

PIAC Bulletin

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Planning ahead

Robin Banks, Chief Executive Officer

Every three years, PIAC undertakes an extensive review and planning process to identify key areas for work and development over the coming three-year period. PIAC has recently completed this process for the period 2008-2011. At the end of each year, PIAC reviews its achievements against that plan and undertakes the development of detailed strategies for the coming 12 months.

In undertaking this major endeavour, PIAC seeks to not only continue successful initiatives and work, but also to identify emerging public interest issues on which it will work in the next period. A major input to the planning process for the current period was PIAC's 25th Anniversary Conference, held in October 2007.

At that Conference, PIAC heard from key thinkers across a range of sectors and industries on what they consider to be the emerging issues. High on the list were public health outcomes and the increasingly well-understood link between poverty and poor health, Indigenous justice issues and reconciliation, and preventing and dealing with the impacts of climate change. The Conference also had the opportunity to consider what has worked in the past in terms of responses to public interest issues and achieving public interest outcomes.

Of course, a challenge for PIAC is identifying those issues on which its skills and particular capacities are going to be most effectively utilised and those on which collaborations can be effective and create much better outcomes than could be achieved by PIAC working alone. PIAC must also consider how it will ensure it has capacity not only to work effectively on those issues it has identified in the planning process, but also capacity to take on newly emerging issues during the period of the plan. This is a significant challenge as funding bodies quite understandably

expect PIAC to be making optimal use of its resources at all times.

In the few months since the Plan was finalised, PIAC has already identified the potential to undertake important work outside that already set out in the plan. Whether or not we rise to that challenge will depend on an assessment of our current capacity to take it on and the likely impact in terms of resources and capacity into the future.

Structure of the plan

The final product of the PIAC's three-year planning process is a three-part document. The three parts are the high-level Strategic Plan; the Targets, Milestones and Actions for 2008-2011; and the Priority Programs for 2008-2011.

The Strategic Plan

The first part—the Strategic Plan—is the highest level of the plan and sets out PIAC's vision for the future, its values and purpose. It also identifies the broad focus areas for PIAC's work for the period and the goals and results that PIAC seeks to achieve in those areas.

This part also sets out the campaign model that PIAC applies to its work; combining litigation, research and policy and training into a multi-disciplinary approach to achieve results.

The Strategic Plan identifies the priority program areas for its substantive work: access to justice,

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Public Interest Advocacy Centre Ltd
Level 9, 299 Elizabeth St
Sydney NSW 2000
DX 643 Sydney
Phone: 61 2 8898 6500
Fax: 61 2 8898 6555
www.piac.asn.au

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Planning ahead continued

consumer rights and protection, government and democracy and human rights. This is a reframing of much of PIAC's continuing work, while providing scope to expand its work in key areas.

PIAC's broad focus for the period is to:

- Develop an effectively governed, sustainable organisation;
- Lead and innovate in addressing public interest issues in priority areas;
- Build capacity in citizens, organisations and communities; and
- Influence social change and public policy through effective interventions.

Within each of these, PIAC has developed goals.

Targets, Milestones and Action

This part of the plan sets out the indicators and activities for each of the goals in the Strategic Plan. It cross-references to the Priority Programs plan. For each goal identified in the Strategic Plan, there is an achievement statement, indicators of success for 2011, targets for June 2009 and actions to be completed in the first year to achieve those targets.

Priority Programs

For those familiar with PIAC's prior plans, this is the part of the Plan that will be most familiar. It contains the same material as the Targets,

Milestones and Actions part, but views it through the program lens rather than the strategic focus lens. It enables staff members and the Board to look at each area of work as a unit to see how each program contributes to achieving PIAC's high-level goals.

The five high-level sections of this part provide detail of the work to be done in the four priority program areas identified in the Strategic Plan as well as the organisational development work necessary to ensure the effectiveness and sustainability of PIAC into the future:

- Access to Justice
- Government and Democracy
- Consumer Rights and Protection
- Human Rights; and
- Organisational Services.

Where to from here

The next few months will see everyone at PIAC completing the work of developing project and work plans that flow from the 2008-2011 Plan. This work is being done alongside the implementation of new strategies and the continuation of the work to which PIAC is already committed. It is always difficult in a busy workplace to set aside the time to ensure effective planning of specific work, but as an organisation PIAC is committed to doing this as it is the foundation of the coming three years.

The Plan will be rolled forward annually, and the detail of the actions and targets for the next 12 months

developed and added to the plan following review of achievements against the identified targets.

In looking forward to the period ahead, I want to acknowledge the fantastic input to the PIAC planning process of all of PIAC's staff members and Directors and PIAC's senior management team, most particularly PIAC's Policy and Program Manager, Deirdre Moor, who has provided significant leadership in the planning process and for whom this work has been the key focus for the last six to eight months. I also thank Margaret Scott of WestwoodSpice who worked closely with us on developing the planning framework, achieving effective input from PIAC staff members and Directors and pulling the various threads together.

The next three years for PIAC will be busy and challenging, but I have no doubt that the organisation will continue to meet the challenge and work with many and varied partners to achieve significant public interest outcomes.

If you want to find out more about PIAC's plan, please contact me on 02 8898 6508. The Strategic Plan is available electronically from PIAC's website at www.piac.asn.au. Copies of the more detailed Targets, Milestones and Actions 2008-2011 part and the Priority Programs 2008-2011 part are being provided to a range of project partners and key stakeholders, and on request.



Retiring Directors

At PIAC's annual general meeting in October the two longest serving Board members retired.

The Hon Elizabeth Evatt AC (left) joined the Board on 26 October 2000 and was Chair from 2000 to 2004.

Annette O'Neill (right) joined the Board on 15 October 1999 and was Chair from 2004 to 2007.

Current Chair Shauna Jarrett (centre) paid tribute to both women thanking them for their tireless work, enthusiasm and the major contributions they have made to the development and growth of PIAC.

Power with protection – the electricity safety net

Joel Pringle, Policy Officer, Energy + Water Consumers' Advocacy Program

Having guaranteed consumer protections against disconnections and increased hardship provisions is a vital part of any planned legislative change to the supply of electricity in NSW.

Public comment on the NSW Government's attempted sale of the NSW electricity retailers and generation assets focused disproportionately on the public relations spin and backroom politics of the NSW Labor Party.

What was missing from the debate was proper analysis of the best policies for the provision of electricity to the residents of NSW.

In spite of former Treasurer the Hon Michael Costa's warnings of widespread blackouts, it now appears the sale was more about filling gaps in the State's finances than continued energy supply. Hopefully we can now move onto a conversation about how the energy industry can be best structured to meet the future needs of energy consumers.

NSW residents are served best by an industry that supplies energy reliably and efficiently, while addressing the essential nature of access to electricity. Therefore, industry policy must ensure NSW households are not denied their rights to energy due to an inability to pay. Further, households should not be forced into poverty due to rising energy costs. Unquestionably we face a future of higher energy costs due to factors as diverse as climate change and higher peak energy demand. Vulnerable households require assistance to adjust to the increased cost of living.

Following the final report of the Unsworth Committee, the then Labor Government announced the \$272 million Electricity Safety Net package. This package was designed to meet the concerns that community groups, consumer groups and unions held about the proposed privatisation and included recommendations addressing

energy affordability. Given the Government's insistence that privatisation would not affect energy affordability, the Rees Government must implement these recommendations regardless of any change to ownership.

Meanwhile, we await the decision on whether the sale of energy retailers will go ahead. Regardless of the decision, PIAC urges the new Rees Labor Government to forge ahead with protections promised to consumers, that were identified as those required to assist vulnerable consumers in a future of higher energy bills.

A central part of this package must be a legislated requirement that consumers will not be disconnected from energy supply due to an inability to pay. This requirement has, in other jurisdictions, put an onus upon retailers to develop hardship programs that assist in meeting the affordability challenge.

Further, it is vital that the Electricity Safety Net sees pensioner rebates not only raised, as promised, but also extended to all Centrelink Health Care Card holders. This is not only a recommendation of the Unsworth Committee - one ignored by the Government - but it is also the standard in other states. PIAC urges the Premier to reconsider the Government's position and implement this reform.

Regardless of the outcome of deliberations over the privatisation of energy retailers, it is imperative that the new NSW Government considers the rights and welfare of NSW residents when deciding how energy will be supplied in this state.



Chinese Visit

In May, lawyers and paralegals from the Legal Aid Commission of the People's Republic of China visited PIAC.

During their visit they heard about PIAC's current areas of work including the Homeless Persons' Legal Service, public interest litigation and the campaign for a community consultation process regarding a Charter of Rights for NSW.

PIAC Training

Customised Training – PIAC and the Cancer Council NSW

Carolyn Grenville, Training Co-ordinator

PIAC's training program is in its eleventh year and next year PIAC celebrates 10 years as a Registered Training Organisation. Training has long been seen as an important way for PIAC to further its strategic direction of building capacity in citizens, organisations and communities.

PIAC's longest standing training partnership is with the Cancer Council of NSW. Since 2002, PIAC has worked with the Cancer Council, training their health consumer advocates to be able to take action on about cancer-related issues and speak out about cancer control to government, media and the general public.

PIAC Training Co-ordinator, Carolyn Grenville, has been involved in the training from the outset and talked to Kelly Williams from Cancer Council NSW about this on-going relationship.



PIAC Training Co-ordinator Carolyn Grenville (Left) with Kelly Williams (Right), Cancer Council NSW

Q: What is the history of the partnership between the Cancer Council of NSW and PIAC's training program?

KW: In 2001, the Cancer Council was approached by a consumer group, Cancer Voices NSW, to start up some advocacy training for consumers. We are not primarily a training organisation so we thought we should investigate someone else doing it.

The consumer advocacy training program was developed in conjunction with PIAC and you came on board to facilitate the training. The same trainer [Carolyn Grenville] has been involved from the beginning so PIAC knows our needs and knows our organisation really well.

Q: Can you tell me about how the Cancer Council uses its advocates?

KW: We invite people to training, and there are two main ways that they can remain involved afterwards. One way is by joining a Regional Advocacy Network and these are groups based around the geographic regions of the Cancer Council. They are set up and supported by the Cancer Council to take action on state-wide advocacy issues, but primarily local advocacy issues, which is what they are generally more interested in working on.

The other way people can remain involved is as an individual advocate. Busy people don't have time to go to meetings but are still passionate about different issues. We still communicate with these people, but we probably have a less intense relationship with them.

Q: So what do consumer advocates bring that the staff of the Cancer Council can't do themselves?

KW: A lot! What we find is that we get a lot of varying perspectives on situations and issues, which is important. It keeps us in touch with what the community wants. The other thing is, if you are thinking politically, what advocates give to the Cancer Council is support for issues, but coming from varying voices, so support from individuals and different groups, not just the Cancer Council.

Q: What do the people that do the training tell you that they get out of it?

KW: One thing I can say is that the training itself evaluates very, very well. People are always commenting on the facilitation, the content and how relevant it is. People really enjoy the two days of training and say that it builds their confidence to go out there and take action. And another thing that is really nice is that people often comment on what they learnt from other people at the training, and we as staff certainly leave each course having learnt something from the other people that are there.

Q: How has PIAC helped the Cancer Council achieve its aims with regard to advocacy?

KW: I think the fact that PIAC is a specialist in this area. PIAC is a training organisation so it knows how to train and is aware of all the adult training principles and that's been really helpful. The content that PIAC provides is fantastic and people do comment on the resources that they take away in terms of tips on lobbying, negotiation etc. So I think that it is very obvious to see that PIAC has expertise in this area and they are very good at what they do, and that has been a real benefit to us who do not focus only on advocacy.

Psst, have you heard about ... privacy

Robin Banks, Chief Executive Officer

There is an awful lot happening in the privacy space at the moment, and a lot of it has the potential to have profound impacts on privacy law and compliance in Australia and in our region. PIAC has a long history of interest in privacy rights, often focusing on particular issues, such as health privacy and access to health records, but also a broad concern to ensure the effective protection, promotion and fulfilment of the human right to privacy.

At the national level, those concerned about privacy rights have been well exercised by the sweeping review of Australian privacy laws conducted by the Australian Law Reform Commission. At the state level, there is also a flurry of current activity.

The NSW Law Reform Commission has a reference on privacy laws and has produced two consultation papers: *Consultation Paper 1: Invasion of Privacy* in May 2007, and *Consultation Paper 3: Privacy Legislation in New South Wales* in June 2008. The first of these dealt specifically with the possible development of a statutory cause of action for invasion of privacy, taking the discussions beyond the current scope of privacy law, which deals in the main with the privacy of personal information. PIAC, in its response to that paper, supported the proposed development. The more recent Consultation Paper deals more broadly with current privacy legislation and its interaction with other laws, in particular freedom of information laws. The Victorian Law Reform Commission is also focusing on privacy-related issues with its current reference on 'Surveillance in public places'.

Beyond Australia's borders, the New Zealand Law Commission is also considering these issues, with its own reference on privacy. And data privacy has been a focus of attention

within APEC over the last few years, with work on developing effective implementation projects (referred to as a Pathfinder) for the APEC Data Privacy Framework.

These various activities provide a unique opportunity to really get some solid thinking and progress on the right to privacy in Australia. And PIAC is certainly taking up that opportunity, seeing the clear links between these various reviews and developments and understanding the need to ensure that any development recognises the complexity of protecting privacy in a digital, global environment.

Of particular interest is how we can ensure effective protection of what people consider when they think and talk about privacy. His Honour, former Chief Justice Gleeson in his August 2008 speech to the National Press Club observed the challenge for courts and parliaments arising from changing definitions of privacy.

'When you look at the kind of information that people publish about themselves, it makes you wonder,' he is reported as having said. He went on, 'I used to think that having a telephone conversation was normally private, but you can't walk down the street without hearing a number of telephone conversations.'¹

I think His Honour's observation is accurate. However, it does not mean that the concept of privacy is no longer relevant, that the right no longer needs protection or that protection is impossible. Rather it reflects that different people have different views about what is private to them, and this will often change over their lifetime, influenced by changing experiences, changing circumstances and changing technologies. I wonder what would happen if you

approached the person in the street after they had concluded their phone conversation and spoke to them about something you had heard. I would hazard a guess that they would be most confronted, feeling that their privacy had been breached.

Of particular interest to many looking at privacy is the question of whether there is a new generation approach to privacy. I am yet to be convinced. The risks we take when young are so very different from those that we would take later in life. The impact of the internet on risks and decision-making are potentially profound when it comes to privacy protection. Information that a young person discloses on a social networking website is potentially no different from that which I would have disclosed to members of my non-virtual social networks when I was the same age. However, there is such a difference: on-line data potentially has an unlimited life, it hangs about in cached pages even when the original information has been taken down by the individual. There is much greater capacity to pass on the information in its entirety; and the understanding of its private nature is so very different from what is said over a bite to eat in a secluded corner of coffee shop even though it is passed on to a approved group of on-line friends.

Our current laws clearly need updating and refocusing to reflect the challenges of new technologies. But the right to privacy needs to be protected in its entirety, not simply continuing the current limited protection afforded to the privacy of personal information.

Footnotes

- 1 Reported on ABC News Online at <<http://www.abc.net.au/news/stories/2008/08/20/2341388.htm>>

Homeless Advocacy Advisory Group: a voice from the street

Julie Hourigan Ruse, Co-ordinator, Homeless Persons' Legal Service

Earlier this year, PIAC applied for a grant under the City of Sydney's 2008-2009 Community Services Grants Program. The application sought funding to establish an advocacy and advisory group comprising people who are homeless, formerly homeless or at risk of homelessness. The application was successful and the City of Sydney approved a grant of \$24,000 for the project.

The role of the Homeless Advocacy Advisory Group will be to:

1. provide input into the development of policy, advocacy and community development activities;
2. provide input into ongoing advocacy activities of the Homeless Persons' Legal Service (HPLS);
3. provide guidance and recommendations, particularly to government agencies, about the most appropriate methods of ensuring proper and adequate consultation with homeless people;
4. participate in training, community education programs and media.

The Homeless Advocacy Advisory Group will be the first of its kind established in New South Wales. Ideally, the Group will have up to 10 members and be representative of people who are homeless, formerly homeless, exiting prison, women escaping domestic violence, youth and Indigenous people.

The City of Sydney has offered to provide a venue for the Group to conduct their monthly meetings, most likely in Kings Cross or Woolloomooloo.

It has been the unfortunate experience of PIAC and PILCH,

through HPLS, that government and other initiatives do not include genuine consultation with homeless people themselves in addressing the growing incidence of homelessness. Or, when consultation does occur it is last minute, ill prepared, not inclusive and not respectful of the needs of those being consulted.

One of the aims of the Homeless Advocacy Advisory Group is to be a central point of contact to facilitate appropriate and meaningful consultation with homeless people on issues affecting them. The Group will be able to put forward informed recommendations to government agencies and other organisations to ensure that homeless people have a strong voice in the process.

While being independent of PIAC and PILCH, it is envisaged that the Group will work closely with HPLS in providing feedback, guidance and assistance on HPLS initiated policy and legislative reform projects.

As well as responding to requests from government for information and feedback on policy, the Group will be encouraged to be proactive in suggesting areas of policy reform.

HPLS aims to seek 'expressions of interest' to participate in the Group during November 2008. A series of information sessions will then be conducted by HPLS to talk about the Group's aims and objectives and to answer any questions from people curious about participating.

The members of the Group will bring invaluable expertise to a structured forum and will be supported by Chris Hartley, the HPLS Policy Officer. Before the Group convenes its inaugural meeting, PIAC will provide a half-day training course for Group members in early December 2008

explaining the different types of advocacy and the ways in which to conduct a public interest campaign.

During this first training session, participants will receive training in how to conduct an advocacy campaign with emphasis on the role consumer representatives may play. Over time, further training will be available to the Group covering topics like presentation skills and media skills.

It is envisaged that the inaugural meeting of the Group will take place during the first half of January 2009. The Group will then meet once a month for the first three months, then meet every second month thereafter. Members of the Group will also receive a sitting fee in order to show respect for their time and expertise.

The City of Sydney is extremely keen for the work of the Group to be communicated back to the broader community. To that end, the Group will publish a regular newsletter, with administrative assistance from PIAC and HPLS, to be distributed electronically to the homeless sector, government agencies and others interested in the work of the Group.

To find out more about the Homeless Advocacy Advisory Group contact Julie Hourigan Ruse, HPLS Co-ordinator on 02 8898 6511, or jruse@piac.asn.au

HPLS is a joint initiative of PIAC and the Public Interest Law Clearing House (PILCH) supported by the NSW Attorney General through the Public Purpose Fund.

We are people after all

Kevin, former homeless person*

A strong advocate for homeless people and the work of the Homeless Persons' Legal Service, Kevin, along with two other former homeless people, captivated the audience at the HPLS Public Forum in Sydney in April with his personal and moving story of life on the streets and his ideas on what is needed to help the homeless into accommodation.

'Wake up, you lazy bums and get a job!', the driver of the car shouts as he blasts his horn at the group of homeless people sleeping rough and huddling for shelter under a bridge. It's 4am and this happens at the same time almost every morning.

This is just one example of how homeless people are treated and regarded by some people.

I first became homeless at the age of fourteen after my parents separated and my father threw me out of home. I spent twenty of the next thirty years of my life living on the street.

During that time, I have seen many unprovoked attacks on the homeless. On one occasion I witnessed two men throw concrete blocks and empty beer bottles at a group of homeless people whose only crime was trying to get some sleep.

What many people don't realise is that homelessness does not discriminate. Anyone regardless of age, race, sex or social status can have something happen to them that might cause them to end up on the streets. I have seen barristers, police officers and public servants becoming homeless after something like a family breakdown has occurred and sent their lives out of control. I know many women who are escaping domestic violence who have ended up on the street and turned to prostitution to support themselves and their children.

I have also seen people who are straight as a die succumb to the culture of homelessness and develop life threatening drug and alcohol addictions. More and more it appears that there is a revolving door between mental health institutions, prisons and the streets.

The reality is that life on the streets is cold and lonely with no sense of belonging. Every day as I crawled out of my blanket the overwhelming feeling I had was sense of shame. It has taken me a long time to gain any self-esteem.

While it's great that the Federal Government is serious about tackling homelessness the solution is not just about providing housing. We have to address the reasons people become homeless, such as domestic violence, family break down, mental health issues and drug and alcohol abuse. There also needs to be on-going support once people find a place to live.

I have now been in housing for over a year. I still feel very shaky about having a home. Suddenly you're off the streets and you have these four walls around you, then you have to manage your money and pay the bills. When I first got into housing there was a time when I thought it would be easier for me to roll up my swag and go droving rather than accept the responsibility of a home. Counselling has really helped me cope with my new life.

Perhaps the greatest change needs to occur in people's attitudes. I didn't plan to become homeless and if I had my time again I would certainly do things differently. But we are who we are and not that much different to you. I am a person with a beating heart willing to contribute to society and enjoy all that living in modern Australia has to offer. See us in that light and we might finally break the cycle of homelessness forever.

* Kevin is a founding member of Homeless Voice, which was formed in 2007 as an advocacy group for homeless people.



HPLS Video

TV journalism students from the University of Technology Sydney have produced a short film on the work of the Homeless Persons' Legal Service, which was shown at the HPLS public forum in April. Since then the video has been used as a valuable training resource.

Pictured with HPLS Policy Officer, Chris Hartley, (left) and former Co-ordinator of HPLS, Elisabeth Baraka, (right) are students, Elaine McKewon and Mirza Natadisastra.

Indigenous Justice

Review of the NSW Aboriginal Trust Fund Repayment Scheme

Keppie Waters, Senior Solicitor, Indigenous Justice Program

The delay in finalising the review of the NSW Aboriginal Trust Fund Repayment Scheme (the Scheme) emphasises concerns about the limits of the Scheme and its effectiveness in providing justice for Indigenous people seeking repayment of their money by the NSW Government.

The Repayment Scheme

The Scheme is the mechanism established by the NSW Government to repay money that it held in trust from Indigenous peoples' wages, pensions, child endowment payments, inheritances, and lump sum compensation payments and never paid to the rightful owner. These monies are often referred to as Stolen Wages. The Scheme, made up of an administrative unit (the Unit) and three-person review panel (the Panel), was established in 2005.

The Unit's role is to consider claims using documentary records held in the name of the claimant by the NSW Government and make an interim assessment of the amount owed. If the claimant is dissatisfied with the Unit's assessment, they can ask the Panel to reconsider the assessment.

Stolen Wages Referral Scheme submission

PIAC, the Public Interest Law Clearing House (PILCH) and PILCH members Allens Arthur Robinson, HWL Ebsworth (formerly Ebsworth & Ebsworth), Freehills and Gilbert + Tobin, along with former PILCH member, Clayton Utz, operate a referral scheme that links claimants with private lawyers who help the claimants to review the interim assessment made by the Unit and make review submissions to the Panel.

On behalf of and with input from participants in the Stolen Wages Referral Scheme, PIAC made a joint submission to the Minister responsible for the Repayment Scheme in mid-2008. This submission provided a 'user's view'

of the Scheme's operations and an evaluation of its effectiveness in repaying stolen wages in NSW. Because the Scheme is located within the Department of Premier and Cabinet, the joint submission as well as those of the Unit and the Panel are considered by the NSW Government to be the subject of cabinet privilege and therefore confidential.

Statistics about the Scheme

PIAC has obtained the following information through a freedom of information request to the Scheme:

- Over 60% of the claims from living claimants that have been assessed resulted in nil assessments because no documentary evidence of a trust fund could be found. (It was the NSW Government's duty to keep and preserve these records).
- The average payment made to successful claimants is \$7,000, with individual payment ranging from less than \$500 to \$44,000.
- Claimants who were legally represented received about 10% more than those who were not.

The Scheme's website indicates that, as at January 2008, only about 358 living claimants and 805 descendant claimants had registered. Compared with earlier estimates that between 3,500 and 11,500 Indigenous people could make claims, this is a very low take-up of the Scheme.

Living claimants' oral evidence

The Unit and Panel have not taken a consistent approach to oral evidence. On one hand, oral evidence is relied on

to vary the written record. On the other hand, oral evidence is not considered sufficient to ground a claim where no written records of a trust account can be found. This is the case even where circumstantial documentary evidence and corroborating oral evidence suggests that a trust fund should have been created.

In circumstances where it is widely acknowledged that original record-keeping was inadequate and records have not been preserved, this limited use of oral evidence cannot be justified.

Claims by descendants of deceased claimants

The Scheme has not yet started to process descendant claims, but has prioritised living claimants. Descendant claims will not have the benefit of direct oral evidence. This makes it important that documentary and oral evidence gathered in the assessment of living claims is aggregated so that inferences can be drawn from, for example, the fact that a claimant was resident at a certain institution where it is known that records were not kept; or where it is clear that records have subsequently been destroyed. Without these inferences, the repayments to descendant claimants will be unfairly low.

The government response to the review

PIAC provided the joint submission to the Minister in June 2008 and it is understood that the Unit and Panel submitted their reports prior to this date. To date, PIAC has received no response from the NSW Government.

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The Stolen Generations Reparations Tribunal Bill 2008

Keppie Waters, Senior Solicitor, Indigenous Justice Program

Wednesday 24 September 2008 saw the tabling in the Australian Senate of the Stolen Generations Reparations Tribunal Bill by Greens Senator Rachel Siewert. This Bill, if enacted, would:

- provide a forum for Indigenous people affected by forcible removal policies to tell their story, have their experience acknowledged and be offered an apology;
- establish the Stolen Generations Reparation Tribunal (section 4);
- give the Tribunal power to order reparations for eligible claimants; these reparations could include, for example, communal funding for access to counseling services as well as monetary compensation (section 28);
- give the Tribunal power to order ex gratia payments for eligible claimants (section 29); and
- establish the Stolen Generations Fund, from which reparations and ex gratia payments would be made (section 33).

In carrying out its duties, the Tribunal would be required to consider the principles contained in section 5 of the Bill:

The Principles are:

- (a) acknowledgement that forcible removal policies were racist and caused emotional, physical and cultural harm to the Stolen Generations;*
- (b) Indigenous children should not, as a matter of general policy, be separated from their families;*
- (c) the distinct identity of the Stolen Generations should be recognised and they should have a say in shaping reparation;*
- (d) Indigenous persons affected by removal policies should be given information to facilitate their access to the Tribunal and other options for redress;*
- (e) reparation for the effects of forcible removals should be guided by the Van Boven Principles.*

This Bill is modelled on draft legislation put forward by PIAC and the Australian Human Rights Centre (AHRC)

in our joint submission to the 2008 Senate Legal and Constitutional Affairs Committee's Inquiry into the Stolen Generation Compensation Bill.

PIAC and AHRC drafted their proposed bill to provide a legislative format to the recommendations of PIAC's 2002 report, *Restoring Identity*. The report and its recommendations were the culmination of PIAC's national community consultation project, Moving Forward that sought the views of Indigenous people about PIAC's model to provide reparations for the members of the Stolen Generations, their families and communities.

The Moving Forward consultations highlighted a significant feature of reparations: that effective redress of historical injustice deals with not only the actual harm of past practices but also the contemporary effects of these past wrongs. Further, the focus of the proposed reparations package was not monetary compensation, but instead included; guarantees against the repetition of forcible removal policies; measures of restitution including the establishment of language and cultural centres; and, rehabilitation measures, for example, counselling.

In the new Bill's Second Reading speech, Senator Siewert urged the Commonwealth Government to support the Bill and said '[i]n the same way the national apology was long overdue, so is a reparation scheme... The Government must act urgently to provide the Stolen Generations full reparation.'

Broad and meaningful reparations are required for members of the Stolen Generations, their descendants and communities to redress the long-term and intergenerational impacts of forcible child removal. Acknowledging past wrongs, through the apologies delivered by the NSW Government in March 2004, and the Commonwealth Government in February 2008, is just the first step in doing what is necessary to address this very important issue. A full and just reparations package set out in this new Bill is the next step.

If you know someone who wants to register or may be eligible to register as a claimant with the NSW Aboriginal Trust Fund Repayment Scheme, they can phone the Repayment Scheme on 1800 765 889 or go to the website www.atfrs.nsw.gov.au

For more information contact Keppie Waters on 02 8898 6527 or kwaters@piac.asn.au

Visit PIAC's website at <http://www.piac.asn.au//system/indig.html>

Profile – Jeremy Rea, Solicitor Advocate, HPLS

Mark Warren, Media and Communications Adviser



HPLS Solicitor Advocate Jeremy Rea

Growing up in Sussex in England, Jeremy Rea saw all the greats of English cricket in the seventies. The likes of Tony Greig, Allan Knott and Derek Randall were Jeremy's idols. A keen cricketer himself he was a handy bat and a useful medium pace bowler; an all rounder, you could say, with a pretty good strike rate.

And it is his extraordinary all-round legal experience that Jeremy brings to the newly created position of Solicitor Advocate with the Homeless Persons' Legal Service (HPLS).

After he came to Australia in the early '80s Jeremy studied law at Macquarie University, graduating in 1987. Over the past 21 years he's worked in a variety of areas of the law from defamation to intellectual property, but he always had a desire to do criminal work.

'I worked for sixteen years in a law firm in North Sydney where I had a chance to do quite a lot of criminal cases. I began to foster a desire to do more criminal matters, particularly for underprivileged people'. It is no wonder Jeremy has a strong social conscience. His father is a pioneering plastic surgeon and his mother was a nurse. Helping people was the main reason why he wanted to be a lawyer.

'I've always been interested in standing up for people's rights and one of greatest privileges is to

represent someone else in Court'. In 2005, Jeremy became an accredited specialist in criminal law. He joined HPLS as its new Solicitor Advocate in January this year and he handles all the criminal work, that comes to HPLS.

'Over the past ten months my eyes have really been opened to the extent to which homeless people are subjected to greater police scrutiny, investigation and apprehension than the rest of the community. As well, there is a real lack of representation for homeless people in Court.'

A lack of services for homeless people is just one of the shortfalls in the system that Jeremy sees on a day-to-day basis. That is where he sees the value of HPLS.

'You need specialist legal services for homeless people - such as - HPLS, that understand the sorts of offences homeless people are likely to commit and the reasons why they commit them. We know our client's histories and their circumstances. It is this specialist knowledge we can take into Court and use to advocate on their behalf.'

Keeping homeless people out of jail is the number one priority of the new Solicitor Advocate and he uses a variety of weapons to achieve this.

'Section 32 of the *Mental Health (Criminal Procedure) Act 1990* (NSW) allows assessment of clients to determine if they have a mental illness. If it is found they do have mental health problems a Court can divert them away from being charged or going to jail and into appropriate treatment. This is a very important strategy given that 60-70 percent of homeless people have mental health issues.'

'We are also lucky because we can rely on eminent medical specialists like psychiatrist Dr Olav Nielsen who provide these assessments on a *pro bono* basis.'

Another major development has been the Integrated Services Project (ISP) started by the NSW Government.

'Under this scheme you can create an individual plan of treatment for a client that includes accommodation and other social services. For example, HPLS has one client who has been on the streets for thirty years and been in trouble with the law all that time. He couldn't get housing and couldn't break the cycle of deprivation. In his most recent matter, the Court has ordered a non-custodial sentence, including that he take part in the ISP where he can get accommodation, treatment, and 24-hour a day assistance. This takes a lot of time and resources but it pays off if that person can turn their life around and, importantly, stay out of the criminal justice system. The more people we can keep out of jail, the less chance people have of becoming homeless.'

As he rushes out of the office for another busy day of Court appearances (including making sure his clients turn up for Court!) Jeremy reflects on his new career and clientele.

'I enjoy every day acting for these clients. They are interesting people with interesting backgrounds. It is the most satisfying job I've ever done and I wouldn't miss it for quids.'

And for the record... Jeremy has advised and represented more than 100 HPLS clients in the past ten months and only two have been sent to jail. Not a bad strike rate from this impressive and committed all rounder.

How to pick a winner: the ‘cracker’ test in public interest litigation

Natasha Case, Acting Principal Solicitor

PIAC’s legal practice is unusual for the work that it does and the way that it does it. PIAC’s litigious work ranges from discrimination and administrative actions to defamation and negligence. PIAC’s non-litigious work includes community education and writing submissions on law reform and policy. When PIAC agrees to represent a client, it approaches the problem arising in their case from a multidisciplinary perspective, working together with non-lawyers at PIAC to develop a comprehensive strategy drawing together media, lobbying, and policy analysis. But how do matters get onto the PIAC case list?

It should be said at the outset that many of the cases choose PIAC. PIAC has received 529 calls from the public in the past 12 months. In addition, there have been numerous written applications for legal assistance and detailed referrals from other Community Legal Centres, private practitioners, former clients and others. With so many requests for assistance, how does PIAC allocate its resources fairly and responsibly?

In considering cases, PIAC uses a number of tools, chiefly:

1. ‘public interest’ criteria;
2. strategic plan;
3. previous work, which may or may not feature in the current strategic plan, and
4. staff capacity.

In summary, PIAC’s public interest criteria describes the two definitions of a ‘test case’:

- (a) it raises questions of law that affect a larger section of the public than just the applicants, or
- (b) it raises novel questions of law, where there is little or no jurisprudence or where existing law is unclear.

With all of these tools, you might think that assessing a case is always a scientific process. You’d be wrong. Sometimes we work through each of these criteria in detail before taking on a case. Sometimes a matter will barely satisfy one, but is clearly a ‘cracker’. The way that PIAC chooses and runs cases is demonstrated by the following examples.

A case might combine a number of issues highlighted in PIAC’s strategic plan. Two matters in which PIAC is acting in the Federal Court raise novel questions of interpretation under the *Disability Discrimination Act 1992* (Cth) and have provided a vehicle for developing public interest litigation jurisprudence regarding the making of costs-limiting orders in human rights matters.

A case might demonstrate the negative consequences of a particular law, that PIAC is advocating to change when it is not possible to litigate the law directly. For example, PIAC represented a Muslim community leader who was defamed by *The Australian* newspaper but received an extraordinarily low award of damages. The NSW Court of Appeal increased his award. *The Australian* is now seeking special leave to appeal to the High Court.

Cases that advance precedents set by earlier PIAC cases include the recent matter of Simpson, where a mother obtained compensation in an out-of court settlement with the NSW Government for the nervous shock she suffered after her son died in custody.

PIAC aims to use litigation as a means of advancing public interest changes in the law, as well as justice for its clients and the community at large.

Continued from p8

Following the disruption to the NSW Government arising from the resignation of the (then) Minister, Deputy Premier, the Hon John Watkins, and of the Premier, the Hon Morris Iemma, no Minister has been appointed to the Scheme. PIAC urges that when a Minister is appointed, he or she make the following changes to the Scheme immediately:

- extend the deadline for registering a claim beyond the current date of 31 December 2008;
- engage in an intensive

- advertising campaign to promote the existence of the Scheme and applicable deadlines;
- reconsider the way that oral evidence, corroborating and circumstantial evidence is used by the Unit and the Panel;
- resource the Unit to review the claim files to aggregate evidence accepted in the claims in order to produce some broad circumstantial inferences for the benefit of living and descendant claims;
- resource the Unit to review its

- records to aggregate data about the outcome of claims;
- publish and regularly update aggregate data, and
- publish all submissions to the Minister about the operation of the Scheme and the NSW Government’s response to these submissions.

These changes represent the first steps towards ensuring that the Scheme effectively addresses stolen wages in NSW.

Tillegra Dam - more money down the drain?

Mark Ludbrooke, Senior Policy Officer, Energy + Water Consumers' Advocacy Program

In November 2006, in a surprising development, the NSW Government announced it would build a new dam in the Hunter Valley. PIAC is concerned about the costs of this approach to Hunter water consumers and suggests the money would be better spent promoting water saving initiatives and measures to use water more efficiently.

The Independent Pricing and Regulatory Tribunal (IPART) recently commenced its review of the prices of water, waste water and sewerage services for the Hunter region. In response, Hunter Water Corporation submitted that the average household will need to contribute an additional \$150 for the construction of the Tillegra Dam.¹ While this is less than many commentators expected, PIAC believes that it is almost double the impact that the NSW Government initially proposed.

There is also concern that contributions from consumers could end up being a lot larger than suggested. Whilst Hunter Water put the total cost of building the dam at \$406.3 million², some critics have proposed the actual outlay is more likely to be in the vicinity of \$600 million or even \$1 billion.³ Hunter Water's recent track record suggests there may be merit to this argument: its current capital expenditure program is \$423 million over budget.⁴

Whatever the total cost, as with the Sydney Water desalination plant, the price increase is likely to manifest as a fixed charge. This means customers can't escape the increase by lowering their consumption. Low-income households in particular will feel the brunt of this charge. It will also disadvantage those households who have already invested in water saving technology like new washing machines and rainwater tanks.

In addition to the new impost, PIAC notes that Tillegra will have social and environmental costs. Almost all of the fifty families who lived within the proposed site of the dam have been relocated from their agricultural properties. Many of these householders have indicated that the land in question had been in their family for generations and expressed disappointment and resentment at being forced from their homes.⁵

Environmental organisations have also expressed grave concerns for the impact of the dam on the health of the Williams River as well as local flora and fauna.

Faced with these economic, social and environmental costs, PIAC has joined many local residents in questioning whether Tillegra Dam is in the public interest.

The rationale offered by the NSW Government was that Tillegra would deliver a secure and sustainable water supply for residents of the Lower Hunter and Central Coast. In former Premier Morris' own words, '[t]his plan eases the pressure now and means the people of the Hunter and Central Coast can look forward to a secure water supply for the foreseeable future.'⁶

This justification is curious given the Hunter has not experienced water shortages. Indeed, while much of NSW has been asked to markedly reduce water consumption, residents of the Hunter have not had to cope with even low-level water restrictions.

The Central Coast, by contrast, has experienced dire water shortages, forcing the local water authorities to develop their own plans to secure an adequate supply for local residents including the development of a

new pipeline purported to triple the catchment area.⁷

Though now an ardent supporter of the project, Hunter Water itself categorically rejected the necessity of Tillegra not too long ago. Its 2003 Integrated Water Resource Plan asserted that the region would not need a new water source within the next 30 years. The Plan also indicated that, 'building a new dam at Tillegra would be far less cost effective than many demand management and water conservation initiatives.'⁸

PIAC concurs with this policy advice. Assisting local residents and businesses to access water efficient appliances and equipment such as rainwater tanks, showerheads and washing machines, as well as rolling out education campaigns and water audits, should be the first step in maintaining water security. In the Hunter and elsewhere, PIAC urges the NSW Government to spare consumers the significant economic, social and environmental costs of large water infrastructure projects and instead start by investing in comprehensive efforts to improve water efficiency and curb consumption.

Footnotes

- 1 Hunter Water Corporation, *Submission to IPART on Prices to Apply from 1 July 2009* (2008) 83.
- 2 Ibid.
- 3 See for example: Letter from Nature Conservation Council to Hunter Water, 16 May 2008.
- 4 Hunter Water Corporation, above n1, 68
- 5 G McDonald, *Tillegra Dam - Effects on a Small Community* (2007)8.
- 6 Premier of NSW, '\$342 million for new dam' (Media Release, 13 November 2006).
- 7 Prime Minister Kevin Rudd, 'Securing Central Coast Water Supplies' (Statement, 25 May 2007).
- 8 Dr Simon Fane, 'If a new dam is the answer, what was the question?', *Newcastle Herald*, 17 November 2006.

National registration : impact on health consumer complaints

Peter Dodd, Solicitor - Health Policy and Advocacy*

Recent widespread concerns about aspects of the public hospital system and 'rogue' medical practitioners have led to calls for more transparent complaints and disciplinary systems. The Federal Government has promised to overhaul the national health system through the Council of Australian Governments (COAG) process. An important part of that process is the decision to introduce a system of national registration for health professionals, including a national consumer complaints system.

The history of this proposal goes back to December 2005, when the Productivity Commission released a report on Australia's Health Workforce recommending a national registration scheme for health professionals administered by one national health registration board. COAG originally agreed to the establishment of a single national accreditation scheme for health professionals and a single national registration body for nine categories of health professionals. In July 2007, COAG decided to go ahead with the national scheme, but with nine separate national registration boards, one for each category of health professional. All Australian Health Ministers signed an Intergovernmental Agreement along these lines on 26 March 2008.

PIAC supports the development of a national registration scheme for health professionals, seeing merit in the view that the professions are central to setting clinical and accreditation standards as well as dealing with 'fitness to practice' issues for those entering the professions. The establishment of a national registration scheme would also allow for greater mobility of health professionals, which in turn could, if well managed, lead to enhanced access to health care by consumers. It is also important from a patient safety perspective that we have a

national approach to recognition and verification of overseas qualifications. In a national marketplace it is vital that regional centres and the less populated capital cities have access to skilled and qualified health professionals.

When it comes to complaints for both the health consumer and the health practitioner, the most significant stage in the complaint process is the initial consideration, after the complaint is made, about whether to investigate the complaint, whether to refer the complaint for resolution or conciliation, or whether or not to deal with the complaint at all. In NSW, this is done by the Health Care Complaints Commission (HCCC), an independent statutory authority, in consultation with the various registration boards. If there is disagreement between a Board and the HCCC as to how a complaint is to be managed, then the investigative/disciplinary path is chosen.

In the latest Commonwealth consultation paper, *Proposed arrangements for handling complaints and dealing with performance, health and conduct matters*, it is proposed that the nine national health boards will have the authority to determine whether or not a health professional will be investigated after a complaint is made about them.

PIAC is concerned with this proposal because, in the national model proposed, the national health boards will be dominated by members of the relevant profession. Under the model, if the relevant board does decide to investigate a complaint (called a notification in the paper), then it could be referred to a panel that would conduct its hearings in private. No legal representation would be allowed and the complainant may not have opportunity for appeal against, or seek review of the decision

while the health professional would have a right of appeal.

PIAC believes that a registration board should not have the responsibility for all the stages of a complaint: initial assessment, investigation, prosecution and adjudication. There should be a clear separation of powers between the body that regulates a profession in areas such as registration and accreditation and the body that makes decisions about allegations of misconduct, departures from accepted standards and lack of professional competence. PIAC believes that the NSW system better reflects that need for a separation of powers.

PIAC will be advocating for an independent body, like the HCCC, to make the initial decision about whether a complaint should be investigated and if necessary prosecuted. This body should have access to dedicated staff and independent professional and peer advice, before making these decisions.

PIAC will be examining in more detail the models of health complaints handling that operate in comparable overseas jurisdictions. PIAC will be advocating for a model that is more consumer focused and consumer accountable than any of the complaints mechanisms that currently exist in the Australian states.

Consumer interests should be at the forefront of any health reform process. If the national registration scheme would result in an overall reduction in consumer protection, then PIAC believes the proposals should be replaced with retention of the current state-based complaints systems, brought up to a standardised benchmark of best practice.

* The author wishes to acknowledge the invaluable assistance of Merrilyn Walton in writing this article

Submissions & Publications

April 2008 - November 2008

Affordable water (April 2008)

In this submission to the IPART review of prices for Sydney Water Corporations, PIAC supports IPART's decision to remove inclining block tariffs but is concerned about increases to prices and the removal of the large household rebate.

Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW (April 2008)

In its response to this NSW Department of Water and Energy Inquiry, PIAC expresses its preference for a non-corporatised model for rural water utilities (RWUs). PIAC favours regulation that aims to conserve water and keep prices at affordable levels.

Submission to the Inquiry into Overcoming Indigenous Disadvantage (April 2008)

In this submission, PIAC identifies that significant Indigenous disadvantage continues to flow from the impact of previous government policies and laws, in particular, those that resulted in the Stolen Generations and Stolen Wages.

Inquiry into Children and Young People 9-14 Years in NSW (May 2008)

In this submission, PIAC focuses on the activities, services and supports needed by young people in this age group who are in contact with the juvenile justice system and has drawn on the casework and research of the Children in Detention Advocacy Project (CID^oAP).

StreetRights NSW #10 (May 2008)

Homeless Persons' Legal Service newsletter.

Response to Draft Principles for Australia's Health System (May 2008)

A key focus of PIAC's response is the role a Charter of Health Consumers Rights should play in providing a framework for the implementation of these principles.

Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 2007 Federal Election (May 2008)

PIAC, in this submission, addresses the issue of funding of campaigns such as donations and disclosure requirements.

Regulating influence and access (June 2008)

In this submission, PIAC recommends that the Lobbying Code of Conduct apply to all Members of both Houses of Parliament and that it be strengthened both in its application and its sanctions.

Settling accounts: the effectiveness of the Aboriginal Trust Fund Repayment Scheme in addressing stolen wages in NSW (June 2008)

In this submission, PIAC draws on its experience working with the Scheme to comment on its effectiveness.

Proposed ratification of the United Nations Convention on the Rights of Persons with Disabilities (June 2008)

PIAC supports the ratification of the Convention as a matter of urgency, seeing this as an important opportunity to be directly involved in the establishment of the Treaty Body, including potentially nominating an Australian expert to that body.

Supplementary submission to the Inquiry into the Stolen Generations Compensation Bill (May 2008)

This submission was prepared in response to Senators' questions and comments at the Inquiry's hearing, held in Sydney on 16 April 2008. The submission includes PIAC's proposed Stolen Generations Reparations Bill.

Rule change proposal from Energy Users' Association of Australia WACC Parameter Values, Equity Beta and Gamma (June 2008)

In this submission, PIAC supports the Energy Users' Association of Australia's proposed change to the WACC Parameter Values, Equity Beta and Gamma in the National Electricity Rules.

The Future of Employment Services in Australia - Discussion paper (June 2008)

HPLS and its interstate counterpart in Victoria argue that the compliance regime breaches the fundamental human rights of social security recipients.

Time to deliver: A National Paid Parental Leave Scheme (June 2008)

In this submission, PIAC strongly supports the introduction of a national scheme of paid leave for parents.

Finding a new way home (June 2008)

In this submission, HPLS comments on a few of the Federal Government's proposed Principles for Change for homelessness, namely the advantages of seeing homelessness as a shared responsibility between government, private and non-profit sectors and the need for joined-up service delivery across all levels of government.

Funding democracy (June 2008)

In its submission to the Victorian Electoral Matters Committee Inquiry into Political Donations & Disclosure, PIAC argues that the principles of equal representation, and equal opportunity for citizens and parties to participate in political life must be central to any consideration of political financing.

Flying in the face of adversity (June 2008)

PIAC's comments on Department of Infrastructure, Transport, Regional Development and Local Government Issues Paper: *Towards a National Aviation Policy Statement* are limited to those issues relevant to people with disabilities. PIAC points out that the emergence of low cost airlines means that air travel is accessible to more people but people with disability now find it more difficult to fly.

Well Connected #32

EWCA newsletter.

Housing the homeless a priority?

HPLS submission to the Joint Guarantee of Service Inquiry (July 2008)

HPLS provides detail on the difficulties homeless people experience with the NSW Department of Housing, particularly priority housing.

Towards Humanity and Decency (July 2008)

PIAC, in this submission, argues for reforms to the immigration detention regime including strict time-limits to detention; and, an end to the current practice of privatisation of immigration detention services.

Affordable renewables (July 2008)

In this submission, PIAC supports the expansion of the Renewable Energy Target but advocates that the scheme must minimise the cost to consumers and include measures to protect low-income households from higher electricity prices.

Submission on NSW Distribution Network Service Providers 2009-2014 Regulator Proposals (August 2008)

PIAC asks that any increases in electricity prices are not be higher than those required.

StreetRights NSW #11 (August 2008)

Homeless Persons' Legal Service newsletter.

Response to Australian Commission on Safety and Quality in Health Care's Consultation on Consumer Engagement Strategies (August 2008)

PIAC argues that strategies should be adopted to enhance consumer participation and engagement through all stages of a consumer's health care.

Not-for-profit accountability (September 2008)

In this submission, PIAC argues that the not-for-profit sector is already subject to a lot of regulation and what is needed is better and more targeted regulation rather than more regulation.

Submission to the Carbon Pollution Reduction Scheme Green Paper (September 2008)

In this submission, PIAC raises concern about the impact of the Scheme on low-income households, with a particular focus on the effects of rising energy bills on consumers facing hardship. PIAC argues for compensation and protection based on energy efficiency.

Negating the proposition that law reform agencies are the best vehicle for law reform (September 2008)

PIAC CEO, Robin Banks, argues that there are a range of individuals and organisations that work - both together and separately - to achieve effective law reform and each has a role to play.

A positive start ... but still more work to do (September 2008)

HPLS urges the NSW Government to consider the role of the NGO sector in developing and evaluating action items under the homelessness framework and to provide new funding.

Airport security - ensuring equality and dignity for people with disability (September 2008)

PIAC and the NSW DDLC respond to the Department of Infrastructure, Transport, Regional Development and Local Government's Aviation Security Screening Review and argue for the need for security officers to be trained and equipped to process passengers with disabilities.

Central Coast water prices (October 2008)

In this submission, PIAC expresses concern about the impact of water price increases on low-income and other disadvantaged residents of the Central Coast.

All publications are available on PIAC's website: piac.asn.au

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Public Interest Advocacy Centre Staff

Robin Banks Chief Executive Officer rbanks@piac.asn.au	Stephen Kilkeary Mental Health Legal Services Project Co-ordinator skilkeary@piac.asn.au	Scott Parker Administrator sparker@piac.asn.au
Brenda Bailey Senior Policy Officer bbailey@piac.asn.au	Jane King Manager, Finance & Administration jking@piac.asn.au	Joel Pringle Policy Officer, Energy + Water Consumers' Advocacy Program jpringle@piac.asn.au
Elisabeth Baraka (to August 2008) HPLS Co-ordinator ebaraka@piac.asn.au	Krystyna Kozapas (May-September 2008)	Jeremy Rea HPLS Solicitor Advocate jrea@piac.asn.au
Natasha Case Acting Principal Solicitor ncase@piac.asn.au	Karen Kwok Administrator kkwok@piac.asn.au	Lizzie Simpson Solicitor lsimpson@piac.asn.au
Jessica Cruise Acting Senior Solicitor jcruise@piac.asn.au	Mark Ludbrooke (from July 2008) Senior Policy Officer, Energy + Water Consumers' Advocacy Program mludbrooke@piac.asn.au	Laura Thomas (to August 2008) Solicitor Indigenous Justice Program lthomas@piac.asn.au
Peter Dodd (from July 2008) Solicitor - Health Policy & Advocacy pdodd@piac.asn.au	Amy McGowan Mental Health Legal Services Project Officer amcgowan@piac.asn.au	Keppie Waters (from July 2008) Senior Solicitor Indigenous Justice Program kwaters@piac.asn.au
Alexis Goodstone Principal Solicitor (on maternity leave from March 2008)	Deirdre Moor Manager, Policy & Programs dmoor@piac.asn.au	Elwyn Ward Finance Officer eward@piac.asn.au
Marion Grammer Bookkeeper mgrammer@piac.asn.au	Jason Mumbulla Computer Systems Administrator jason@piac.asn.au	Mark Warren Media and Communications Adviser mwarren@piac.asn.au
Carolyn Grenville Training Co-ordinator cgrenville@piac.asn.au	Ka Ki Ng Receptionist kng@piac.asn.au	PIAC College of Law Placements Irene Kafeero (to July 2008) Sarah Ibrahim (to August 2008) Ee-von Lok (from July 2008) Claire O'Moore (from September 2008)
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Christine Johnson Librarian cjohnson@piac.asn.au		

Public Interest Law Clearing House (PILCH) Staff

Amy Kilpatrick Executive Director akilpatrick@piac.asn.au	Amy Brady PILCH College of Law (to August 2008) Paralegal (from August 2008) pilchsecondee2@piac.asn.au	Tom Johnson (to Sep 2008) PILCH Secondee pilchsecondee@piac.asn.au
Gina Vizza (from Aug 2008) Pro-Bono Co-ordinator gvizza@piac.asn.au	Samantha Johnson (from Sept 2008) PILCH Secondee	PILCH College of Law Placement Iain Bailey (from Sept 2008) Ruth Greenwood PILCH Secondee (to Aug 2008)

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