for the wrongs and injustices done to the stolen generations.

Conference attendees gave considerable support to the proposal that reparations be available to individuals and communities, and that the basis or rational for the tribunal be an acknowledgment that harm was a clear consequence of removal policies. Inherent in the proposal is that those affected would be able to put their stories on the public record and to have a direct say in how reparations should be designed and provided.

In his speech to the conference, the Minister for Aboriginal Affairs and Reconciliation, Mr Ruddock, regrettably was unable to respond positively to the pleas from Australia's Indigenous people for acknowledgment and reparation. He could not match the spirit shown in other countries that have been able to deal with the wrongs of their past in imaginative and constructive ways. Australia could do well to remember the words of the Deputy

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From the Director

Andrea Durbach, *Director*

During the Centenary of Federation celebrations and the weeks leading up to the federal election, we have been reminded of the values which ostensibly underlie and inform the foundations of our nation: egalitarianism, tolerance, fairness, freedom. Over the last few months, the leaders of Australia have sought to ride high on our national characteristics, and yet act so contrary to them. When desperate refugees fleeing brutal regimes, war, poverty and terror, are depicted by Australian leaders as wealthy queue-jumpers who have bought their passage, or illegal or inauthentic refugees whose numbers threaten our borders and national cohesion, our leaders, and those who follow their lead, highlight the increasingly hollow underpinnings of our national values.

And when individuals, community groups and lawyers come together to protect the rights of human beings in search of safety and dignity, they are told by the nation's Attorney-General that their humanitarian action in keeping with our international human rights and treaty obligations, "promoted unlawful activity."

Although Justice French of the Federal Court found against the applicants who sought to protect the rights of the refugees on board the Norwegian tanker *MV Tampa*, he did not characterise their role as "promoting unlawful activity". Indeed, Justice French stated:

> The counsel and the solicitors acting in the interests of the rescuees in this case have evidently done so pro bono. They have acted according to the highest ideals of the law. They have sought to give voices to those who are perforce voiceless and, on their behalf, to hold the Executive accountable for the lawfulness of its actions. In so doing, even if ultimately unsuccessful in the litigation, they have served the rule of law and so the whole community.

The Attorney-General made a further assessment of the case when, prior to the case being determined by a court, he pronounced that the applications before the court had "hampered efforts to resolve the matter".

Resolution apparently came in the form of shirking our obligations under the *UN Refugee Convention* and striking deals with Pacific Islands to take asylum seekers, the majority of whom will in all liklihood be transported back to Australia after being assessed as legitimate or genuine refugees under Australia's migration laws. In his speech delivered at the *Visions for a Nation* forum in Adelaide in October, the Rt Hon Malcolm Fraser commented that "the world now knows that we are establishing camps for refugees in countries around Australia's periphery. … It is obscene that a wealthy country such as Australia is buying space in poor countries such as Nauru and Papua New Guinea to help solve an Australian problem. … (t)he numbers coming to Australia are relatively small, 4000 or 5000, compared to over 400,000 to Europe, the best part of 100,000 to Britain and well over 100,000 to Germany."

Where refugees do make it onto Australian soil, what they come to are detention centres which are themselves the subject of scrutiny. Harsh and, in many instances, inhumane conditions prevail. In late October, Western Australia's Inspector of Custodial Services, Richard Harding, told the *International Corrections and Prisons Association* conference that after a nine hour inspection of Curtin Detention Centre, he believed that the clashes between residents and detention centre guards a few months ago, "were due to appalling conditions and frustration." Inspector Harding noted that "the huts were grossly overcrowded, many toilets and some washing machines were broken, the so-called 'shop' was abominably stocked and rather inaccessible, the system for sending mail breached all standards of privacy and confidentiality and the medical and dental facilities were inadequate."

Conditions at Adelaide's detention centre Woomera, are equally disturbing. Information from detainees indicate that:

- in one compound there are two working toilets for 700 people – both leaking, and sand on the floor is used to "mop up" leaking effluent;
- in the same area there are only four working showers. Hot water is only available after midnight;
- no food may be taken from the dining-rooms for children or sick adults and food is generally inedible and only water (no coffee, tea or food) is permitted between meals;
- there is no air conditioning in 45 degree summer heat and inadequate heating during freezing winter nights. There is no flyscreen to protect against the huge population of flies and mosquitoes;
- those seeking medical attention (including, for example, painkillers, treatment for a raging fever, tonsillitis) queue in the open for as long as 2 hours on each occassion that they need to take medication;
- there is inadequate baby food or formula – a woman struggling to breastfeed her baby was advised to feed the baby powdered chicken stock mixed with water without access to sterile equipment;
- declining health status is a serious issue – many women report "ulcers" which may be stress-related;
- psychological health is a major concern, with frequent instances of self-harming, children suffering night terrors and bed-wetting. Despair and depression are prevalent; and
- there is no visitors centre. After a 20 hour trip from the eastern states, husbands of wives interned are turned away or told they can come back for two hours the following day.

As Australia reaffirms its support for a relentless war in Afghanistan, thousands of refugees are emerging as a consequence and thousands more will seek refuge on our shores. Over the last few years, government has failed to implement a system built to ensure fairness and respect for the dignity of refugees seeking protection in Australian. Where individuals, community groups and pro bono lawyers step in to uphold the system and protect rights, rather than see them as "promoting unlawful activity" we should support and acknowledge their compassion and, in the words of Justice French, their commitment to serving "the rule of law and so the whole community." #

Doctors to say sorry

Amanda Cornwall, *Senior Policy Officer*

PIAC will be part of a project to develop a national standard to promote better communication between health care providers and patients when something goes wrong was announced earlier this year. The standard is an initiative of the Australian Council for Safety and Quality in Health Care. It is expected to include an expression of regret, a factual explanation of what happened, the potential consequences and steps being taken to manage the event.

When mistakes happen in the course of health care resulting in unintended harm it is known as an "adverse event". A common response of health care professionals is to clam up in an attempt to avoid dreaded legal action. The result for the patient is further trauma because no-one will tell them what is going on.

Not surprisingly, in these circumstances patients consider legal action to seek some form of acknowledgment and redress. It is well-documented that the main reasons people sue their doctors for negligent care are not just for compensation, but to find out what went wrong and to ensure it doesn't happen again. Unfortunately, the legal system doesn't necessarily deliver those outcomes very effectively. With more litigation against doctors and the resulting increases in the price of medical indemnity insurance an alternative had to be found.

The Australian Council for Safety and Quality in Health Care, established in January 2000 by Australian Health Ministers, has sought a solution through the *Open Disclosure* project. It recognises that active management of adverse events through timely and appropriate information flows is vital to drive improvements in the safety and quality of our health care system. The Council believes that doctors should acknowledge and apologise to patients for their errors. Doctors should also provide reassurance to patients and their carers that lessons learned from such mishaps will help prevent their recurrence.

The *Open Disclosure* project aims to develop national standards to promote a consistent approach to expressing regret and to enhance communication with patients when something goes wrong. It requires development of a standard and an educational package aimed at health care providers and managers.

The Australian Health Ministers Council is expected to consider a draft of the standard in July 2002, with completion of the project by late 2002.

#

Reparations Tribunal

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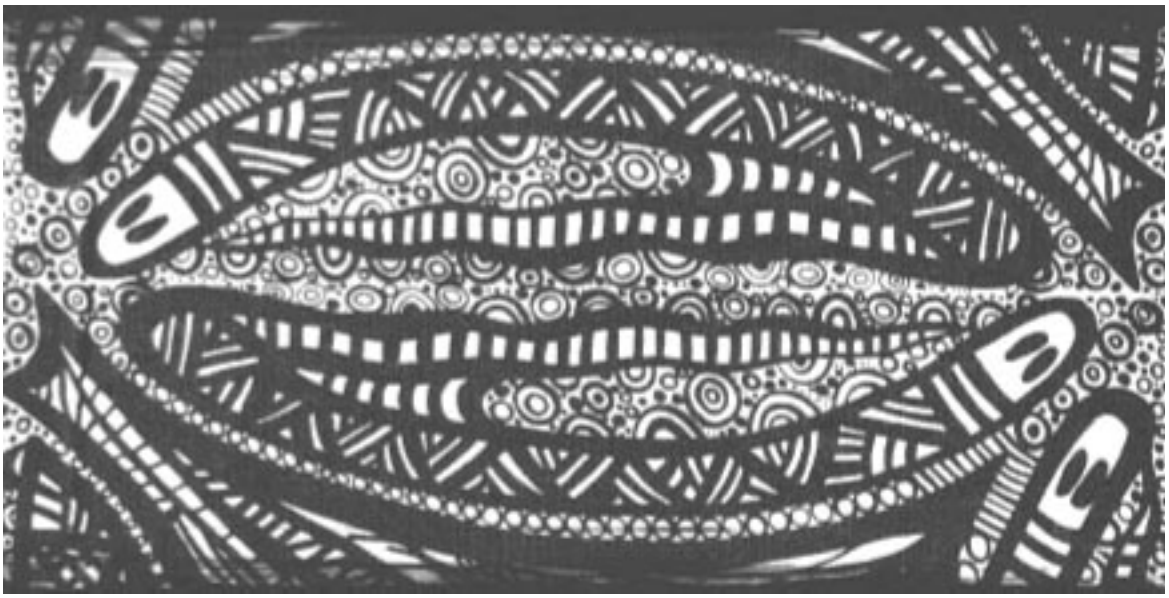
Chairperson of the South African Truth and Reconciliation Commission, Dr Alex Boraine in response to Prime Minister Howard's call that Australia needs to move on from its past: "It is important", said Dr Boraine, "to read the page, to understand its contents, before you can turn it".

Since the conference, a number of state governments have responded to the messages from the floor at the conference on the need to consult with the stolen generations if programs intended to target their needs are to be effective.

A final report on the *Moving forward* consultation project and the tribunal proposal will be released in February 2002.

Conference papers and the Interim report of the *Moving forward* project are available at www.humanrights.gov.au/movingforward .



Indigenous women, discrimination and access to complaints mechanisms

Alexis Goodstone, *PIAC Solicitor* and Dr Patricia Ranald, *Principal Policy Officer*

PIAC and the Wirringa Baiya Aboriginal Women's Legal Centre have completed a project examining Indigenous women's access to discrimination complaints mechanisms in NSW. The report of the project is based on interviews with 73 Indigenous women from 10 city and country communities in NSW. The women were asked about their experiences of and responses to discrimination, whether they knew how to complain about discrimination and to whom, and what changes were needed to improve their access. The project was funded by the NSW Department for Women.

The complaints bodies: the ADB and HREOC

In NSW, complaints about discrimination can be made under state law to the Anti-Discrimination Board (ADB) and under Commonwealth law to the Human Rights and Equal Opportunity Commission (HREOC). Complaints must be made in writing. The complaints body attempts to get the two sides to discuss and reach agreement about how to settle the complaint. If this fails, the person complaining can have the complaint heard by a tribunal or court.

The ADB has an Indigenous unit of three Indigenous officers. It investigates and conciliates complaints lodged by Indigenous people, produces culturally appropriate information and visits Indigenous communities throughout NSW. HREOC does not have an Indigenous complaints unit, or identified Indigenous positions, though it does recruit some Indigenous complaints staff through its general recruitment processes. Visits to Indigenous communities are part of its general education program.

Complaints by Indigenous women

The ADB receives an average of 44 complaints from Indigenous women each year and 42 from Indigenous men. HREOC receives an average of eight complaints per year from Indigenous women and seven from Indigenous men. Indigenous women complain to the ADB and HREOC mainly about race discrimination.

Voices of Indigenous women

Many of the Indigenous women who were interviewed had a clear understanding of the meaning of discrimination. In all groups, Indigenous women reported that they experienced discrimination and in most cases this was reported to be regular and often severe. Most of the discrimination suffered by Indigenous women related to race and was experienced in many areas of life.

The women interviewed had different responses to discrimination. Some women withdrew from or tried to ignore the discrimination while others challenged it and attempted to educate or punish the discriminator. Many felt intense anger and hurt at being denied equal treatment. Only some women responded by making complaints.

Most of the women had very little knowledge about where to go for help or advice about discrimination, or who to complain to, even though many were aware that there were laws against discrimination. There was some level of awareness of the ADB but little awareness of HREOC. Some women had complained to the ADB but none had complained to HREOC.

The women recommended more "Koori friendly" information about the ADB and HREOC. They wanted to have face-to-face contact with ADB and HREOC staff, either through a permanent local office or officer, or regular community visits. They also wanted Indigenous complaints handling staff and outreach workers, to ensure the effective delivery of information and education, and to improve confidence in making complaints. Other issues raised included difficulties in putting complaints in writing, the complaints process taking too long and the need for legal advice and support when making a complaint.

Indigenous women's experience of making a complaint

Nine women who had made complaints to the ADB or HREOC were interviewed about their experiences of making a complaint. Most felt they needed legal advice or other support to make a complaint. All said they would prefer to deal with Indigenous staff. Some had difficulties putting their complaint in writing. Several reported that they were not clear about the steps in the process and felt they needed clearer advice from the complaints agency. Most commented that the time taken to resolve complaints was too long.

Main recommendations for change

- That HREOC employ designated Indigenous staff to conduct community education and to handle complaints.
- That the ADB and HREOC increase the numbers of Indigenous staff, both women and men, available to handle complaints.
- That the ADB and HREOC expand their outreach programs to Indigenous communities.
- That the ADB and HREOC establish offices or have staff based in regional centres throughout NSW to provide services for Indigenous people.
- That the ADB and HREOC produce "Koori- friendly" information.

The Report of the project will be launched at the Australian Museum in mid December by Indigenous woman, writer and activist, Jackie Huggins. For copies of the report, please contact PIAC. #

Indigenous Solicitor project

Alexis Goodstone, *PIAC Solicitor*

In recent years, PIAC has expanded its links with Indigenous communities and increased its legal advice, casework and advocacy on behalf of Indigenous clients. PIAC and PILCH's Stolen Generations project has been ongoing since 1996, and featured the *Moving Forward* consultation and conference in 2001 (see separate story on page 1). In partnership with Wirringa Baiya, PIAC conducted a consultation project examining Indigenous women's access to discrimination complaints mechanisms (see separate story on page 4). We are also involved in the *Working it Out* project, providing legal education to isolated communities in western NSW and have conducted advice and litigation in relation to Aboriginal housing issues, Aboriginal deaths in custody and race discrimination, both by PIAC staff and via referrals to the Public Interest Law Clearing House (PILCH) member firms and barristers.

To build on this work and increase our capacity to provide a culturally appropriate service to Indigenous people, PIAC is delighted to announce that PILCH member firm Allen Allen and Helmsley has agreed to sponsor the employment of an Indigenous solicitor. The role will involve:

- building links with Indigenous organisations;
- identifying public interest issues which impact on Aboriginal communities with a view to conducting legal advice, casework and advocacy; and
- assisting in the conduct of PIAC's broader legal practice.

Shaz Rind, currently working for ATSIC in Canberra, and originally from Western Australia has been appointed to the position and will join PIAC staff in November this year. Shaz is a young lawyer with experience working for the Aboriginal Legal Service of WA and the Ministry of Justice in WA, as well as ATSIC. He ran an Aboriginal student organisation at university and was involved in mentoring Aboriginal students. He has represented Indigenous youth as a member of the Metropolitan Aboriginal Justice Council of WA, and has experience working on native title, stolen generations, criminal, commercial and a wide range of other litigation. His career aim is to work for the benefit of Indigenous people in the legal field.

The Aboriginal Justice Advisory Committee will play an active role in assisting Shaz to meet and form links with Indigenous communities, peak bodies and organisations in NSW. Our thanks to David Robb of Allens and Winsome Matthews of the Women's Legal Resources Centre for their support and assistance in this important initiative. #

From left to right – *Back row*: Sarah Mitchell, Simon Moran, Jane King, Jim Wellsmore, Amber Lonergan. *Middle row*: Kathleen Searles, Pat Ranald, Marie Manaena, Trish Benson, Tamara Pallos, Patricia McEniery, Madeleine Bennison. *Front row*: Alexis Goodstone, Andrea Durbach, Melissa Franklin, Sandra Stevenson. *Absent*: Amanda Cornwall, Shaz Rind.

Insuring doctors

Jim Wellsmore, *Policy Officer (UCAP)* and Amanda Cornwall, *Senior Policy Officer*

A national review of medical indemnity arrangements is being pursued by the Australian Health Ministers Advisory Council (AHMAC). One of the key topics addressed by the review is proposed regulation of the medical indemnity providers, known as medical defence organisations (MDOs). The Council hosted a forum on National Standards for the Medical Defence Industry in Melbourne in September to canvass possible reforms. These developments parallel the legislative changes to medical indemnity arrangements in NSW (reported in *PIAC Bulletin 13*).

The Forum found broad consensus that MDOs and competing private insurers should be regulated and that this should occur at a national level. Finding an appropriate regulatory body proved more difficult, although many indicated an interest in this role being assumed by the Australian Prudential Regulation Authority, the insurance industry regulator.

The merits of a requirement for MDOs to have a minimum capital reserve is a significant issue, particularly in light of the HIH collapse. Such a requirement would offer some certainty for consumers who would be adversely affected if a medical indemnity provider suffered a business collapse. The need for MDOs to adopt consistent accounting standards was widely agreed.

Better understanding of patterns in medical error and levels of litigation against doctors requires standardised data collection and reporting by MDOs. The MDO industry representatives at the forum suggested they are willing to examine this issue. However, further detailed work is needed to establish the range of information currently held by the MDOs and what might be required in future.

Despite the broad consensus expressed at the forum, the crucial issue remains the detail of any future regulation and standards introduced for MDOs. For example, the MDO representatives at the forum expressed their concern at the suggestion that regulation might extend to types of products and prices despite it being pointed out that this is an approach common to many industries. The *Health Care Liability Act* 2001 in NSW gives the Minister powers to ensure appropriate medical indemnity and insurance products are available at sustainable prices.

Work on these issues will continue through a Joint Working Group of AHMAC, with advice from a *Medical Indemnity Forum*, of which PIAC is a member. Health Ministers are to consider further proposals in the first half of next year. #

South African lawyers import PILCH

Under the apartheid regime, many lawyers in private practice in South Africa played a critical role of challenging the laws of a repressive state and representing those who sought redress from those who executed apartheid policies. Their involvement gave public interest pro bono legal work considerable credibility and many of these lawyers were central to the development of the legislation and institutions which have shaped the new South Africa. With the emergence of post-1994 South Africa, a new Constitution was enacted containing one of the most comprehensive and progressive bills of rights in the world. These new rights have however given rise to a perception, albeit erroneous, that there is no longer an obvious or pressing need for lawyers to undertake public interest pro bono work. The political imperatives which had previously drawn private practitioners into public interest work, have, to a significant degree, been replaced by financial imperatives, and lawyers are perceived as "traders in legal advice" rather than as "agents of justice."

A study commissioned by Atlantic Philanthropies and the Legal Resources Centre in South Africa, recently took PIAC Director Andrea Durbach to South Africa to explore the feasibility of developing a model, similar PILCH, bringing private practitioners and public interest law firms together to facilitate and enhance the range and quality of legal services available to disadvantaged people and communities.

Andrea conducted consultations with individuals and organisations in Johannesburg, Pretoria and Cape Town, including representatives from private law firms, law societies and bar associations, university law schools and law clinics, public interest/ human rights and legal organisations, and funding and donor agencies. The consultations considered:

- the viability of a PILCH model in the South African context
- the willingness and capacity of the legal profession, or segments of it, to undertake pro bono work and barriers to the development of a pro bono legal service
- the critical legal issues confronting disadvantaged and marginalised communities which might be addressed via the service
- the structure, operation, management and resourcing of the service
- the process for developing a model which can accommodate the commitment and constraints of the legal profession and the legal needs of the community.

The majority of participants interviewed pointed to a willingness to undertake public interest pro bono work and a desire for the legal profession "to be seen to be accessible." They stated that the goodwill and professional and financial resources, "needed to be harnessed within a formalised structure which lawyers could shape and own with the community." They endorsed the establishment of a referral service which assessed matters against public interest criteria and matched poor and unrepresented individuals, communities and organisations with lawyers willing to provide the legal services required without charge or at reduced fees. In addition, they believed that a PILCH-type service could:

- make visible the legal needs of disadvantaged and marginalised communities;
- consolidate public interest and human rights legal work into a formal structure;
- regenerate a community service culture amongst the legal profession;

A report, containing a collation and analysis of the consultations, key findings and recommendations will be available towards the middle of December. #

Who wants changes to the WTO?
Report of the Parliamentary Inquiry into Australia's Relationship with the WTO

Dr Patricia Ranald, *Principal Policy Officer*

The Joint Standing Committee on Treaties Inquiry into Australia's relationship with the World Trade Organisation (WTO) tabled its report at the end of September. PIAC is a member of the Australian Fair Trade and Investment Network, which lobbied for this inquiry. The inquiry received over 300 submissions, many of which came from community organisations.

We saw the inquiry as an opportunity to educate politicians about community concerns and promote public debate through the public hearing process. This process was probably more important than the report itself, since the committee is dominated by government members and the report was bound to reflect this.

Community concerns included:

- the lack of community consultation and parliamentary scrutiny of trade policy;
- the secretive and undemocratic structure of the WTO and its marginalisation of developing countries from decision-making;
- the conflicts between international trade law and UN agreements on human rights and the environment;
- the ability of WTO disputes panel decisions to override legitimate public interest regulation; and
- the potential expansion of trade agreements into areas like public services and investment policy which should remain at the level of national and local democratic policy-making.

Many of these concerns are shared by developing country governments in the WTO. This is demonstrated by the fact that, at the time of writing in October, many developing country governments had still not agreed to the agenda of the next WTO Ministerial Meeting scheduled for November.

The title of the Report, "Who's Afraid of the WTO?" reveals its general direction. The report endorses current government policy, while conceding that some changes are needed around the edges of that policy. Community criticism of current policy is alleged to be based on ignorance or misunderstanding, and "community information programs" are recommended on the benefits of trade liberalisation.

However, the body of the report does record many of the criticisms of the WTO and Australia's policy towards it raised by many of the submissions to the inquiry from organisations and individuals. Some of the recommendations address issues raised by them. The timing of the report means that the fate of these recommendations awaits the election outcome.

One positive and revealing recommendation is that the government should commission multi-disciplinary research to evaluate the socio-economic impact of trade liberalisation in Australia since the conclusion of the Uruguay Round of trade negotiations in 1994. This is based on the damaging admission by the Department of Foreign Affairs and Trade (DFAT) that it produces studies which claim to predict future benefits from further trade liberalisation, but has not done any studies which show the actual economic and social outcomes.

The committee also recommended that the likely socio-economic impacts of future WTO agreements on industry sectors and communities be assessed before deciding whether Australia should enter into them. This is also an implied criticism of the DFAT and other studies which always claim long-term net economic benefits for the whole economy from liberalisation precisely because they exclude consideration of social impacts like job losses on particular sectors and communities.

A related recommendation is that a specific Joint Standing Committee on Trade Liberalisation be established to monitor and review the impact of Trade agreements on Australia, to have input into trade negotiation positions as they are developed by the government, and to conduct an annual public review of WTO policy.

Other recommendations support community consultation about trade policy and inclusion of community representatives in WTO delegations. However the current advisory body is still overwhelmingly made up of business interests, with only four community representatives out of 16.

The report also acknowledges that there has been a lack of consultation with state and territory governments on trade policy and recommends some measures to address this.

The dissenting voice in the report (Appendix A) is that of Democrat Senator Andrew Bartlett, who endorses the concept of "Fair Trade" rather than "Free Trade", and supports many of the major concerns raised by community organisations.

The report is available on the parliamentary website at:

http://www.aph.gov.au/house/commmittee/jsct

PILCH Report

PIAC preferred tenderer for National Pro Bono Resource Centre

Following the First National Pro Bono Law Conference, *For the Public Good*, held in August last year, the Commonwealth Attorney-General convened a National Pro Bono Task Force to prepare a recommended action plan for the national co-ordination and development of pro bono legal services in Australia, for submission to the Attorney. The Task Force, chaired by ALRC President, David Weisbrot, included representatives from universities, community legal organisations, the Bar, and the Law Council of Australia. PIAC Director and PILCH Co-ordinator Andrea Durbach and PILCH Victoria Executive Director, Samantha Burchell, were members of the Task Force.

The *Report of the National Pro Bono Task Force to the Commonwealth Attorney-General* was launched by the Attorney-General on 29 June 2001. Central to the recommendations of the Task Force is the establishment of a National Pro Bono Resource Centre which would stimulate and encourage the development, expansion and co-ordination of pro bono services, offer practical assistance for pro bono service providers and potential providers, and play the key roles of facilitating pro bono practice and enable the collection and exchange of information. The federal government announced funding of $1 million over four years for the implementation of the Task Force's recommendations.

Expressions of interest from organisations willing to host and operate the National Pro Bono Resource Centre were sought by the Attorney in July 2001. PIAC, in partnership with PILCH, PILCH Victoria, the University of New South Wales, the National Association of Community Legal Centres and the Law Society of Western Australia, submitted a proposal which recommended establishing the Centre as an independent national body, which would operate under the guidance of a Board of Directors and broad-based Advisory Council. PIAC, together with the project partners, proposed facilitating the establishment of the Centre under the guidance of a steering committee.

In early November, the Attorney-General announced that a consortium, led by PIAC, had been selected as the preferred tenderer for the establishment and running of the National Pro Bono Resource Centre. PIAC has been in discussions with the Attorney-General as to the details of the agreement. Our thanks to the PIAC and PILCH Boards and to all those who supported and assisted with the development and design of the proposal.

Practising in the Public Interest

In the October 2001 edition of "Australian Lawyer", Anne Trimmer, President of the Law Council of Australia endorses the National Pro Bono Task Force recommendation of fostering a strong pro bono culture, particularly in Australian Law Schools.

The PIAC and PILCH *Practising in the Public Interest* Summer/Winter School is designed to introduce senior law students to systems advocacy and public interest law and to expose them to organisations which are directly involved in pro bono and public interest work.

The course is a five day intensive course made up of a three day training component, based on the accredited PIAC course – *Working the System* – and a two day placement in a PILCH member firm or organisation which undertakes pro bono or public interest work. The placement component of the course enables students to gain an understanding of the variety of ways in which pro bono and public interest litigation are conducted in private practice and to enhance their knowledge of the range of strategies and opportunities which further the practice of pro bono work. Most participating univesities also require students to undertake a research project as part of the course.

PIAC and PILCH intend to continue running the course twice each year, a Summer and a Winter School, with different universities. *Practising in the Public Interest* has been run in conjunction with the University of Western Sydney (Nepean), the University of New South Wales, the University of Sydney and the University of Wollongong. Interest in the PIPI course has also been expressed by Melbourne universities and PIAC and PILCH will work with PILCH Victoria to pursue this initiative. Most of the participating universities have accredited the course as part of their respective law degrees.

As part of the Winter School held in July this year, conducted with the University of Western Sydney (Nepean) and the University of Wollongong, students undertook placements with Allens Arthur Robinson, Blake Dawson Waldron, Clayton Utz, Gilbert & Tobin, Freehills, Mallesons Stephen Jaques, Maurice Blackburn Cashman, the NSW Bar Association, the Legal Aid Commission of NSW, PIAC and PILCH. PILCH member firm Henry Davis York hosted the course.

In February 2002, PIAC and PILCH will again run a Summer School in conjunction with the University of Sydney and the University of New South Wales, hosted by PILCH member firm, Freehills.

Our thanks to the participating universities and PILCH members for their significant contributions to this important initiative.

Secondees

PILCH is fortunate to have the continued support of member firms who provide solicitors on secondment to PILCH. Secondee solicitors are critical to PILCH's operations. They undertake a broad range of activities at PILCH, including taking inquiries and requests for assistance from members of the public and community organisations and assessing requests for assistance against PILCH eligibility criteria (which requires an examination of the public interest elements of the matter, its potential impact on the wider community and its prospects for legal resolution).

Where matters meet PILCH eligibility criteria and are referred to PILCH members, secondees prepare briefs to referee PILCH members and liaise with and attend introductory meetings between the PILCH member and the client. In addition to PILCH referral work, secondee solicitors also participate in PIAC's legal practice and assist in organising PILCH functions and initiatives. They help organise and attend PILCH functions, seminars, conferences, Board meetings and fundraising events.

Many secondee solicitors comment that they enjoy the opportunity to engage in considerable client contact, to have responsibility for their own files and to improve skills such as interviewing, file management, relationship building and drafting. They also value the exposure to a wide range of legal, social and policy issues and community legal needs.

The current PILCH secondee solicitor is Tamara Pallos from Blake Dawson Waldron. Tamara's secondment is from July until November 2001. She will be followed by Peter Olds, a solicitor from Freehills who will be on secondment at PILCH until February 2002. Secondees are now being sought for the remainder of 2002. Secondments are usually for 3-4 months on a full-time basis. If you can assist or have any queries in relation to secondments, please contact Kathleen Searles or Andrea Durbach at PILCH.

Botswanan High Court judge addresses PIAC/ PILCH fundraising lunch

A sold-out fundraising lunch for PIAC/ PILCH, hosted by PILCH member firm, Minter Ellison, was addressed by international human rights lawyer and judge, Justice Unity Dow. The first woman judge to be appointed to the High Court of Botswana, Unity Dow grew up in a poor family in a village in south-eastern Botswana where there was no running water or electricity and education was minimal. She spoke about her intriguing entry to the study of law, her work as an activist lawyer and her new career as a writer of fiction. In Australia to promote her first novel, *Far and Beyon*' at the Melbourne Writers Festival, Justice Dow donated proceeds of the sale of her book at the lunch to PIAC's *Stolen Generations Project*.

Described as "a heroine of the woman's movement" by Australia's former representative to the United Nations Human Rights Committee and PIAC Chairperson, Elizabeth Evatt, Unity Dow is recognised as having set an international standard with her Nationality Case where she successfully challenged the Botswanan *Citizenship Act* as being unconstitutional and in breach of Botswana's obligations under the *Convention on the Elimination of Discrimination against Women*. The Act decreed that the children of Botswanan women married to foreigners assumed their father's nationality and were not entitled to the benefits of Botswanan citizenship. These benefits were however available to children of Botswanan men married to foreigners.

Our thanks to Quentin Bryce, Elizabeth Evatt, Minter Ellison and Spinifex Press for their support and contributions.

PILCH NSW sought out by international markets

The PILCH model was showcased on two different continents during September and October. PIAC Director and PILCH Co-ordinator, Andrea Durbach, was invited to participate in a conference on *Pro Bono and Access to Justice* convened by the Faculty of Law at Palermo University in Buenos Aires. Andrea met with human rights and community organisations, law firms and legal academics, and lawyers from North and South America to discuss best practice pro bono service delivery and the promotion of pro bono work among law students and the private profession.

In South Africa, Andrea conducted a feasibility study with lawyers from the Legal Resources Centre to assess the need and support for the development of a PILCH-based model in South Africa. Since the implementation of the new Constitution and Bill of Rights in South Africa after the historic 1994 elections, there is some concern to ensure that lawyers can promote and advance the rights enshrined in the constitution. Often those most in need of assistance to assert these new rights, are impoverished and marginalised individuals and communities. Andrea consulted with law firms, professional organisations, law faculties, funding bodies and human rights organisations in Johannesburg, Pretoria and Cape Town. Her report and recommendations arising from the study will be presented to the Legal Resources Centre Board later this year.

Membership

PILCH is delighted to welcome Sixth Floor Selborne Wentworth Chambers and law firm, Holding Redlich. Membership of PILCH comprises law firms, barristers, floors of barristers, accountancy firms and mediators. Applications for or queries about PILCH membership should be directed to Kathleen Searles or Andrea Durbach.

Legal Helpline

The Attorney-General of New South Wales, together with the Legal Aid Commission of NSW, the Law Society of NSW and the NSW Bar Association, has been developing a legal helpline known as "LawAccess" which will primarily co-ordinate the provision of legal information and information about referral services for the benefit of consumers of legal services in NSW. It will operate as a first point of contact for NSW legal assistance services providing legal information, referral to appropriate services and general legal advice. PIAC Director and PILCH Co-ordinator, Andrea Durbach, participated in an Advisory Board for the development of the helpline. LawAccess commenced operations in September 2001.

QPILCH

Over the last few months, PILCH staff have assisted Legal Aid Queensland in their efforts to establish a Public Interest Law Clearing House in Queensland. QPILCH was incorporated on 8 June 2001, with the Hon Paul De Jersey AC, Chief Justice of Queensland as Patron, and Andrew Buchanan of Allens Arthur Robinson as President. QPILCH will be launched toward the end of the year. PILCH now has a presence in three states – New South Wales, Victoria and Queensland. #

LITIGATION REPORT

Litigation Team

Gambling Case – Appeal to the High Court

In a judgment of the NSW Court of Appeal in September, the Court found that a compulsive gambler should not be permitted redress under the law characterising his gambling activities as "deliberate and voluntary acts". Mr Chris Reynolds will apply for special leave to the High Court after he lost his appeal to the NSW Court of Appeal in relation to a claim for losses resulting from his compulsive gambling. The Court of Appeal found that the club owed no duty of care to Mr Reynolds nor did it act unconscionably in its dealings with him, despite Mr Reynolds' notifying the club of his addiction to gambling.

In 1992 and 1993 Mr Reynolds lost approximately $57,000 at the club. The club cashed personal, business and third party cheques for Mr Reynolds enabling him to gamble well beyond his means. Mr Reynolds claimed that Katoomba RSL breached its duty of care to him to responsibly provide gaming services and exploited his vulnerability by assisting him with funds to gamble when the club knew his gambling was compulsive and beyond his means.

Mr John Basten QC and Mr Jeremy Stoljar are briefed to represent Mr Reynolds in the application for special leave to the High Court.

Freedom of Information

Utilising Freedom of Information legislation, at both the state and federal level, continues to be indispensable for PIAC in investigating cases against government agencies and influencing government decision making

The pressure generated by a Freedom of Information (FOI) application has forced Weemala, a residential institution for people with disabilities, to review who is entitled to access a fund used to pay for amenities for residents. The fund, known as the Comforts Fund, is made up of interest from individual residents' accounts. The transfer of this interest over to the Comforts Fund was done without the residents' knowledge or consent. The FOI application aimed to expose how the fund worked, has resulted in an undertaking from the institution to review the terms of the fund with a view to making it accessible to all residents who contributed to it.

In another case, as part of an investigation into a potential claim on behalf of a prisoner who was raped while in custody, PIAC requested a copy of the statement given by our client to the police. Numerous written requests were ignored by the police involved. It was only by making a formal FOI application that our client's statement was immediately released. Informal requests for information, not made under FOI legislation, evidently do not carry the same weight.

PIAC has been successful in obtaining the public release of the "Guidelines" used by Victims Compensation Tribunal assessors in the determination of compensation claims. PIAC was prompted to apply for these under FOI in order to be properly informed of what considerations are taken into account by assessors.

The Attorney General's Department refused access to the Guidelines on the grounds that the Guidelines relate to the Tribunal's judicial functions which take them outside the scope of the FOI Act (s 10). The matter was to be heard by the Administrative Decisions Tribunal however, a few days prior to the hearing, the Attorney General's Department provided the Guidelines to us. Those Guidelines have now been distributed to a number of community legal centres and other organisations which act for victims of crime.

Women in the Ring

PIAC, with Ms Kate Eastman acting as counsel, represented Ms Holly Ferneley in an application to the Federal Court pursuant to the *Sex Discrimination Act 1984* (*Cth*) (SDA). Ms Ferneley is a professional athlete who fights in boxing, karate, kung fu and kickboxing bouts against other women. She is however not allowed to fight in NSW because women are not permitted to apply to register as a boxer with the Boxing Authority of NSW.

The Authority is responsible for registering boxers, including kickboxers in NSW. Professional and amateur boxers are not allowed to participate in bouts if they are unregistered.

Ms Ferneley applied to the Authority but they refused her application on the basis of s 8(1) of the *Boxing and Wrestling Control Act* 1986 (BWCA). That section states "A male person of or above the age of 18 years may make an application to the Authority to be registered as a boxer of a prescribed class".

Ms Ferneley lodged a complaint to the Human Rights and Equal Opportunity Commission (HREOC) but her complaint was terminated after HREOC argued that the complaint involved a dispute not covered by the SDA. She then lodged an application in the Federal Court, naming the Boxing Authority and the State of NSW as respondents. The Authority submitted to the Federal Court and the state of NSW defended the application. Ms Ferneley's application was heard by Justice Wilcox on 8 November 2001.

At the hearing PIAC argued that the Boxing Authority discriminated against Ms Ferneley by failing to register her. The Authority argued that it was required to follow this course of action by s 8(1) of the

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Value Adding in Training

Cathie Sharp, *Training Co-ordinator*

To expand PIAC's training arm and accommodate demand for our services, we have branched out from our focus on designing and delivering programs publicly and in-house into a number of other training strategies. One of these is the production of a training package for the program *Work the System: An Introduction to Advocacy*, which we make available through licence to interstate training organisations. In addition, we have developed programs to train-the-trainers.

The basis of one of these began in 1998 and 1999 in co-operation with migrant resource centres in western Sydney and utilising interpreters, we delivered a number of Civics programs to people of non-English background. The aim of the programs was to provide basic information on the structure and roles of government and the voting system. There was an obvious interest and need for this information but to include more people without the added step of interpreters, we had to develop new approaches. Consequently, with inspiration and support from Bankstown Area Multicultural Network (BAMN) and the Canterbury-Bankstown Migrant Resource Centre, in 2000 we developed a comprehensive train-the-trainer program for community bi-lingual workers.

Initially two trainer programs were run with 25 local community bi-lingual workers who had previous facilitation experience. They were trained in the content of the Civics program, the presentation of the program and in basic presentation skills.

The trainers represented twelve language groups; Vietnamese, Spanish, Indonesian, Cantonese, Bosnian, Dari/Afghan, Tongan, Hindi, Maltese, Filipino and Tagalog. Training packages were prepared with materials translated into these languages and over four months, eighteen community programs were presented to the different communities.

Two more train-the-trainer programs have since been delivered, one by PIAC and the other by a trained BAMN co-ordinator, increasing both the number of languages and community training programs now available.

The approach of using skilled bi-lingual workers to present material to their own community in their own language has many advantages including:

- established relationships with the trainer assists in attracting the community;
- material can be effectively tailored to the specific group's needs; and
- the interest of participants in the topic is maintained as the trainer has an understanding of the characteristics of the group.

The success of these programs has been very encouraging and PIAC hopes to develop and deliver more train-the-trainer programs in identified areas.

LITIGATION REPORT

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BWCA. PIAC argued the section was invalid as it was inconsistent with the SDA, a Federal statute.

The state of NSW argued that the SDA did not apply as, firstly, the Authority did not provide a service, as defined by the *SDA,* and fundamentally that the sport of boxing was exempt from the operation of the SDA. The state claimed that the exemption in s.42 of the SDA applied which exempts the applica-tion of unlawful discrimination provisions in the SDA where the actions complained of relate to a competitive sport where strength, stamina and physique are relevant.

PIAC argued on behalf of Ms Ferneley that s 42 was not applicable to single sex sports as the SDA is concerned with discrimination as between different sexes. The ramifications of the State's argument are significant. If their submissions are accepted then the exemption could be applicable to any competitive sport. HREOC, recognising the importance of the case, sought and were granted leave to appear as amicus curae in the proceedings.

Mr Gavan Griffiths QC, with Kate Eastman, appeared for Ms Ferneley.

A decision is expected in the New Year. #

Policy Report

Dr Patricia Ranald, Principal Policy Officer

Privacy of health records

With new privacy laws coming into effect in the private health sector in December, PIAC has been busy promoting awareness of legal obligations to consumers, community based service providers and health information managers. PIAC facilitated feedback from consumer groups on draft Health Privacy Guidelines prepared by the Privacy Commissioner in July. A forum on *Privacy law and community health* organised jointly with Hunt and Hunt solicitors in November attracted an audience of managers and health workers in community based health organisations.

Corporate Code of Conduct Bill Inquiry Report

The Joint Statutory Committee on Corporations and Securities reported in late June on the Corporate Code of Conduct Bill which was introduced into the Senate by the Australian Democrats. The Bill applies environmental, employment, health and safety and human rights standards to the conduct outside Australia of Australian corporations, requires corporations to report on their compliance with such standards, and provides for the legal enforcement of the standards. The Bill was inspired by the failure of Australian companies to apply environmental standards in their overseas operations. The two most notable recent examples of this were the widespread pollution caused by BHP's OKTedi mine in PNG and the Esmerelda mine in central Europe. Similar legislation has been introduced into the United States and European parliaments.

The PIAC submission and other submissions from unions and community organisations to the Inquiry supported the legal enforcement of standards for corporate behaviour. Corporate submissions argued against the legislation, arguing that it was an unreasonable imposition on them.

The committee produced three reports, divided on party lines. The majority government report rejected the Bill in principle, and also identified some technical and drafting problems. The Labor party members supported the development of corporate standards and supported the concept of legislation to require reporting on compliance with such standards. However, they fell short of supporting legal penalties for companies which did not meet the standards. The Democrat member strongly supported the entire Bill, while acknowledged that drafting could be improved.

The Bill has served a useful purpose in starting public debate on these issues. PIAC and other community organisations have lobbied the ALP to pursue this policy.

Health consumers networking

Health consumer groups in NSW have deemed a statewide network for health consumer activists a resounding success. Members of the Health Consumers Network (NSW), established in 2000 as a pilot project, agreed to continue the organisation at a general meeting in October. As one of the HCN members put it, "All of us working in our special interest groups benefit from coming together to share our experiences and to discuss important issues. It is vital to keep HCN going".

HCN will seek funding from government and provider groups to support consumer representatives and policy projects. In the meantime it will continue to respond to regular requests to provide consumer representatives and consumer perspectives by relying on the resources of key members, such as PIAC. Members will be able to share their views freely and often through an HCN members' email list launched in November.

Healthy participation

The NSW Minister for Health announced a new Participation Council to provide advice from the community and consumer perspective in health. The announcement, made on 1 November 2001, fulfils a promise to implement a recommendation of the NSW Health Council for a state level mechanism to provide a voice for consumers in health policy and planning decisions. Wendy McCarthy will chair the Council and members will include people from PIAC and HCN. The Minister made the announcement at the same time as he launched the final report of the Consumer and Community Participation Implementation Group.

Join the Health Consumers' Network (NSW) Inc

The Health Consumers' Network provides for health consumer groups in NSW to share information and experience, and to provide a voice for health consumers on a statewide level. Like the national Consumers' Helath Forum, HCN's vision is: Consumers shaping health and health delivery systems in NSW.

The Health Consumers' Network aims to enable health consumers in NSW to contribute to the development of health policy, planning, priorities, service delivery and evaluation. In doing so it seeks to achieve a more effective, equitable and high quality health system that provides health for all

Everyone can join HCN. Organisations that represent the views of health consumers or the community can apply to be voting members of HCN. Individuals and other organisations that support HCN can join as associate members.

Membership inquiries or for more information

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UCAP REPORT

Trish Benson, *Senior Policy Officert (UCAP)* and Jim Wellsmore, *Policy Officer (UCAP)*

Electricity, Gas and Full Retail Competition

As reported in the last *PIAC Bulletin*, the NSW Government has finalised the *Electricity Supply (General) Regulation 2001*, the regulation that sets out the rules for the introduction of full retail competition in the electricity industry from 1 January 2001.

PIAC has been extensively involved in developing the framework for the regulation through the working groups established by the Market Implementation Group (MIG) in NSW Treasury and most of this work has been incorporated into the regulation. However, there was a surprise in that there was a clause in the regulation that enables a retailer of last resort to charge a retailer of last resort fee of up to $50. The amount of the fee had to be approved by the Minister for Energy. A retailer of last resort comes into play when a retailer can no longer supply electricity to their customers, for example, if the retailer becomes insolvent.

PIAC immediately wrote to the Treasurer, the Hon Michael Egan, suggesting that this fee related to the retailer's costs, that the amount of the fee be determined by an independent regulator, in this case, the Independent Pricing and Regulatory Tribunal (IPART) and questioned the appropriateness of imposing this fee on households on low and fixed incomes.

The Minister for Energy, the Hon Kim Yeadon agreed to meet with PIAC to discuss this issue. The agreed outcomes of the meeting were that the Minister will refer the retailer of last resort fee to IPART after 1 January 2001 to consider the appropriateness of the fee and, if it is considered appropriate, an alternative fee. The Minister has also made it clear that IPART will be required to follow its normal consultative processes.

The Minister assured PIAC that the government has attempted to address the issues for households on low and fixed incomes by IPART having to consider the impacts on low income households in developing its recommendations. There will be also no fees applied to customers who were on standard supply immediately before the last resort supply event.

These agreed outcomes offer important safeguards to consumers under a full retail contestability regime.

The regulation to protect residential consumers who use gas have not been finalised yet. The Ministry of Energy and Utilities have indicated to PIAC that this regulation will mirror as far as possible the electricity regulation where the issues are the same. PIAC looks forward to being consulted on this regulation.

REFIT

The energy efficiency pilot project, REFIT is about to get up and running in the Lower Hunter. The project will provide energy efficiency devices for households on low incomes who live in the private rental market. Contracts between the participating organisations are close to being signed and major welfare agencies in Newcastle have been provided with information about the Pilot Project so that they can start to refer clients to be provided with the service. The funding has been provided by EnergyAustralia, the Sustainable Energy Development Authority and Hunter Water with in-kind support provided by Newcastle City Council and PIAC.

Lord Mayor of Newcastle, John Tait, Minister for Energy, the Hon Kim Yeadon and Managing Director, Energy Australia, Paul Broad at the REFIT Launch on 23 November.

The Minister for Energy, the Hon Kim Yeadon, has agreed to launch the pilot project in Newcastle on 23 November and both Paul Broad, the Managing Director of EnergyAustralia and John Tate, the Mayor of Newcastle have agreed to speak.

Demand Management

The Premier, the Hon Bob Carr has requested that IPART inquire into the role of demand management. Demand management includes energy efficiency (such as the REFIT Pilot Project), load management which involved activities designed to reduce peak load and distributed generation which is generation that is connected within a distributor's network rather than within the transmission network.

IPART released an Issues Paper, *Inquiry into the Role of Demand Management and Other Options in the Provision of Energy Services* in July 2001.

PIAC provided a submission to the Tribunal that dealt mainly with energy efficiency projects, particularly our experience of implementing the REFIT Pilot Project. PIAC will continue to provide submissions and participate in this Inquiry as the IPART final report to the Premier will not be completed until July 2002.

PIAC People

After years of dedicated service at PIAC, Greg Kirk, our Principal Solicitor left us in August to join the Australian Securities and Investment Commission. His presence, skill and expertise on many matters will be sorely missed at PIAC and we wish him all the best with his new position. We anticipate appointing a new Principal Solicitor in late 2001. We are delighted, however, to welcome London solicitor, Sarah Leslie, who requested voluntary work with PIAC during a 6 months break from her busy practice in London. Sarah is a solicitor with London firm, Irwin Mitchell where she primarily works on discrimination and human rights. Sarah will share her time between the Human Rights and Equal Opportunity Commission Legal Section and PIAC.

PILCH member firm, Malleson Stephen Jaques seconded solicitor Simon Etherington to PIAC for 3 months. Our thanks to Malleson Stephen Jaques for this opportunity and to Simon for his initiative and contribution to PIAC's legal practice.

Kathleen Searles, previously a solicitor with Minter Ellison joined us in September as the PILCH locum solicitor while Sandra Stevenson is on leave for 6 months.

PILCH member firm Allens Arthur Robinson has agreed to sponsor a new solicitor position at PIAC, aimed at consolidating and expanding PIAC's work with Indigenous people. We welcome Shaz Rind who starts with PIAC in late November.

Churchill award

PIAC policy officer, Amanda Cornwall, has been awarded a Churchill Fellowship for a study project on "the impact of information technology in health services on consumer privacy and access to information". The eight week project commencing in May 2001, will consider developments in Canada, the UK, France and Germany.

College of Law

Our thanks go to Aaron Tang, our College of Law placement from July 2001 to October 2001. Aaron is now working at Butterworths. Our most recent College of Law placement is Amber Lonergan, who joined us in October and will be with us until February.

PILCH Secondees

In the last 6 months the Public Interest Law Clearing House has functioned with the assistance of secondees from member firms Blake Dawson Waldron and Minter Ellison. Tamara Pallos returns to Blakes in December and will be replaced at PILCH by a secondee from member firm Freehills, Peter Olds.

Board News

PIAC Board Director and barrister, Steven Walmsley has been appointed a District Court Judge and Board Director, and NSW Legal Aid Commission Chief Executive Officer, Margaret Allison recently took up the position of Director-General at the NSW Department of Ageing, Disability and Home Care. Our congratulations to both Steven and Margaret and our thanks for their support and contribution to the PIAC board and the centre.

We also extend very warm thanks to Board Director Bob Wilson who has been on the PIAC Board for four and a half years and has steeled us through complex times. His vision, guidance and dedication is greatly appreciated and treasured. We will miss his rigor, support and enthusiasm.

We are delighted that at the PIAC AGM in October, Elizabeth Evatt was returned as Chairperson of PIAC for a second term and former ASIC Chairperson, Alan Cameron was appointed to the Board.

The board and staff of PIAC and PILCH would like to take this opportunity to wish you all a very happy festive season and a safe and happy New Year and to thank all PIAC's friends for their continuing support.

We look forward to working with you again in 2002.

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PIAC Board

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