PIAC BULLETIN

# PIAC

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## CLASS ACTION

PIAC and Maurice Blackburn begin a class action on behalf of young people falsely imprisoned by NSW police.

## THE DEFENCE DOCUMENTS

Previously classified documents point to the truth about military detention in Iraq and Afghanistan.

## DEATH IN PRISON VAN

Coronial Inquest into Mark Holcroft's death in a prison van.

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

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Cover: Musa Konneh. Photo: Ben Rushton/SMH

THOMSON REUTERS


CEO REPORT

# A FOCUS ON DETENTION

A sign of a civilised society is that it recognises the fundamental dignity in all people, especially those on its margins. This principle can be in tension with our natural sympathies, which might be more easily roused for some categories of disadvantaged people than they are for others.

Over the course of this year, a number of PIAC's projects have focussed on prisoners and detainees – a category of people who are frequently vilified or disdained.

The story of Mark Holcroft provides a tragic illustration of how we, as a community, need to do more to protect those imprisoned by the state. Almost exactly two years ago, Mark began a seven-month sentence for drink driving.

Mark was a minimum-security prisoner, and a fortnight into his sentence he was to be transported between two NSW correctional facilities. At some point in the journey, Mark became distressed. He lurched forward and lost control of his bowels. Other prisoners in the prison van tried to assist him. Frantically, but in vain, they attempted to get the attention of the guards, who were in the front compartment.

By the time the van arrived at its destination, Mark couldn't be revived. PIAC represented three of Mark's siblings at the Inquest into his death. The Inquest considered some of the deficiencies in Mark's medical care, as well as the inadequacies in the prisoner transport system that meant that there was no effective means of alerting the guards to Mark's distress.

Two other PIAC projects, which are described in greater detail later in this PIAC Bulletin, also focus on the protection of the rights of people who are detained. The first relates to suspected combatants taken captive by Australia and its allies in the conflicts in Afghanistan and Iraq.


*Edward Santow, PIAC Chief Executive ... 'as a community, we need to do more to protect those imprisoned by the state.'*

For six years, PIAC used freedom of information law to try to obtain from the Australian Government documents relating to Australia's detention and treatment of these people. When finally released, PIAC found that the documents contained disturbing revelations about the Australian military's adherence to international law and the Geneva Conventions.

Closer to home, PIAC's Children in Detention Advocacy Project has long advocated for the rights of young people who are detained in Australia. Working with law firm Maurice Blackburn, PIAC recently launched a major class action on behalf of young people who have been unlawfully detained by the police. The essential problem seems to be a long-running glitch in the NSW government's computer system, which results in the police arresting children and young people for breach of bail conditions that no longer exist.

Other vulnerable groups for whom PIAC has focused its advocacy this year include people experiencing homelessness, people with a disability, people with a mental illness, young people, and people at risk of being cut off from energy and water services.

**Edward Santow**,
Chief Executive Officer

# CORONER INVESTIGATES DEATH IN PRISON VAN


*PIAC Solicitor Peter Dodd with Nerida Pride and Christopher Holcroft outside the NSW Coroner's Court ... eight recommendations to the Commissioner of Corrective Services.*

On 12 August 2011, the NSW Deputy State Coroner, Paul McMahon, delivered his findings in the Inquest into Mark Holcroft's death. PIAC represented Mr Holcroft's two sisters and one brother at the Inquest.

Mr Holcroft suffered a heart attack in a prison van while travelling from Bathurst to Mannus Correctional Centre in NSW. Although other prisoners in the van banged on the side of the van and tried to get the attention of the guards, the van did not stop until it reached Mannus. Sadly, Mr Holcroft had died by then.

The Inquest highlighted several issues:

- There was no two-way communication in the van;
- There was only one observation camera working in each of the van's compartments;
- There was no duress button that prisoners could use to alert guards in the front section of the van;
- Prisoners were not given food, water or toilet stops on a journey that lasted more than four hours.

Mr Holcroft reported to Justice Health nurses that he had chest pains a week before he went on his fatal journey. He was given ECG tests, but a doctor employed by Justice Health acknowledged at the Inquest that he made an error interpreting the results of these tests.

Expert evidence given at the Inquest said Mr Holcroft's death was preventable because, if the ECG tests had been properly interpreted, he should have been immediately hospitalised and treated.

The Coroner found that Mr Holcroft's death was primarily the result of the failure of Justice Health to provide him with proper care.

It is troubling that the original police investigation for the Coroner did not identify the standard of the health care received by Mr Holcroft as an issue for the Coroner.

It was only when PIAC raised the issue that the Coroner requested an expert report. This highlights the need for the involvement of investigators with an expertise in health care in coronial investigations. It also highlights the need for involvement of bodies such as the Health Care Complaints Commission in the investigation of health care-related deaths before an inquest takes place.

The Coroner made eight recommendations to the Commissioner of Corrective Services. The most significant is that the Standard Operating Procedures and Departmental practices for inmate transfers should be reviewed so as to ensure that:

- Adequate drinking water is always available to inmates during transfers;
- If the proposed journey is anticipated to be longer than three hours, a toilet stop should be included during the course of the journey; and
- If the proposed journey is anticipated to be longer than four hours, a meal should be provided to each inmate prior to the commencement of the journey as well as during the course of the journey.

The Coroner recommended a review of two-way communication systems that have been installed in prison vans following Mr Holcroft's death to ensure such systems are available in all prison vans at the earliest possible date.

The Coroner also recommended that disciplinary action be considered against a Corrective Services Officer, Peter Augustine Sheppard, with particular regard to his actions as an observer at the time Mr Holcroft died. The Coroner found that, had Mr Sheppard undertaken his duties in a proper fashion, he would have been aware of the welfare concern regarding Mr Holcroft.

At no stage during the Inquest did Corrections NSW concede that what happened in the van on 27 August 2009 was in any way inappropriate or of concern. Justice Health apologised to the Holcroft family at the Inquest and acknowledged its failure to provide Mr Holcroft with proper care and the consequences of that failure. However, when given an opportunity, Corrective Services NSW failed to do the same.

PIAC believes the culture of Corrective Services NSW should respect the human rights of prisoners and their basic human needs. This should be evident in policies and protocols that reflect international and national standards for the care of prisoners.

PIAC has called on the NSW Justice Minister, Greg Smith, to take the lead in the implementation of the Coroner's findings.

*Story: Peter Dodd, PIAC Solicitor*
*Photo: Dominic O'Grady*

# HOME LATE? GO STRAIGHT TO PRISON

## FOR SEVERAL YEARS, PIAC HAS BEEN WORKING TO ASSIST A LARGE NUMBER OF YOUNG PEOPLE WHO HAVE BEEN UNLAWFULLY DETAINED BY POLICE.

PIAC's work in this area has led to a successful outcome in an individual case, as well as the launch of a major class action in partnership with law firm Maurice Blackburn against the State of NSW.

PIAC's Indigenous Justice Program (IJP) recently assisted a young Indigenous girl, Sophie (not her real name), who was falsely imprisoned by the NSW police on the basis of out-of-date bail information.

Sophie had her bail conditions dispensed with at court but was picked up by police and detained overnight for allegedly being in breach of her bail conditions.

In fact, the information that the police relied on was incorrect – something that both Sophie and her family tried to explain to the police. However, no further inquiries were made and these protestations were not accepted. As a result, Sophie was held in custody until she appeared before a court the next day and the mistake was acknowledged.

A week after this traumatic event, Sophie was again detained by police for the same reason. Fortunately, Sophie was not detained overnight because police made further inquiries and subsequently released her. After several months of negotiation with the State of NSW, this case was settled to the client's satisfaction in early 2011.

This is not an isolated incident. PIAC has seen a number of similar cases over the past six years through its involvement in the Children in Detention Advocacy Project (CIDnAP), a joint initiative with the Public Interest Law Clearing House (PILCH) NSW and Legal Aid NSW.

CIDnAP recognises that young people are subject to more numerous and onerous bail conditions than adults, and are more heavily monitored by police for any potential breach of these conditions. Detention should be used as a last resort for young people (a principle enshrined in both international and domestic law). However, CIDnAP has found young people are arrested and detained far too regularly for minor offences. It is especially disturbing that this is occurring so frequently when young people simply commit insignificant breaches of their bail conditions, such as being late for a curfew.

It is a harsh punishment for a young person to be detained in custody if they arrive home 20 minutes late. But it is even more distressing when a young person is unlawfully detained for allegedly breaching their bail in circumstances where those bail conditions have been changed or removed.

Clients have reported feeling frustrated and distrustful of police and the justice system, and emotionally scarred by being detained with no lawful basis. This leads to social and emotional costs for the individual and their families, as well as unnecessary costs of detention and policing for the people of NSW. Despite regularly raising the issue with representatives of the NSW Government, the unlawful detention of young people on the basis of incorrect bail information is an issue that has not been resolved.

On 8 June 2011, PIAC and law firm Maurice Blackburn launched a class action against the State of NSW in the Supreme Court of NSW.

The action focuses on the false imprisonment by NSW police of large numbers of young people on the basis of out-of-date bail information. The class action seeks to make the system accountable and correct; it also seeks compensation for those affected.

Any young person arrested by the police for breaching a bail condition, and who was not on bail at the time of the arrest, may be eligible to join the class action.

For more information, please contact Laura Brown, PIAC Solicitor, (02) 8898 6539 or email lbrown@piac.asn.au

Young people wanting to register their interest in the class action can find out more on Facebook, using the search term 'false imprisonment'.

*Story: Laura Brown, PIAC Solicitor.*
*Photo: Flikr/MrFink*

# CLASS ACTION OVER FALSE ARRESTS

## IT'S NOT OFTEN THAT A MAGISTRATE APOLOGISES TO A PERSON APPEARING BEFORE THEM. BUT THAT'S WHAT HAPPENED TO MUSA KONNEH LAST YEAR.

''The magistrate said: 'This boy is not meant to be here, why is he here?' The magistrate even said 'sorry' to me,'' the 19-year-old migrant from Sierra Leone recalled.

In the 12 hours before he appeared before court Mr Konneh had been falsely arrested, handcuffed, strip searched and spent a night in the police cells.

Two officers knocked on his door at 9.30pm on a Saturday night and arrested him, insisting he had breached his bail conditions by not reporting to police. He tried to explain they were wrong, but to no avail.

In fact, Mr Konneh was no longer on bail, and his case - for allegedly riding on the train without a ticket - had been dismissed in the Children's Court four days earlier. While the court had a record of the decision, the police computer system, which is meant to receive information from the courts system Justicelink, had not been updated.

A class action was filed in the Supreme Court in June 2011 against the NSW Government over this and other detentions. Mr Konneh is the first young person to join it.

The case, launched jointly by the Public Interest Advocacy Centre and Maurice Blackburn Lawyers, is open to other young people detained for a breach of bail conditions that were no longer in place at the time of the detention.

The case seeks to argue that it was ''not reasonable'' for police to rely on their COPS database when arresting young people for a breach of bail because the problem had been known for years.

Maurice Blackburn's NSW managing principal, Ben Slade, said police were targeting ''vulnerable young people'' for the enforcement of bail conditions and Aboriginal children were over-represented among those falsely arrested. Police should only deprive children of their liberty as a last resort, he said.

He called on the government to fix the problem and ''take responsibility for this wrongful conduct ... and apologise to them and compensate them''.

> ***POLICE SHOULD ONLY DEPRIVE CHILDREN OF THEIR LIBERTY AS A LAST RESORT***
>
> Ben Slade, managing principal, Maurice Blackburn Lawyers

*Class action lead applicant, Musa Konneh ... falsely arrested then strip searched.*

*Story: Geesche Jacobsen, **Sydney Morning Herald**. Reprinted with permission. Photo: Ben Rushton, SMH.*

# THE DEFENCE DOCUMENTS

## PREVIOUSLY CLASSIFIED DOCUMENTS OBTAINED BY THE PUBLIC INTEREST ADVOCACY CENTRE POINT TO THE TRUTH ABOUT AUSTRALIA'S DETENTION PRACTICES IN IRAQ AND AFGHANISTAN.

Australian Defence Force (ADF) documents obtained by the Public Interest Advocacy Centre under freedom of information law reveal that the Australian Government deliberately avoided its international legal obligations in relation to detainees caught by the ADF in Afghanistan and Iraq.

Surprisingly, Australia entered the conflict in Afghanistan with no clear plan as to what to do with captured Taliban or Al Qa'eda fighters.

The ADF had not put any resources into processing and detaining captives in Afghanistan because it assumed that US forces would take responsibility for any prisoners of war (POWs). Australia believed the US would give detainees the full protection of international law and prisoner of war status under the Geneva Conventions.

However, the US believed the Geneva Conventions did not apply to all detainees because some of them were considered "unlawful combatants".

This left the ADF with a problem. The ADF did not have the resources to detain captives. Nor could the ADF transfer its captives to US custody for detention and processing because to do so would breach the Geneva Conventions (given that the US and Australia disagreed about the application of international law).

The impasse meant that Australian troops were engaged in a conflict in which they could not take captives in their own right. This posed serious questions about the ADF's ability to fulfil its mission effectively in Afghanistan while at the same time meeting its obligations under international law.

> ***"WHEN ASKED BY DEPARTMENT OF DEFENCE OFFICIALS WHETHER HE HAD SUGGESTED THAT INTERROGATION TECHNIQUES COULD BE MODIFIED TO ENSURE THEY WERE LAWFUL, MAJOR O'KANE REPLIED: "IT WASN'T OUR JOB".***

*PIAC is calling for a Royal Commission into Australia's detention practices and policies in Afghanistan and Iraq. The call for a full and independent inquiry follows PIAC's publication of dozens of previously classified documents obtained under freedom of information law. The documents reveal disturbing details about Australia's avoidance of international law and indicate a serious failure of leadership within the Australian Defence Force. The documents are online at* **http://military.piac.asn.au**

As Australia did not have its own detention facilities in Afghanistan, and to avoid formally transferring captives to the US, the Australian Government developed a detainee policy that was based on a legal fiction.

The detention policy involved the practice of ensuring that a single US soldier was present with ADF troops when captives were taken. On this basis, the ADF asserted that Australia "merely assisted" in the capture and the US was legally responsible for any captives.

The policy defied common sense. How could a single US soldier capture large numbers of detainees? Surely, if large numbers of Australian troops and only one US solider were present when detainees were captured, Australia was the responsible detaining power.

More importantly, the policy defied international law. The policy was clearly designed to avoid Australia's obligations as a detaining power under the Geneva Conventions. Even the Chief of the ADF, Admiral Barrie, questioned the legality of the policy when he stated in a memorandum to the Minister for Defence: "such an arrangement may not fully satisfy Australia's legal obligations and in any event will not be viewed as promoting a respect for the rule of law".

Yet the policy was later adopted in Iraq. Although Australia, the US and UK signed an agreement, known as the Trilateral Arrangement, for the handling and transfer of detainees in Iraq, this arrangement was never used by Australia. Instead, the ADF adopted a practice of handing detainees over to the US and UK, without regard for how these detainees would be treated.

This policy and practice had disastrous consequences.

*Story: Gemma Namey, PIAC Solicitor.*
*Photo: Flikr/soldiersmediacenter*

# ADF COMPLICITY?

**What happened to Tanik Mahmud?**

The documents obtained by PIAC reveal that an Iranian man, Tanik Mahmud, died in custody. Mr Mahmud and 65 other men were captured by 20 Australian SAS troops and one US soldier in Western Iraq on 11 April 2003. The Australian SAS held the 66 men for a number of hours before transferring them to the UK for transport to a US-run dentition facility in Iraq.

There is strong evidence to suggest that Mr Mahmud was fatally assaulted by UK RAF troops while onboard a UK helicopter.

When the Iranian Government approached the Australian Government about the whereabouts of the captured Iranians, the Australian Government response was that the ADF was not the detaining power and therefore did not detain the Iranians.

This incident is a clear example of the problems with Australia's detention policy and practice. Australia sought to avoid its international obligations with little regard for the consequences.

**Illegal detention practices**

Another significant revelation from the documents obtained by PIAC is that the Australian Government had prior knowledge of illegal detention practices in Iraq, including at Abu Ghraib.

An Australian military lawyer, Major George O'Kane, advised on US interrogation techniques at Abu Ghraib. The techniques included sleep management, dietary manipulation and sensory deprivation. Major O'Kane's advice concluded that the techniques were open to abuse and only "substantially complied" with the Geneva Conventions.

However, a senior Defence official told an Australian Senate Committee that the advice concluded that the techniques were consistent with the Geneva Conventions. The public record has not been corrected.

When asked by Department of Defence officials whether he had suggested to the Abu Ghraib interrogators that the techniques could be modified to ensure they were lawful, Major O'Kane replied: "It wasn't our job".

Major O'Kane was also instructed by a senior US military officer to deny the International Committee of the Red Cross (ICRC) access to nine people being held in cell block 1A at Abu Ghraib.

The US refused the ICRC access on the basis that the nine detainees were undergoing active interrogation at the time of the visit. However, under the Geneva Conventions, the ICRC has special access rights to visit detention facilities and can only be obstructed in situations of imperative military necessity, and then only as an exceptional and temporary measure.

The Australian Government failed to raise concerns about these US breaches of international law at Abu Ghraib with its ally. This suggests some level of complicity on behalf of the Australian Government.

*Story: Gemma Namey, PIAC Solicitor.*

# MILITARY DETENTION: UNCOVERING THE TRUTH

## HOW A SIX-YEAR FOI PROJECT NETTED PREVIOUSLY CLASSIFIED AUSTRALIAN DEFENCE FORCE DOCUMENTS.

In June 2005, the Public Interest Advocacy Centre made an application under freedom of information (FOI) law to the Department of Defence. PIAC sought access to documents relating to Australian Defence Force operations outside Australia since 11 September 2001. The documents related to the apprehension, detention or transfer to other military or civil authorities of individuals suspected of being terrorists.

The Department of Defence took more than three years to reach a decision in response to PIAC's request.

In August 2008, the Department of Defence identified 222 documents that were deemed relevant to the FOI request, from 3000 that had been reviewed.

However, PIAC was given access to just 21 of the 222 documents. Of these 21 documents, only one was released in full; the other 20 were released with redactions. The Department of Defence claimed that 199 of the unreleased documents were fully exempt from disclosure because they affected national security, defence or international relations.

The Department of Defence did not provide PIAC with copies of the 21 documents until February 2009.

In April 2009, PIAC sought internal review of the Department of Defence decision not to release all the documents. As the Department of Defence did not respond, PIAC asked the Administrative Appeals Tribunal (AAT) to review the decision in June 2009.

In July 2009, the Department of Defence acknowledged that it had "inadvertently overlooked" a number of documents when the original decision was made. The Department also acknowledged that its August 2008 decision did not provide sufficient detail to allow PIAC to understand the decision.

Throughout 2009 and 2010, PIAC succeeded in gaining access to a significant number of documents (approximately 160), which had previously been withheld by the Department of Defence.

Many of the documents, which the Department of Defence originally claimed as being exempt from release, were subsequently released to PIAC.

Some parts of the documents were released to PIAC with extensive redactions. That is, the Department of Defence blacked out those parts of the documents that it believed were exempt from disclosure. These documents were subsequently re-released with the previously redacted sections revealed.

***"THE DEPARTMENT OF DEFENCE ACKNOWLEDGED THAT IT HAD "INADVERTENTLY OVERLOOKED" A NUMBER OF DOCUMENTS WHEN THE ORIGINAL DECISION WAS MADE."***


# CALL FOR INQUIRY

## PIAC IS COMMITTED TO ENSURING THAT AUSTRALIAN GOVERNMENTS ARE ACCOUNTABLE AND TRANSPARENT.

PIAC believes that the public has a right to know whether the Australian Defence Force has appropriate policies and procedures to ensure that its personnel do not commit, and are not complicit in, acts of torture or degrading treatment of prisoners.

PIAC has monitored closely the Government's implementation of anti-terrorism legislation and policies and has commented extensively on legislative proposals and changes in policy.

PIAC is calling for a Royal Commission into the conflicts in Iraq and Afghanistan, with a particular focus on detention issues. The inquiry should address the following questions:

- Why did Australia enter the conflicts in Afghanistan and Iraq without knowing how it would manage detainees?
- What formal arrangements were put in place to ensure a US soldier was always present with ADF troops to take legal responsibility for their capture?
- Is this practice, of having one US soldier with ADF troops, still being used in Afghanistan?
- What was the legal advice that supported this ad-hoc detention practice?
- Did Australia express concern to the US regarding its illegal detention practices?
- The International Committee of the Red Cross (ICRC) investigated the coalition forces' abuse of prisoners at Abu Ghraib and produced a report in October and November 2003. What did these reports reveal?
- What lessons has Australia learnt about embedding Australian personnel in Coalition Operations?
- What safeguards are in place to ensure that Australian troops no longer hand detainees over to the US, or other coalition members, without proper regard for their rights under the Geneva Conventions?

*If you are interested in joining this campaign please contact PIAC on +61 2 8898 6500 or use the "action" tab on website:* **http://military.piac.asn.au**. *Visitors to this website can send an email to the Minister for Defence calling for an inquiry.*

*Story: Gemma Namey, PIAC Solicitor.*
*Photo: Flikr/soldiersmediacenter*

# HOMELESS HUBS BRING IT ALL TOGETHER

## ONE-STOP-SHOPS: PRACTICAL HELP FOR PEOPLE EXPERIENCING HOMELESSNESS.

## KEY FACTS

- Hubs bring together a range of services and government agencies with the objective of connecting vulnerable people to essential services in a respectful and welcoming environment.
- These hubs are designed to improve the quality of life of those experiencing homelessness and those at risk of homelessness by bringing together as many essential services as possible under the one roof, at one time.
- The Homeless Persons' Legal Service (HPLS) supports hubs as an adjunct to its clinic work. HPLS has participated in several hub events, including those organised to coincide with National Homeless Persons' Week held in August 2011.

There has been a shift during the past couple of years in the way support and services are offered to people experiencing homelessness.

The concept of homelessness 'hubs' originated in San Francisco, California, in 2004, under the umbrella of Homeless Connect. Hubs now operate around Australia, with Brisbane holding the inaugural hub event in 2006.

In June 2010, the City of Sydney, the Centre for Volunteering NSW and Homelessness NSW set up Sydney's Homeless Connect. The first Sydney Homeless Connect hub was held on 8 June 2010 at Sydney Town Hall. The Homeless Persons' Legal Service (HPLS) attended this event as well as the second Sydney hub on 10 June 2011.

Representatives from over 60 government agencies and service providers joined more than 300 volunteers at these hubs. Together, they provided a range of services: housing and employment assistance; health checks from doctors, dentists, eye-checks; free clothing and footwear; fresh and nutritional food and drink; pet care; haircuts; internet and phone services; books; legal services and counselling. Each event attracted between 1200-1500 people.

HPLS has also participated in the Woolloomooloo Integrated Service Hub (WISH), which commenced in November 2009. This is a monthly hub organised by City of Sydney's Homelessness Unit. It is held at the Ozanam Learning Centre in Forbes Street, Woolloomooloo, and brings together government and non-government services including Centrelink, Housing NSW, Medicare and Mission Australia.

WISH aims to provide practical assistance to homeless people and help reduce homelessness and rough sleeping in Sydney's inner city. WISH also offers an opportunity for people to re-connect with the community in a safe and welcoming environment.

**Lower North Shore hubs**

On 3 August 2011, HPLS attended the inaugural annual Lower North Shore Homeless Hub at the Dougherty Community Centre in Chatswood. Organisers included a number of North Shore councils and community organisations, as well as Centrelink, Mission Australia, Salvation Army, Housing NSW, HPLS and JP Morgan. In addition to assistance from essential services, those who attended were offered free haircuts, a lunch and blankets.

**Northern beaches hubs**

Manly Community Centre organised the first hub for people experiencing homelessness on the Northern beaches in February 2011. The second hub was held on 11 August 2011 and mirrored the format and constituency of the Lower North Shore and WISH hubs. HPLS attended both events and provided free legal advice and assistance.

*The Homeless Persons' Legal Service is a joint initiative of the Public Interest Advocacy Centre and the Public Interest Law Clearing House. PIAC receives core funding for HPLS from the NSW Attorney General, through the NSW Public Purpose Fund.*

Given that there are no community legal centres anywhere on the Northern beaches or Lower North Shore, HPLS sees its involvement in these hubs as a crucial first step in trying to bridge this unmet gap in free legal service delivery.

**Western Sydney hubs**

The Nepean Campaign Against Homelessness (NCAH) was founded in 2007 and aims to raise the political profile of homelessness and affordable housing in western Sydney. NCAH is an initiative of the homelessness networks in the region – Youth Accommodation Interagency Nepean and the Adult Homelessness Network Nepean.

During 2009/2010, NCAH facilitated a consortium of over 40 agencies to partner with Wentworth Community Housing to establish a regional supportive housing service called Project 40.

Project 40 aims to provide permanent housing with support to those who experience chronic homelessness and are highly vulnerable within the region.

NCAH commenced a Hawkesbury Homelessness Outreach Hub in 2010. This year, hubs have operated in Penrith, Hawkesbury, Blacktown and the Blue Mountains during National Homeless Persons' Week.

The benefits that flow from these hubs for people experiencing homelessness are unique in homeless service delivery in Australia.

For more information about HPLS, clinic times and locations, visit www.piac.asn.au

*Story: Ben Fogarty, Senior Solicitor, Homeless Persons' Legal Service.*
*Photo: Flikr/publik16*

# MENTAL HEALTH LEGAL SERVICES PROJECT

In July 2011, PIAC concluded its Mental Health Legal Services pilot project. This project adopted a multi-disciplinary approach to assisting people whose mental illness contributes to a complex combination of needs.

PIAC provided an employee with social work experience to the Indigenous men's healing group, Gamarada, and Shopfront Youth Legal Centre, which specialises in providing legal representation to homeless young people.

In addition, PIAC provided a dedicated solicitor to assist in each of the Multicultural Disability Advocacy Association of NSW and the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors.

This project was evaluated thoughout its operation and an independent report will shortly be made public. With the pilot phase of the project now complete, PIAC is working with its partner organisations to secure funding that will enable this excellent work to continue.

This pilot project recognised that mental illness can prompt or exacerbate a person's legal problems. If either is left unaddressed, the person can become enmeshed in the criminal justice system. This project showed that mental health and legal problems can be dealt with simultaneously and successfully for all involved.

*Solicitor Nancy Walker at the Multicultural Disability Advocacy Association of NSW.*

# WITHHELD IN TRUST

## ARBITRARY DECISIONS MADE DECADES AGO CONTINUE TO AFFECT INDIGENOUS CLAIMS FOR STOLEN WAGES.

For several decades, many Aboriginal people in NSW had their wages and other monies placed in trust by the NSW Government and never returned to them.

PIAC was a key player in lobbying the NSW Government for the establishment of a scheme to repay these 'Stolen Wages'. As a result of this lobbying by PIAC and other organisations, the Aboriginal Trust Fund Repayment Scheme (ATFRS) was established in 2005. Since then, PIAC has helped more than 200 people lodge their claims and provide further evidence and documentation to the ATFRS. PIAC has also engaged in systemic advocacy with the ATFRS and the NSW Government to improve accessibility, transparency and accountability for the ATFRS processes.

One of the outstanding issues relates to money held in trust by the Child Welfare Department (CWD). This money is wrongly considered to be outside the scope of the ATFRS.

Up until 1969, money belonging to many Aboriginal people in NSW was administered by the Aborigines Protection Board (APB), which later became the Aborigines Welfare Board (AWB). The CWD took over the administration of Aboriginal wards of the state from the AWB in 1969, looking after their welfare, their work and their trust accounts.

The CWD was the forerunner of what is now known as Community Services NSW (formerly Department of Community Services).

While the ATFRS will repay money that was held in accounts managed by the APB and the AWB, a number of claimants had their trust accounts transferred to the CWD, either because they were not under the control of the APB and the AWB at all, or because the CWD took over their wardship and maintained their trust account at some stage.

*Working family, 1959 ... up until 1969, money belonging to many Aboriginal people was administered by the Aborigines Protection Board.*

It is clear from legislation and from contemporary documentation that the CWD often performed similar functions to the APB and the AWB in relation to the wards under their care, sending them out to work and maintaining trust accounts.

However, CWD claimants cannot receive any trust monies from the ATFRS, as their trust monies lie outside the scope of the repayment scheme.

This is a problem for a large number of claimants, who may have money remaining in trust, but are unaware of this because the ATFRS only searches the records of the APB and the AWB, not the CWD.

Once a claimant is told that there are no records under ATFRS relating to their claim, it can be difficult for them to know what to do next.

In its early years of operation, the ATFRS did help claimants gain access to documents relating to the CWD. But as the ATFRS moves closer to finalising its activities, with limited resources, individuals now have to make their own approaches to Community Services NSW.

There is no formalised process within Community Services NSW to assist claimants. And because the majority of Indigenous people who were under the control of government are not aware which department was administering their welfare, PIAC is concerned that many claimants are disadvantaged by the repayment process.

PIAC has assisted a number of clients to access their CWD records and assess them to determine whether there is any money remaining in trust.

PIAC recently worked with two clients who made unsuccessful claims to the ATFRS but who had considerable amounts of money remaining with the CWD. Community Services NSW repaid this money after submissions from PIAC.

While this is a good outcome for these two clients, the legacy of discriminatory conduct which began with APB and the AWB continues now with the way in which the ATFRS and Community Services NSW responds to these types of claims.

If any money is found to be in trust under the ATFRS, the claimant is paid $11,000, regardless of the amount actually remaining in the trust. If a client can successfully submit to Community Services NSW that money is remaining in trust, however, they are only repaid the amount that remains in trust, which is usually far less than $11,000.

Often arbitrary decisions led to Aboriginal children being put under the control of the APB, the AWB or the CWD. PIAC has worked with clients who were put under the control of one department while their siblings were put under the control of another department. It is disheartening for clients to recognise that these arbitrary decisions, which they had no knowledge of, or control over, continue to affect the amount of money they are entitled to be repaid.

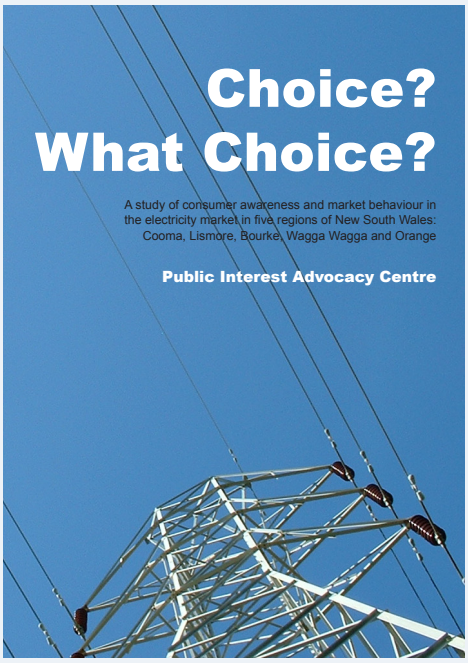
PIAC will continue to lobby for transparent, accountable and accessible decisions by the ATFRS and the NSW Government in relation to the stolen wages of Aboriginal people.

For more information, please contact Laura Brown, PIAC Solicitor, (02) 8898 6539 or email lbrown@piac.asn.au

*Story: Laura Brown, PIAC Solicitor.*
*Photo: Flickr/pizzodisevo*

> ***IF ANY MONEY IS FOUND TO BE IN TRUST UNDER THE ATFRS, THE CLAIMANT IS PAID $11,000, REGARDLESS OF THE AMOUNT ACTUALLY REMAINING IN THE TRUST.***

# CHOICE? WHAT CHOICE?




*All PIAC publications and submissions are available on the PIAC website. Search or browse at www.piac.asn.au/publications*

***PIAC WANTED TO LEARN MORE ABOUT HOW CONSUMERS IN RURAL AND REGIONAL AREAS OF NSW EXPERIENCE ENERGY MARKET COMPETITION.***

## A NEW PIAC REPORT HIGHLIGHTS CONSUMERS' EXPERIENCES OF ENERGY MARKET COMPETITION.

In 2012, the Australian Energy Market Commission (AEMC) is scheduled to review the effectiveness of competition in the NSW energy market. The aim of the review is to assess the effectiveness of competition in the electricity and gas retail markets to determine whether to retain, remove or reintroduce retail energy price controls.

Previous reviews included an investigation of consumer conduct in these markets, including an assessment of consumers' awareness of their ability to switch retailers and to what extent consumers switched energy retailers.

In preparing to contribute to the upcoming review, PIAC wanted to learn more about how consumers in rural and regional areas of NSW experience energy market competition.

PIAC saw this as important because competition reviews in other jurisdictions had conflated results between different areas, perhaps disguising some of the differences experienced by consumers outside of urban areas.

PIAC was aware that in other sectors, such as telecommunications, there are concerns that the market does not always deliver equitable outcomes for consumers in rural and regional areas.

The PIAC report, written by Policy Officer, Louis Schetzer, entitled *Choice? What Choice?*, studies residential electricity consumers in five New South Wales regions: Cooma, Lismore, Bourke, Wagga Wagga and Orange. The study sought to address four key questions to gauge the ability of these consumers to participate effectively in the NSW electricity market.

Using a household telephone survey and a targeted set of in-depth interviews, the study aimed to establish whether consumers in the five regions:

- were aware that they could choose the company that sells them electricity;
- had ever switched electricity retailer;
- and if not, why not.

The study also sought to uncover whether there are any significant demographical or geographical variances in relation to these questions.

A comparative analysis of the study's survey results with previous electricity consumer surveys undertaken on behalf of the AEMC and the Independent Pricing and Regulatory Tribunal (IPART) gives useful context to the data collected.

The comparative analysis looks at whether the electricity market in NSW produces uniform outcomes for residential consumers or whether variances in marketing activity and levels of consumer awareness of choice point to the need for a more nuanced approach when seeking to establish whether that market is effectively competitive.

The study indicated that consumers who were surveyed had relatively low levels of awareness of their ability to choose between electricity retailers. Survey results also showed that a low proportion of households in each of the regions have switched retailers. Of those that switched, most did so in search of savings, but their expectations of lower electricity prices were not realised.

*Choice? What Choice?* is available on the PIAC website. Visit www.piac.asn.au/publications

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

# MEDICAL EQUIPMENT PAYMENT

**THE PHYSICAL DISABILITY COUNCIL OF NSW AND PIAC'S ENERGY + WATER CONSUMERS' ADVOCACY PROGRAM SPOKE TO A GROUP OF PEOPLE WITH DISABILITY ABOUT THEIR ENERGY USE.**

Many people at this meeting expressed their concern about rising electricity costs. In some cases, these concerns were heightened because of participants' reliance on electricity to help with the essentials of daily life.

The following week, PIAC met with the Australian Parliamentary Secretary for Energy Efficiency, the Hon Mark Dreyfus, to discuss the household assistance package being designed to help people manage costs resulting from pricing carbon.

During that meeting, PIAC recommended that household assistance include additional financial help for people who have serious medical conditions.

PIAC explained that this measure is important because serious medical conditions often mean that people have higher electricity requirements that cannot be reduced.

In July 2011, the Australian Government released information explaining how households will be compensated for any cost of living increases resulting from pricing carbon.

The package includes the Essential Medical Equipment Payment, which will be paid at a rate of $140 per year. This payment is in addition to increases to the Disability Support Pension and is available to concession card holders who have a recognised medical condition that requires high energy use.

# CARING FOR OLDER AUSTRALIANS

The Productivity Commission released its final report on *Caring for Older Australians* on 8 August 2011.

PIAC made two submissions and Solicitor Peter Dodd gave oral evidence at a public hearing in response to the Commission's draft reports on this topic. The PIAC submissions focussed mainly on the aged care complaints system.

The final report quotes PIAC's concern that 'to a fair degree, the aged care complaints system in Australia has lost the trust of Australia's consumers'. Currently the office of the Aged Care Commissioner is not independent and can have its decisions on complaints overturned by government. PIAC argued strongly that there should be an independent body that assesses, investigates and makes the final determination on aged care complaints.

The final report recommends that there should be a new office of Commissioner for Complaints and Reviews as part of a larger independent body called the Australian Aged Care Commission (AACC). PIAC is satisfied, if the Government adopts the Productivity Commission's recommendations, that this body will be sufficiently independent. PIAC would expect that, if the AACC is appropriately funded, complaints about aged care would in the future be determined impartially and transparently.

# PIAC PUBLICATIONS SUMMARY

PIAC made 26 submissions in the seven months from January to July, 2011. This includes submissions on:

- Aged care
- Bail
- Childrens' rights
- Discovery
- Forced adoption
- Homelessness
- Human Rights
- Judicial review
- Law reform
- Migration and detention
- Penalty notices
- Privacy
- Suspended sentences
- Utilities

Other publications published by PIAC during this period include:

- *Well Connected*, the newsletter of the Energy + Water Consumers' Advocacy Program
- *Street Rights NSW*, from the Homeless Persons' Legal Service
- *PIAC e-bulletin*, published monthly.

# 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

**Environmental and Planning Law Journal**
Dr Gerry Bates

**Family Law Review**
Dr Anthony Dickey QC,
Adjunct Professor Jennifer Boland

**Insolvency Law Journal**
Dr Colin Anderson

**Journal of Banking and Finance Law and Practice**
Gregory Burton SC, Professor Robert Baxt AO

**Journal of Judicial Administration**
Professor Greg J Reinhardt

**Journal of Law and Medicine**
Dr Ian Freckelton SC

**Local Government Law Journal**
John Mant, Mary-Lynne Taylor

**Local Government & Planning Law Guide**
Glen McLeod

**Northern Territory Law Journal**
Cameron Ford

**Online Currents**
Madeleine Davis, Elisabeth Thomas

**Property Law Review**
Professor Brendan Edgeworth, Dr Lyria Bennett Moses, Cathy Sherry

**Public Law Review**
Professor Cheryl Saunders AO

**The Queensland Lawyer**
Andrew West

**The Tort Law Review**
Nicholas Mullany

**Workplace Review**
Jeffrey Phillips SC, Neil Napper, Stephanie Vass

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