

## EWCAP Conference

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

**As debate over the efficacy of the Australian Government's Carbon Pollution Reduction Scheme (CPRS) intensifies, seventy delegates recently attended the EWCAP conference, 'Carbon & Consumers', to explore how disadvantaged consumers are likely to cope with and respond to the introduction of an Emissions Trading Scheme (ETS).**

The conference began with an acknowledgement that the CPRS is designed to increase the price of carbon intensive goods and services and that consumers are supposed to respond to this price signal by reducing their consumption. Robin Banks, Chief Executive Officer of PIAC and conference MC, expressed concern that some consumers will experience difficulty responding to these price hikes and may be at risk of energy hardship and disconnection.

Keynote speaker Professor Ian McAuley from the University of

Canberra and Centre for Policy Development concurred that many households are unable to make investments that allow them to reduce their energy consumption. Poor access to information about energy prices and consumption levels, the propensity to keep old and inefficient appliances because they continue to function, and the preference for immediate savings over future benefits, each hamper consumer responses to price signals. Professor McAuley proposed that the Government could overcome such barriers by disseminating detailed information and establishing norms of

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'Carbon and Consumers' Conference (L to R) Mark Ludbrooke, Senior Policy Officer, EWCAP; Professor Ian McAuley, University of Canberra; Joel Pringle, Policy Officer, EWCAP; Allan Asher, Director of the Foundation for Effective Markets and Governance; Robin Banks, CEO PIAC.

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## PIAC's Newest Initiative

**Robin Banks**, Chief Executive Officer

Much has said in recent times of the need to ensure more effective service provision, including through co-ordination of different services, particularly in the area of community services and mental health. This reflects the principles and philosophy underpinning the development of the community legal centre movement in Australia in the 1970s, that it is not enough to simply respond to a legal problem in isolation, to be effective services must also identify and seek to address both systemic issues impacting on the community more broadly, and other problems impacting on the individual's ability to resolve legal and related issues.

As recently as 27 April 2009, the *Sydney Morning Herald* ran an opinion piece from Patrick McGorry, Professor of Youth Mental Health at the University of Melbourne on the need for better mental health care for young people. In his article, 'Youth need better mental health care', Professor McGorry observed:

'By far the greatest burden for society flowing from untreated mental disorders is social disability and marginalisation from decades of suffering. Young adults have the worst access to mental health care and, despite links between offending behaviour, mental disorders and substance abuse, there are virtually no specialised adolescent mental health services in Australia.'<sup>1</sup>

PIAC's newest access to justice project—the Mental Health Legal Services Project—seeks to respond in part to concerns about the lack of early response and to improve how people with mental illness are treated within the legal system by providing more holistic responses to legal and related needs.

The Project received start-up funding in 2007 from Legal Aid NSW to identify unmet legal and related needs of people with mental illness and develop and pilot approaches to responding to that need. In its first year, the Project focussed on learning about what has worked in various other parts of the world and developing relationships with a range of potential project partners.

Early in 2009, PIAC received news that the NSW Attorney General, the Hon John Hatzistergos, through the NSW Public Purpose Fund, had agreed to provide funding for four specific pilot outreach projects all of which work on the model of bringing different services together to better meet the needs of the client group. (See 'Making human rights real in mental health' on page 6 for more about the pilots).

While the pilot projects cannot fill the gap left by the lack of specialist mental health services for particularly vulnerable communities, such as young people, we hope they can reduce the impact of the law and legal processes on people whose lives are already complex and often traumatic as a result of mental ill health. It is likely that finding appropriate treatment and support services will be a key challenge as will finding appropriate legal services to assist where our services don't have capacity.

Capacity of services to respond to client needs and of clients to effectively use services has been identified in the project as a key focus and, as an adjunct to the pilots, PIAC has developed and will be delivering two training courses. The first is a workshop for people with mental illness on how to deal with (pre-) legal problems and to get the best out of visiting a lawyer. The second is a workshop for legal and related service providers on how to work effectively with clients with mental illness.

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### Matt Laffan

The PIAC family was saddened by the unexpected death of DPP Solicitor, Disability Advocate and PIAC Director Matt Laffan earlier this year.

Matt was greatly respected for his courageous advocacy skills, intellect and good humour. Tributes that followed his death spoke of Matt's love for his family, the law and justice, rugby union and life in general.

PIAC Chair Shauna Jarrett said, 'Matt brought an incredible mix of personal experience and knowledge of the law to his job as a Director. He will be greatly missed and our best wishes and thoughts go to his family.'

Matt is pictured here with former PIAC Director, The Hon Elizabeth Evatt AC, at last year's AGM.



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behaviour that encourage consumers to act in the optimal manner, and by providing rebates for the replacement of inefficient appliances.

Professor McAuley also promoted the idea of a mandated conservation and equity tariff with a minimum charge or free allocation of energy for basic usage and a higher charge for more discretionary consumption.

Allan Asher, Director of the Foundation for Effective Markets and Governance, then gave the second keynote address that focused upon the experience of European consumers following the introduction and development of an emissions trading scheme (ETS). Mr Asher noted that the scheme increased the wholesale price of electricity by ten percent and added five to eight percent to household energy bills.

In Europe, the experience was that energy companies raised their prices to incorporate the market value of the ETS even though they were given most of the permits. Mr Asher warned that the European scheme had generated windfall gains for power generators but profits had not been invested in low-carbon, energy generation. He suggested that any profits from carbon trading should be offset by mandatory expenditure on social programmes and that government policies should be rolled out in collaboration with not-for-profit organisations that have considerable experience working with communities.

Conference delegates then heard from a panel of experts about the likely impact of CPRS-induced energy price increases on their respective constituencies.

Alison Peters of the Council of Social Service of NSW (NCOSS) observed that the capacity of not-for-profit organisations to support communities declined as energy bills escalated and suggested that

organisations should integrate energy efficiency initiatives into their mainstream programs. Ms Peters also echoed Allan Asher's view that organisations are trusted information agencies that should be used to support communities to become energy efficient.

Deb Phippen from the ACT Tenants' Union reminded delegates that tenants lack the incentive and often permission to invest in energy-efficiency initiatives because they don't own the property to which improvements would be made. Landlords also have limited motivation because they don't see the economic return from reduced energy bills.

Jenna Wood of Country Energy indicated that energy retailers understand the impact of price increases on households and work to assist customers experiencing difficulty to pay their bills. Ms Wood commended the Government for promising to compensate low-income households for increased costs stemming from the CPRS but expressed concern that support wasn't directly linked to energy bills.

Karen Oakley from the NSW Consumer Advisory Group - Mental Health added that rising energy costs mean many people with a mental illness will have to choose between spending on energy or health services. Such financial pressures create anxiety and stress that exacerbate mental illness and increase demand for health care. It was noted that many people living with a mental illness already incur high electricity costs because they spend considerable time at home and that reliance on the Disability Support Pension means households can't afford the high upfront costs to improve their energy efficiency.

The final panelist, Maree O'Halloran of the Welfare Rights Network, observed that whilst high-income households could afford to lower

their carbon footprint, many other households lack the resources to do so. Ms O'Halloran suggested that low-income households must have the opportunity to improve their energy efficiency lest they become further marginalised as sustainable practices become emblematic of 'good citizenship'.

Having heard from various keynotes and panelists about the likely impact of the CPRS, delegates then adjourned to workshops to develop ideas to assist consumers to respond to rising energy prices.

Many delegates supported the idea of employing government monopsony power to buy and then provide a quantum of free or low- and fixed-price energy to households. Others suggested that community-led energy generation and purchasing should play a valuable role in delivering affordable energy to residential consumers.

Delegates agreed that the Government should roll out a comprehensive energy audit scheme targeting low-income earners and funded through CPRS revenue. A national body was proposed to oversee local implementation through councils, energy retailers and community organisations.

There was also strong support for additional funding for No Interest Loans Schemes (NILS) and rebates to assist households to replace inefficient appliances.

The introduction of financial incentives and penalties to persuade landlords to improve the energy efficiency of their properties was also floated. So too, the idea of lobbying the NSW Government to enhance the BASIX building standards.

EWCAP is collating these and other recommendations and will produce

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## Energy + Water

### Cut off II launch

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



Robin Banks (R), CEO PIAC, hands the *Cut Off II* report to Clare Petre (L), the Energy & Water Ombudsman NSW.

Performance statistics recently released by the Independent Pricing and Regulatory Tribunal (IPART) indicate that there are still over 18,000 residential electricity disconnections each year in NSW. PIAC recently launched a new report, *Cut Off II: the experience of utility disconnections*, that uncovers who is being disconnected in New South Wales and reveals their circumstances at the time of disconnection. It also highlights the inadequacy of the existing regulatory and policy framework in assisting people to both avoid disconnection and establish reconnection. Alarming, the report indicates that one in three customers reported no contact with their retailer in the period just prior to disconnection. Of those who did have contact with their retailer, one quarter said they weren't offered a payment plan; energy or water vouchers; contact with a community organisation; access to Centrepay; or a hardship program. In addition, around half of those who were on a payment plan said it was unaffordable. In response to these findings, PIAC has developed a series of recommendations for action from both the NSW Government and energy retailers. For a copy of the report and recommendations contact Mark Ludbrooke on 02 8898 6518 or [mludbrooke@piac.asn.au](mailto:mludbrooke@piac.asn.au)

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a report of the conference findings to be presented to both the Federal and NSW Ministers for Environment. The proposals will also be developed and promoted in EWCAP submissions and advocacy work.

One of EWCAP's primary objectives is to ensure that sustainability policies reflect the needs of low-income and other residential consumers. Whether Australia introduces an emissions trading scheme, carbon tax or some other carbon mitigation strategy, PIAC expects that the conference proceedings and advocacy to follow will assist in ensuring that low-income and other disadvantaged households are not adversely affected by climate change mitigation and that their amenity may be improved by initiatives that assist them to cope with rising energy prices.

**EWCAP is funded by the NSW Department of Water and Energy to advocate in the interests of low-income and other residential consumers in the NSW energy and water markets.**

**For more information contact Mark Ludbrooke on 02 8898 6518 or [mludbrooke@piac.asn.au](mailto:mludbrooke@piac.asn.au)**



EWCAP celebrated its 10th Anniversary at the conference. Cutting the cake are EWCAP Reference Group members, Cheryl Kelly (L) and Joyce Fu (R).

## Mental health advocacy forum

Amy McGowan, Project Officer, Mental Health Legal Services Project

The lack of independent mental health (IMH) advocacy in NSW has been identified as a major issue for people with mental illness in NSW. Without independent advocacy people with mental illness are unable to access the most basic of all protections: visibility. The need and potential for such advocacy was the main theme of PIAC's IMH Advocacy forum, held in January 2009.

The purpose of the forum was to bring together a diverse group of people with mental illness, past and present advocates and other people with a commitment to human rights in mental health, and those with expertise in advocacy program development and delivery. Several key themes emerged from the forum, including:

1. **IMH Advocates need to be appropriately skilled and trained:** advocates need to have a sound working knowledge of the law as it applies to mental health specifically, as well as more broadly.
2. **Lived experience of mental illness is an important quality for IMH Advocates:** while it was agreed that the most important skill for an IMH Advocate is the ability to steadfastly represent the wishes of the people with mental illness, it was also agreed that lived experience of mental illness could further enhance the capabilities of an advocate.
3. **The independence of the IMH Advocate assists their primary role of enabling people with mental illness:** this is not merely with regard to the obvious capacity to act 'without fear or favour', but also to be able to step outside of the people with mental illness's usual context and think about creative, alternative solutions to presenting problems. For example, in the area of accommodation, an IMH Advocate could consider a range of options beyond what might usually be on offer. Thus, rather than a person being inappropriately discharged from hospital to a boarding house they might be placed in more suitable, supported or independent accommodation.
4. **Volunteer IMH advocacy programs need to be properly structured, supported and supervised:** past and current experience in running such programs has shown that volunteers make good, even outstanding, IMH Advocates. The sustainability of any IMH advocacy program, moreover, rested upon how well the program is organised, the type and frequency of training support provided to advocates as well as the professional supervision they can access.
5. **IMH advocacy would work best if delivered as part of a holistic service delivery model:** participants suggested that wherever possible IMH advocacy should be embedded in or connected to other health, community and legal services. This is because people with mental illness face immense obstacles when forced to travel from one service to another. A 'one-stop-shop' approach would also make the work of the IMH Advocate much easier and more effective.
6. **IMH advocacy should at once address the legal and non-legal issues of people with mental illness:** one participant stated that 'we can't have 17 different sorts of advocates for different parts of a person's life'. The demarcation between legal and non-legal support serves no useful purpose and in fact can lead to confusion and diminished outcomes. What really matters is that advocates are able to refer people with mental illness on or assist them to directly access, when required, appropriate legal and other support.
7. **IMH advocacy should be freely available to all people with mental illness:** service exclusion criteria often mean that people with mental illness can be excluded from one necessary service or another. It is important that IMH advocacy takes account of people with mental illness in hospital, in the community and in correctional facilities, in both metropolitan and rural, remote and regional areas of NSW. IMH advocacy also needs to take account of diversity amongst people with mental illness, including Indigenous status, homosexuality, non-English speaking background or other cultural variables.
8. **IMH advocacy should uphold the human rights principles that are enshrined in the *Convention on the Rights of Persons with Disabilities (CPRD)*:** the intent of the CPRD is to maximise individual autonomy while eliminating social exclusion. It calls for all people who are living with a disability to be granted equal access to the health, community and legal services that they require to realise their full potential and participation in the life of the community. To that end, IMH advocacy is a form of supported decision-making, which starts with the premise that people with mental illness should, to the greatest extent possible, retain agency over their own lives.

Further work will be done on possible models for IMH in NSW. For further information about the forum, please contact the Mental Health Legal Services Project on 02 8898 6539.

## Making human rights 'real' in mental health

Stephen Kilkeary, Co-ordinator, Mental Health Legal Service Project

In March 2009, PIAC received the good news from the Public Purpose Fund that it had been successful in its funding submission for four pilot projects and two training modules within the Mental Health Legal Services Project. Those pilot projects are:

- a social work support service at the Shopfront Youth Legal Centre (Shopfront) in Darlinghurst;
- a legal support service at the Multicultural Disability Advocacy Association (MDAA) in Harris Park;
- an Indigenous Men's Access to Justice (IMAJ) Worker service at Redfern; and
- a legal support service at the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) in Carramar.

The training modules are:

- 'How to Sort Out Your (Pre)-Legal Problems', for consumers and their advocates; and
- 'How to Work With Consumers', for lawyers and other advocates.

That means for the first time in NSW and for a period of two years, a co-ordinated program of innovative service models will work towards improving access to justice for people who are mentally ill. Indigenous men, homeless young people, refugees, asylum seekers and people from non-English speaking backgrounds will all directly benefit.

Moreover, experiential, problem-solving training will be made available to consumers, lawyers and other advocates. From the outset, the pilot projects and training modules will be overlaid by a comprehensive, action-research evaluation strategy, to identify and quantify both

individual outcomes and systemic legal and policy issues.

The pilot projects and training modules were developed in large measure as a response to the expressed needs of people with mental illness.

Background research, such as that conducted by the Law and Justice Foundation of New South Wales, and extensive field research by the Mental Health Legal Services Project, confirmed that people with mental illness face multiple barriers to accessing justice.<sup>1</sup>

These barriers cover a vast range of subjective, interpersonal, social, economic, political and ideological factors. For example, it is a sad reality that people with mental illness are more likely than members of the community as a whole to be:

- the victims of crime;
- living in poverty;
- imprisoned; and/ or
- homeless.<sup>2</sup>

By combining hard evidence with listening to the lived experience of consumers, the pilot projects and training modules will hopefully realise positive individual outcomes while also contributing to 'big picture' change. In those specific ways, the co-ordinated program of innovative service models will indeed make human rights 'real' in mental health.

One pilot project, to employ an Indigenous Men's Access to Justice worker, exemplifies the grassroots approach used to develop the pilot projects and training modules. Over a period of several months, Mental Health Legal Services Project staff met on a regular basis with leaders from the Gamarada Men's Healing Program in Redfern, to discuss how

a service might be devised to best meet the legal, health and welfare service needs of Indigenous men. The result was a pilot project that combines the trauma recovery elements of that program with a dedicated, Indigenous Men's Access to Justice worker. That worker will support Indigenous men through the course of the Gamarada Men's Healing Program and where appropriate, connect those men to relevant services.

It is anticipated that an important consequence of the pilot projects and training modules will be to help diminish the significant problem of stigma against people with mental illness. Historically and to the present, stigma arguably remains the greatest obstacle that people with mental illness face, insidiously enmeshed in cultural practices that lead to gross discrimination, harassment, violence and social exclusion.<sup>3</sup>

The research evidence suggests that one of the best ways to combat stigma is to work directly with people with mental illness and learn from their experiences.<sup>4</sup> All four of the pilot projects and the two training modules are built as templates of 'consumer-oriented' practice. For example, the training module, 'How to Work With Consumers', for lawyers and other advocates, features a session where people with mental illness talk about their own experiences working with legal, health and welfare professionals.

The next stage in the development of the pilot projects and training modules is to recruit staff and to produce a training calendar. It is expected that the new workers will commence in late May or early June 2009. The training will commence in May 2009.

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Gamarada Men's Healing Program in Redfern.

This is an exciting time for PIAC, for the project partners and for human rights in mental health. In light of Australia's ratification of the *Convention on the Rights of Persons with Disabilities* in July 2008, the pilot projects and training modules reflect that Convention's principles of individual autonomy, self-determination and the right to full participation in the life of the community. Access to justice, after all, should not be limited to some but should be freely available to all citizens.

#### Footnotes

- 1 M Karras, E McCarron, A Gray & S Ardasinski, *On the Edge of Justice: The Legal Needs of People with a Mental Illness* (2006).
- 2 J Choe, L Teplin, K Abram, 'Perpetration of Violence, Violent Victimization, and Severe Mental Illness: Balancing Public Health Concerns', (2008) 59 *Psychiatric Services*, 158-161; K Carter, T Blakely, S Collings, F Gunasekara, & K Richardson, 'What is the Association Between Wealth and Mental Health?' (2009) 63 *Journal of Epidemiology and Community Health* 222-225; E Perese, 'Stigma, Poverty, and Victimization: Roadblocks to Recovery for Individuals with Severe Mental Illness' (2007) 13 *Journal of the American Psychiatric Nurses Association* 286 & 288-290.
- 3 T Lincoln, E Arens, C Berger, W Rief, 'Can Antistigma Campaigns Be Improved? A Test of the Impact of Biogenetic vs. Psychosocial Causal Explanations on Implicit and Explicit Attitudes to Schizophrenia' (2008) 34(5) *Schizophrenia Bulletin*, 984.
- 4 Corrigan & Penn 1999 cited in G Boysen, & D Vogel, 'Education and Mental Health Stigma: The Effects of Attribution, Biased Assimilation, and Attitude Polarization' (2008) 27(5) *Journal of Social and Clinical Psychology* 446.



#### HPLS at State Parliament

The Homeless Persons' Legal Service was invited by the NSW Attorney General, The Hon John Hatzistergos MLC, to observe the introduction of legislation into the Legislative Assembly that changes the way homeless people can deal with outstanding fines.

Pictured at the media conference at State Parliament (L to R) Father Chris Riley, Youth off the Streets; Julie Hourigan Ruse, Co-ordinator, HPLS; The Hon John Hatzistergos MLC, NSW Attorney General; Chris Hartley, Policy Officer, HPLS; Robin Banks, CEO, PIAC; and Major Marina Randall, Salvation Army.

# Indigenous Justice

## Restoring Identity relaunched

Vavaa Mawuli, Senior Solicitor, Indigenous Justice Program\*

**This year PIAC will release a revised edition of its ground-breaking report, Restoring Identity. First published in 2002, Restoring Identity proposed a framework for a national Stolen Generations Reparations Tribunal.**

The proposals in *Restoring Identity* were developed to address the failures of governments and churches to implement a reparations scheme for the Stolen Generations as recommended by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, the *Bringing them home* Report.<sup>1</sup>

The function of the proposed tribunal is to provide a comprehensive reparations package to Indigenous people and communities to acknowledge and address the harms caused by the forcible removal of Indigenous children from their families under past government policies.

The National Inquiry, conducted by the (then) Human Rights and Equal Opportunity Commission (HREOC) in 1995 and 1996, investigated the past laws and policies that led to the removal of Indigenous children by compulsion, duress and undue influence. It heard accounts from members of the Stolen Generations affected by the laws and policies about their experiences and documented many of these stories in its report, *Bringing them home*.

The National Inquiry concluded that the policies were in breach of the international prohibition on racial discrimination and amounted to a 'gross violation of human rights'.

HREOC recommended a reparations package for the Stolen Generations based on international human rights principles consisting of:

- acknowledgement and apology;
- guarantees against repetition;

- measures of restitution;
- measures of rehabilitation; and
- monetary compensation.<sup>2</sup>

### PIAC's Proposal

PIAC's reparations tribunal proposal provides an alternative to litigation for members of the Stolen Generations who seek redress for harm and injustices suffered as state wards. Legal claims for compensation have proven to be difficult, lengthy and costly and have produced very few successful outcomes for the Stolen Generations. The considerable passage of time and difficulties with accessing records either because they are lost, destroyed or were inadequately maintained are just some of the issues that present challenges to Stolen Generations litigants. Further, litigation outcomes may fail to adequately address the complexities of the issues facing Stolen Generations.

PIAC's reparations tribunal proposal was widely supported during a Senate Inquiry into the Stolen Generations in 2000. In June 2008, the Senate Standing Committee on Legal and Constitutional Affairs tabled the report of its Inquiry into the Stolen Generation Compensation Bill.<sup>3</sup>

PIAC submitted to the Committee that it should endorse the reparations tribunal model as it did in its 2000 inquiry.<sup>4</sup> The Committee did not recommend the establishment of a reparations tribunal but instead proposed the establishment of a National Indigenous Healing Fund. The Healing Fund will be established later this year.

### Developments in the Stolen Generations Reparations campaign

There have been a number of notable developments in the campaign for reparations for the Stolen Generations since *Restoring Identity* was published in 2002.

The apology by Prime Minister, The Hon Kevin Rudd, to the Stolen Generations in 2008 marked a significant step forward in acknowledging the experiences of members of the Stolen Generations.

The Tasmanian, Queensland and Western Australian Governments established redress schemes designed to provide *ex gratia* payments to people who experienced harm in state care.

The New South Wales and Queensland Governments have implemented Stolen Wages schemes to repay wages, benefits and other entitlements that were withheld from Aboriginal and Torres Strait Islander people under legislative and other arrangements and never repaid: a practice that widely affected members of the Stolen Generations.

The formal support by the Australian Government for the United Nations Declaration on the Rights of Indigenous People was symbolic in improving Australia's relationship with Australia's Aboriginal and Torres Strait Islander people.

These developments are a positive step forward in the ongoing campaign for reparations for the Stolen Generations. However, PIAC

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hopes that by releasing the revised edition of *Restoring Identity*, all governments, churches and other stakeholders will be encouraged to revisit the reparations tribunal model and consider a collective approach that is culturally appropriate and adequately acknowledges and addresses the experiences of the Stolen Generations.

## The Report

*Restoring Identity* was the final report of the *Moving Forward: Achieving Reparations* national consultation project conducted in 2002, which sought the opinions of Aboriginal and Torres Strait Islander people about PIAC's proposal for a Stolen Generations reparations tribunal.

The project was carried out with the assistance of the HREOC, the Aboriginal and Torres Strait Islander Commission, the National Sorry Day Committee and Stolen Generations groups in the Northern Territory. It documents the outcomes of the consultations and examines

International approaches to providing reparations as well as drawing on PIAC's own experiences representing members of the Stolen Generations.

*Restoring Identity* recommends a reparations tribunal that:

- Provides a forum for Indigenous people affected by forcible removal policies to tell their story in a non-adversarial process, have their experience documented and acknowledged and be offered an apology.
- Provides reparations measures, including monetary compensation, in response to applications through appropriate reparations packages.
- Makes recommendations about government and church activities that affect contemporary Indigenous child separations and measures that might be implemented to heal past wrongs.

Included in the revised edition of *Restoring Identity* is a draft Stolen Generations Reparations Bill, which

provides for the establishment of a reparations tribunal.<sup>5</sup>

The draft Bill provides a framework for the functions and powers of the proposed tribunal and outlines the claim process and procedures. The revised edition of *Restoring Identity* will be launched later this year.

## Footnotes

- 1 Australian Human Rights Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).
- 2 Ibid, Appendix 9, Recommendations.
- 3 Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Stolen Generation Compensation Bill 2008* (2008).
- 4 PIAC, Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Stolen Generations Compensation Bill (2008).
- 5 PIAC acknowledges the invaluable support of and work done by Associate Professor Durbach, and the Partners and staff of Allens Arthur Robinson who worked with PIAC on the Bill.

## Stolen wages update

**Vavaa Mawuli**, Senior Solicitor, Indigenous Justice Program\*

The registration deadline for potential claimants to make a Stolen Wages claim is the end of May 2009.

The repayment of withheld wages, benefits, pensions and other entitlements to members of the Indigenous community is a very important issue and currently repayments are being made in NSW through the Aboriginal Trust Fund Repayment Scheme.

Unfortunately, the Repayment Scheme is not widely advertised and so PIAC is asking you to let people know about the registration deadline.

The Scheme has recently changed some of the key elements of its operation. If you or another family member has made a claim in relation to the trust fund of a deceased relative, only the person who has made the claim will be eligible for payment. The spouse, all living children, or all living grandchildren may be eligible under the Scheme and should get in touch with the Scheme to register.

To contact the NSW Aboriginal Trust Fund Repayment Scheme, call 1800 765 889.

For more information about PIAC's Indigenous Justice Program (IJP), contact IJP Senior Solicitor, Vavaa Mawuli, on 02 8898 6527 or [vmuwali@piac.asn.au](mailto:vmuwali@piac.asn.au).

**\* PIAC's Indigenous Justice Program was established in 2001 with funding support from law firm, Allens Arthur Robinson. This continued funding enables PIAC to employ a full-time solicitor in the Indigenous Justice Program.**

Allens Arthur Robinson 

# Indigenous Justice

## Profile - Vavaa Mawuli & Mark Holden

**Vavaa Mawuli**, Senior Solicitor & **Mark Holden**, Solicitor, Indigenous Justice Program



Vavaa Mawuli (L) and Mark Holden (R)

### Vavaa Mawuli

I recently joined PIAC as the Senior Solicitor in the Indigenous Justice Program. I bring to the role over four years of experience working as an advocate in Indigenous Legal Aid organisations in Sydney and the Northern Territory.

After completing a law degree at Bond University in Queensland, I moved to Sydney to undertake the College of Law program, which included an internship at the Aboriginal Legal Service, Redfern.

I remained with the ALS for the next few years, where as a solicitor I advocated for a range of Indigenous people across New South Wales, including parents whose children had been removed by the State, and also those charged with criminal offences.

After two years in Sydney, I relocated again, and turned my focus to the Indigenous people of the Top End of the Northern Territory. At the North Australian Aboriginal Justice Agency, I devoted the next two years to working as a criminal law advocate in the Darwin, Katherine, and Nhulunbuy offices, and also as the manager of the Nhulunbuy office.

My work as an advocate for the Indigenous communities in New South Wales and in the remote regions of the Northern Territory has exposed me to a broad range of public interest issues.

PIAC's emphasis on improving access to justice and achieving social justice for Indigenous Australians is what drew me to the position. I am committed to continue working with Indigenous communities to achieve social justice and advocate to right past wrongs perpetrated against them.

### Mark Holden

I first became acquainted with PIAC when I applied for an internship, through the Aurora Project. I was so intrigued with how PIAC is different from other community legal centres in seeking change in policies and helping promote the public interest for the good of prejudiced minorities.

As PIAC's Indigenous Solicitor I feel a strong sense of empathy with our clients as my family has been through many of the pains experienced by them. This has included the loss of trust funds owing or the breaking up of families by the Aborigines Welfare Board.

At the same time, I feel privileged to hear the stories of those affected by the policies. It has led to some revealing discoveries about life in the missions, the reserves and the infamous homes that has caused so much pain.

It is this empathy and understanding that makes me determined to address these issues and contribute to the reconciliation between Indigenous Australians, the Federal and State Governments and the wider community.

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*Continued from p2*

This work builds strongly on much of PIAC other current and past work. It links in with two joint projects PIAC has with the Public Interest Law Clearing House: the Homeless Persons' Legal Service and the Children in Detention Advocacy Project. It also builds on PIAC's recent and ongoing work on mental illness and prisons and on its history of identifying unmet legal needs and piloting responses to such needs. PIAC has, in that work, sought to ensure that it built models that approached problems in a proactive way: looking to use research and policy capacity to develop law reform proposals to limit harms and respond to systemic issues; to ensure ongoing capacity to learn from the experiences of those for whom the services are designed; and to ensure there is capacity

to both respond to individual legal needs, conduct test case litigation and build the capacity of the client community to limit, prevent and more actively deal with legal problems themselves.

I am looking forward to learning from the pilots and developing with others better systems for supporting people with mental illness in the legal system.

### Footnotes

- 1 Professor Patrick McGorry, 'Young need better mental health care', *Sydney Morning Herald*, (Sydney, 27 April 2009, 9).

## Litigation update

Alexis Goodstone, Principal Solicitor

### Killeen v NSW Department of Transport

PIAC is acting for Mr Killeen, a disability advocate and wheelchair user, in his disability discrimination complaint against the NSW Department of Transport for licensing wheelchair accessible taxis that he alleges do not comply with the *Disability Standards for Accessible Public Transport 2002* (Cth) (Public Transport Standards). Complaints have also been lodged against two companies that convert taxis to be wheelchair accessible and two companies that own and operate wheelchair accessible taxis.

From 2006, Mr Killeen found that he was not able to travel in a significant number of wheelchair accessible taxis because there was inadequate space in the vehicles to accommodate him using his wheelchair. This significantly reduces the number of taxis that Mr Killeen and many other wheelchair users can access and causes delays when using taxi services. On many occasions, Mr Killeen has booked a wheelchair accessible taxi only to discover that he cannot fit in it and has had to turn the taxi away and make another booking. At times this has meant that he has had to wait for up to 50 minutes for a taxi and has resulted in him missing medical appointments and other engagements.

PIAC and Mr Killeen met with representatives of the Department late last year in an attempt to resolve the matter. However, PIAC has now lodged a complaint with the Australian Human Rights Commission, which is currently being investigated.

### Burns v Kennett

In October 2008, PIAC lodged a vilification complaint on behalf of Mr Burns with the Anti-Discrimination Board of NSW.

The complaint concerns comments made by former Victorian Premier, The Hon Jeff Kennett, to a News Limited journalist in July 2008, which were published in *SX Weekly*, *The Herald Sun*, *The Daily Telegraph*, *The Australian* and on the website 'news.com.au'. In the articles, Mr Kennett supported the decision of Victoria's Bonnie Doon Football Club to sack its trainer, Mr Ken Campagnolo, when it was discovered he was bisexual. Mr Kennett said, among other things: "[The club] ran an unnecessary risk... It's the same if you have a paedophile there as a masseur, right?"

The Board initially raised the question of whether it had jurisdiction to deal with the complaint as Mr Kennett resides in Victoria. However, PIAC argued that these comments were published in a national publication and therefore the NSW Board had jurisdiction to entertain the complaint. The complaint has now been accepted and PIAC is awaiting a response from Mr Kennett.

### Coronial Inquiry into the death of Jason Szczepek

PIAC represented Ms Lewis at the Coronial Inquiry into the death of her son, Jason Szczepek, who committed suicide on 29 May 2006. The Coronial Inquiry was held in late 2008. Prior to his death, Mr Szczepek was discharged against his wishes from Sutherland Hospital's psychiatric unit. He attempted to commit suicide at least once and requested re-admission. Despite his deteriorating mental condition, he was not re-admitted but instead remained on Community Treatment Order.

The Inquest heard evidence from mental health workers and Mr Szczepek's treating psychiatrist. The Coroner adjourned the Inquest for the parties to present written submissions.

PIAC's submitted to the Coroner that the evidence before the Inquiry pointed to a systemic failure by the health system to meet the needs of a chronically ill patient, by failing to admit him or to provide alternative care.

PIAC drew on the recommendations of the NSW Mental Health Sentinel Events Review Committee Report, *Tracking Tragedy*, and called on the Coroner to make recommendations to Government to ensure that, in the future, people who are chronically mentally ill and are a suicide risk, are provided with appropriate care and treatment, in a protective and secure environment. The Coroner is yet to hand down the Inquest Report.

### Other casework

The Indigenous Justice Project continues to act for clients making stolen wages claims. It is also investigating a number of claims by Indigenous minors who appear to have been unlawfully detained by police and providing preliminary advice to a number of members of the stolen generations who allege sexual and physical abuse whilst under the care of the (then) Department of Community Services.

PIAC's defamation case against Nationwide News Pty Ltd on behalf of Romzi Ali has been finalised, with the High Court recently rejecting an application from Nationwide News for leave to appeal the decision of the NSW Court of Appeal to award damages to Romzi Ali for defaming him in articles published in *The Australian* in 2003. Nationwide News had alleged that Mr Ali was linked to terrorists.

PIAC gratefully acknowledges the *pro bono* assistance provided by lawyers and barristers to PIAC's clients and Allens Arthur Robinson for funding for the Indigenous Justice Project.

## HPLS Solicitor Advocate: ensuring effective representation

**Jeremy Rea**, Solicitor Advocate, Homeless Persons' Legal Service\*

The position of Solicitor Advocate within the Homeless Persons' Legal Service (HPLS) commenced on 14 January 2008. The purpose of the Solicitor Advocate position is to establish a dedicated point of contact for people who are homeless or at risk of homelessness to access legal representation in minor criminal matters.

The role was established to overcome some of the barriers homeless people face accessing legal services, including: a lack of knowledge of how to navigate the legal system; the need for longer appointment times to obtain instructions; and the capacity to address multiple and complex inter-related legal and non-legal issues, such as mental health or addiction issues.

The title was adopted from those used by organisations such as Legal Aid NSW and the Office of the Director of Public Prosecutions, where a hybrid position was created for a senior solicitor who would fulfil the role of both solicitor and barrister in short trials and committal proceedings.

### The role of Solicitor Advocate

The Solicitor Advocate role as implemented by the HPLS, however, is a unique role that is different to those at Legal Aid NSW. This is due to the fact that the HPLS model, while combining the traditional roles of solicitor and advocate, is a more proactive model.

This can be seen in the breadth of the tasks undertaken by the HPLS Solicitor Advocate. The duties of the Solicitor Advocate at HPLS include not only taking instructions from the client, advising the client and representing the client in Court; they also include ensuring the client attends court and liaising with the various HPLS host welfare agencies

and their caseworkers, where the client is either residing or seeking assistance, such as Wayside Chapel, Edward Eagar Lodge and Matthew Talbot Hostel.

This liaison is critical in both obtaining an understanding of the particular client, which can be greatly assisted by the input of the caseworker, and in ensuring when and where the client needs to go for support.

In many cases the first contact and knowledge of a particular client's need for legal assistance is through the client's caseworker. There have been many occasions when the Solicitor Advocate has been contacted by a caseworker about a client who needs on-the-spot representation in court and the only person that can give coherent instructions is the caseworker.

One major feature of the HPLS Solicitor Advocate model is that it is proactive. The models adopted by Legal Aid NSW and Aboriginal Legal Services are in the traditional mould of the client coming to the organisation to seek assistance and providing the information as the case progresses to the particular lawyer who has carriage of the matter. The HPLS model, on the other hand, involves the Solicitor Advocate going to the client at either the HPLS host welfare agency or outreach centre following referral either from one of the HPLS clinics, the host agency or other homelessness services.

It also involves the Solicitor Advocate being able to represent a particular client on an urgent basis, either through contact from the client or, more often than not, through referral from the HPLS host welfare agency as the client is often in custody and cannot get ready access to legal assistance. It is readily acknowledged that this type of

service is equally provided by Legal Aid and Aboriginal Legal Services, however the HPLS model provides it on a more personalised basis and utilises extensively the assistance and knowledge of caseworkers and outreach workers.

In terms of representation in court the Solicitor Advocate role follows the normal pattern of representing the client in Court either by way of making submissions on sentence, bail or appeal and representing a client in a defended hearing by way of presenting evidence, cross-examining and making submissions. The difference is that the client has the same solicitor from start to finish, which appears to result in greater client satisfaction and a more satisfactory outcome, as opposed to a situation where the client is represented by a different solicitor at each court appearance.

Because of the chaotic nature of life for many homeless people and the constant daily battle to find safe accommodation, a meal or attend a clinic to get their medication, remembering to attend court is often not the main priority for the Solicitor Advocate's clients. An important aspect of working effectively with homeless clients is the constant personal contact to ensure they attend court.

The target client base for the Solicitor Advocate has a deliberate focus on homeless people who cannot effectively access Legal Aid or the duty solicitor at court. The clients of the Solicitor Advocate have complex needs. As well as being homeless, many clients must overcome the impact that mental illness or drug and alcohol addiction has on their ability to give clear instructions in a very short interview in an unfamiliar and unfriendly environment immediately before their matter is called.

## The HPLS Legal Clinics

The HPLS legal clinics are the main way in which the client gains access to the Solicitor Advocate and representation in Court.

Solicitors from Public Interest Law Clearing House (PILCH) members staff the clinics. (This is done by members on a *pro bono* basis.) If a client comes to a clinic needing legal assistance with a minor criminal matter they are referred to the Solicitor Advocate.

## A day in the life of the Solicitor Advocate

A typical day for me, as the Solicitor Advocate, starts by coming into the office in Elizabeth Street, Sydney, before setting off for court. I check e-mails and telephone messages and do what is necessary on those that require urgent attention. I generally leave other e-mails and messages to be dealt with when the day's court work is over.

As preparation and consulting with the client has invariably occurred before the Court appearance, little in terms of last minute preparation needs to be done unless the matter is an urgent on-the-spot representation or representation of a client in custody who I need to meet, get instructions from and advise before their court appearance.

Before leaving the office for court, I let other staff know when I'm likely to be back in the office. If the court is in the suburbs then this is done the evening before.

Attendance at court normally means attending the Downing Centre Local Court or Central Local Court, both of which are close to PIAC's office. I usually arrange to meet the client at Court, either outside or, if the matter is

at the Downing Centre, on the 4<sup>th</sup> Floor. Often the client, despite prior notification and reminders, will not turn up on time and in rarer cases not attend at all. If the client does not attend, then it's time to get on the phone to see if they can be located, calling the various welfare agencies that they may be visiting: be it the HPLS host agency, a drop-in centre, a rehabilitation centre, methadone clinic or a detoxification centre.

Sometimes the client does not turn up because they have been taken into custody. This is normally easily established by ringing Central Local Court, which deals with the majority of Sydney metropolitan custodies. Other times, clients have been scheduled to a psychiatric institution either by the Police or the Local Mental Health Care team.

Assuming that all goes to plan and the client gets to court, the case will be in one of three lists: if the client has only recently been charged, the case will be in the Registrar's list to be adjourned for either hearing or sentence; if the matter is ready for sentencing, it will be in the list before the Duty Magistrate; if the matter is for hearing, unless it is estimated to take more than a day, it will be in the hearing list and is allocated to a Court when one becomes available.

Often, I will have more than one matter on each day and sometimes in different courts. There have been occasions when I've been required to be in Balmain, the Downing Centre and Ryde Local Courts on the same day. This involves a degree of time juggling done in the knowledge that court process and lists are invariably slow, so that a matter designated to commence at 9:30 am may not be called on by the Court until 1:00 pm or after. Listing of numerous matters only works with sentence and other

short matters. Any double listing of hearings would be fatal, as once a hearing of a matter starts it can be expected to go all day.

Except where the matter proceeds to a defended hearing or is a complex sentencing matter, most Court matters can be finalised by lunchtime.

After Court I return to the office to prepare follow-up correspondence, arrange for medical appointments for clients in cases where medical evidence is required, have conferences with clients and witnesses, liaise with the host welfare agencies or other organisations and undertake research that is essential in preparing for each matter. In order to get a matter ready for Court the Solicitor Advocate must set aside uninterrupted time to review the Police brief, prepare cross-examination and draft submissions. This challenges even the best time management practices with all of the other demands on my time in a normal day as the Solicitor Advocate.

To date the model has proven to be very effective. It is a model that can and should be adopted by others as it enables the client to be better integrated into the legal process rather than being just an isolated object of the exercise. The model very much responds to the particular impacts of homelessness on clients with minor criminal matters, being flexible in relation to client contact and undertaking extensive outreach and case management to ensure the best outcomes for the client.

\* The Homeless Persons' Legal Service is a joint initiative of the Public Interest Advocacy Centre and the Public Interest Law Clearing House. PIAC receives funding from the NSW Attorney General, The Hon John Hatzistergos MLC, through the NSW Public Purpose Fund to operate the Service.

### Street Care: giving homeless people a voice

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

PIAC has been successful in obtaining funding under the City of Sydney's 2008/2009 Community Services Grants Program to establish an advocacy and advisory group to work with the Homeless Persons' Legal Service (HPLS). The group is made up of people who are homeless, formerly homeless or at risk of homelessness.

In February, the group, who have decided to call themselves 'Street Care', met for the first time. Street Care has eight foundation members and is representative of people who are homeless, formerly homeless, exiting prison, women escaping domestic violence, youth and Indigenous people.

As part of PIAC's and HPLS's commitment to the development of Street Care members, a half-day training session on what it means to be an advocate was conducted before Street Care's first official meeting.

One of the aims of Street Care is to be a central point of contact to facilitate appropriate and meaningful consultation with homeless people on issues affecting them, and ensuring homeless people have a strong voice in the community.

In March, the office of the NSW Premier, The Hon Nathan Rees MP, invited Street Care to attend NSW Parliament House for a tour and to watch Question Time in the Legislative Assembly. The Minister for Housing, David Borger MP, invited Street Care to his Parliamentary office where he listened to concerns identified by members based on their personal experiences of homelessness.

An exciting event that demonstrates the importance of a group like Street Care was the invitation for one of the members to speak at a conference organised jointly by the City of Sydney and Mercy Foundation. Street Care member Sarah Bartley spoke to, and took questions from, a gathering of 150 people who work in the homeless sector, both government and non-government, on her experience of what is necessary to make exiting homelessness permanent.

Street Care will publish its first monthly newsletter, *Street Cred*, in April.

Enquiries about working with Street Care should be directed by e-mail to: [streetcare@piac.asn.au](mailto:streetcare@piac.asn.au).

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### Fines reforms update

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

In December 2008, two years after the release of the Homeless Persons' Legal Service (HPLS) report, *Not such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW*, the NSW Government made a number of amendments to the *Fines Act 1996* (NSW) that reflect many of the recommendations made in the report and those raised by HPLS in subsequent meetings with the NSW Attorney General's Department.

HPLS believes these reforms to the on-the-spot fines system in NSW will make a significant difference for people who are homeless and others who face disadvantage. The most radical reform will enable an individual who has a mental illness, intellectual disability or cognitive impairment; is suffering from acute economic hardship; or who is homeless, to apply to the State Debt Recovery Office to participate in a two-year trial program of Work and Development Orders (WDO) that allows them to 'pay off' their fines in ways other than money, for example, through volunteer work with an approved organisation, participation in approved medical or mental health treatment programs or participation in education and/or vocational courses.

A very important difference between a WDO and a court-ordered Community Service Order is that there is no negative consequence that attaches to non-completion or partial completion of the WDO. Because there is no concept of failure to complete a WDO, the worse outcome for an individual is that their outstanding fines debt remains unpaid. An individual will receive full credit for every hour spent in undertaking a WDO; so, if a person completes one quarter of their WDO obligation their fines debt will be reduced by 25% and only the remaining 75% remains outstanding. Further, all enforcement sanctions, like cancellation of a driver's licence, are lifted once a WDO application has been approved.

HPLS is currently working with the NSW Attorney General's Department and a number of other government agencies and non-government organisations to write the guidelines that underpin the operation of the two-year trial of Work and Development Orders. HPLS expects the trial to commence on 1 July 2009.

## PIAC promoting human rights conversations

**Brenda Bailey**, Senior Policy Officer & **Lizzie Simpson**, Solicitor

**A homeless persons' theatre group has been one way PIAC has been gathering stories and viewpoints on whether Australia needs better human rights protections.**

### The Federal Government's human rights consultation

In December 2008, the Federal Government announced that it was holding a national consultation to give Australians a chance to have their say about human rights protection in Australia.

The key questions that the consultation has asked people to talk and provide their views about are:

1. Which human rights (including corresponding responsibilities) should be protected and promoted?
2. Are these human rights currently sufficiently protected and promoted?
3. How could Australia better protect and promote human rights?

Submissions to the consultation close on 15 June 2009.

The consultation has been an opportunity for PIAC to reach

a diverse range of people and communities across NSW. PIAC provided groups with training, consultation forums, and workshops on preparing submissions.

The importance of such engagement for PIAC was to encourage people to make submissions to the national consultation and to support access to the process to those members of the community who otherwise would have difficulty making a contribution.

In the five months leading up to the submission closing date, PIAC supported and participated in consultations with a range of groups including people experiencing homelessness, women (in partnership with the University of Technology, Sydney) and older people with the assistance of the Council on the Ageing (NSW).

There was also a special program supporting youth workers and their organisations to get ideas from young people that could be incorporated

into submissions. This work focused on young people in the outer western suburbs of Sydney and the inner west. It has been a challenge to help workers on the front line understand the link between human rights and their everyday activities of helping young people with housing, social security and juvenile justice issues. Working through examples and helping draw their links has been an effective way of making this connection. It is this basic community education that is needed in order for people to engage in this debate and has been the approach PIAC has taken throughout its work supporting people to participate.

### Homelessness and Human Rights – consultations and public forum

Theatre can act as a rehearsal ground for the outside world, giving oppressed people skills to deconstruct, re-think and articulate their point of view and generally communicate for themselves.

Augusto Boal

In early May 2009, PIAC conducted a series of consultation events in homeless shelters around inner-city Sydney focusing on homeless peoples' stories and ideas about human rights. In order to ensure that these consultations were conducted in an entertaining and accessible way, they were conducted jointly with Milk Crate Theatre.

Milk Crate Theatre is a joint project between the Darlinghurst Theatre Company and Wesley Mission's Edward Eagar Lodge that aims to create challenging and inspiring theatre with, by and for the homeless and disadvantaged community.



2008 Human Rights Awards: (L to R) The Hon Catherine Branson QC, President, Australian Human Rights Commission; The Hon Robert McClelland, Federal Attorney-General and Robin Banks, CEO, PIAC.

*Continued p17*

# Government and Democracy

## Secrets, Spooks and FOI – national security and public interest

Mark Polden, Solicitor

### The Rudd Government's promise to reform freedom of information laws is welcome but government information can still be kept secret if it's deemed a matter of national security.

In 1983, the Australian Secret Intelligence Service (ASIS) was involved in an incident at the Melbourne Sheraton Hotel, in which a door was smashed with a sledgehammer and sub-machine guns brandished by black-clad agents wearing party masks, much to the alarm of paying guests.

This was a training exercise that went horribly wrong: an example of ASIS exceeding its powers, and acting unlawfully.

More recently, the (then) Minister for Immigration Kevin Andrews consistently claimed that he had acted in the national interest in cancelling the visa of Mohammed Haneef, the Indian doctor who was accused of aiding terrorists.

At the time, the Minister was in possession of threat assessments from the Australian Security and Intelligence Organisation (ASIO), which established that there was no evidence at all to suggest that Haneef was a national security threat. The Minister acted instead on the basis of 'suspicions' expressed by the Australian Federal Police (AFP), which the subsequent Clarke Inquiry found were based on little more than extracts from internet chat rooms and telephone conversations, and Dr Haneef's attempt to depart the country on an overseas flight.

In each of these examples, paper trails left by two of Australia's seven security agencies—ASIO and ASIS—showed who in Government knew what, and when.

Under the current *Freedom of Information Act 1982* (Cth), ASIO and ASIS documents in the hands of a

Minister, relating to cases like these, are potentially available for release. If the Government asserts that disclosure would damage defence or national security, it can make an exemption claim, which can be examined by an independent tribunal: the Administrative Appeals Tribunal (AAT).

Alternatively, the Minister can issue a conclusive certificate, which effectively means 'all bets are off'. In other words, access to the information is banned, and the individual's rights to review are strictly limited.

In its 2007 policy statement, *Government Information: Restoring Trust and Integrity*, the ALP in opposition made an election commitment to repeal the power to issue conclusive certificates. For that it should be congratulated.

But there is a fly in the freedom of information (FOI) ointment. The Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008 (Cth) abolishes conclusive certificates. However, the Bill also amends the legislation by excluding from FOI all documents, no matter what their content, that have originated or have been received from Australia's seven security agencies, including ASIO and ASIS.

A second group of proposed FOI changes was announced in the form of an 'exposure draft' by the Special Minister of State, The Hon Senator John Faulkner, in late March and revealed that the Government intends to exclude from FOI all defence documents relating to operational intelligence.

Such documents are presently within the scope of the Act, at least when

in the hands of Ministers. Their wholesale excision from the scope of FOI will take effect whether or not access would cause, or could reasonably be expected to cause, any damage at all to Australia's security or defence interests.

Perhaps significantly, the one case in which a conclusive certificate has been issued to date on defence or national security grounds involved Department of Foreign Affairs and Trade documents, relating to whether convicted terrorism supporter David Hicks was legally held at Guantanamo Bay detention camp by the Government of the United States of America.

These issues relate to a project that PIAC is presently undertaking relating to prisoner capture, transfer and treatment of prisoners, including those captured by Australian forces in Afghanistan and Iraq. The project is being run in co-operation with the American Civil Liberties Union, New York University and UK all party Parliamentary Committee on Extraordinary Rendition.

Recent revelations in the USA in relation to the so-called 'war on terror' suggest that any step that would have the tendency to exclude from public view documents evidencing misconduct by state agencies, particularly those charged with the onerous responsibility of investigating terrorism, ought to be viewed with a degree of caution.

In recent years, a number of incidents have arisen in which government Ministers have asserted that they were not aware of crucial intelligence—or defence-related information. One such instance involved the (then) Defence

*Continued p17*

*Continued from p16*

Minister, The Hon Senator Robert Hill's complete lack of awareness concerning a report on conditions at Abu Ghraib Prison, prepared by the International Committee of the Red Cross, the fact that an Australian army major had drafted the US response, and the content of that response.

*Continued from p15*

The inspiration for the human rights performance piece came from the real-life stories of people who had experienced homelessness and brought home the fact that human rights are inadequately protected for homeless people in Australia. Following the performance piece, PIAC staff and other volunteers assisted the participants in recording their stories and ideas about human rights and how they could be better protected.

These stories were collected together in a book titled, *Universal Declaration of Homeless Rights*, which was presented to the Federal Attorney-General, The Hon Robert McClelland, and other guests at a Public Forum on 20 May. The Public Forum featured a keynote address by the Attorney-General, a panel discussion of homelessness and human rights and a performance by the Sydney Street Choir. A copy of the book was also submitted to the National Consultation and informed PIAC's own submission.

## Women and Human Rights Forum

In early April, more than sixty women participated in this forum to develop a submission for the National Human Rights Consultation.

Liz Broderick, Sex Discrimination Commissioner with the Australian Human Rights Commission was the keynote speaker.

The program for the forum included an exercise that helped the women to find their 'story'. The aim was to

The proposed blanket exclusion of all security agency and operational documents from the scope of FOI would take effect irrespective of their content, or their potential to damage national interests, as opposed to the interests of Ministers, departments or agencies. Under these changes details

of the Sheraton and Haneef cases would likely remain a state secret. Such an approach is inconsistent with the rhetoric of restoring trust and integrity to FOI.



PIAC Solicitor, Lizzie Simpson (L) and Disability Advocate, Greg Killeen (R) taking part in the National Consultation held in Sydney.

help women understand that human rights belong to everyone. Small groups of women shared stories from their life experience. As one woman, who worked on international issues, said at the end of the day, 'I didn't know I had a story'.

The stories documented at the forum will be included in a submission to the national consultation from the women who attended the forum.

## Human rights – join the conversation

PIAC, in collaboration with Telstra, Social Leadership Australia and the Australian Human Rights Commission, put on an event focused on encouraging participation from alumni of the Sydney Leadership Program and the business community, but open to the public more broadly. The event, held in early May, heard from the President of the Australian Human Rights Commission, The Hon Catherine Branson QC, and

then provided an opportunity for participants to join in the national conversation through a facilitated small group conversation format. Participants were encouraged to think about how human rights are relevant in their work and daily lives and to contribute to the national consultation.

If you haven't thought about what you might add to the national consultation, we urge you to do so. This is a rare opportunity to contribute to the formulation of a significant new direction for not only government, but our nation as a whole. It is vital that the consultation engage the whole of the Australian community, not just 'the usual suspects'. It is important that the consultation hear of everyone's experience and views of what should be fundamental rights, of how the core principles of respect and dignity should be reflected in both our national culture and law, of what matters to each and every one of us.

# Submissions & Publications

October 2008 - May 2009

## **Australia's Future Tax System Review**

(October 2008)

Submission to the Australia's Future Tax System Review

## **Street Rights NSW Ed 12**

(November 2008)  
Newsletter of the Homeless Persons' Legal Service

## **Hunter water prices**

(November 2008)  
Submission to the IPART review of prices for water, stormwater and recycled water services for Hunter Water Corporation

## **Freeing up information**

(November 2008)  
Response to the NSW Ombudsman's review of the *Freedom of Information Act 1989*

## **Maintaining consumer focus in health complaints: the key to national best practice (November 2008)**

Submission to National Registration and Accreditation Scheme for the Health Professions on proposed arrangements for handling complaints, and dealing with performance, health and conduct matters.

## **People with disability - from recipients to full and active participants**

(December 2008)  
Response to the Developing a National Disability Strategy for Australia Consultation

## **Review of alcohol-related violent offences**

(December 2008)

Submission to the NSW Sentencing Council's review of the sentencing procedure for alcohol-related violent crime.

## **Talkin' Justice - Issue 4**

(December 2008)  
Newsletter of the Indigenous Justice Project

## **Well Connected - No 33**

(December 2008)  
Newsletter of the Energy and Water Consumer Advocacy Program

## **Enhancing the rights-based approach to health care complaints in NSW**

(December 2008)  
Submission to NSW Parliamentary Joint Committee on the Health Care Complaints Commission

## **Improving clarity and enhancing protection of privacy rights**

(December 2008)  
Submission to the NSW Law Reform Commission in response to its Consultation Paper 3: Privacy Legislation in NSW

## **Submission on the Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008**

(January 2009)  
Submission to the Senate Standing Committee on Finance and Public Administration Inquiry into the Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008.

## **A Good FiT: Designing an effective and fair Feed-in Tariff Scheme for NSW**

(January 2009)  
Submission to the NSW Solar FiT Taskforce consultations

## **Implementing the Productivity Commission review of the Disability Discrimination Act**

(January 2009)

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Disability Discrimination and Other Human Right Legislation Amendment Bill

## **Unified Privacy Principles - the right way ahead**

(February 2009)  
Comments to the Federal Department of Prime Minister and Cabinet on the draft Unified Privacy Principles

## **Harmonising spent convictions laws in Australia**

(February 2009)  
Submission to the Standing Committee of Attorneys General on the Draft Model Spent Convictions Bill 2008 (SA)

## **PIAC Annual Report 2007-2008**

(February 2009)

## **Street Rights NSW Ed 13**

(February 2009)  
Newsletter of the Homeless Persons' Legal Service

## **Cut Off II: the experiences of utility disconnections. Final report**

(January 2009)  
This is the final report for the project Cut Off II: The Experience of Utility Disconnections, prepared by Urbis for the Energy and Water Consumers' Advocacy Program.

## **Considering the impact of CIN more broadly**

(January 2009)  
Response to the NSW Ombudsman's review of the impact of Criminal Infringement Notices on Aboriginal and Torres Strait Islander Communities

## **Implications of government funding of advocacy for third-sector independence and exploration of alternative advocacy funding models**

(Summer 2008)  
This paper examines the effect of funding contracts on the capacity of third-sector organizations to effectively advocate.

## **Deepening democracy**

(February 2009)  
Submission to the Department of Prime Minister and Cabinet in response to the Electoral Reform Green Paper

## **Taking action on homelessness**

(March 2009)  
Response to the NSW Government Homelessness Action Plan

## **A just and fair prison system: Principles or profit?**

(March 2009)  
Submission to NSW Legislative Council General Purpose Standing Committee No 3 - Inquiry into the Privatisation of Prisons and Prison-related Services

## **Lifting the veil of secrecy**

(March 2009)  
Response to the Australian Law Reform Commission Issues Paper 34: Review of Secrecy Laws

## **Response to the Australian Energy Regulator draft distribution determination 2009-10 to 2013-14**

(February 2009)  
The AER draft determination includes significant rises in the cost of electricity. In this submission PIAC argues that a number of the regulator's decisions should be reviewed for their impact on residential consumers.

## **Opening the door for disability access**

(March 2009)  
Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the draft Disability (access to Premises - Buildings) Standards

## **Submission to Report on Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW**

(March 2009)  
In this submission PIAC acknowledges the need for reform of local water utilities but submits that changes must be in the best interests of non-metropolitan customers and communities.

## **Central Coast water prices**

(March 2009)  
Submission to IPART Draft Determinations and Draft Report on prices for water, wastewater and stormwater services for Gosford City Council and Wyong Shire Council

## **Clean and fair**

(April 2009)  
Submission to the Senate Select Committee on Climate Policy

## **Protecting consumer protections**

(April 2009)  
Submission to the Council of Australian Governments (COAG) released a consultation paper titled 'An Australian Consumer Law: Fair Market - Confident Consumers'

## **A privileged profession? Shield laws and the Evidence Act**

(April 2009)  
Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Evidence Amendment (Journalists' Privilege) Bill 2009 (Cth)

## **Electricity price increases as of 1 July, 2009**

(April 2009)  
PIAC response to the Chair of IPART, in relation to concerns about the impact of price rises on low-income households.

## **Silent Corruption**

(April 2009)  
Submission to the Committee on the Independent Commission on Corruption into Section 37 of the *Independent Commission Against Corruption Act 1988* (NSW) (April 2009)

## **Finding the right balance: Medicare Compliance Audits**

(April 2009)  
Submission to the Senate Community Affairs Committee Inquiry into Compliance Audits on Medicare Benefits

## **Taxing Charity**

(May 2009)  
Submission to Australia's Future Tax System Review

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	Matt Laffan (to March 2009)	Associate Professor Merrilyn Walton

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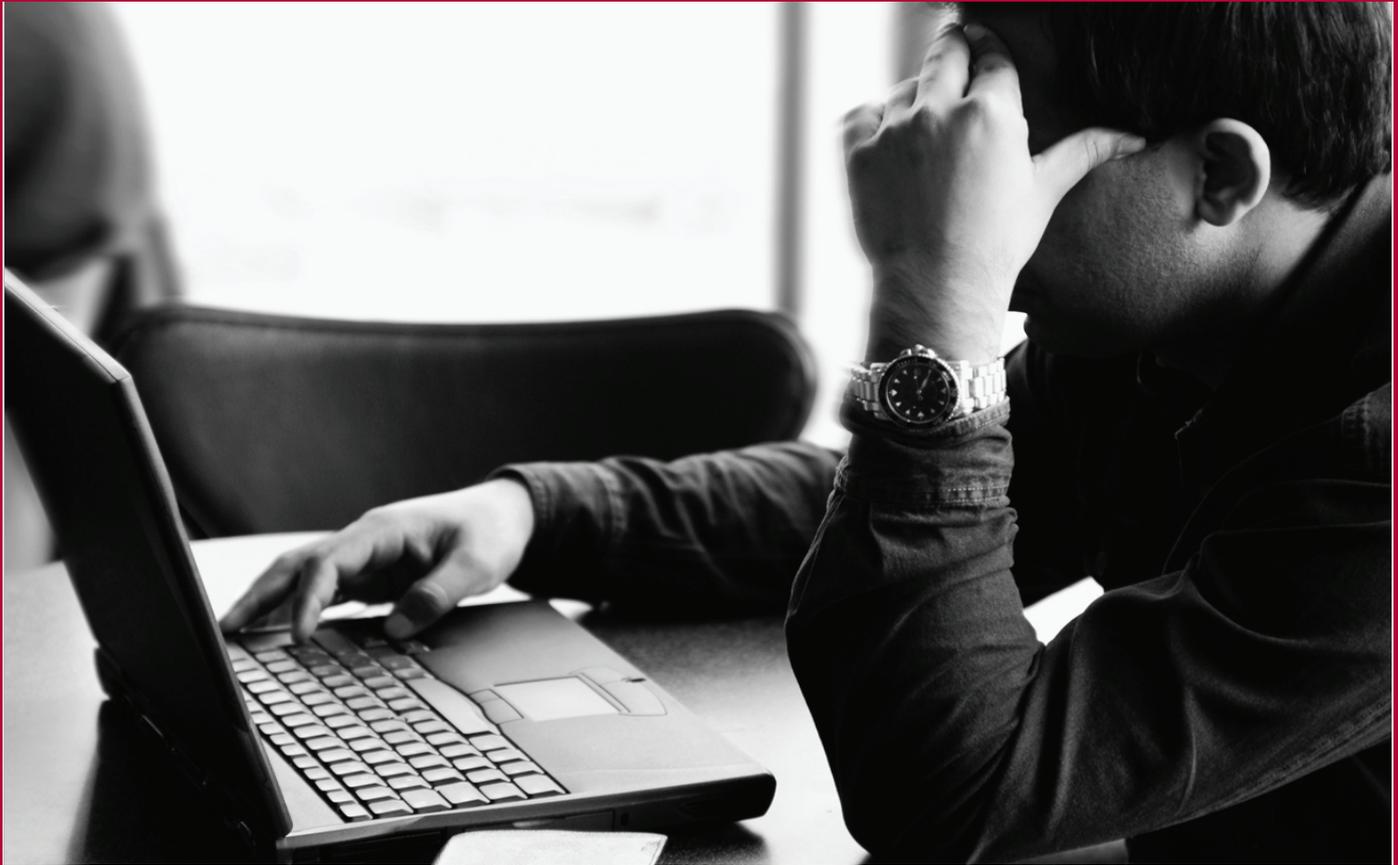
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