

PIAC Bulletin

Journal of the Public Interest Advocacy Centre

May 2007

Twenty-five years in the ring

Robin Banks, Chief Executive Officer

The Public Interest Advocacy Centre was formally launched on 29 July 1982 by the then NSW Attorney General, the Hon Frank Walker QC, and was incorporated as a separate organisation in June 1984. In the 25 years since that time, PIAC has remained committed to retaining its independence and its focus on working strategically through the law to pursue the public interest.

It began with four staff: Peter Cashman, Susan Bothman, Kate Harrison and Jenny Reid, and a Steering Committee of ten members. It now has 27 staff, (a full-time equivalent of 22) including four interns, and a Board of 11 Directors.

The current themes of PIAC's work retain much in common with its early work. This article is an attempt to identify some of those themes and celebrate some of the achievements. It can, because of space, never do that adequately and I apologise in advance for all of what is not highlighted.

In 1982 PIAC was in court on the issue of imprisonment of fine defaulters. Fortunately, the law has changed and imprisonment can now only be an indirect consequence of fine default. Yet in 2007, PIAC, through the Homeless Persons' Legal Service, is pursuing further reforms to the fines system having identified the disproportionate impact of fines on people who are homeless and others who have social disadvantage.

In the same year, in its first case, PIAC challenged the retrospective application of electricity tariff increases. As a result of that case, the NSW Government stepped in to defer charges and to legislate against retrospective increases. In 2007, PIAC continues its work on electricity pricing and while we no longer facing retrospective

increases, the recent draft determination of the Independent Pricing and Regulatory Tribunal that authorises electricity tariff increases of up to 25% is a key focus of that work.

Ten years after PIAC was established, it was involved in considering the proposed Government Pricing Tribunal and then increasingly got involved in utilities issues, such as the consumer impacts of corporatisation of the provision of water through the establishment of Sydney Water, and, more broadly, the consumer impacts of privatisation of utilities¹. This work led, in the late 1990s, to the funding of PIAC's Utilities Consumer Advocacy Program by the NSW Government. That funding has continued to enable PIAC to employ dedicated staff to do this work. It is hoped that further funding will be announced in the forthcoming NSW Budget.

In 1983, PIAC went to the High Court in an attempt to establish a guaranteed right to vote in Federal elections after the electoral rolls were closed early in the lead-up to the 1983 election; an attempt that was unsuccessful. Just this month, Federal Government changes to the electoral system came into operation that will further restrict the right to vote, excluding all prisoners, and closing the electoral rolls when the election is called. Highlights of the intervening years include a successful challenge

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to the complexity of referendum questions in May 1990, and challenges to local government elections that have clarified the obligations of candidates, and community education work on voting and civics in migrant communities in NSW. PIAC has a commitment to enhancing democratic processes, including voting, and will continue to seek to undertake work that promotes effective democracy.

In an extraordinarily ambitious way, PIAC was a major player in supporting women who had been affected by the faulty intra-uterine device, the Dalkon Shield, assisting 1,700 women to file claims in litigation in the USA.

While such consumer protection work has become less of a focus of PIAC's work in recent years, for much of the 1990s PIAC was involved in the extensive HomeFund litigation, where it took on the legal challenge of protecting low-income homeowners from the effects of the NSW HomeFund scheme.²

In 1983, PIAC assisted the Aboriginal Legal Service to make submissions to the House of Representatives Inquiry into the James Hardy Group mine at Baryugil. In 1984, the inquiry refused to recommend compensation despite recognising the barriers to common law claims for miners affected by asbestos at the mine. Among the barriers noted were those faced particularly by traditional law widows of Aboriginal miners.

In the late 1990s PIAC represented the National Aboriginal History and Heritage Council in its action to protect the site in Sydney where in 1938 some 1,000 Aboriginal activists gathered for a National Day of Mourning and Protest. The gathering was held at the Australian Hall at 150 Elizabeth Street, after the organisers were refused use of Sydney Town Hall. One of the targets of the protest was the policies of the NSW Aborigines Protection Board.

These policies and similar policies in other states and territories have been the focus of PIAC's continuing work to achieve justice for Aboriginal people, with its current focus on achieving full repayment of wages and other monies withheld from Aboriginal people by the NSW Government (through the Aborigines Protection Board and the Aboriginal Welfare Board) between 1900 and 1969, and work in the late 1990s and early 2000s on an appropriate response to the removal of Aboriginal and Torres Strait Islander children from their families. For many affected by these policies, there are serious barriers to compensation using common law, just as there were for the Baryugil widows.

PIAC's focus on health rights continued with its involvement in the Chelmsford Inquiry into the use of deep sleep therapy at Chelmsford Private Hospital as a treatment for depression and related compulsive behaviour such as drug and alcohol addiction. Today, PIAC is again focussing on the treatment of people with mental illness, having recently established a mental illness and prisons network to bring together individuals and organisations across NSW to work for improvements. PIAC's recent submission to the NSW review of the forensic provisions of the *Mental Health Act 1990* is aimed at removing from the executive the discretion to approve or deny release of forensic patients.

Other work PIAC has undertaken in the area of health has included projects to reform the law to provide for ownership of medical records in the mid 1990s, campaigns for disclosure of health effects of pharmaceuticals, human pituitary treatment and silicon breast implants in the 1990s, work on the regulation and public disclosure of toxic chemical use in the early 1990s³, and a growing focus on privacy and health as technology plays a greater part in the delivery of government-

funded health services, leading up to PIAC's current work on the proposed Department of Health and Human Services Access Card.

In its early years, PIAC focussed on consumer issues in media and communications. It worked with others to establish in 1984 the Media and Communications Council to represent community, consumer and trade union views on media and communications issues. The following year, PIAC successfully represented the Australian Consumers Association in a legal challenge to Channel 9's licence renewal on local content and community consultation grounds. While the complaints were upheld, the Tribunal took a cautious, 'warning only' approach. This was one of a number of legal actions in the area of media and telecommunications that PIAC took on. This led in 1987 to the establishment of the Communications Law Centre.

Another recurring theme in PIAC's work has been access to justice. Building on the successful establishment of the Communications Law Centre, PIAC led the formation of a Youth Justice Coalition that worked to achieve funding to establish a specialist legal service for young people⁴. At the same time it was working with the NSW Law Society and a small group of private law firms to establish the Public Interest Law Clearing House (PILCH) to enhance the availability of *pro bono* assistance in public interest matters⁵. More recently, PIAC has, with PILCH and utilising the *pro bono* commitment of PILCH members, established the Homeless Persons' Legal Service.

Other PIAC work that has been aimed at improving access to justice has included projects on the law of standing, work on the role of *amicus curiae* intervenors in Australian courts, (including PIAC representing the *amici* in a range of proceedings, most recently in respect of regulation

Safeguarding young people's liberty

Alexis Goodstone, Principal Solicitor

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention and imprisonment of a child shall be in conformity with the law and shall be used as a measure of last resort and for the shortest appropriate period of time.

Convention on the Rights of the Child, Article 37(b)

The Children in Detention Advocacy Project is a joint project of the Public Interest Advocacy Centre, the Public Interest Law Clearing House and Legal Aid NSW. The Project provides free legal advice and representation to young people who may be able to make a civil compensation claim for false arrest, unlawful detention, malicious prosecution and/or the use of excessive force by the police, state transit authorities and/or private security companies. It arose from need for legal advice and representation in these areas identified by the Legal Aid Children's Legal Service.

The Project recognises that the right to liberty is a fundamental human right and that children are a vulnerable group for whom arrest, detention and imprisonment should be a last resort and strictly according to law. It has identified systemic problems that result in young people being unlawfully or unnecessarily detained and aims to address these through litigation, advocacy and working with relevant community organisations and government agencies to find appropriate solutions.

The cases

A number of Project cases involve young people who are granted bail on condition that they 'reside as directed' by the Department of Community Services (DOCS), often 'in consultation with' the Department of Juvenile Justice (DJJ). DOCS and DJJ are sometimes unable to find accommodation in these circumstances. If accommodation

is not available or cannot be found, a young person can remain in custody for extended periods of time, despite having been granted bail. Most disturbing is when this occurs for an offence for which the young person, if convicted, does not face a custodial sentence. In one of PIAC's cases, a young person alleges he was detained in a Juvenile Detention Centre for five weeks due to DOCS being unable to find him appropriate accommodation.

Some of the young people the project is assisting have been arrested on the basis of a warrant that has been withdrawn or revoked. One young person, for example, spent over three weeks in custody before his matter came before a magistrate who realised that the warrant that he was arrested pursuant to was no longer in force. In other cases, young people have been picked up for breaching a bail condition that was no longer current.

It seems that in some cases, magistrates revoke warrants or alter bail conditions but the updated information does not appear as it should on the computerised records relied on by police. As a result, young people are coming into contact with police, being arrested, spending time in police custody and then sometimes in a Juvenile Detention Centre before the mistake is recognised and the young person released.

In addition, there are cases raising allegations of unlawful arrest, the use of excessive force during arrest,

and unlawful arrest by transit officers and private security guards.

Advocacy

The Project has written to DOCS and the Attorney General's Department about the issues raised by the cases. We have met with the latter and will soon be meeting with senior staff from DJJ. We also hope to meet with the NSW Police Force in the near future.

Some of the solutions being discussed at these meetings include methods of removing the potential for error in the transfer of information from courts to police, improving funding to DOCS to ensure accommodation for young people granted conditional bail and giving magistrates the power to require a report from DOCS in relation young people who have accommodation needs that must be addressed if bail is to be granted.

If all stakeholders proceed on the basis that the unlawful or unnecessary detention of any young person is abhorrent, even for a short time, the Project is confident that solutions can be found to further safeguard young people's liberty.

Contact

If you have clients who would like to be referred to the Project, please contact Alex Grosart, Legal Aid NSW on 02 9219 5830 or alexander.grosart@legalaid.nsw.gov.au. If you have any questions about the Project, please contact Alexis Goodstone, PIAC, on 02 8898 6516 or agoodstone@piac.asn.au.

Political Donations – Undermining our democracy

Carol Berry, Solicitor

PIAC has been investigating recent legislative developments in other western democracies toward making government more accountable and transparent. A key way in which governments can achieve this objective is by creating greater transparency around donations provided to political parties by corporations, organisations and individuals.

One of the best examples of legislative reform has been undertaken in Canada, where the *Federal Accountability Act* was passed at the end of last year. That Act makes substantive changes to 45 statutes and amends over 100 others in order to implement a wide range of reforms such as eliminating corporate, organisational and union donations, protecting whistleblowers more effectively and strengthening access to information legislation.

Increasingly Australians are concerned by the influence of large donations on the operation of the Australian political system. There is widespread concern around the potential 'Americanisation' of our political system, where massive donations are poured into the campaign coffers

of the major parties. These concerns reflect the view that a lack of regulation around campaign donations and expenditure may compromise the democratic process.

PIAC supports the initiatives for legislative reform in Australia such as placing a cap on campaign expenditure, declaring the original source of all donations and limiting corporate and individual donations.

Organisations such as Democracy Watch – <http://www.democracywatch.com.au/> – are campaigning for a National Summit to discuss the need to tighten regulation of donations and campaign expenditure. PIAC is supportive of this initiative and will be working with other organisations throughout the remainder of 2007 to broaden the campaign for reforms in Australia to promote improved democratic accountability.

For more information about PIAC's work in this area please contact Carol Berry – carol@piac.asn.au.

Twenty-five years in the ring continued

of the provision of information by lawyers, and litigation lending), and work to expand the scope for class actions and representative proceedings in Australia. PIAC has also had a continuing focus on the importance of effective administrative law, including simpler and more accessible administrative law procedures and effective access to government information through freedom of information laws.

Much of PIAC's work has involved test cases to protect and promote human rights. PIAC first big case was its representation of six women sacked by Australian Iron and Steel in a complaint of sex discrimination. That case, which resulted in the landmark High Court decision, *Australian Iron and Steel Pty Ltd v Banovic* (1989) 168 CLR 165, and related cases continued until 1994, when representative proceedings were finalised. PIAC has continued to support applicants in anti-discrimination matters. Highlights included the successful

case of Scarlett Finney asserting her right to equal access to education against the Hills Grammar School, and the successful case against the Sydney Organising Committee for the Olympic Games (SOCOG), where the applicant, Bruce Maguire, challenged SOCOG's failure to provide information in formats that were accessible to him as a blind man. (This was only one aspect of PIAC's work on protecting consumers and the community in the lead-up to the Sydney Olympics in 2000.) PIAC has also acted in litigation in respect of a range of other human rights, including free speech, and protection from vilification.

PIAC's work in human rights has not been limited to litigation. It has sought to highlight the impact of international trade agreements on human rights through its work with the Australian Fair Trade and Investment Network. It has undertaken a national project to provide community education on

the protection and promotion of human rights, and is currently part of the NSW Charter Group that is seeking a commitment from the NSW Government to consult with the community on effective human rights protection.

This is just a snapshot of the last 25 years of PIAC's work in the public interest. But keep the camera handy, because the next 25 should provide just as much action.

- 1 In 1995, PIAC published two papers on utilities: *Privatisation of utilities. How are consumers affected?* and *Consumer Rights and Utilities*.
- 2 This work began in the early 1990s and continued until 2001.
- 3 In 1991, PIAC published a series of papers on toxic chemicals, and in 1992 published *Toxic Maze*.
- 4 The National Children and Youth Law Centre received funding support in 1992, with the centre opening in June 1993.
- 5 PILCH was also established in July 1992 and began operating in November that year.

Reflecting on the 1967 Referendum

Charmaine Smith, Solicitor

This year will mark the 40th anniversary of the national referendum, held on 27 May 1967, to amend two sections in the Australian *Constitution* that discriminated against Aboriginal people. Since 1901, sections 51 and 127 of the *Constitution* had read as follows:

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:-
(xxvi) The people of any race, other than the aboriginal people in any State, for whom it is necessary to make special laws.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives should not be counted.

The referendum saw an overwhelming vote of 90.77 per cent in favour of removing the words 'other than the aboriginal people in any State' from Section 51 and the entire Section 127.

The significance of the amendments was that Aboriginal people could now move freely between the States, be subject to Commonwealth laws rather than six different State laws and be counted in the national census. As

such, the 1967 referendum is commonly regarded as the turning point in Australia's political history and the date Aboriginal people were recognised as citizens of Australia. It is also a testament to the tireless commitment of many Aboriginal and non-Aboriginal campaigners and activists.

The 1967 referendum will be commemorated back to back with the 10th year anniversary of the tabling in Parliament of the *Bringing them Home* report, which chronicled the systematic separation of Indigenous children from their families and the widespread devastation that followed.

This year is a time to reflect on how far Australia has come and how far we have to go. The disparities between Aboriginal and non-Aboriginal people in all key indicators of life such as health, education and employment are quite marked with Aboriginal people continuing to occupy the most disadvantaged place in Australian society.

Outback pub does anti-discrimination training

Charmaine Smith, Solicitor

PIAC recently represented an Aboriginal resident of a remote NSW town who had lodged a complaint of race discrimination against her local pub. She alleged that staff in the pub discriminated against Aboriginal patrons by delivering harsher penalties for the same breach of club rules by non-Aboriginal patrons. The effect of the harsher penalties meant that Aboriginal patrons were barred from the pub for longer periods of time and for more trivial matters.

The evidence of PIAC's client was largely circumstantial. The list of all people barred from the pub demonstrated that the overwhelming majority of barred patrons were Aboriginal. This was grossly disproportionate to the number of Aboriginal residents in the town. At a conciliation conference the pub acknowledged that the imposition of its penalties was done in an *ad hoc* manner and with no formal guidelines. It consequently agreed

to re-evaluate its barring policies and display a notice setting out breaches of conduct with corresponding penalties on its premises. Most significantly, the pub agreed to participate in anti-discrimination training so its staff and board members would become more aware of issues associated with discrimination.

PIAC was extremely pleased with the outcome of this matter as it will benefit all of the Aboriginal residents in the town. Being barred from the only licensed premises that is commonly used as the venue for birthdays, weddings and other celebrations in a small community can have a substantial detrimental effect on the quality of a person's family and social life, particularly when the suspension has been imposed in discriminatory or unfair circumstances.

Prices going up to come down: the paradox of competition

Elissa Freeman, Senior Policy Officer

In April, when the Independent Pricing and Regulatory Tribunal (IPART) released its draft decision to endorse a 26% price increase in electricity prices, one journalist lamented that the State Government's promise of low prices had been formally dumped.¹

Many reasons have been given why regulated electricity prices are going to skyrocket over the next three years. Some say it's due to climate change policies and others claim it's to ensure the lights stay on. In reality, the overwhelming driver of the price increase is the increased profitability of the industry participants.

To be blunt, prices are being forced up in order to make energy businesses more attractive (perhaps to the potential buyer of NSW state-owned energy businesses) and to allow 'headroom' for competitors to lure households off the regulated tariff and on to a market contract.

At the end of the 1990s, NSW households were sold a lemon. We were promised lower energy bills if our state-owned monopolies were exposed to the rivalrous discipline of market forces.

Full retail competition in electricity and gas was formally introduced for households in 2002, enabling households to choose their energy supplier. Importantly, the NSW Government retained a fully regulated contract and tariff for customers who could not secure a better deal in the market or who did not want to enter the competitive marketplace for the supply of an essential service.

Since that time fewer than 30% of households have moved off a regulated contract to try their luck in the competitive market. The overwhelming majority chose to stick with the regulated option.

Up until now, economic regulation of the standard contract has been successfully undertaken by IPART. Regulation has been successful on three counts. It created effective incentives to improve productivity, it limited price increases to efficient levels and it allowed the regulated businesses to deliver healthy dividends to the owners, the NSW Government. Everyone was winning. Except for the private electricity businesses looking to enter the highly profitable marketplace.

The recent draft determination delivered signals a change in direction from both the NSW Government and the economic regulator. The terms of reference issued by the Minister for Energy fail, for the first time ever, to consider the impacts of the determination on consumers. Instead, the terms of reference ask the Tribunal to allow costs to be assessed based on a new entrant's cost profile rather than the costs actually incurred by the regulated entities.

This determination introduces headroom: inflated costs to stimulate competition. Just over half of the price increase at this determination is attributable to increasing the profitability of the industry.

IPART has justified its decision based on an assumption that competition is effective. IPART expects that any excess profits will be competed away by firms competing for the customers. Yet, IPART has undertaken no analysis of the actual outcomes for those customers who have signed contracts with new retailers.

The competitive market has delivered mixed outcomes in other jurisdictions. Evidence from the United Kingdom confirms that low-income households tend to end up with the most expensive electricity

rates based on the contracts that are marketed to them. Evidence from Victoria suggests that the price benefits of competition have not been forthcoming to rural households and tenants.

In NSW, the level of competitive activity has increased. But positive outcomes for consumers have not been equally forthcoming. In 2005-06, the Energy and Water Ombudsman reported a 258% increase in complaints relating to marketing behaviour of energy retailers. Households are being routinely misled about the highly complex products offered by energy retailers.

Electricity price increases disproportionately impact low-income households. Electricity costs for the lowest 20% of earners absorb around 8% of average income. In comparison, the top 20% earners spend just 1% of their income on electricity. There is no evidence to confirm that low-income households benefit equally from competition. To the contrary experience suggests that these households do not secure good competitive offers.

On 1 July 2007 the new electricity prices will come into force. Alongside this will be increased marketing activity. If you thought mobile phone contracts were difficult to assess, wait till a salesperson knocks on your door to tell you how many cents per kilowatt hour at different times of the day they can offer you. You might be more convinced by the free DVD package that will be thrown into the deal.

That DVD package will be coming to you courtesy of poor government policy that places profitability ahead of efficient costs.

1. Power bills surge to fix ageing grid, Sydney Morning Herald 5/4/07 p1

Climate change and equity

Elissa Freeman, Senior Policy Officer

Over the next 12 months the major political parties will be formulating policy responses to the challenges posed by climate change. Inevitably, the policy solutions revolve around reducing the very high level of emissions produced from Australia's predominantly coal-based electricity generators.

Moving away from our current generating base will have a direct flow through to electricity prices, and as electricity prices increase it is vulnerable households who hurt the most. Even the energy industry acknowledges that higher energy bills have a disproportionate impact on low-income households and that government support programs will be required.

The challenge presented by climate change policy is to ensure that the downstream impact is understood and that mitigation policies are in place. A range of social welfare, consumer and environmental organisations have formed a loose coalition to consider the potential equity implications of proposed climate change policies.

One such organisation is the Brotherhood of St Laurence, who commissioned research into the impact on low-income households of a carbon tax. The research undertaken by National Institute of Economic and Industry Research for the Brotherhood has confirmed that imposing a price for carbon on the economy is regressive: it has disproportionate impact on low-income households. The research suggests that poorer households will need assistance to offset the cost of carbon and to adjust to a lower carbon intensive economy. Similar social equity concerns are raised by the other policy fixes that drive up energy prices and costs of

goods generally, including a higher mandatory renewable energy target and an emissions trading scheme.

The message is clear. Measures aimed at reducing emissions need to be complemented with policies that actively assist households in reducing their consumption and adjusting to a potentially inflationary environment.

Policy makers should also not think that higher prices will change consumption behaviour. Essential services like household energy and water consumption have low price elasticity of demand. That means that big increases in prices deliver a relatively small change in amount consumed.

PIAC's experiences in the energy and water industries suggest that a sophisticated policy response is needed to curb energy consumption. In the water industry, more effective measures to reduce demand have been water restrictions, retrofitting with efficient appliances and education campaigns.

The New South Wales Government has already implemented a range of policies to reduce energy consumption. PIAC has given its support to a number of these programs that meet both environmental and social equity concerns.

The Energy Savings Fund was established two years ago to deliver a pool of contestable funds for activities that demonstrably reduce energy consumption. A small levy is placed on each individual household bill in return for programs that will assist the community to reduce energy consumption. Programs to remove second fridges, undertake energy audits and refit buildings

with energy efficiency fittings have been funded through this initiative.

However, the way in which we consume energy is predominantly driven by the structural design, fittings (insulation) and fixtures (hot water tanks) of our homes. These programs do not yet have the capacity to influence this aspect of energy consumption. The Building and Sustainability Index (BASIX) should have delivered more efficient homes but compliance standards have ended up weaker than was originally envisaged.

While wealthier households have the financial means to invest in energy efficient appliances and building design, low-income households often lack the initial capital to make similar investments. Tenants, similarly have a limited capacity to influence the way they consume energy. Better public housing stock, and efficiency disclosures on rental and sale properties would be a start to improving the way in which we consumer energy and water.

Social equity will need to be a part of climate change responses. The framework exists to deliver energy efficiency programs that benefit low-income households. PIAC is committed to continuing its work in the energy industry to ensure that consumers, and particularly low income and vulnerable consumers, get a fair deal from climate change policies.

Homelessness - a dangerous way of life

David Skidmore, HPLS Policy Officer

On 6 December 2006, the body of Mitchell Moseley, a 23-year-old homeless man, was found near St Andrew's Cathedral in Sydney's CBD. His death is one of the most recent cases of murder of a homeless person Australia. In November 2003, a homeless man living in Mildura, Victoria, was burnt to death after his shack was set on fire.¹ The body of Anthony John Wood was discovered 7 October 2003 near George St in Sydney having been killed when an assailant struck several hammer blows to his head.² And the catalogue of crimes committed against homeless people does not end there. Leaving aside the ever-present danger of being a victim of homicide, homeless people are routinely humiliated, assaulted and robbed.

Homeless people have few protections against would-be assailants. They try to avoid making themselves targets by sleeping in places that are not readily detectable such as behind bushes in parks or in derelict buildings. Sometimes they stay in groups for protection. Unfortunately, the company of other homeless people is no guarantee against assault or even worse as found by research from Britain.

... the presence of other homeless people was certainly not a safeguard. The second largest group of perpetrators of offences against the homeless are the homeless themselves, and the homeless do not necessarily trust one another. An outreach worker remarked that clusters of people can lead to 'a rough sleeping scene with lots of alcohol and drugs' and violence.³

However, while other homeless people can pose a threat to those living on the street, the same study found that homeless people have the most to fear from random attacks

carried out by members of the general public.

Anti-social behaviour in the lives of homeless people is unique in that members of the public are often the perpetrators. The nature of anti-social behaviour for homeless people ranges from insults and harassment to incidents of physical assault and extreme degradation.⁴

Alarming, a report published by the National Coalition for the Homeless, which is a network of homeless service providers, advocates and homeless people themselves in the USA, showed that quite young people were involved in attacks on homeless people.

In 2006, headline after headline carried the same message, 'Groups of teens savagely beat homeless men.' The data shows that the majority of crimes were committed by teens and youths as young as thirteen-years-old. Of the known attackers, 62% were youths between age thirteen and nineteen. An overwhelming 84% of the accused and convicted were 25 and under.⁵

The sadistic nature of these crimes is a reminder of the assaults and murders inflicted on members of Sydney's gay community in the early 1990s. They often involved young perpetrators and the victims suffered horrific violence. The victims were not robbed because the assailants were not after money. They were out to maim or kill someone they saw as less than human. The level of violence during that period motivated the gay community to campaign for more accurate incident reporting, improved police protection and anti-vilification legislation. Can the same things be achieved for homeless people?

Unfortunately, there is no statistical data kept by agencies such as the NSW Police, Bureau of Crime Statistics

and Research or the Australian Bureau of Statistics specifically on crimes of violence committed against homeless people. Apart from the reports from Australian news outlets mentioned above, there has been only limited research on the prevalence of violence against homeless people. Nonetheless, systematic data collection should be a priority for the relevant government agencies. The scope of the problem needs to be quantified and appropriate action taken to protect homeless people against such violence.

PIAC's Homeless Persons' Legal Service (HPLS) is undertaking research on violent crime committed against homeless people and will propose ways to address the problem based on the responses of homeless people themselves and existing work undertaken in Australia and overseas. In particular, HPLS is seeking to find out what can be done to improve police services, legal assistance and the courts system in terms of how they serve homeless people as victims of crime.

1 Simon Castles, *Homeless Paying a Savage Price for our Poverty* (2004) The Sydney Morning Herald <<http://www.smh.com.au/articles/2004/01/05/1073267968043.html?from=storyrhs>> at 11 April 2007.

2 Stateline NSW, *A Killing in the City*, 12 August 2005, ABC Television <<http://www.abc.net.au/stateline/nsw/content/2005/s1436801.htm>>

3 Tim Newburn and Paul Rock, *Living in Fear: Violence and Victimisation in the Lives of Single Homeless People*, (2005) 21.

4 *Ibid*, 14.

5 National Coalition for the Homeless, *Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness*, (2006) 12.

Classification Review Board bans euthanasia publication

Carol Berry, Solicitor

On 19 April 2007, the Classification Review Board handed down its reasons for deciding to refuse classification of a recent publication, *The Peaceful Pill Handbook*, by Drs Philip Nitschke and Fiona Stewart.

The publication has stirred up a controversy ever since Dr Nitschke had copies of the book seized by Customs at Brisbane Airport in September 2006.

Dr Nitschke applied for the book to be classified by the Office of Film and Literature Classification (OLFC) after the Federal Government deemed the book a prohibited import under Customs regulations. The OLFC then announced that they would classify the book with a Category 1 - Restricted classification, meaning that it could not lawfully be sold to minors.

The Attorney-General Phillip Ruddock and the NSW Right to Life then appealed this decision to the Classification Review Board (CRB). The CRB overturned the original decision and decided to refuse classification, on the basis that the book instructs in matters of crime.

In their submissions to the CRB, the authors pointed out that *The Peaceful Pill Handbook* is predominantly a medical publication aimed at providing information to its target audience in a readily understandable way.

The intention of the book is to provide information for those who may be faced with a painful death, about the manner in which life might be ended in the most peaceful and dignified way possible. As is noted in the book's preface, seriously ill and elderly people have the right to make carefully considered decisions about their lives, including its end.

PIAC is in the process of arranging further advice for Drs Nitschke and Stewart in relation to possible avenues for appealing the classification decision.

Reasons for the decision of the Classification Review Board to refuse classification are available on the OFLC website <<http://www.oflc.gov.au/special.html?n=262&p=66>>.

\$125,000 awarded in 'terrorism' defamation matter

Carol Berry, Solicitor

PIAC's client, Mr Romzi Ali, was recently awarded \$125,000 in damages after the Supreme Court found that he had been defamed by *The Australian* newspaper in 2003. *The Australian* printed offending articles, one on the front page of its publication, claiming that Mr Ali had raised money for the terrorist organization, Laskar Jihad. The articles referring to Mr Ali were published less than a year after the Bali bombings in 2002, in which 88 Australians were killed.

In the defamation case against the newspaper in 2005, a jury found the article contained meanings that Mr Ali was a supporter of terrorism and 'that he has raised money for the operations of Laskar Jihad, an organisation which does not worry about doing killing in pursuit of its political objections'.

In contradiction to the claims of *The Australian*, Mr Ali was in fact an upstanding citizen who had worked tirelessly within his community to ease tensions after the Bali bombing in 2002. Mr Ali had earned considerable respect within his own community and among the Dee Why population more broadly, where he was raising his family with his wife. The unsubstantiated allegations in *The Australian* had a profound impact on his life, as many

who has previously trusted and respected him now had cause to doubt his motivations.

Mr Ali was the secretary of the Dee Why mosque at the time the allegations were printed. He had a strong local media profile as an advocate for peace and better understanding of Islam by the wider Australian community. He had often been quoted or photographed along with colleagues from other religious persuasions, such as representatives of the Anglican Church, spreading the word of tolerance and understanding. Not surprisingly, the allegations printed in *The Australian* undermined his standing in the community.

Justice Bruce James awarded Mr Ali \$125,000 in damages when he found that the article had damaged Mr Ali's reputation and had left him angry and humiliated. Handing down his judgment in the NSW Supreme Court, Justice Bruce James said reading the articles had affected Mr Ali's health and that he was 'frightened, alarmed, shaken and broken'.

For further information about this case, contact Carol Berry – carol@piac.asn.au.

Human Rights

Airline Access: not a flight of fancy!

Brenda Bailey, Policy Officer

PIAC is working through 90 case studies from people with disabilities describing their recent experiences with air travel. The case studies describe the good and the bad. Most of us could describe bad experiences on planes: late planes, poorly trained staff or lost luggage. For people with disabilities, if and how a service is delivered can determine whether or not they are able to travel at all, not simply whether the trip is uncomfortable or late.

Not all of the stories describe bad experiences. Airlines can get it right sometimes and when they do, as a parent with two children with disabilities said, '... I am looking forward to taking them again.'

More often the case studies demonstrate the many barriers people with disabilities face to receiving an adequate service. Passengers have been given many reasons by airlines for why they cannot travel, such as their wheelchair is too large or they must have a carer to accompany them on the trip. This last point is particularly annoying to people who have travelled for decades without any incidents and without a carer. The mother of a 12-year-old girl with a disability described how she tackled the problem of transporting a wheelchair from every angle. She spoke to the airlines, to the baggage handlers, to the chair manufacturers about dismantling the chair, and to the media. After this experience she said of her planned holiday, 'We cancelled our flight to Brisbane and have not had a family holiday out of the

State. I did not have the energy or strength to go through the battle to book a holiday.'

When people with disabilities did get on a plane, many were confronted by staff who were not trained or equipped to work with people with disabilities. Inappropriate treatment has come in many forms. It included public announcements about delays 'caused by passengers needing assistance', personal questions, unskilled transfers from wheelchair to aircraft seats, breakdown in communication about needs from ground staff to flight crew, and damage to wheelchairs.

A common complaint was of passengers who needed assistance being 'forgotten' when boarding or disembarking the plane. This resulted in passengers missing flights, waiting for some time on a plane after all other passengers had left. One passenger with a vision impairment, left waiting on the tarmac for assistance described the experience 'I had no idea where I was supposed to go. Luckily I have a very intelligent blind dog and she was able to work it out.'

PIAC is undertaking this work as part of the National Accessible Airlines Project. The report on the case studies will be used to support a submission to the review of the *Disability Standards for Public Transport 2002* (Cth), which is taking place later in 2007.

Campaign for human rights for NSW launched

Brenda Bailey, Policy Officer

It was standing room only when the NSW Charter Group was launched by the former NSW Attorney General, the Hon Bob Debus at NSW Parliament House on 16 April 2007. The group is calling on the Government to undertake widespread community consultation about how human rights should be protected in NSW.

Constitutional law expert, Professor George Williams, and Indigenous lawyer, academic and PIAC Board member, Professor Larrisa Behrendt, also presented their views on the need for greater protection of human rights. Both have recent experience of talking to the community about the adequacy of human rights protection and how it should be improved, with Professor Behrendt being a member of the Consultation Committee in the ACT in 2003 and Professor Williams chairing the Consultation Committee in Victoria in 2005-06.

The NSW Charter Group, of which PIAC is a founding member, believes that the NSW Government needs to ask the community what it thinks about:

- How best to protect and promote human rights in NSW.
- Whether or not NSW needs a charter of human rights.
- And what rights should be protected if a charter is adopted.

The Charter Group brings together community organisations, trade unions, church and faith groups, charities, lawyers, human rights groups and academics in the call for better human rights protection in NSW. The Group is supporting the need for effective community consultation. It does not have a position on whether the community should commit to a charter, or if it does, its content or the form such a charter should take.

Access Card still causing a public interest headache

Carol Berry, Solicitor

Despite the major flaws in the Access Card proposal being recently exposed by the Senate Finance and Public Administration Standing Committee, and the accompanying legislation being sent back to the drawing board, the Federal Government is still committed to introducing the Access Card legislation in June 2007 and pressing ahead with the introduction of the new national Card.

PIAC's most recent submission on the Access Card proposal was in response to the Consumer and Privacy Taskforce's third discussion paper, which is about the registration process. As the Discussion Paper outlines, the importance of the registration process in ensuring the success or failure of the Access Card scheme cannot be underestimated.

The actual registration of 16.5 million Australian adults will be a massive undertaking. The cost associated with registering 32,000 people per day, which are the numbers that have been quoted by the Government, will be enormous. PIAC has called for not only the cost to taxpayers of registering Australians, but also the costs of informing the public of how the scheme will operate and what they will need to do in order to register, must be clearly disclosed to and by the Taskforce.

There are enormous public interest implications around this process, not only in terms of the tax burden for taxpayers, but also in terms of the inconvenience that could be caused to the Australian people, particularly those in rural and regional areas, or those who may have difficulty accessing their identity documents.

PIAC has recommended that the Taskforce seek full disclosure by Government to the public of the costs of implementing the Access Card scheme, including the costs of community information, registration, card manufacture and processing, and implementation of card-reader technology and systems to all necessary government and non-government-sector entities.

The integrity of the entire Access Card scheme depends on the Government getting it right. As with other elements of this proposal, further detail is required and guarantees must be provided before PIAC has sufficient information to determine whether or not this proposal is in the public interest. At present, PIAC remains unconvinced.

For more information about PIAC's position on the Access Card proposal, please contact Robin Banks – robin@piac.asn.au or Carol Berry – carol@piac.asn.au.



NSW Charter Group launch at Parliament House had people struggling to fit into the Jubilee Room to hear the Hon Bob Debus, Larrisa Behrendt and George Williams.

Time for change

Carol Berry, Solicitor

PIAC recently made a submission to the review of the forensic provisions of the *Mental Health Act 1990* and the *Mental Health (Criminal Procedure) Act 1990* being undertaken by former Supreme Court Judge and current president of the Mental Health Review Tribunal, The Hon. Greg James QC.

PIAC's submission addressed all elements of the review, but the most important aspect of its submission relates to the need to remove executive discretion over recommendations of the Mental Health Review Tribunal in NSW.

The status of forensic patients (principally those found not guilty on the grounds of mental illness) within the criminal justice system and the discretionary nature of the decision-making in respect of these patients is an ongoing issue of concern. Forensic patients become caught within the corrections system despite the fact that the law has recognised that they were so unwell at the time of their offence as to not be capable of responsibility for their actions.

The regime of executive discretion in NSW creates a number of problems, most markedly the fact that people become trapped within the system well beyond any period that could be considered reasonable, or necessary. PIAC is aware of numerous examples of forensic patients who have been (and remain) mentally healthy without recourse to medication for a number of years, for whom the Tribunal may have recommended release many times, and yet their release is not authorised by the Executive. The result is inevitably unjust.

At the inquest into the suicide death in custody of Scott Simpson (who was a forensic patient at the time of his death), where PIAC represented the family of Mr Simpson, the number of forensic patients remaining in correctional detention due to executive discretion was brought to the attention of the Coroner. One of the reasons provided by Justice Health as to why Scott Simpson did not receive the urgent mental health care he required before his death was that there were not enough beds in Long Bay Prison Hospital. One of the reasons there were not enough beds was because beds in the less-acute wards were occupied by forensic patients waiting to be released through the exercise of executive discretion.

In response to this evidence, the Deputy State Coroner made the following recommendation to the Minister for Health:

Given that decisions about placement within Correctional Centres and the release of forensic patients are made in other States by either an independent Tribunal such as the Mental Health Review Tribunal or by superior courts, a review should be conducted as to whether the present system of Executive responsibility is best suited to ensure the placement and movement of inmates on clinical grounds. The review should specifically assess whether, under the present system, the decision-making process about the movement of forensic patients ensures the best use is made of the limited available hospital beds.

The Consultation Paper that was circulated as part of the current

review of this area of the law proposes the five options for reform in NSW in regard to decision-making about forensic patients, including retention of the current system.

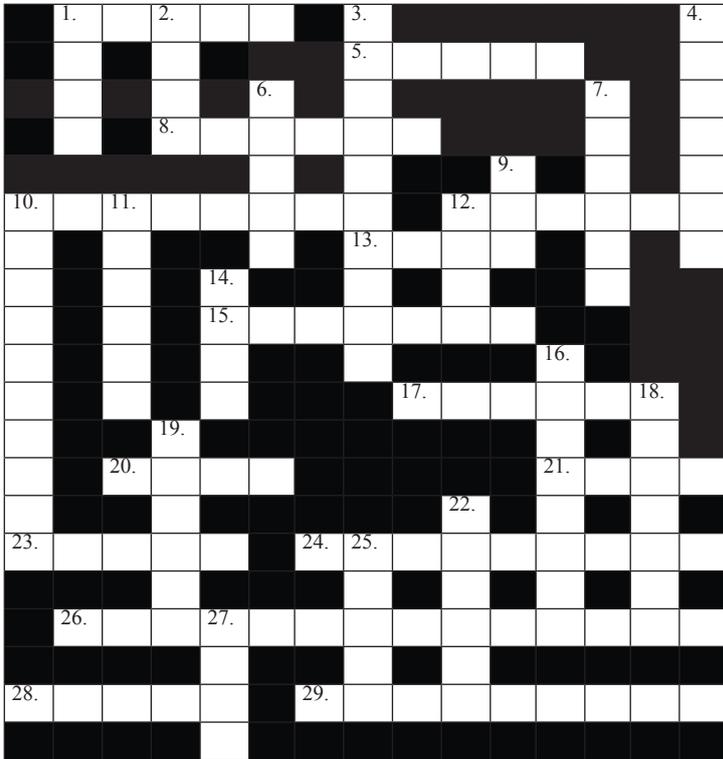
PIAC is strongly of the view that executive discretion over recommendations of the Mental Health Review Tribunal should be removed. PIAC believes that this arrangement is outdated, unjust, results in inconsistent treatment, allows for inappropriate influences on decisions, and is undemocratic.

PIAC has argued that the Mental Health Review Tribunal is the body with the most expertise relevant to making decisions about forensic patients in NSW. PIAC also acknowledges the benefit of having a right of appeal to the Supreme Court, to provide judicial oversight of decisions, where appropriate.

Many of the other jurisdictions in Australia have established decision-making processes similar to those outlined above. Once the NSW Government has decided on a model of decision-making in broad terms, PIAC would welcome the opportunity to participate in the process of developing that model. PIAC hopes that the NSW Government will provide stakeholders with the opportunity to provide their views on the more detailed mechanics of decision-making once they have been developed.

A copy of the submission can be found on PIAC's website.

The PIAC Crossword



HO

Across

- 1 Pro bono referral service for tail-less fish (5)
- 5 See 9 down
- 8 See 9 down
- 10 PIAC is celebrating this with disorganised "Third" Bay (8)
- 12, 16-down Pre-Cubist lint displays significant community importance. (6,8)
- 13, 6-down Terribly afraid ret will achieve just global commerce (4,6)
- 15 First point puts 4 into risqué entitlement to be removed from public view (7)
- 17 Become anxious when returned and finally put in to the project investigating minor's in custody (6)
- 20 Put a lid on it after you find a utility consumer group (4)
- 21 Utilities Ombudsman had a victory after the finale. (4)
- 23 See 7 down
- 24, 11 down Map, back to front, corrects civil liberties document. (7,2,6)
- 26 Circle edge before Hanson's party shows prejudice (14)
- 28, 29-across Essential industries that sporadically draw a net with confused Greeny (5,3,6)
- 29 See 28 across.

Down

- 1, 2-down Change or swap lass for Legislature's prerogative. (4,4)
- 2 See 1 down
- 3 The years PIAC has existed an extreme Tory went in at close of business. (6-4)
- 4 On the rocks, without spirit. That's equitable! (7)
- 6 See 13 across
- 7, 23-across Indigenous workers suffered this injustice and unfortunately went goless. (6,5)
- 9, 8 and 5-across PIAC training program for Indigenous women and to our men. Wrong, incorrect! (3,6,5)
- 10 Breaking rib. Washing standard of proof in 26 across cases. (10)
- 11 See 25 down.
- 12 Account given after math's ratio becomes leading legal and policy centre. (4)
- 14 Legal service for those sleeping rough and some hopelessly odd. (4)
- 16 See 12 across.
- 18 Free legal advice for U2 fans? (3,4)
- 19, 27-down The A.C.C.C. put on a dress untidily for National ID document. (6,4)
- 22 Some thief ran central European country. (6)
- 25, 11-down Sing with lips closed before a string untangled basic freedoms. (5,6)
- 27 See 19 down.

Submissions & Publications

November 2006 - April 2007

Submission to the Review of the Mental Health Act 1990. Comment on the exposure draft of the Mental Health Bill 2006 (Nov 2006)

This submission outlines PIAC's perspective on the NSW Government's exposure draft of the Mental Health Bill 2006.

Putting the justice into social justice! Comments on the Draft Redfern-Waterloo Human Services Plan Phase Two (Nov 2006)

The Draft Plan raises various issues confronting homeless people in the Redfern-Waterloo area. However, the legal needs of homeless people should be explicitly addressed as a matter of social justice.

Health and social services access card : comment on exposure draft of Human Services (Enhanced Services Delivery) Bill 2007 (Jan 2007)

This submission outlines PIAC's concerns about the introduction of the proposed Access Card, in particular in relation to the lack of detail about mechanisms to ensure the protection of privacy and identity of all Australians who are issued with the access card

Comments on the City of Sydney Homelessness Strategy 2007 – 2010 (Feb 2007)

PIAC's comments emphasise the benefits of co-ordination between the diverse organisations that provide services to people who are homeless or at risk of homelessness and sees the City of Sydney as particularly well placed to take a lead in such co-ordination. Further, PIAC recommends that the City of Sydney retain sufficient flexibility in its response to homelessness and work with the Federal and NSW Governments to ensure co-ordinated responses on public space regulation, the regulation of boarding houses, and the development of affordable housing stock.'

Review of the listing provisions of the criminal code: submission to the Parliamentary Joint Committee on Intelligence and Security (Feb 2007)

In its submission PIAC has again called for changes to the listing regime. The listing regime sets out the mechanism for an organisation to be listed as a 'terrorist organisation'. PIAC is concerned that the significant criminal law consequences that flow from the

listing of an organisation as a terrorist organisation be appropriately reflected in the procedures. PIAC refers, in its submission, to the recent report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to the UN Human Rights Council on his study of Australia in terms of human rights compliance while countering terrorism.

Submission to the Senate Standing Committee on Finance and Public Administration: Inquiry into the access card bill: Human Services (Enhanced service Delivery) Bill 2007 (Feb 2007)

PIAC's submission calls for the Senate to reject the Bill on the basis that the proposal is too unclear and there is too much being left to either later legislation or executive decision making. PIAC identifies serious privacy protection and identity security concerns with the Bill. Further, PIAC identifies that this Bill has the very real potential to significantly change the relationship between government and the people and must, as a result, be treated with due caution.

The Health Access Card: how much access and for whom? (Feb 2007)

Short paper presented to Liberty: the Victorian Council of Civil Liberty's Public Forum on the Federal Government's ID card. The paper focuses on the problems of rushing through such significant changes to the nature of government relations with its citizens and identifies some key concerns with Health Services (Enhanced Services Delivery) Bill 2007.

Voluntary medical and emergency information: Submission to Access Card Consumer and Privacy Taskforce (Mar 2007)

The discussion paper examines the potential for the 'personal' area of the chip on the proposed Human Services Access Card to be used by the card holder for emergency medical information. PIAC's submission on this issue calls for caution on this issue as there are already existing, well-understood mechanisms for communicating emergency medical information that do not rely on technology. PIAC raises concerns about the costs of such a system and the very real potential that these costs would be borne directly by card holders.

Time for change. Response to the Consultation Paper: review of the forensic provisions of the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990

(Mar 2007)

This submission outlines PIAC's views on the changes to the law that are required in this area. The submission primarily focusses on the need to remove executive discretion over recommendations of the Mental Health Review Tribunal in relation to forensic patients, as well as outlining a number of changes that PIAC believes are required in order to improve the quality of treatment of forensic patients in NSW.

Comments on the City of Sydney Drug and Alcohol Strategy 2007 - 2010

(Apr 2007)

Homeless people have a high incidence of drug, alcohol and mental health problems. Because they live in public spaces they are also vulnerable to crimes of violence inflicted by intoxicated people. The City of Sydney's Draft Drug and Alcohol Strategy 2007-2010 aims to address the problems of drug and alcohol use in the City of Sydney LGA. PIAC calls on the City to include the welfare of homeless people when developing policy and undertaking actions on drug and alcohol issues.

Health and Human Services Access card: Discussion paper 3 – Registration

(Apr 2007)

PIAC's submission commends the Access Card Consumer and Privacy Taskforce on identifying key issues apparent in the proposed Access Card registration process. PIAC notes the lack of community understanding of the extent and impact of the proposed implementation of an Access Card; and the failure of the Federal Government to comply with its own commitments in terms of developing a service charter, and a Regulation Impact Statement in respect of such sweeping changes to the right of individuals to access government health and human services. PIAC calls for the proposal to mandate only the collection of that information and identification data that is strictly necessary under current health and human services systems.

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