

Journal of the Public
Interest Advocacy Centre

Number 34, Autumn 2012

PIAC BULLETIN

PIAC

JOINT VENTURE

PIAC embarks on a
joint venture with
the University of Sydney.

DISCRIMINATION

Disability,
marriage equality,
& consolidation.

PIECING THE PUZZLE TOGETHER

Freedom of Information is
an indispensable tool.





THE SECRET TO POSITIVE REFORM

**WORKING FOR A FAIR,
JUST & DEMOCRATIC
SOCIETY**

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Public Interest Advocacy Centre Ltd
 Level 7, 173-175 Phillip Street
 Sydney NSW 2000
 DX 643 Sydney
 Phone: +61 2 **8898 6500**
 Fax: +61 2 8898 6555

Web: www.piac.asn.au

 www.facebook.com/pages/Public-Interest-Advocacy-Centre

 @PIACnews

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Cover: Julie Haraksin and friends.
Photo by Scott Parker.

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CEO REPORT

Welcome to the first *PIAC Bulletin* from our new home on Level 7, 173-175 Phillip Street, Sydney – opposite the Law Courts Building at Queen’s Square. This is an exciting move: it puts PIAC in the heart of the legal precinct in Sydney and gives us greater scope to work with our partner organisations to foster reform that promotes social justice.

Our experience suggests that the secret to achieving positive reform is to create a broad coalition dedicated to achieving a shared goal.

A good example is in the area of discrimination. Responding to compelling advocacy from community organisations and the wider public, the Federal Government recently announced a change in policy to remove one of the key barriers facing same-sex couples wanting to marry overseas.

The Government’s move to consolidate federal anti-discrimination laws into a single statute is another case in point. PIAC has been working with non-government organisations, the Australian Human Rights Commission, business and the public sector to ensure that the Government’s proposed new law is more accessible, provides broad protection against discrimination and strikes an appropriate balance with other rights such as freedom of religion.

The Government is committed to releasing an exposure draft of its new ‘Equality Bill’ in the middle of this year, and we hope that the Bill will reflect the experience and expertise of this wide range of stakeholders. It was, after all, a similar coalition of organisations that came together to call for stronger human rights protection during the National Human Rights Consultation (Brennan Committee).

While progress in implementing the Brennan Committee report has been



Photo: Brendan Esposito

Edward Santow, PIAC chief executive ... ‘the secret to achieving reform is to create a coalition dedicated to a shared goal.’

frustratingly slow, a milestone was reached in March with the formation of the Parliamentary Joint Committee on Human Rights. This new committee will scrutinise the human rights impact of Bills, and has the potential to improve the focus on human rights in the legislative process.

Collaboration is a hallmark of PIAC’s work. Perhaps the best example is the Homeless Persons’ Legal Service (HPLS). Under PIAC’s management and supervision, HPLS brings together 10 law firms, 10 homelessness service providers, Legal Aid NSW and PILCH NSW, to provide free legal advice and assistance for people experiencing homelessness.

Last year, HPLS helped over 850 clients. This was achieved by 350 lawyers who gave over \$1.5 million in pro bono legal advice.

PIAC’s program work is also greatly assisted by its partnership with community organisations, government, philanthropic foundations and academics. We are particularly grateful for the assistance we receive from our law firm partners – especially, Allens Arthur Robinson, which funds our Indigenous Justice Program solicitor; PIAC’s co-counsel in the CIDnAP class action, Maurice Blackburn; and law firm King & Wood Mallesons, which provides secondees to PIAC.

Edward Santow,
PIAC Chief Executive Officer.

PIAC ENTERS JOINT VENTURE WITH SYDNEY LAW SCHOOL



Moving in ... PIAC's new premises at 173-175 Phillip Street, Sydney.

The Public Interest Advocacy Centre (PIAC) and Sydney Law School have established a joint venture to pursue opportunities in education, law reform and public interest litigation.

The joint venture also enables PIAC and the Law School to work together on research initiatives and policy development.

As part of the agreement, PIAC has moved into the old Law School building in Phillip Street, Sydney.

'This is a wonderful opportunity for both organisations,' said PIAC chief executive officer, Edward Santow.

'Through its internship and placement programs, PIAC lawyers and policy officers have long played a mentoring role for students and recent graduates.

'This joint venture allows PIAC to expand this role – opening up the opportunity to a new group of students to learn directly from some of Australia's most effective social justice advocates.

'At the same time, the University of Sydney students will be able to contribute meaningfully to the campaigns that PIAC runs.'

In February this year, PIAC delivered the first annual Social Justice Clinical Summer School; a new program developed by PIAC as part of the joint venture and intended to further develop the Law School's social justice program.

The summer school program includes a teaching component focused on public interest advocacy and a clinical placement of up to 15 days.

The joint venture is expected to enhance collaboration between the Law School and PIAC in policy development and research.

'We share several areas of interest, including human rights and homelessness,' Mr Santow said.

'PIAC's advocacy on these issues, and on other issues such as discrimination and access to energy and water for disadvantaged consumers, draws very strongly on our experience representing and assisting affected people.

'The joint venture will allow us to work more closely with academic researchers. It enables us to strengthen our evidence-based approach in relation to this advocacy,

and collaborate with Sydney Law School academics to produce more influential reports.'

Mr Santow said the joint venture would also provide opportunities for academics to be involved in PIAC's litigation work.

'Some of Australia's foremost experts in areas such as constitutional law, human rights and Indigenous justice are academics, and indeed many are based at the University of Sydney.

'This new partnership will provide opportunities to unlock that expertise, making it available in public interest test cases that, by definition, push the boundaries of existing precedent.'

The Dean of Sydney Law School, Professor Gillian Triggs, has also welcomed the joint venture, saying it will strengthen the Law School's focus on social justice and clinical legal education.

'Our Social Justice Program continues to expand and this latest collaboration will offer diverse opportunities for our students and invaluable research initiatives for our Faculty,' Professor Triggs said.

'We already have a well-established clinical education link with PIAC through dedicated internships and placement opportunities for our students.

'While these links are set to grow, we will now see a further benefit to both staff and students through research initiatives planned in the areas of legal education, law reform and public interest litigation,' Professor Triggs said.

The joint venture recognises and preserves PIAC's status as an independent organisation. PIAC will maintain its operational, financial and management autonomy as part of the arrangement.

Story: Dominic O'Grady, PIAC Senior Media & Communications Adviser.

Photo: Enoch Lau.

PIAC NEWS IN BRIEF

SUNDAY, MARCH 25, 2012 THE SUN HERALD NEWS 33

Children sue over wrongful arrests

By Nick Robinson (PIAC)

TWENTY-ONE children wrongfully arrested because of a computer error have joined a class action against the NSW government.

The move comes after the government failed to deliver on a promise made last June to fix the problem with the Department of Justice computer systems, which police use when making arrests. Solicitors involved in the class action said that since then at least 11 children had been wrongfully arrested because of out-of-date information on the system.

Musa Konneh, a senior member with the Public Interest Advocacy Centre who is spearheading the action, said young people continue to be wrongfully detained, despite the class action. The Department of Justice's computer systems, known as Just in Lock, did not fully sync with the police computer database. This meant police did not immediately have access to changes in a person's court records after they had approved before a magistrate and had their bail conditions varied or dropped.

A police source said it was frustrating for officers, who were acting in good faith on the information that was available to them.

Last June, Musa Konneh became the first young person to join the class action seeking compensation over his wrongful detention. Mr Konneh was arrested, strip-searched and spent a night in jail because the police computer database failed to recognise that all charges against him had been dismissed in the Children's Court four days earlier.

The Sun Herald's report revealed 20 young people have responded to the solicitors' invitation in the class action about being wrongfully arrested because of the system error, which dates back to 2004. Of the 20, 12 were contacted about them that they want to be part of the action.

The law firm Maurice Blackburn, which is involved in the class action, said it believed the

A young person involved in the class action was arrested at his Caringbah flat at 11.30pm on a Thursday in 2010 because he had not been home when police called at 8pm. But the then 17-year-old's bail conditions had been altered by a magistrate a month earlier, and his arrival had been extended to 8pm - a condition he had complied with. The teenager was taken to a

here taken and held in a cell at Parramatta Children's Court until the matter was thrown out by a magistrate.

Last June, the Minister for Police, Mike Gallagher, said the problem needed to be fixed urgently and that he did not believe it would be an issue in a year's time.

A spokeswoman for the minister yesterday

from the NSW Police Force and the Department of Justice, NSW Police said new safeguards had been put in place and it was working to fix the problem with the support of the government.

Last financial year, police were forced to pay more than 65 million to compensate people it had falsely imprisoned and searched. It was a

Lead applicant, Musa Konneh ... pictured in The Sun Herald.

Class action continues against State of NSW

PIAC and Maurice Blackburn continue to run their class action against the State of NSW on behalf of young people falsely imprisoned by NSW Police on the basis of out-of-date bail information.

The class action is still open to children and young people who were detained by a police officer for breaching a bail condition that no longer applied.

The alleged breach of bail should be for offences being heard in the Children's Court of NSW. More information is available on the class action hotline. Call (02) 8898 6517 or visit the PIAC website at www.piac.asn.au

Innes v Railcorp: next stop, court

For almost a year, Graeme Innes AM has been urging RailCorp NSW to get serious about its obligations towards rail passengers who have a disability.

Mr Innes, who is blind, has made repeated complaints regarding RailCorp's failure to provide audible announcements on trains. These announcements are crucial because they allow passengers with vision impairment to know that they are getting off at the right station.

PIAC is representing Mr Innes in disability discrimination proceedings against RailCorp. Mr Innes, who also happens to be the Disability Discrimination Commissioner, made 36 complaints to the Australian

Human Rights Commission between April and September last year, alleging that RailCorp trains failed to provide clear and audible announcements.

Mr Innes alleges that RailCorp is in breach of federal disability discrimination law. A mediation on 24 February was unsuccessful. The matter will proceed to hearing in the Federal Magistrates Court.

Test case for GIPA Act

For the past six years, Phillip Black has been trying to access his medical records, held by the Hunter New England Area Health Service.

Specifically, Mr Black wants a copy of a report written about him by a psychologist who has never met him, and an Area Health Service record of a telephone call made about

him. Mr Black applied for access to the documents under the new *Government Information (Public Access) Act 2009 (NSW)* (GIPA Act) in July 2010 but was refused access by the Area Health Service.

PIAC is representing Mr Black in his appeal to the Administrative Decisions Tribunal. It is an important case that will test whether the new GIPA Act can achieve its aim of providing a freer, more open approach to accessing government information in NSW.

The Area Health Service is arguing against release of the requested documents on several grounds, one being that health care professionals provide this information on a confidential basis. PIAC contends that health care professionals are aware that people can access their medical records. Hearing dates have been set for late April and late May.

Prison reforms after Holcroft inquest

Recommendations made by Deputy State Coroner Paul MacMahon following the death of Mark Stephen Holcroft have been put into place in NSW prisons.

Prisoners will be given food and bottled water if they are travelling in prison vans for more than two hours at a time, and intercoms will be installed in prison transport vehicles by the end of this year.

Corrective Services NSW's professional standards committee will also consider disciplinary action against two corrections officers involved in Mr Holcroft's transport.

Mr Holcroft, 59, was a low-security inmate serving a seven-month jail term for drink-driving. He died from a heart attack in a prison van while being transported to a low-security prison farm at Tumbarumba.

PIAC represented three of Mr Holcroft's siblings at the inquest into his death.

LAW STUDENTS JOIN SOCIAL JUSTICE SUMMER COURSE

Seven passionate law students were on placement with PIAC in February 2012 as part of the inaugural Social Justice Clinical Summer Course, run in partnership with the University of Sydney.

The course began with four days of seminars. PIAC staff with expertise in public interest litigation, advocacy, and campaigning ran some of the sessions, while others were led by guest presenters such as the Bertha Foundation's Jennifer Robinson, a leading member of the legal team representing WikiLeaks founder, Julian Assange.

After four days of classes, the students worked alongside PIAC staff on projects such as the Children in Detention Advocacy Project, the Optional Protocol to the Convention Against Torture, and the Disability Standards for Accessible Public Transport.

The students also participated in Homeless Persons' Legal Service clinics, attended court with a PIAC solicitor, and visited other agencies working in the field of social justice.

The new Course and the joint venture between PIAC and the University of Sydney presents new opportunities in clinical education for law students.

PIAC believes that fostering law students' passion for social justice will ensure that future generations of legal practitioners gain a lifelong commitment to public interest advocacy.

The potential for this Course to have a powerful impact on students is confirmed by the feedback received from the class of 2012, including;

'I feel really re-inspired to work in social justice after meeting such awesome people and hearing amazing stories.'

'Equally confronting, inspiring and potentially career and life changing – gave me the courage to continue letting my heart to bleed.'

Students said having the opportunity to learn from presenters who have incorporated the principles of social justice into their careers was a valuable source of inspiration. More information about PIAC training opportunities and upcoming courses is available on the PIAC website at: www.piac.asn.au/training

*Story: Kylie Coventry, PIAC Training Officer.
Photo: Dominic O'Grady.*



The class of 2012 ... Social Justice law students, photographed with the Bertha Foundation's Jennifer Robinson (third from left).

CONSOLIDATING FEDERAL ANTI-DISCRIMINATION LAW

AUSTRALIAN DISCRIMINATION LAW IS UNNECESSARILY COMPLICATED BUT THERE IS A WAY WE CAN IMPROVE ACCESS TO EQUALITY.

The Federal Government is reviewing federal anti-discrimination law to consolidate existing legislation into a single, comprehensive statute. The consolidation project represents a significant reform in the 40-year development of anti-discrimination law.

It also presents an opportunity to improve existing protections and address problems with compliance.

The Government announced the consolidation project in April 2010 as part of Australia's Human Rights Framework. In September 2011, the Attorney-General's Department issued a discussion paper seeking community views on federal anti-discrimination laws. The Department is reviewing submissions received and a draft exposure bill is expected in coming months.

The process aims to simplify existing laws and consolidate them into one statute. There are currently five key pieces of Federal anti-discrimination legislation. These are the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004* and the *Australian Human Rights Commission Act 1986*.

The reform is being guided by the following principles:

- a reduction in complexity and inconsistency in regulation to make it easier for individuals and businesses to understand their rights and obligations under the legislation;
- no reduction in existing protections in federal anti-discrimination legislation;
- ensuring simple, cost-effective mechanisms for resolving complaints of discrimination; and
- clarifying and enhancing protections where appropriate.

Australian discrimination law is unnecessarily complicated and inconsistent. There are discrimination laws at both federal and state levels. Federal discrimination laws are limited, prohibiting discrimination on the basis of sex, race, disability and age. State and territory discrimination laws have tended to offer greater protection. For example, in NSW, discrimination on the basis of homosexuality and transgender status is prohibited. At the Federal level, access to justice is difficult because if a matter does not resolve at conciliation then the complainant risks an adverse costs order in the federal courts.

PIAC's submission made a number of recommendations to address these problems.

The current definitions of discrimination in the federal laws are complex and make it difficult for an applicant to prove a discrimination complaint. PIAC recommended that the existing categories of direct and indirect discrimination be replaced with a single definition of discrimination. A single definition would remove complexity and be more consistent with definitions in international treaties. In the event that the existing definitions are retained, PIAC made a number of recommendations to improve their operation.

PIAC suggested that the federal laws be broadened to prohibit discrimination on the basis of other attributes. Currently, federal employment laws provide greater protection than federal anti-discrimination laws. For example, under the Fair Work Act 2009, discrimination on the grounds of political opinion and religion are prohibited. PIAC recommended that this inconsistency be addressed as part of the consolidation process. PIAC also recommended that

discrimination law be extended to cover new attributes. PIAC's experience coordinating the Homeless Persons' Legal Service has highlighted the need for protection from discrimination on the basis of housing status. In addition, PIAC supports extending discrimination protection to victims of domestic violence.

For many years, PIAC has advocated for changes to the complaints and compliance framework. PIAC's experience representing clients in discrimination complaints before the Australian Human Rights Commission and federal courts have highlighted the difficulties in accessing justice for people who have experienced discrimination.

PIAC made a number of recommendations to address the current problems with the process of pursuing a discrimination complaint. The recommendations included:

- amending standing rules to make it easier for organisations to bring complaints on behalf of individuals;
- making each party bear their own costs in federal court discrimination matters;
- allowing the courts to make corrective and preventative orders to assist in addressing and preventing systemic discriminatory practices;
- allowing individuals and companies to be fined for breaching discrimination laws; and
- creating a new equality body to monitor compliance, investigate breaches and commence court action for breaches of discrimination laws.

PIAC awaits the release of an exposure draft Bill over the coming months and hopes the consolidation process improves Australia's human rights protection.

Story: Gemma Namey, PIAC Solicitor.

HARAKSIN V MURRAYS AUST: DECISION IMMINENT



PIAC solicitor Gemma Namey (l) with Julia Haraksin and Chris Ronalds SC ... Ms Haraksin is suing Murrays Australia after she tried to book a seat on a Murrays Australia coach to attend a work conference in Canberra.

A Federal Court decision in Julia Haraksin's discrimination complaint against bus company Murrays Australia Ltd is expected by the middle of this year.

PIAC is representing Ms Haraksin, who is suing Murrays Australia after she tried to book a seat on one of the company's coaches to attend a work conference in Canberra.

Murrays Australia told Ms Haraksin none of the company's coaches could take her because she uses a wheelchair.

Ms Haraksin is not claiming financial compensation. Instead, she is seeking a Court order directing Murrays Australia to comply with national disability standards that require transport providers to ensure at least 25 per cent of their vehicles are wheelchair accessible. Murrays Australia has claimed that modifications would cause the company undue hardship.

The national disability standards were introduced in 2002. They impose

obligations on all public transport operators to make travel accessible for people with disability.

Unfortunately, Murrays Australia is not the only bus operator that PIAC considers has failed to meet the legal standards of disability access. A government review of the efficiency and effectiveness of the standards, released last year, confirmed that the extent of accessibility varies across different types of bus services.

The review highlighted that accessible infrastructure at bus stops continues to be a problem. The review also identified systemic problems with the disability transport standards. The review noted that there is a lack of baseline data from 2002, which hampers making an assessment of the success of the standards.

Another systemic problem identified by the review is that enforcement of the disability standards relies on individual complaints.

PIAC has advocated for many years for changes to the monitoring and

enforcement of these standards. The fact that enforcement relies on individuals such as Ms Haraksin making a complaint to the Australian Human Rights Commission and then proceeding to the federal courts places an undue burden on people with disability. The costs associated with this process also act as a deterrent. Some operators could weigh the costs of compliance against the likelihood of an individual following through with a complaint, and opt in favour of non-compliance.

PIAC contends that a Government authority should be responsible for monitoring compliance with the standards and prosecuting breaches of the law. This would improve data collection and remove the burden from individuals to bring court action.

PIAC hopes that the proposed consolidation of anti-discrimination laws (see story on opposite page) will consider this proposal.

Story: Gemma Namey, PIAC Solicitor.

MARRIAGE EQUALITY, ONE STEP FORWARD

DISCRIMINATORY PROVISIONS IN THE MARRIAGE ACT ARE THE TARGET OF THREE SEPARATE PRIVATE MEMBERS BILLS INTRODUCED TO PARLIAMENT

Australia has seen a number of promising developments in relation to marriage equality in the past six months.

A change of policy in February 2012 by the Federal Government allowed same-sex couples to apply for a certificate that enables them to marry overseas.

Before an Australian couple can marry overseas, they must usually apply for a Certificate of No Impediment (CNI). The CNI confirms that there are no obstacles to the marriage. Until recently, the Federal Government refused to issue CNIs to same-sex couples. However, this changed following the Australian Labor Party's Conference in December 2011.

Prior to the policy change, PIAC worked with Australian Marriage

THERE IS NO QUESTION THAT THIS POLICY DISCRIMINATED AGAINST SAME-SEX COUPLES, GIVEN THAT A HETEROSEXUAL COUPLE IS GENERALLY ABLE TO OBTAIN A CNI AS OF RIGHT.

Equality to address this clearly discriminatory, and possibly unlawful, refusal to issue CNIs. As a result of this work, PIAC became aware of the damaging flow-on effects of the policy. For example, some same-sex couples were unable to access health care and immigration entitlements offered by foreign governments because they were unable to marry.

'PIAC applauds Attorney-General Nicola Roxon for changing this policy. It is an important milestone towards achieving equality for same-sex couples,' said PIAC chief executive officer, Edward Santow.

'There is no question that this policy discriminated against same-sex couples, given that a heterosexual couple is generally able to obtain a CNI as of right.'

Also in February this year, three separate private members bills were introduced into Parliament.

These bills sought to amend the *Marriage Act 1961* (Cth) by removing discriminatory references from the definition of marriage and allowing all couples, regardless of gender, to marry in Australia.



Street action ... the debate about marriage equality is shifting.

The first was the Marriage Equality Amendment Bill 2010 presented by Senator Sarah Hanson-Young (Australian Greens) on 8 February. This bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report by 25 May 2012.

Just five days later, two private members bills were introduced to the House of Representatives. On 13 February 2012, Adam Bandt MP (Australian Greens) presented the Marriage Equality Amendment Bill 2012. On the same day, Stephen Jones (ALP) introduced the Marriage Amendment Bill 2012. These two bills are the subject of an inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs. Its report will be tabled on 18 June 2012.

There is little substantive difference between the three bills. The main objective of each is to amend the definition of marriage contained in s4 and remove s88EA of the *Marriage Act*, which prohibits the recognition of same-sex marriages conducted overseas.

Both the Bandt and Hanson-Young bills propose a new definition of marriage as 'the union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life'.

The Jones bill proposes marriage as 'the union of two people, regardless of their sex, to the exclusion of all others, voluntarily entered into for life'. Both the Bandt and Jones bills make it clear that none of the amendments would impose obligations on ministers

of religion to conduct marriages of same-sex couples.

These developments suggest that the debate about marriage equality in Australia is shifting. However, there is still a significant chance that all of the bills will fail to achieve their objective. Although the current Parliamentary inquiries are welcome, the fact that there are three bills with the same objective is confusing.

Perhaps of more concern is the fact the Opposition has so far not allowed its MPs a conscience vote. This means certain defeat for any of the bills if they are debated in Parliament. At the very least, the current inquiries are an opportunity for all Australians to consider the arguments and evidence about marriage equality in Australia.

Story: Lizzie Simpson, PIAC Senior Solicitor.



Photo: Flickr/ Devar

PIECING THE PUZZLE TOGETHER

FREEDOM OF INFORMATION LAWS HELP US GET TO INCONVENIENT TRUTHS.

Story: Gemma Namey, PIAC Solicitor.

Freedom of information (FOI) laws can be very useful in strategic litigation. FOI applications can operate as informal pre-litigation discovery, turning up documents that become important pieces in a puzzle. PIAC's military accountability project revealed disturbing details about Australia's approach to the detention and treatment of suspected enemy combatants in Iraq and Afghanistan. The project is also a fascinating case study in the deployment of FOI laws.

PIAC made its first FOI request to the Department of Defence in 2005. At the time, PIAC was closely monitoring the raft of anti-terrorism legislation passed in the wake of the September 11 attacks in the US. PIAC lodged an FOI request seeking documents relating to individuals suspected of being terrorists. Specifically, PIAC was interested in how these individuals were apprehended, detained and transferred to other military or civil authorities outside Australia.

The story regarding Australia's detention of individuals in Iraq and Afghanistan emerged slowly. An operation on 11 April 2003, involving Australian SAS troops in Western Iraq, received widespread media coverage at the time. Australian military officials publicly lauded Australia's key role in the successful operation, which resulted in the capture and detention of 66 men.

In 2004, more details emerged. The then Chief of the Defence Force, General Peter Cosgrove, told a Senate Estimates Hearing that a single US soldier accompanied Australian SAS troops on 11 April 2003. Consequently, General Cosgrove claimed the US was legally responsible for the capture of the 66 men in question. General Cosgrove said it was "unremarkable" that the 66 men were captured by a single US soldier; Australian troops merely assisted with the capture.

Previously-classified documents obtained by PIAC added significant detail to the events on 11 April 2003. The previously-classified documents revealed that one of the 66 men captured and detained by Australian troops, Tanik Mahmud, later died in UK custody. Australian officials knew of the man's death on a UK RAF helicopter but sought to cover up the death because it was potentially damaging to the UK and US governments. The Australian Government had sought access to a UK report into the death, but the UK denied access, claiming the death was the subject of criminal proceedings.

Freedom of information (FOI) laws can be very useful in strategic litigation.

Further pieces of the puzzle surrounding Tanik Mahmud's death emerged when *The Guardian* reported in 2010 that members of a UK RAF regiment had allegedly kicked Mr Mahmud to death. Guardian journalist Ian Cobain reported that no post mortem examination was conducted at the time and no attempt had been made to contact Mr Mahmud's family. It took a while for more pieces of the

puzzle to come to light. In February 2012, *The Guardian* claimed that the 66 men captured on 11 April 2003 had been sent to a secret prison known as "H1". *The Guardian* also cited a previously classified US memorandum about Mr Mahmud's death. The US memorandum, which *The Guardian* shared with PIAC, provided further detail of the events surrounding Mr Mahmud's death. Mr Mahmud waited a long time before he received any medical attention, and according to the US memo, there was "no indication that any person gave either unconscious EPW [enemy prisoner of war] any medical assessment (check for pulse, etc.) when they were found to be unresponsive." Mr Mahmud was dumped in the back of a vehicle on his stomach, and another unconscious captive was loaded on top of him.

Significantly, the US memo discloses the US view that "some doubts exist as to which party is the Detaining Power for the purposes of responsibilities under the Geneva Conventions". This assessment was at odds with General Cosgrove's evidence to Senate Estimates.

Government documents released to PIAC reveal that the Australian military was very concerned about public perceptions regarding the capture of those 66 men in Iraq. The



Photo: Flickr/Pedro Moura Pinheiro

Australian military was also concerned about who was the Detaining Power.

A document prepared for General Cosgrove notes: "Defence may find it difficult, although not impossible, to coherently explain that AS was not the Detaining Power". This document highlights that the large number of captives (66 men) "places pressure on the credibility (visually, if not legally) of asserting that the sole US member attached to the AS SF element, formally effected the detention."

By drawing on public statements, media reports, and documents released under FOI laws, PIAC has pieced together many of the details surrounding Mr Mahmud's death. It is a death the Australian Government tried to keep hidden.

PIAC's work in this case has also highlighted that the Australian Government's refusal to accept legal responsibility for the capture and detention of the 66 men in Iraq is on shaky legal ground. Clearly, FOI laws are an indispensable tool for holding governments to account.



Iraq action ... Australia refused to accept legal responsibility for 66 detainees. Inset: The Sydney Morning Herald reports on a previously classified US memo.

Government moves a step closer to anti-torture protocol

On 28 February, the Federal Government tabled in Parliament a National Interest Analysis that proposes Australia ratify the United Nations Optional Protocol to the Convention against Torture (OPCAT).

'Torture is wholly inconsistent with the Australian Government's fundamental responsibility to protect the rights and dignity of all individuals.

'Ratifying OPCAT will send a strong message both within Australia and internationally that Australia takes its human rights obligations seriously,' Attorney-General Nicola Roxon said.

The tabling of the National Interest Analysis is an important step towards the ratification of OPCAT.

If OPCAT is ratified, Australian prisons, police stations, juvenile detention

centres, immigration detention centres and secure mental health facilities will be independently monitored and inspected to ensure they comply with the international treaty standards.

In December 2011, PIAC and 28 other organisations including Amnesty International Australia and Civil Liberties Australia co-signed a letter to the Attorney-General, urging the ratification of OPCAT. The National Interest Analysis refers directly to this letter.

The Joint Standing Committee on Treaties will now consider OPCAT and will report on 28 June 2012.

Submissions responding to the National Interest Analysis are due on 30 March.

If you can assist with PIAC's campaign to ensure that OPCAT is ratified as soon as possible, please contact Peter Dodd at PIAC on (02) 8898 6523 or at pdodd@piac.asn.au.



Photo: Flickr/Pedro Moura Pinheiro

Photo: Flickr/M

CREATING A FUTURE WHERE ENERGY IS AFFORDABLE

The Federal Government's release of its draft *Energy White Paper* in December last year marked the end of an era. The *White Paper* claimed that cheap energy is now a thing of the past, replaced by a period of investment in energy infrastructure. Unfortunately, the *White Paper* gives little thought to the needs of vulnerable consumers.

PIAC does not argue with the Government's view that energy prices cannot be artificially held below the cost of supply.

Governments have a responsibility to ameliorate disadvantage when policies place pressure on prices.

However, PIAC believes governments have a responsibility to ameliorate disadvantage that arises when policies place pressure on prices. Governments should be taking action during policy development to avoid such disadvantage, and PIAC notes that such an approach was adopted prior to the introduction of a carbon price. The carbon price legislation included targeted measures to assist low-income households.

There are other schemes, however, that leave vulnerable energy consumers unprotected. People who are less able to absorb rising costs often reduce their spending on other essential items and ultimately face an increased risk of disconnection.

The draft *Energy White Paper* refers to the social safety nets that exist in all jurisdictions to assist low-income consumers. In NSW, the Low Income Household Rebate is the primary energy rebate providing Health Care and other Concession Card holders with \$200 this financial year. But while electricity prices have increased by between \$216 and \$315 annually, the rebate has increased by \$55. Clearly, increased rebates do not offset rising prices.

There are a number of reasons why electricity prices are increasing. On 1 July 2011, the regulated retail price of electricity in NSW rose by an average of 17 per cent. The Independent Pricing and Regulatory Tribunal reported that 9 per cent of this price rise was due to network costs, 1 per cent was due to generation costs, 1 per cent was due to retail costs, and 6 per cent was due to the cost of complying with green schemes. These schemes include the Small-scale Renewable Energy Scheme (SRES), the Large-scale Renewable Energy Target (LRET) and the Energy Savings Scheme (ESS).

PIAC supports schemes that provide environmental benefits but argues any scheme that places pressure on electricity prices should be funded from general revenue rather than price rises. Electricity prices are blunt instruments for funding such schemes because they fail to protect people on low incomes who traditionally spend a higher percentage of their income on essential services. In effect, the consumers in NSW who received a \$55 increase in their rebate faced an average annual price increase of between \$76 and \$111 because of decisions to use the customer base to fund green schemes.

In the absence of alternative revenue sources, PIAC recommends that any initiative that will result in higher energy prices should include measures to protect vulnerable and low-income consumers. This responsibility should not be left to other jurisdictions that deliver assistance because sharp price rises have left safety nets over-subscribed.

In NSW, 18,561 residential energy customers were disconnected for not paying their bills in 2010-11. This represents an extra 2,726 disconnections or an increase of 17.2% over the previous year. Additionally, NSW community services are struggling to meet increasing

demand as vulnerable consumers seek assistance to pay their energy bills.

Policy makers need to develop a more systematic approach to energy affordability. To this end, PIAC's submission to the draft *Energy White Paper* recommends convening an Affordability and Consumer Protection Sub-committee of the Standing Committee on Energy and Resources (SCER).

Given that education, employment and communications rely on electrical devices, there are far-reaching ramifications for the growing number of consumers who find electricity unaffordable. If we are to create a secure and sustainable energy future, we must include ways to respond to the issue of affordability. These responses must be integrated within the policy process and not developed as an afterthought.

PIAC's submission to the draft *Energy White Paper* can be viewed at: www.piac.asn.au/publications

Story: Carolyn Hodge, Senior Policy Officer, Energy + Water Consumers' Advocacy Program.



Flickr/Pedro Moura Pinheiro

A PLACE TO CALL HOME

A NEW HPLS PROJECT AIMS TO GIVE VOICE TO THE EXPERIENCES OF HOMELESS PEOPLE RECENTLY RELEASED FROM PRISON.



Photo: Flickr/Peter Hindmarsh

On the streets ... a new HPLS project aims to give voice to the experiences of homeless people released from prison.

The experiences of homeless people recently released from prison will inform a new project for the Homeless Persons' Legal Service* (HPLS) and the Homeless Consumers' Advisory Group, StreetCare.

StreetCare members and HPLS staff are visiting agencies in inner Sydney and Parramatta to interview people who have recently left prison and who need help from services that assist homeless people.

As well as identifying the experiences of homeless people recently released from prison, the project seeks to identify the difficulties faced by homeless services in providing assistance to these people.

'We aim to talk to 20 to 25 people who have recently been released from prison and who are facing difficulties securing stable accommodation,' said HPLS policy officer Lou Schetzer. 'We will be speaking to men and women who have recently left prison, whether they have had short-term or long-term sentences, or been released after being on remand.'

'We want to know whether this group of people think they were given the help and support they needed when they were released from prison.'

'This project is about giving people a voice, so that government can hear the difficulties faced by this group,' Mr Schetzer said.

WE WANT TO KNOW WHETHER THIS GROUP OF PEOPLE THINK THEY WERE GIVEN THE HELP AND SUPPORT THEY NEEDED WHEN THEY WERE RELEASED FROM PRISON.

Several studies have previously identified the links between homelessness and recidivism, and identified difficulties faced by people when they are released.

'The NSW Government has also identified the need to assist people leaving custody by providing appropriate housing and support,' Mr Schetzer said.

StreetCare and HPLS staff began consultations and interviews in March 2012. The project is expected to run for several months.

* The Homeless Persons' Legal Service (HPLS) is a joint initiative of PIAC and the Public Interest Law Clearing House (PILCH) NSW.

Story: Lou Schetzer, HPLS Policy Officer.

PIAC is raising funds to support the Homeless Persons' Legal Service. To make a tax deductible donation, please call Sally at PIAC on +61 2 8898 6500 or visit www.piac.asn.au

'UNLAWFUL' KANANGRA DETENTION CASE CONTINUES

The High Court is expected to hear a special leave application this year in a case involving the alleged unlawful detention of Ms Joanne Darcy.

Ms Darcy has a mild intellectual disability. She was 19 years old when a Magistrate's order sent her to the isolated Kanangra Centre, an institution then run by DOCs (now called Family and Community Services) for people with intellectual disabilities located on the mid-north coast of NSW.

Ms Darcy was sent to Kanangra for 'assessment' in 1996. However, she was not released until December 2002.

PIAC has acted on Ms Darcy's behalf since she lodged her claim for false imprisonment in 2007. The matter was heard first in the District Court in 2010, and then the NSW Court of Appeal in December 2011.

The NSW Court of Appeal affirmed the decision of the District Court. The Court of Appeal found that Ms Darcy was indeed detained at

the Kanangra Centre, given that she couldn't leave without permission. However, the Court of Appeal held that Ms Darcy's stay at Kanangra was lawfully justified by the tacit consent of the Public Guardian.

The Court of Appeal's conclusion raises serious questions about 'tacit consent' and the way public officials exercise powers that significantly affect peoples' rights.

Fundamentally, Ms Darcy's false imprisonment claim is concerned with protecting the rights of people with an intellectual disability to live freely within the community, without being subjected to arbitrary or otherwise unlawful detention.

The Court of Appeal decision could be extended to adversely affect the rights of other vulnerable individuals, including people who are subject to mental health tribunal orders or elderly people who are subject to guardianship orders.

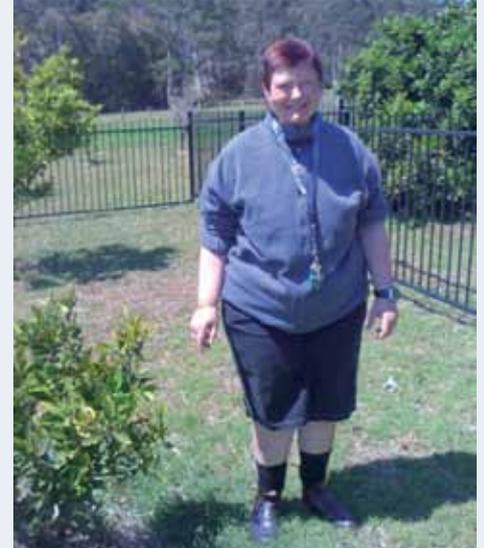


Photo: Joanne Darcy ... detained for six years at the Kanangra Centre.

The Court of Appeal's conclusion also has important implications in regard to the exercise of administrative power.

Story: Lizzie Simpson, PIAC Senior Solicitor.

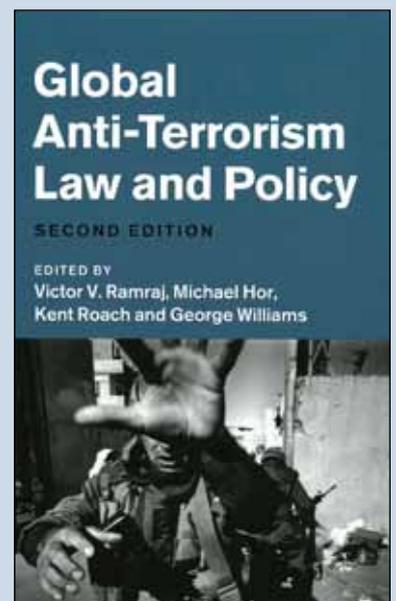
PIAC PUBLICATIONS & PAPERS

PIAC made 22 submissions in the seven months from August 2011 to February 2012. This includes submissions on:

- Access to energy and water
- Discrimination
- Mental Health
- NSW Tribunals
- Freedom of Information
- Coronial law reform
- Security for costs.

Other publications or papers written or produced by PIAC staff during this period include:

- *Street Rights NSW*, from the Homeless Persons' Legal Service
- *PIAC e-bulletin*, published monthly
- *PIAC Annual Report 2010-11*
- Edward Santow & George Williams, 'Terrorism threat assessments: Problems of constitutional law and government accountability' (2012) 23 *Public Law Review* 33.
- Nicola McGarrity & Edward Santow, 'Anti-terrorism laws: balancing national security and a fair hearing' in Ramraj et al (eds), *Global Anti-Terrorism Law and Policy* (2nd ed, 2012).



PIAC HAS MOVED

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OUR NEW ADDRESS IS:

LEVEL 7, 173-175 PHILLIP STREET,
SYDNEY, NSW 2000

PHONE: + 61 2 8898 6500

FAX: + 61 2 8898 6555

Note that our DX, fax, phone and email addresses remain the same.



Photo: PIAC staff, clockwise from left: Deidre Moor (Manager, Policy & Programs); Jessica Mah (Solicitor); Melissa Pinzuti (Legal Secretary); Carolyn Hodge (Senior Policy Officer, Energy + Water Consumers' Advocacy Program) with Chris Hartley (Senior Policy Officer).

Legal Journals from Thomson Reuters

Australasian Dispute Resolution Journal

Ruth Charlton

Australian Business Law Review

Professor Robert Baxt AO

Australian Intellectual Property Journal

David J Brennan

Australian Journal of Administrative Law

Dr Damien J Cremean

Australian Journal of Competition and Consumer Law (formerly Trade Practices Law Journal)

Dr R J Desiatnik

The Australian Law Journal

Mr Justice P W Young AO

Australian Tax Review

Professor Chris Evans, Professor Michael Walpole

Building and Construction Law Journal

John B Dorter

Company and Securities Law Journal

Professor Robert Baxt AO, Assoc Professor Paul Ali

Criminal Law Journal

Stephen J Odgers SC, Professor Mirko Bagaric

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Dr Gerry Bates

Family Law Review

Dr Anthony Dickey QC,
Adjunct Professor Jennifer Boland

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Dr Colin Anderson

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Gregory Burton SC, Professor Robert Baxt AO

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