

# PIAC Bulletin

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edited by Simon Moran, Sarah Mitchell  
and Andrea Durbach

PUBLIC INTEREST ADVOCACY CENTRE  
Level 1, 46-48 York Street  
Sydney NSW 2000  
Ph: 612 9299 7833  
Fx: 612 9299 7855  
piac@piac.asn.au  
www.piac.asn.au

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## Public liability and public rights

Jim Wellsmore, *Policy Officer*

Proposals for changes to tort law and the rights of injured persons to seek legal redress are a major issue affecting the public interest.

Such proposals have arisen in response to the enormous public attention being given to a supposed "crisis" in the ongoing provision of insurance for public and professional liability. There are many areas of the community concerned with the provision and cost of this insurance cover. To date, PIAC has concentrated on the debate concerning medical practitioners and insurance indemnity in relation to medical error affecting consumers of health services.

The nature of the "crisis" in indemnity cover for doctors is a matter which requires rigorous and ongoing analysis. Some doctors' groups, a number of insurers and even governments have been keen to point the finger at the users of health services — consumers and those injured through medical error. Yet, it is widely understood and accepted that the financial problems besetting the largest provider of indemnity cover, United Medical Protection (UMP) arose from years of poor management and under-priced cover. On the other hand, the Australian Health Ministers Advisory Council (AHMAC) has been told by its own researchers that the response from insurers of dramatic increases in premiums is not justified by claims of consumers supposedly becoming more litigious.

The limited data available to the public indicates that in New South Wales there has been no significant increase in the number of "large" claims from medical

negligence — those involving catastrophic injury. Nonetheless, the notion that consumers are driving up insurance costs generally has been reinforced by a handful of large damages awards arising from medical negligence and other public liability cases. This has triggered a response from governments which has been primarily focussed on changes to tort law without a parallel concern with the rights of those who may face harm. New South Wales has been the most aggressive state in this regard with proposals to overhaul the system whereby injured persons can turn to the courts for legal redress.

Insurers, including those involved in medical indemnity cover, make decisions about the kind of cover they provide as well as to whom and at what price, on a purely commercial basis. This is the reason for the withdrawal of some providers and for rising premiums in Australia following last year's events in New York.

Yet, what is being proposed to address apparent blow-outs in insurance costs, is that these costs be tackled not by regulating the commercial behaviour of these businesses, but by direct intervention through statute to reduce the rights and entitlements of individuals injured as a result of negligence by another party. This is occurring during a period when all governments have been eager to stress individual responsibility over public services and safety nets. The consequences for individuals suffering

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# From the Director

Andrea Durbach, *Director*

As PIAC staff and Board gear up for our 20th anniversary celebrations later in the year, we spent a day in April evaluating our work and planning new projects and directions. This exercise, undertaken each year, came at a time when it is vital that we rethink the aims and objectives of PIAC and our role as “rights advocates”, as we work in an environment which increasingly sees government and its patrons encroach upon the rights and freedoms of those least able to assert them.

A few weeks ago, I met with Canadian academic, Ted Morton, Professor of Political Science at the University of Calgary, who has been in Australia undertaking research on rights advocacy groups across the country and the factors which facilitate their work and determine their impact. His research draws extensively on the key argument advanced by American academic Charles Epp, in *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective*. Epp suggests that in America, rights have been created or expanded primarily as a consequence of consistent and coherent pressure from well-organised rights advocates, whose work is advanced by the presence of a “support structure for legal mobilisation.” Epp’s support structure consists of rights advocates with sufficient resources, the existence of a constitutionally-based rights document, the presence of independent-activist judges and a level of popular support for civil rights and liberties.

Epp’s analysis offers not only an interesting check-list against which to evaluate the extent of and future

prospects for a “rights revolution” in the Australian context, but also invites us to shape our work in the presence or absence of the elements which comprise his “support structure”. The broader community is taking up the position of onlooker with growing ease while senior representatives of our government deceive us about the characteristics of desperate refugees and the conduct of a High Court judge and justify the eradication of fundamental rights in the name of “security of the state”. This climate, along with an absence of a Bill of Rights and constraints on available funds for advocacy work, suggest that our work needs to address how we strengthen the fragile foundations of our society to best promote and protect human rights.

PIAC’s key strategies have expanded from legal advice and litigation, to policy work and law reform and more recently, to the establishment of our training program, *Working the System*. In undertaking this training program, communities and organisations are navigated through the intricacies of governmental and legal systems and develop a range of advocacy skills. These training sessions also create an opportunity for PIAC staff to learn about the complex and varied legal needs and concerns of these communities and groups. Our training program has grown dramatically over the last few years, primarily, it seems, as a consequence of citizens and communities feeling shut out and peripheral to decision-making processes. And as government loses patience and respect for participatory decision-making and authentic

community consultation, there is a clear role for organisations like PIAC to undertake work with the community to ensure governments which are responsive, transparent and accountable. Indeed, to constantly re-invigorate the democratic process.

Distributing information and equipping individuals and communities with the knowledge and tools to re-charge democratic values and assert the protection of rights, is a critical component of advocacy work. But this strategy in itself remains insufficient without resources to expand and enforce those rights, and to alter the policies, practices, and culture of bureaucracies and private organizations to good effect. It is through informal networks and mechanisms such as the Public Interest Law Clearing House that rights advocates have access to a community of lawyers who are committed to a deliberate and strategic use of law to make a difference to people’s lives, often providing expertise and resources with no or little cost to their clients.

To maintain community support for civil rights and liberties when government policies and action seem aimed at inflating individual interests, creating the potential for an “exclusionary, intolerant, factionalized vision of community”, becomes a greater and greater challenge for advocacy groups working in the public interest. Perhaps this challenge underscores the importance of working towards the development of a key peg of Epp’s ‘support structure’: an Australian Bill of Rights. #

## Public liability and public rights

*continued from p 1*

catastrophic injury are obvious. A person who has no opportunity for future employment and faces large hospital bills and massive costs for ongoing medical care is compelled to find an alternative to public support.

Indeed, these long-term care costs have been identified as a major factor in the size of "large" damages awards. The AHMAC has been told that these costs can comprise as much as 80% of the award in such cases.

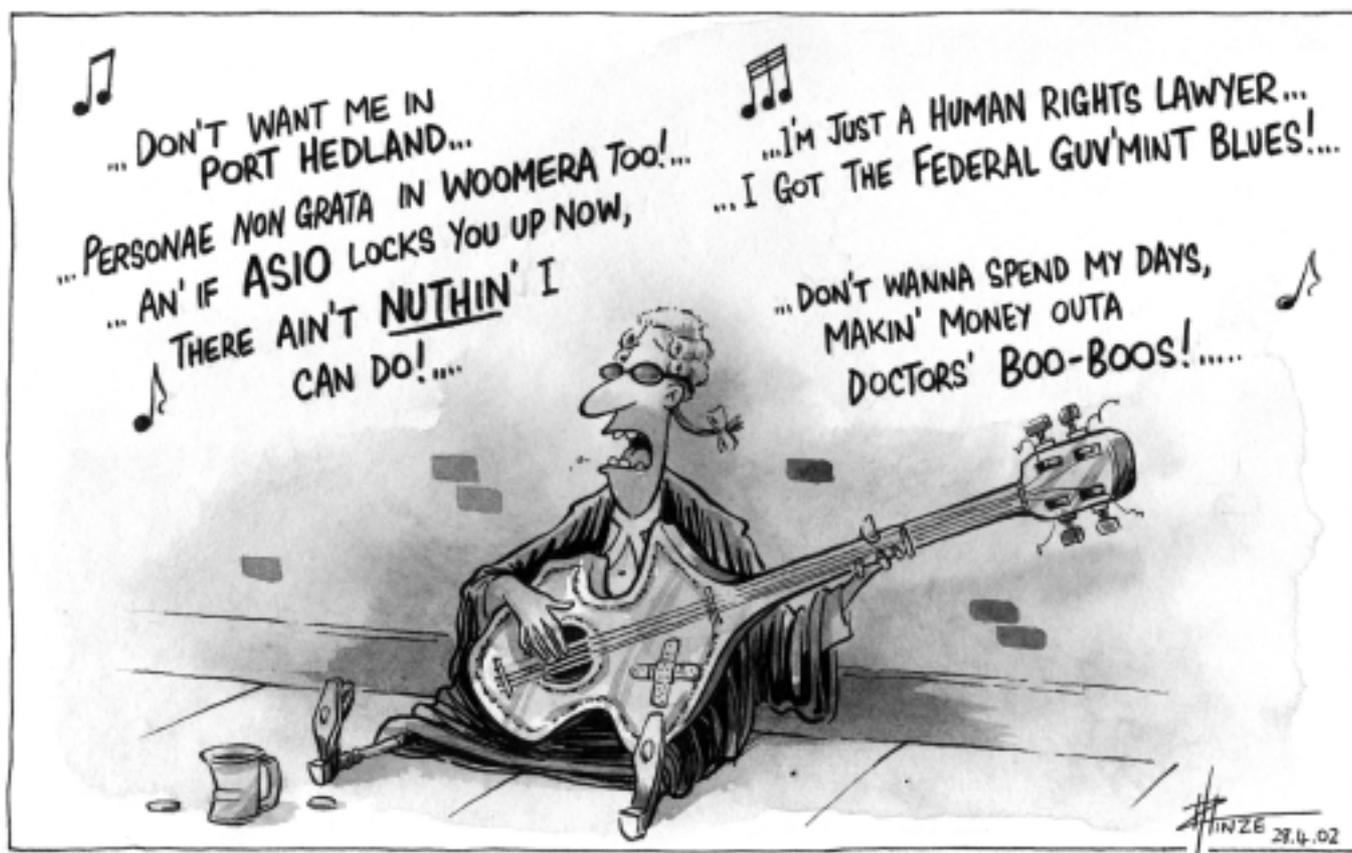
Until now, these costs have overwhelmingly been met by insurers who have provided doctors with

commercially-based cover. The collapse of UMP has made it harder for many doctors to obtain such cover. In addition, many doctors in private practice no longer wish to accept the full cost of insurance as a legitimate part of running their businesses. Some doctors' groups are pursuing a proposal for the Commonwealth to assume all these costs through a public fund which would assess and meet the cost of long-term care for those suffering catastrophic injury either through medical error or some other event such as motor vehicle accidents.

In the case of NSW, consumers already have been forced to accept statutory changes to tort law which limit their rights to redress for medical negligence. Among a raft of changes introduced in 2001, these have reduced damages for economic

loss (through an increased "discount"), capped non-economic loss damages and established a minimum threshold for claims which can be pursued through the courts.

The NSW Government has proposed to extend these reforms to other civil damages cases with the *Civil Liability Act 2002*. There appears to be an assumption that the community will accept such reductions in their rights to seek redress. However, the public consultation undertaken by the NSW Government around the 2001 reform package hardly gave the community an opportunity to have its views heard. It is to be hoped that the rush to find a legislative "fix" to the insurance crisis will not once again over-ride the need for genuine community debate around these critical issues. #



Cartoon is reproduced courtesy of Hinze/Sun Herald

# PIAC to establish National Pro Bono Resource Centre

Kathleen Searles, *PILCH Solicitor*

Following the First National Pro Bono Law Conference held in August 2000, the Attorney-General convened a National Pro Bono Task Force to prepare an action plan for the national co-ordination and development of pro bono legal services in Australia.

A key recommendation of the Task Force was the establishment of a National Pro Bono Resource Centre (the "Centre") to stimulate and encourage the development, expansion and co-ordination of pro bono services. The Federal Government announced funding for \$1 million over four years to establish such a centre and sought expressions of interest from organisations willing to host and operate it.

PIAC, in conjunction with its project partners, was awarded the tender and has entered into a contract with the Commonwealth to establish the Centre as an independent, national centre. It is envisaged that the Centre will be operational later this year.

The establishment of the Centre will be overseen by a Steering Committee made up of representatives from PIAC, PILCH NSW, PILCH Victoria, the National Association of Community Legal Centres, the University of New South Wales, the Law Society of Western Australia, the Law Council of Australia, the Australian Council of Social Service, QPILCH and Gilbert & Tobin.

The Steering Committee, which meets once every three weeks, will oversee the establishment of the Centre and participate in key tasks, including:

- consultation with key stakeholders;
- assessment of a viable legal and financial structure for the Centre;
- recruitment and appointment of the Centre's Director;
- preparation of an initial strategic plan for the Centre (including a review of the Centre's objectives and priorities);
- exploration of funding and resource opportunities to ensure the long-term operation and growth of the Centre; and
- securing premises for the Centre.

PIAC Director and PILCH Co-ordinator Andrea Durbach and PILCH lawyer Kathleen Searles, will direct the establishment of the Centre under the guidance of the Steering Committee.

The Steering Committee is currently recruiting the founding Director of the Centre. An initial strategic plan for the Centre's first twelve months of operation has been developed and the Committee is considering written advice from a PILCH law firm regarding the most appropriate legal and financial structure for the Centre. The Centre's Director, who will be assisted by a part-time policy officer and administrator, will be based at PIAC initially and then move to independent

premises. PIAC is seeking offers from organisations which may be able to share their premises with the new Centre.

To coincide with the launch of the Centre in August, PIAC and PILCH are working with the Attorney General's Department to host a one-day workshop which will explore barriers and opportunities in pro bono legal work. The workshop, which will encourage participation from all states, will also focus on the role of the new Centre.

Please contact Kathleen Searles at PIAC on (02) 9299 7833 or [ksearles@piac.asn.au](mailto:ksearles@piac.asn.au) for more information about the Centre or any offer of assistance. #

## Indigenous Justice Program

Shaz Rind, *Solicitor*

PIAC's Indigenous Justice Program aims to identify public interest issues which impact on Indigenous communities with a view to conducting public interest advocacy, litigation and policy work on behalf of Indigenous clients. The employment of an Indigenous solicitor will assist PIAC to achieve this goal and to provide a culturally appropriate service to Indigenous people. PILCH member firm Allens Arthur Robinson funds PIAC's Indigenous Solicitor, Shaz Rind.

PIAC's Indigenous Justice Strategy will initially focus on two main areas. Firstly, the mistreatment of Indigenous people by the police and in custody, including police custody and jail. Possible causes of action in this area include:

- complaints to the Police service and/or Ombudsman which involve serious police misconduct;
- civil assault claims;
- applications to the Victims Compensation Tribunal for acts of violence arising from police mistreatment;

- cases of breach of duty of care, breach of fiduciary duty and/or breach of statutory duty;
- discrimination claims; and
- deprivation of liberty/wrongful arrest and imprisonment claims.

Secondly, PIAC's Indigenous Justice Strategy will focus on representing Indigenous clients in race discrimination cases. This includes representation in anti-discrimination conciliation processes, and in the Administrative Decisions Tribunal and Federal Court/Federal Magistrate Service proceedings.

Since arriving at PIAC in November last year, Shaz has met with numerous Indigenous community organisations, legal services and with Dr Bill Jonas, HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner and Chris Puplick, President of the Anti-Discrimination Board of NSW. Shaz is a member of the NSW Law Society's Indigenous Lawyers Taskforce. #

# East Timor

Dr Annemarie Devereux, *Senior Solicitor*

At the end of March 2002, I left East Timor after spending eighteen months working with the UN. Having had my interest in East Timor ignited through the experience of being an NGO Observer for the Popular Consultation in August 1999, it was an immense privilege to be working in East Timor during its transition to independence. As a Legal Officer with the Legal and Human Rights Units (HRU), two projects in particular dominated my working life: the process of establishing a Reception, Truth and Reconciliation Commission and the process of constitution making.

## Reception, Truth and Reconciliation Commission

As a result of a call by the Timorese Council for National Resistance (CNRT) for a truth and reconciliation commission, the UN convened a Steering Group of Timorese NGOs, and UN personnel to consider the issue. After consulting with communities in the thirteen districts of East Timor, the Steering Group resolved that a body should be created to perform two functions:

- (1) to inquire into human rights violations which occurred between April 1974 and October 1999 (truth seeking); and
- (2) to facilitate “community reconciliation agreements” between those who had committed less serious crimes during this period, their victims and their home communities.

Some elements could be drawn from the commissions in South Africa and Guatemala. Others were rejected. Victims of abuse insisted, for instance, that there be no amnesties. Perpetrators of serious

crimes needed to be prosecuted for justice to be done. Empowering the commission to oversee community reconciliation processes was also novel. It reflected both the strong traditional justice system in East Timor and the potential over-burdening of the new court system in dealing with, for example, 35 000 house burnings. Procedural safeguards were added to prevent the process itself infringing human rights.

The Commission, having had National Commissioners appointed earlier this year, is due to commence operations mid-year. Though entrenched in the Constitution, the future operation of the Commission is not yet beyond doubt. The new Parliament has foreshadowed a review of the mandate of the Commission. On 20 May, a draft law granting amnesties and pardons was introduced, though has subsequently been withdrawn for “re-drafting”. Much may depend on how the Commission’s early proceedings are perceived and the outcome of negotiations with militia leaders in West Timor.

## Constitution

The task of constitutional development was relatively rapid in East Timor. In May 2001, Constitutional Commissions were created by the UN Administration to carry out community consultations over a period of five weeks before the sittings of the (elected) Constituent Assembly. The Constituent Assembly sat from mid-September 2001 until mid-March 2002, with the new Constitution being adopted on 22 March 2002.

In human rights terms, the major issues surrounding the draft Constitution related to process and substance. Procedurally, the Constituent Assembly’s initial methods of

operating tended to exclude significant participation by civil society. Language difficulties, limited information networks, and restricted public hearing times all provided barriers to participation. Some progress was made in relation to opening up the process, though it was apparent in the Assembly’s final week of consultation that the process of constitutional education and input needs to be ongoing.

In substantive terms, the draft Constitution was heavily influenced by the Constitutions of Portugal and Mozambique. A Bill of Rights was included, however mechanisms for enforcement of rights were limited. The fact that defining the scope of many rights was left to future parliaments, may also prove problematic in that future parliaments have the opportunity to dilute their strength. Distinctions had also been entrenched between those who were Timorese “by birth or parentage” (original citizens) and those who “acquired” citizenship (naturalised persons). Working with individual Assembly members, NGO Coalitions such as the Child Rights Committee and the Gender and the Constitution Working Group and UN Offices (including the UNHCHR), the Human Rights Unit sought to ensure that many concerns about the human rights provisions were brought to the attention of the Assembly. Happily, many of the issues were addressed by the Assembly, although the rights of women, ethnic minorities and judicial independence remain somewhat vulnerable.

East Timor faces immense practical difficulties at this time. International assistance in supporting local initiatives remains vital. It is a great pleasure to see PIAC’s work with other CLCs in offering assistance to Timorese counterparts. It is an exchange that is immensely rewarding. #

# LITIGATION REPORT

Simon Moran, *Principal Solicitor*

## Litigation annual planning day

At its annual planning day the PIAC litigation team set target areas for casework over the next year. The practice will focus on:

- refugee detention;
- indigenous discrimination and policing;
- disability discrimination; and
- economic and social rights.

## Refugee Rights

As refugees fight to assert their ever diminishing rights, PIAC has received numerous requests for advice and legal assistance for refugees in relation to conditions in detention, the detention of children and challenges to indefinite detention. Proceedings have been commenced by PIAC in the District Court on behalf of a Somali refugee who claims that she was assaulted by detention officers during her time at Villawood Detention Centre. PIAC hopes that the case will not only compensate our client but also mark a watershed in defining standards of care in detention and accountability. PIAC is being assisted by Larry King SC and Jeremy Stoljar.

PIAC is assisting with the preparation of the defence for the Sydney-based protesters who face Commonwealth criminal charges as a result of events at Woomera Detention Centre, South Australia during Easter 2002. Their case is likely to raise significant issues concerning the conditions at Woomera and the legality of the continued

detention of asylum-seekers at detention centres.

PIAC is a founder member of Australians for a Just Refugee Program (AFJRP) and will work with AFJRP and other organisations to develop a co-ordinated strategy to defend the rights of refugees.

## The Stolen Generations

PIAC continues to act for members of the stolen generations in their pursuit for justice. PIAC acts for a member of the stolen generations who applied to the Victims Compensation Tribunal (VCT) for compensation for sexual assaults while she was a domestic worker on a rural property in NSW in the 1950s. Our client was placed as a domestic worker with the alleged perpetrator and his family while a ward of the state.

Significantly, in its decision, the VCT agreed to consider the claim even though the relevant acts occurred more than twenty years before the VCT was established. The Tribunal Assessor accepted that "the applicant was subjected to a series of indecent and sexual assaults by the alleged offender". However, the Assessor was not satisfied "that the injury was caused as a result of the sexual assaults". Our client's claim appears to have failed on the basis that the devastating effects of her removal were the cause of her damage, and that the subsequent events of abuse did not, on the balance of probabilities, cause her harm. The decision is the subject of an appeal.

## Kickboxer goes down fighting

Unlike other states, the New South Wales *Boxing and Wrestling Control Act 1986* makes it an offence for women to engage in a boxing contest. PIAC represented professional kickboxer, Ms Holly Ferneley in an application to the Federal Court which argued that the New South Wales legislation was incompatible with the *Sex Discrimination Act 1984* (Cth). While Mr Justice Wilcox found against Ms Ferneley, he noted in his judgment that the case had "served the public interest in clarifying important issues of discrimination law" and added that "it was not clear" to him that Ms Ferneley "should be required to pay the respondent's costs." It seems that the respondents shared this view and no costs have been sought against our client.

## Upcoming cases

The High Court will hear a special leave application in the problem gambling case *Reynolds v Katoomba RSL Club* in early August 2002. John Basten QC and Mr Jeremy Stoljar are briefed to represent Mr Reynolds.

PIAC has filed an application in the Supreme Court for Save Our Suburbs (SOS), a political party which the State Electoral Commissioner refused to register as a result of non-compliance with administrative regulations made by the Commissioner. SOS is arguing that the administrative procedures set in place by the Commissioner go beyond the scope of the Commissioner's powers as set out in the *Parliamentary Electorates and Elections Act 1912* (NSW).

The proper implementation of appropriate levels of safety measures at public events is a key aspect of the evidence which PIAC is seeking to present to the Coronial Inquest of Jessica Michalik who died after a crowd collapse at the 2001 Big Day Out (BDO) during a performance by the band Limp Bizkit. PIAC and

counsel, James Hmelnitsky, are representing Jessica's father, Mr George Michalik at the coronial inquest. Coroner Milledge has heard evidence of the events that lead up to the crowd collapse, the attempts to rescue Jessica from the collapse, a crowd collapse at the BDO 2000 and the safety planning surrounding the

event. Limp Bizkit, the promoters of the BDO, security personnel at the BDO, the NSW Police Service and Workcover are represented at the hearing.

The inquest into the death of Jessica Michalik will reconvene on 6 June 2002 with members of Limp Bizkit and BDO promoters giving evidence. #

## What's new in PIAC training?

Carolyn Grenville, *Training Co-ordinator*

### New Training Co-ordinator for PIAC

In March 2002 PIAC welcomed new staff member Carolyn Grenville, who is filling in as Training Co-ordinator while Cathie Sharp is on one year's leave. Carolyn comes with many years of training experience, working in the community, tertiary and public sectors. Community Legal Centre staff may remember Carolyn from her days at Redfern Legal Centre Publishing as course convenor.

### Our Strong Women Project

Training Co-ordinator Carolyn Grenville will soon be packing her bags to travel around Australia to present a series of two-day leadership and advocacy workshops for Indigenous women. PIAC is working with the National Network of Indigenous Women's Legal Services to deliver the training which aims to empower Indigenous women with the knowledge and skills to be effective advocates for their own communities. The training courses will be held in nine locations around Australia.



Carolyn Grenville, PIAC's new Training Co-ordinator.

Funding for this project has been provided to the Network by the Federal Office of the Status of Women under the National Women's Development Program. For more information contact Carolyn Grenville.

### Macquarie University — a new partner with PIAC in training law students

PIAC is delighted to welcome the Macquarie University Division of Law as a new partner for the *Practising in the Public Interest Winter School* in July 2002. PIAC will be partnering with Macquarie University, the University of Western Sydney and the Public Interest Law Clearing House to present the

course to final year law students. Students will get a taste of what it is like to practise public interest and pro bono law.

### New PIAC course in advocacy skills

Demand remains high for the newest PIAC course *Effective Advocacy Skills and Strategies*. The one-day course is targeted at community workers, activists and campaigners who want to brush up their skills in lobbying, negotiation and media. Participants learn lobbying tips, how to be an effective negotiator, and how to get their story in the media. Courses will be held in Sydney throughout the year. Contact PIAC to find out when the next course will be held.

### Tailoring training for your organisation

PIAC can tailor training courses to meet the needs of your organisation. We offer training on a range of advocacy related topics, as well as our VETAB accredited *Work the System* course. Contact PIAC if you think we can assist your organisation. #

# PILCH SOLICITORS ASSIST REFUGEES

Sandra Stevenson, *PILCH Solicitor*

There has been an overwhelming response from PILCH member lawyers to participate in a project to assist refugees seeking permanent protection in Australia.

Since late 1999, unauthorised entrants to Australia who have been assessed as refugees, have been granted temporary protection visas (TPV), which entitle them to a 30 month residency. At the end of this period, TPV holders may apply for continued protection. Previously such applicants would have been granted permanent residents visas.

PILCH and PIAC have been part of a working group, comprising refugee and immigration groups, established to provide an organised response to the anticipated flood of asylum seekers who are having permanent visas reviewed in 2002 and 2003. Due to the complexity of the applications for permanent residents visas, the group identified the need for assistance in completing the required applications forms. There are some 1800 TPV holders without access to legal assistance in NSW.

Over 150 PILCH member lawyers have volunteered to provide a range of assistance from completing applications for TPV holders to preparing submissions and representation. These volunteer lawyers are currently attending information and training programs co-ordinated by the Refugee Advice & Casework Service.

## SECONDEES

Solicitors on secondment to PILCH from member firms are vital to the

successful operation of the scheme. Seconded solicitors are exposed to a broad range of legal issues, considerable client contact and extensive case management. Seconded also assist with PILCH training and promotional activities.

Peter Olds on secondment from Freehills, was extensively involved in co-ordinating PILCH's work with the legal working group assisting refugees on TPVs. Since his return to Freehills in February 2002 he has continued to play a major role in facilitating this important project.

Following Peter, was PILCH seconded solicitor, Rohini Jannu from Allens Arthur Robinson. "Working at PILCH", says Rohini, "has given me an insight into the broad range of issues that communities face and the frameworks that exist to assist them in dealing with those issues.

"It has been a valuable experience to work directly with a diverse client group and lawyers across the profession. While on secondment, I was also able to attend the PIAC/PILCH summer school, *Practicing in the Public Interest*, with students from the University of Sydney and the University of New South Wales. The variety of topics and presenters made for an educational experience in relation to the practice of public interest and pro bono law."

Bassina Farbenblum, solicitor from Minter Ellison, will join the Clearing House on a three month secondment in July 2002, followed by a solicitor from Allens Arthur Robinson.

Seconded are now being sought for the period December 2002 through to mid-2003. If your firm can assist or requires any information on secondment, please contact Sandra Stevenson or Andrea Durbach at PILCH on 9299-7833.

## INDIGENOUS LAWYER PROGRAM

A cocktail party, hosted by PILCH member firm Allens Arthur Robinson, was held in late February to welcome PIAC's new Indigenous Solicitor, Shaz Rind. In addressing guests at the function, Shaz noted the importance of initiatives such as the creation and sponsorship of the position, which saw a private law firm support a community organisation in an effort to improve access to legal services for Indigenous people and communities.

Terri Janke, President of the Ngalaya Indigenous Lawyers Association, added to Shaz's comments: "I believe this program is a positive step towards greater opportunities for Indigenous lawyers in the legal profession, as well as increasing access to legal services by Indigenous peoples."

## PILCH IN OTHER STATES

QPILCH was launched in April 2002 by the Hon Rod Welford MLA, Queensland's Attorney-General and Minister for Justice. A partnership of law firms, the Queensland Association of Independent Legal Services, the Queensland Law Society and Bar Association, Legal Aid Queensland and Griffith University Law School,

QPILCH is co-ordinated by Tony Woodyatt with Andrew Buchanan of Allens as inaugural President.

PILCH staff are currently assisting with a proposal to establish a PILCH in South Australia.

## PRACTISING IN THE PUBLIC INTEREST

The PIAC/PILCH *Practising in the Public Interest* course for law students continues to draw capacity attendance. The course is designed to introduce senior law students to systems advocacy and the practice of public interest and pro bono law. The five day course comprises a three day training program and a two day placement with PILCH member firms and organisations which undertake pro bono legal work and public interest litigation. During the course, using a combination of lectures, case studies and discussion groups, students consider public interest legal strategies, how to access government and legislative processes and effect

draft legislation, integrate international human rights principles into domestic litigation, develop campaigns and utilise the media.

As part of the Summer School held in February, students from the University of Sydney and the University of New South Wales undertook placements with Allens Arthur Robinson, Blake Dawson Waldron, Gilbert & Tobin, Freehills, The Legal Aid Commission of NSW, Clayton Utz, Maurice Blackburn Cashman, the Aboriginal Legal Service, the Human Rights and Equal Opportunity Commission, PIAC and PILCH. The Summer School was hosted by PILCH member firm Freehills.

In July, PILCH member firm Gilbert & Tobin will host the *Practising in the Public Interest* Winter School for law students from the University of Western Sydney (Nepean) and Macquarie University.

Our thanks to participating universities, PILCH members and organisations assisting with

placements, for their significant contribution to this initiative.

## SUMMER CLERKS VISIT PILCH

Earlier in the year, 20 summer clerks from Mallesons Stephen Jaques had lunch with PIAC and PILCH staff and heard about the work undertaken by both organisations. Summer clerks were able to gain an insight into the opportunities for private lawyers to undertake pro bono and public interest litigation.

The annual PILCH Summer Clerks cocktail party, hosted this year by PILCH firm Gilbert & Tobin, provided a further opportunity for summer clerks to learn more about the work of PILCH and the involvement of the private profession in pro bono legal service provision. Over 100 summer clerks attended the function and were addressed by Gilbert & Tobin Managing Partner Dan Gilbert (a past President of PILCH), PILCH Co-ordinator Andrea Durbach and Freehills secondee, Peter Olds. #

### PILCH Board

Christopher Greiner	<i>President, Blake Dawson Waldron</i>
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Michael Lee	<i>Barrister</i>
David Robb	<i>Allens Arthur Robinson</i>
Peter Maiden	<i>Barrister</i>
Rachel Pepper	<i>Barrister</i>

# Policy Report

Dr Pat Ranald, *Principal Policy Officer*

## Trade and human rights

Julius Roe, President of the Australian Manufacturing Workers' Union, the Rev Dr Ann Wansbrough, Uniting Church Minister, Dr Meredith Burgmann, President, Legislative Council of NSW, Senator John Cherry, Australian Democrats Spokesperson on Trade and Senator elect Kerry Nettle, Greens NSW addressed the launch of *The WTO Negotiations: The MAI Resurrected* at NSW Parliament House on 24 April. Written by PIAC's Principal Policy Officer Dr Patricia Ranald, the publication explains the current WTO negotiations on Trade in Services (GATS) and on investment, competition policy and government procurement. These negotiations could lead to a reduction in the right of governments to regulate services, the privatisation of public services, and reductions in the right to regulate transnational investment. These were features of the Multilateral Agreement on Investment (MAI), which was defeated in 1998 after community campaign exposed it to public debate. The publication explains the WTO process, how we can hold our government accountable and campaign against these outcomes, and argues for a trade framework which respects human rights and the environment.

See [www.aftinet.org.au](http://www.aftinet.org.au) to order copies of the publication.

## Anti-terrorism legislation

Six bills on anti-terrorism measures tabled in Federal Parliament in February which could have profound effects on rights to liberty, a fair trial

and freedom of association have provoked strong public debate. The bills create a new offence of terrorism, apply severe penalties and give additional powers of investigation and detention to police and security forces. Five of the bills were referred to the Senate Legal and Constitution Legislation Committee and one to the Parliamentary Joint Committee on ASIO, ASIS and DSD.

Despite the very short time frame, the Senate committee received 431 submissions. The PIAC submission briefly outlined our major concerns in three major areas. The first was that the definition of "terrorism" needs to be much more narrowly defined, to ensure that the stated intention to exclude "lawful advocacy, protest or dissent or industrial action" is achieved. Secondly, PIAC opposed the granting to the Attorney-General of the power to proscribe or ban organisations, with the burden of proof to be on the organisation concerned that it should not be proscribed. Such provisions could have been used to proscribe Australian groups which supported the African National Congress under Apartheid, or the East Timor Independence Movement.

Finally PIAC opposed the provisions for detention of individuals for forty-eight hours (which could be renewed indefinitely) without being charged with an offence. Those detained would not have the right to legal representation or to refuse to answer questions.

The Senate committee report released on 8 May and endorsed by all members

of the committee was extremely critical of these and other aspects of the legislation. This is significant as it indicates differences amongst government members, which make amendments to the legislation more likely.

PIAC also participated in a delegation from the National Association of Community Legal Centres which lobbied Opposition Senators about the bills.

## Open disclosure – when things go wrong

The crisis in medical indemnity insurance may seem an odd time to be calling for more open communication between providers and consumers when things go wrong. But this is exactly what the Australian Council for Safety and Quality has done as part of its program for improving the safety of our health care system, an idea welcomed not only by health professionals, hospitals and consumers, but also by insurers and lawyers.

The Council's Open Disclosure project aims to improve the communication by providing health care professionals and health services with the necessary practical skills. It will produce:

- a national standard to provide guidance on open disclosure; and
- an education and organisational support package to facilitate implementation of the standard.

PIAC was engaged to conduct the initial consultation phase with stakeholders across the country during

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# UCAP REPORT

## Electricity, gas and full retail competition — customers staying put

Trish Benson, *Senior Policy Officer* • Jim Wellsmore, *Policy Officer*

If you are a householder in NSW you are now able to choose your gas and electricity supplier. Retail competition was introduced into the gas and electricity industries in January 2002. So far this does not seem to have resulted in much movement in the marketplace by households. High volume customers are generally being put onto negotiated contracts by their incumbent gas and electricity retailers.

PIAC is satisfied that NSW consumers are well protected by a comprehensive set of consumer safeguards. Pricing regulation in both electricity and gas has meant that NSW households need not feel pressured to change their energy supplier.

### Pricing of the regulated retail electricity tariff — mid-term review

The Independent Pricing and Regulatory Tribunal (IPART) is reviewing their current price-capping decision on retail electricity tariffs. This determination was originally made at the end of 2000 and will remain in effect until 2004. A mid-term review of the price-capping arrangement is needed because of the introduction of full retail competition on 1 January 2002.

Some electricity and gas suppliers have told IPART that regulated tariffs need to be increased to ensure that competition can occur. In other words, raise prices so that households who

have stayed with their supplier, or are locked out of the market, will be forced to change supplier. PIAC has rejected this argument in our submission to IPART saying that the regulated tariffs were put in place to protect customers from higher prices.

Another view has been proposed primarily by second-tier retailers (those other than the incumbent retailers) who contend that there should be no price regulation at all. Again, PIAC rejects this view because without price regulation, retailers would rebalance their prices and households who cannot renegotiate a contract, would be subsidising those households that can. While this industry position is highly unlikely to be adopted by IPART, it will be a major issue when a new decision about price-capping on electricity tariffs is made in 2004.

### Undergrounding of electricity cables — there's more to it than meets the eye

As many *PIAC Bulletin* readers will know NSW Premier Bob Carr has responded to pressure from the Parliament to consider whether it is feasible to put the state's electricity wires underground in local distribution systems.

The Minister for Energy, the Hon Kim Yeadon, has requested IPART to review the costs, benefits and funding of "undergrounding" our electricity wires.

The Ministry of Energy and Utilities is also considering:

- running pilot schemes to gain a clearer picture of what undergrounding will cost, and identify possible technical issues;
- forming a working group to investigate whether overhead cables and other utilities services can also be put underground; and
- possible private sector involvement in such a program.

PIAC delivered an extensive submission to IPART questioning the high costs of undergrounding when compared with the benefits, the most obvious being the improved look of our streets. We did make some concessions, suggesting that it may be important for heritage sites to be undergrounded. Wires on main roads might also be better off underground, not only because of the visual amenity but also the possible reduction in costs associated with damage caused by motor vehicle accidents.

IPART issued an interim report to Minister Yeadon titled *Electricity Undergrounding in New South Wales*. The report recommended undergrounding, providing households that benefit (although some benefits, such as improved visual amenity, are difficult to quantify) pay through local rates or levies, with contribution from the state and distribution networks.

At a subsequent IPART public forum, these issues were hotly debated

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## Policy Report

*continued from p 10*

February and March. Senior Policy Officer Amanda Cornwall prepared a discussion paper and conducted 14 workshops with stakeholders exploring issues such as are what information should be provided and by whom, understanding the difference between an apology and admission of liability, dealing with breakdowns of trust, and developing values and organisational systems to support disclosure. The paper and workshop outcomes will contribute towards the development of the draft national standard which will be available for public comment later this year.

For further information contact Project Manager — Louise Kershaw, Royal

North Shore Hospital, email:  
[Lkershaw@doh.health.nsw.gov.au](mailto:Lkershaw@doh.health.nsw.gov.au).

### Impact of information technology in health services on consumer privacy and information access

Amanda Cornwall left for Canada in early May to commence her Churchill Fellowship study tour for a period of eight weeks. The study, which will culminate in a PIAC report, will examine the impact of information technology in health care, with a focus on consumer access to information.

The study will examine and compare programs for electronic storage and linkage of personal health care information in Canada, Germany,

France, England and Ireland. Its focus will be on the need to balance protecting individual privacy and the public benefits of sharing health information. The study is being undertaken through discussions with government departments of health, privacy and data protection commissioners and consumer advocacy groups and supplementary research.

Electronically linked health records are being developed at federal and state level in Australia without specific privacy protections or commonly agreed objectives. Consumer and community groups, policy makers and regulators are often not well informed about international best practice in this area. The places selected for study are recognised as having the most advanced policies and regulatory approaches. #

## UCAP REPORT

*continued from p 11*

between the various participants, including the main proponent of undergrounding, Sydney Cables Downunder.

IPART and the Ministry are required to report to the Government on the merits or otherwise of undergrounding. We hope that the Tribunal does not deviate from the recommendations in their interim report. PIAC would be very concerned if a situation arose where unfair cross-subsidies were created to give a few households improved amenity.

### Sydney Water innovates Payment Assistance Scheme

For the first time Sydney Water has recently agreed to include private

tenants in its Payment Assistance Scheme (PAS).

PAS vouchers cover all residential charges except septic pump usage. They are distributed through community welfare agencies to assist in cases of one-off hardship which may fall outside other relief provisions.

Private tenants will now be eligible to receive PAS to pay for water usage charges, where they are liable for these under their lease arrangements. In these circumstances, private tenants are only eligible to receive one PAS voucher equivalent to \$25.

PIAC congratulates Sydney Water on this timely and important change to their social policy. Low-income households are disproportionately represented in the private rental market. While they only pay for their actual water usage, this can be a significant cost, especially for large households.

## Reduced greenhouse gas emissions

New South Wales Premier Bob Carr recently announced mandatory reductions in greenhouse gas emissions for NSW electricity retailers. The retailers will have to reduce their greenhouse gas emissions by 5% by 2007. Retailers face financial penalties if the benchmarks are not met. This NSW Government policy initiative followed consultation by the Ministry of Energy and Utilities with the industry, environmental and consumer organisations.

The electricity retailers have already had greenhouse gas reduction targets in their licence conditions. The targets have never been met by three of the retailers: Energy Australia, Country Energy and Australian Inland Energy and Water. Integral Energy is the only supplier to have met their greenhouse benchmark.

This initiative should mean that prices will not rise in the next two years for NSW households. #

# Tips from PIAC Training

Carolyn Grenville, *Training Co-ordinator*

## Lobbying – 5 questions to help you get started

Many of us want to influence others to support our cause or issue, whether it be defending consumer rights, righting an environmental wrong, or changing an unfair government policy. Whatever your interest or passion, here are 5 questions to ask yourself, to help you to win hearts and minds for your cause.

### Q What is your goal?

You won't be able to push for what you want unless you can clearly express what it is. Do you want to correct an injustice, get more funding, defeat a piece of legislation or change a government policy? Think about if and where you can compromise, and decide on a fallback position in case you can't get everything you want.

### Q Who are your allies?

Building a coalition of groups and individuals who agree with you will help you push your cause. You should take your friends where you find them, regardless of their political background. Present a united front but don't expect to always agree on every issue.

### Q Who are your opponents?

Put yourself inside the heads of your opponents and know their arguments so that you are ready to counter them. But don't waste time trying to convince those who are publicly committed to an opposite point of view. Save your energy to sway the undecided, and those who hold the power on your particular issue.

### Q Who is your target?

Who will you lobby for change? Do your homework to find out the key decision makers on your issue or cause. Don't know which level of government deals with your issue, or whether you should be approaching politicians or public servants? You could start by talking to your local member to find out who's who, and who you should be talking to. You could also contact any peak bodies that work on your issue, to ask them for advice and enlist their support in lobbying your cause.

### Q What else should you be doing?

Lobbying is only one part of a successful advocacy campaign. There are lots of other activities you can use to push your cause:

- letters, submissions and petitions;
- meetings, rallies and vigils;
- media releases and events;
- legal appeals;
- submissions to parliamentary committees;
- questions on notice in parliament; and
- direct action stunts.

**Good luck in making the system work for you!**

# PIAC People

## Board

We are delighted to welcome Alan Cameron, Management Consultant and former head of the Australian Securities and Investment Commission (ASIC), Bill Grant, CEO of Legal Aid NSW, Merrilyn Walton from the Faculty of Medicine at the University of Sydney and Philip Bates, Barrister at Sir Owen Dixon Chambers as new Board members.

Our appreciation to our resigning Board Members, Bob Wilson, Margaret Alison and Stephen Walmsley SC. Margaret has been appointed Director-General of NSW Department of Ageing and Disability and Stephen has been appointed to the Bench.

## Staff

After 5 years of service Marie Manaena, PIAC's receptionist and administrator extraordinaire, returned to New Zealand at the beginning of the year. Her attention to our every need and her cheerfulness will be greatly missed. We have been extremely fortunate to have Denise Mowbray filling this position since January until we fill it on a permanent basis.

PIAC's legal practice is now headed up by Simon Moran, our new Principal Solicitor after Greg Kirk joined ASIC. Annemarie Devereux has been appointed as our new Senior Solicitor, replacing Trish McEniery who left us in February to be a full-time mother. Annemarie, a human rights lawyer and academic has recently returned to Australia after 12 months working with the UN in East Timor.

PIAC veteran, Bev Duffy, who worked as our policy officer in the early 90s and

is currently Senior Project Officer on the NSW Parliament Standing Committee on Social Issues, has returned as a consultant to write the second edition of *Working the System*, which forms the basis of our training program.

Our most recent College of Law placement, Ann Daniel, provided great support to the litigation team during the months from February until May and we wish her luck in her future career. #



PIAC solicitor Shaz Rind and Board member Joanna Kalowski, at the PIAC annual planning day.



PIAC Principal Policy Officer, Dr Patricia Ranald at Parliament House launching a publication.

## PIAC Staff

Andrea Durbach  
Director of PIAC and  
Co-ordinator of PILCH  
email: adurbach@piac.asn.au

Jane King  
Centre Co-ordinator  
email: jking@piac.asn.au

Madeleine Bennison  
Financial Manager  
email: mbennison@piac.asn.au

Sandra Stevenson  
PILCH Solicitor  
email: sstevenson@piac.asn.au

Kathleen Searles  
PILCH Solicitor (Locum)  
email: ksearles@piac.asn.au

Position Vacant  
Administrator  
email: piac@piac.asn.au

Simon Moran  
Principal Solicitor  
email: smoran@piac.asn.au

Dr Annemarie Devereux  
Senior Solicitor  
email: adevereux@piac.asn.au

Alexis Goodstone  
Solicitor  
email: agoodstone@piac.asn.au

Shahzad (Shaz) Rind  
Solicitor  
email: srind@piac.asn.au

Melissa Franklin  
Legal Secretary  
email: mfranklin@piac.asn.au

Dr Patricia Ranald  
Principal Policy Officer  
email: pranald@piac.asn.au

Amanda Cornwall  
Senior Policy Officer  
email: acornwall@piac.asn.au

Trish Benson  
Senior Policy Officer (UCAP)  
email: tbenson@piac.asn.au

Jim Wellsmore  
Policy Officer (UCAP)  
email: jwellsmore@piac.asn.au

Carolyn Grenville  
Training Co-ordinator  
email: cgrenville@piac.asn.au

Sarah Mitchell  
Policy Administrative Officer  
email: smitchell@piac.asn.au

## PIAC Board

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