

Journal of the Public
Interest Advocacy Centre

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PIAC BULLETIN

PIAC

**INNES v
RAILCORP**
Court hears
disability
discrimination
claim

**STREETCARE
VIDEO**
Stories from
the street

**JUSTICE FOR
WOMEN**
The Australian
Iron & Steel case:
a watershed in
employment rights



IT'S IMPORTANT TO HAVE HEROES

Working for a fair, just & democratic society

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Cover: Graeme Innes outside the Federal Magistrates Court, Sydney.
Photo: Dominic O'Grady.

CEO REPORT

In this *Bulletin*, we mark 30 years since PIAC was established. We've taken this opportunity to look back at some of PIAC's work to promote equality.

Later in this issue, you can read a piece by PIAC's long-serving principal solicitor, Alexis Goodstone, about Scarlett Finney's landmark case. Scarlett, then a young pupil with spina bifida, helped establish the principle that schools must make reasonable adjustments to allow children with disability to learn on equal terms with other kids.

You can also read a reflection by former PIAC head, Andrea Durbach, on PIAC's campaign to combat sex discrimination in the iron and steel industry. That campaign helped establish some core principles of anti-discrimination law, as well as opening up opportunities to women who had long been denied work in a traditionally male-dominated industry.

While we are proud of our past successes, there remains much for PIAC to do. Our victories can be reversed, and inequality and injustice remain in modern-day Australia.

PIAC's current projects continue our enduring focus on promoting equality, with a number of high-profile cases on disability and racial discrimination. This issue also showcases our work with other disadvantaged groups, such as those experiencing 'energy poverty' and people who are homeless.

Homelessness remains at least as big a problem in mining-boom era Australia as it was 30 years ago. Writing in the South African context in 2004, but in words that apply just as easily to today's Australia, the then Justice Albie Sachs said:

"It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when state action



Edward Santow, PIAC Chief Executive ... 'easy to feel daunted by the problems we address.'

intensifies rather than mitigates their marginalisation."

Albie Sachs is a man whose strength, valour and single-minded pursuit of justice are remarkable.

It's easy to feel daunted by the scale of the problems we address. It can be overwhelming to try to confront the underlying problems that contribute to the disadvantage experienced by many Aboriginal and Torres Strait Islander Australians, people who are homeless and other vulnerable groups.

But this is why it's important to reflect on our history. Our victories are worth celebrating because they show how PIAC can contribute to a society that is fairer, more just and more democratic.

It's also important to have heroes. They include former and current PIAC staff; lawyers, community groups and donors who assist us from outside the organisation; and people like Albie whom we admire from afar. They all help to focus our minds on the problems we need to address, and show that progress – sometimes dramatic, sometimes incremental – is possible and worth aspiring to.

Edward Santow,
PIAC Chief Executive Officer.

INNES v RAILCORP 'I'm asking for RailCorp to tell me where I am'

Graeme Innes AM says he wants just one thing from RailCorp: 'all I'm asking is that they tell me where I am'.

For blind travellers such as Mr Innes, announcements that identify the name of the next train station are crucial.

Mr Innes is suing RailCorp for its alleged failure to provide an adequate system for audible 'next stop' announcements. PIAC is acting on Mr Innes' behalf.

'Our main goal is to have RailCorp comply with its obligations under the Disability Standards for Accessible Public Transport 2002,' said PIAC Chief Executive, Edward Santow.

'Every citizen is entitled to use public transport services without discrimination,' Mr Santow said.

'PIAC has taken on this discrimination case because we believe the law should provide a fair and practical outcome for Mr Innes. Public transport should be for all members of the public, regardless of their disability,' Mr Santow said.

Mr Innes, who is the Disability Discrimination Commissioner, is pursuing the case in his private capacity.

'Using my white cane or, in more recent years, my dog guide, I can find my way to the station. I can navigate through the station and find my way to the train. I can find the door of the train, and get on and off by myself. I can find my way around the carriage, and locate a seat. There is only one



Graeme Innes (left) outside the Federal Court with PIAC Senior Solicitor, Anne Mainsbridge and PIAC Chief Executive, Edward Santow.

thing I can't do: I can't tell where I am,' Mr Innes told the ABC's *RampUp*.

'When the NSW Anti-Discrimination Act was amended in 1983 to include discrimination on the ground of disability I celebrated, along with many other people who are blind or have low vision.

'We celebrated because we thought that there would be station announcements on the trains. Nothing happened. Some of us lodged discrimination complaints, but still, not much happened.

'When the Disability Discrimination Act (DDA) was passed in 1992, we celebrated once again, because we thought there would be station announcements on the trains. Nothing happened. Some of us lodged discrimination complaints, but still, not much happened.

'When the DDA Transport Standards were passed in 2002, we celebrated again. Because, once again, we thought there would be station announcements on the trains. Nothing happened. Some of us lodged discrimination complaints, but still, not much happened.

'There are consistent station announcements on the Tube in London and the subway in New York. There are also consistent station announcements in other Australian capitals, like Melbourne, Brisbane and Perth. Why is it so hard in Sydney?

'I don't want to spend three days of my annual leave in court. I don't want the stress of being cross-examined by the barrister acting for RailCorp. I'd rather just get on with my job; there are far more important disability rights issues I could be working on. But I'm mad as hell, and I'm not going to take the discrimination any more.

RailCorp has rejected claims that it discriminated against Mr Innes.

The case was heard in the Federal Magistrates Court in August 2012. Federal Magistrate Kenneth Raphael has adjourned the case until 22 November 2012, and ordered further mediation.

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



Graeme Innes on the ABC's 7.30 program.

PIAC news in brief

PIAC wins national youth legal award

PIAC has won a prestigious 2012 Children's Law Award. Sharing the award with partners Legal Aid NSW, Maurice Blackburn and PILCH NSW, PIAC's work was recognised for outstanding legal representation of the rights and interests of children and young people.

The National Children's and Youth Law Centre presented the award at an event hosted by King & Wood Mallesons in Melbourne on 17 August 2012.

The award recognises PIAC's crucial work in instigating and managing the Children in Detention Advocacy Project, and its on-going class action on behalf of young people unlawfully detained by NSW police on the basis of out-of-date bail information.

PIAC chief executive, Edward Santow, said he was honoured to receive this award on behalf of PIAC and its project partners.

'The award recognises a wonderful collaboration that also includes a number of commercial law firms, such as Allens, Lander & Rogers and Carroll & O'Dea. All have worked tirelessly to seek redress for the unlawful detention of children and young people.'

The award made special mention of a class action run by PIAC and law firm Maurice Blackburn, on behalf of Musa Konneh (pictured) and other young people who claim to have been wrongly arrested and detained.

The class action's lead applicant, Mr Konneh, was arrested and detained in southwest Sydney in August 2010. However, the police relied on incorrect bail information. When this was brought to the attention of the court, Mr Konneh was immediately released.

The 2012 Children's Law Awards is a biennial event which recognises the outstanding achievements and commitment of those individuals and organisations who advance the legal rights and interests of children and young people across Australia.



Draft Homelessness Bill 'needs major re-think'

The Federal Government's draft Homelessness Bill 2012 needs a major re-think in order to have a positive, practical impact on people who are homeless or at risk of homelessness.

That's the message PIAC has delivered to the Federal Minister for Housing and Minister for Homelessness, Brendan O'Connor.

'The draft Bill expressly states that the new law is intended to have no effect on legal rights or obligations in relation to homelessness. I have never seen a law that does this, and it would completely undermine the good policy that the Bill is intended to implement,' said PIAC's Edward Santow.

'Because of this, the Bill will be of little or no help to the growing numbers of men, women and families who are in housing crisis.'

'PIAC urges the Housing Minister to revise the draft Homelessness Bill. The proposed legislation must at least require homelessness services to meet basic human rights standards when delivering assistance to people in need,' Mr Santow said.

Minister announces funding for StreetCare

Following a meeting with StreetCare, the NSW Minister for Community Services, Pru Goward, has announced further funding for PIAC to ensure StreetCare continues.

The Minister confirmed the funding on the last day of National Homelessness Week, in August 2012.

StreetCare is a consumer advisory committee made up of people who are homeless or who have recently experienced homelessness.

The Homeless Persons' Legal Service (HPLS) established StreetCare in 2008 to uphold the rights of homeless people, enabling them to participate in government policy-making and responses to homelessness.

High Court dismisses Joanne Darcy application

The High Court has dismissed a special leave application on behalf of Joanne Darcy, who was detained at a state-run facility called Kanangra for over six years.

PIAC represented Ms Darcy, who has a moderate intellectual disability.

In 1996, Ms Darcy was convicted of a minor criminal offence. She was 19 years old at the time, and she was ordered to attend Kanangra, on the NSW mid-north coast, for psychological assessment.

Ms Darcy was subsequently detained at Kanangra for six and a half years.

Acting on behalf of Ms Darcy, PIAC lodged a claim of false imprisonment against the State of NSW. The matter was heard first by the District Court, then the NSW Court of Appeal.

The Court of Appeal accepted that Ms Darcy had been detained at Kanangra, but believed the Office of the Public Guardian had tacitly consented to her detention.

PIAC unsuccessfully argued that tacit consent could not be interpreted as a determination.

Straight from the source: 'streeties' tell it as it is

A new project from PIAC's Homeless Persons' Legal Service captures the stories of StreetCare members, in their own words. LOU SCHETZER* reports.

A new project from PIAC's Homeless Persons' Legal Service (HPLS) and its consumer advisory group, StreetCare, uses video interviews as a way for StreetCare members to share their stories of homelessness.

Called *In their Words*, the project provides an opportunity for people who have experienced homelessness to share their experiences. The videos will be included in training programs for people who work with homeless clients, and can be shown to policymakers and politicians to improve their understanding of individual experiences of homelessness. HPLS will also distribute the interviews via PIAC's website, YouTube and Facebook channels.

StreetCare members including AJ, Ken, Mary and Tony talk about how they became homeless, the challenges associated with being homeless, the services that assisted them, and the importance of having government, policy makers and service providers take account of homeless people's opinions.

They also talk about the significance of their involvement with Street Care.

The stories reflect the diversity of homelessness in NSW. The project will gather stories about homelessness from different perspectives: men, women, families, young people, transgender people, homeless people in the inner city, outer suburbs and regional areas.

The project breaks down the stereotypes that persist regarding homeless people and presents an opportunity for these stories to reach a wide audience, through social media.

The experiences of StreetCare members are important stories. They are stories that deserve to be heard and preserved. These are stories of resilience, struggle and strength.

Ultimately, these stories show that homelessness can affect anyone. Most of us are only three or four mishaps away from falling into a housing crisis.

Each member of StreetCare has their own story of facing homelessness. Some of them have been able to secure some form of housing, but some are still homeless, or at risk of falling back into homelessness.

These interviews also show that involving homeless consumers in advocacy, training and service design is a significant resource and a benefit for government and homeless agencies. But the project is also an amazing opportunity for homeless people.

In their Words exemplifies the commitment of HPLS to ensuring the opinions and voices of homeless people are heard in policy advocacy.

HPLS believes it is essential that people who have experienced homelessness play a central role in law reform and policy advocacy.

Doing so encourages the development of better policy and it empowers those who participate.

HPLS believes that such involvement is a meaningful and practical expression of the right of affected people to participate in public affairs, as enshrined in Article 25 of the International Covenant on Civil and Political Rights.

* Lou Schetzer is PIAC's acting Senior Policy Officer. HPLS is a joint initiative between PIAC and the Public Interest Law Clearing House. PIAC is grateful to the Law and Justice Foundation of NSW and to law firm Maddocks for their support of *In their Words*.

StreetCare member Ken talks to PIAC's acting Senior Policy Officer Lou Schetzer.

Photo: Scott Parker.



PIAC'S first client says no to power hike

The attempt by an energy retailer retrospectively to charge customers for a hike in electricity prices made PIAC's first client, Arthur Austin, so mad that he took the matter to the Supreme Court.

The ensuing skirmish with the retailer and then NSW premier, Neville Wran, 'has undoubtedly

brought home the dangers of taking the public for granted – especially now that PIAC exists to give legal aid to individuals who are prepared to challenge acts of doubtful legality by Government, government instrumentalities and other organisations' reported the *Sydney Morning Herald's* legal correspondent, John Slee.

The following story recounts PIAC's first case. It appeared in the *Sydney Morning Herald* on 16 August 1982. An edited version is reproduced in this edition of the *PIAC Bulletin*, with permission, as an introduction to PIAC's 30th anniversary celebrations.

The Sydney Morning Herald, Monday, August 16, 1982

How a retired electrician got Wran to freeze power charges

By JOHN SLEE, Legal Correspondent

WHY did Mr Wran, who fought to stand aloof from the retrospective electricity charges brouhaha, eventually intervene and tell the Sydney County Council he'd freeze charges if they didn't?

Partly it was because of the Ombudsman, Mr George Masterman, QC, and his report which said that the retrospective charges were probably illegal.

But more likely it was because of Mr Arthur Austin, a 69-year-old retired electrician and a political scrapper from way back.

Mr Masterman's report carried some weight, but it was a carefully qualified document, a lawyer's abstract exercise. Mr Wran could have seen it as an inconvenient exposure of the probably illegality with which the county councils were acting, but he could also probably have counted on it being forgotten fairly quickly.

Arthur Austin, symbol of every aggrieved electricity consumer, would not have gone away so easily.

With rare determination Mr Austin managed to get himself before Justice Needham of the Equity Division of the Supreme Court on July 26 to put his complaint about backdated charges.

The judge heard him out and carefully read Mr Austin's "book have the document prepared in proper form, identifying the points of law with the help of a lawyer, and to come back to court."

Mr Austin went away to do just that. In his search for legal aid he came upon the newly formed Public Interest Advocacy Centre.

The centre, set up by the Law Foundation of NSW, was officially opened on July 29 by Mrs Margaret Whitlam, who is the chairwoman of the Law Foundation's board of directors, and the NSW Attorney-General, Mr Frank Walker. It is headed by Mr Peter Cashman, a lawyer who has done research for the foundation on the delivery of legal aid.

The centre was established to provide legal assistance in cases where the issues at stake affected not just an individual but many.

Mr Austin followed that with a second session — to abolish the "municipal" county councils and replace them with a single State-wide electricity undertaking, to reduce costs.

Last week Mr Austin received acknowledgment of these communications from Mr Sheahan, the minister assisting the Premier.

Mr Sheahan offered an explanation for the 512 charge imposed for meter reading and programming accounts — which Mr Austin had also challenged. But he was silent on his request for a clearer system of presenting bills, with previous and present meter readings, and — hardly surprising — his call for reform in the county council administration.

Mr Austin will not now appear in court to challenge on behalf of all electricity consumers the legality of retrospective billing.

But his brief skirmish with the Sydney County Council and Mr Wran has undoubtedly brought home to them the dangers of taking the public for granted — especially now that the Public Interest Advocacy Centre exists to give legal aid to individuals who are prepared to challenge acts of doubtful legality by Government, instrumentalities and other organisations.

The retrospective power billing issue is now virtually dead, but Mr Austin does not regret the effort he put into fighting it.

"I never slept from the start that we would all end up paying more for electric...

... But that far as I was involved...

... If not, retrospectively...

... would it end...

... "I'd be fortunate...

... nations and...

... their costs...

... and that's...

... their mistake...

... "I would be...

... and with...



Mr Masterman . . . found that retrospective charges were probably illegal.

16 August 1982

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lawyer's' statement of claim.

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This was precisely the kind of test case Mr Austin had set in motion, and he became PIAC's first client.

In the week before August 8, when Mr Wran announced he would freeze power charges if the county councils did not, Mr Austin was busy consulting PIAC lawyers, and re-drafting his statement of claim.

He also decided then that, with

This was precisely the kind of test case Mr Austin had set in motion, and he became PIAC's first client.



Sydney County Council and Mr Wran has undoubtedly brought home to them the dangers of taking the public for granted – especially now that PIAC exists to give legal aid to individuals who are prepared to challenge acts of doubtful legality by Government, government instrumentalities.

The retrospective power billing issue is now virtually dead, but Mr Austin does not regret the effort he put into fighting it.

“I knew right from the start that we would all end up paying more for electricity, and will, but that was not the point, as far as I was concerned. The real issue was the principle involved.

“If you had a government instrumentality getting away with retrospective charging, where would it end?”

the case safely in the hands of a body that would see it through, he would stand down as plaintiff if that would speed proceedings.

Mr Austin will not now appear in court to challenge on behalf of all electricity consumers the legality of retrospective billing.

But his brief skirmish with the

“You’d have all sorts of organisations and firms saying that unfortunately they’d miscalculated their costs for the past half-year and that now they were putting their mistake on your bill.

“Sometimes, I suppose, people would be able to challenge them and win. But if it became open slather and firms were clever about it they’d probably get away with it, or do their best to, like the Government”.

In a sense, Mr Austin’s battle, and his victory – at least in principle – completes a circle.

In 1959, when the Labor Party was still in turmoil after the split of 1954, Mr Austin stood as an Independent Labor Candidate against the NSW Premier, Mr Joe Cahill. (In those days his name was Charles Highet, which he later changed to find odd.)

Mr Austin polled 1,094 votes

and lost his deposit, despite a platform that was broad-ranging and forward-looking.

He promised to fight for lower bus fares and more liberal payouts by poker machines, and, anticipating a change in drinking habits by about 20 years, said the breweries should be compelled to market a light beer, to give the working man a choice.

But, testimony to his consistency and doggedness, there were two other planks to his platform – lower electricity charges and the abolition of the Sydney County Council as the marketing authority for electricity.

Perhaps Mr Wran had some inkling of what he was up against when he acted to nip Arthur Austin’s latest challenge in the bud. Courtesy of Fairfax Syndication.

PIAC marks 30 years of public interest advocacy

‘A new form of legal aid to help mount test cases on issues which go beyond the dispute in question, will soon be available through the Public Interest Advocacy Centre.’

That’s how the *Sydney Morning Herald*’s legal correspondent, John Slee, reported PIAC’s arrival 30 years ago, in 1982 (see story opposite).

PIAC opened its doors on 29 July 1982 with just four staff members: PIAC director, and barrister, Peter Cashman (pictured); solicitor Sue Bothmann; project officer Kate Harrison; and secretary Jenny Reid.

Initially, PIAC was established as a division of the Law Foundation. Its 11-member steering committee included Law Foundation board members Terry Purcell and Anne Gorman, former Attorney General John Maddison, and a Redfern Legal Centre solicitor (and now High Court judge), Virginia Bell.

Consumer rights topped the agenda in PIAC’s first year, with the organisation successfully challenging the retrospective application of electricity price rises in NSW.

PIAC also focused in its first year on the imprisonment of fine defaulters, seeking approval in the Court of Appeal for a ‘time to pay’ principle. The argument was rejected.



Peter Cashman and Terry Purcell celebrate PIAC’s first anniversary in 1983.

‘PIAC has changed and adapted over the years, but its ethos has remained strong and consistent,’ said PIAC’s current chief executive, Edward Santow.

‘PIAC remains committed to social justice and consumer rights, and to promoting open and accountable government. Our litigation and advocacy work, and our legal support and training programs are focused on achieving these goals.

‘PIAC is shaped by the people who work here and by those who have contributed to the organisation over the past 30 years.

‘We owe a great deal to all of the organisation’s past and present staff and supporters.

‘I am acutely aware that we continue to derive a great deal of knowledge, inspiration and strength from those PIAC people who went before us, including the organisation’s first director and current chair, Peter Cashman,’ Mr Santow said.

Celebrations for PIAC’s 30th anniversary will be held over the coming months.

JOBS AND JUSTICE FOR WOMEN

One of the biggest and most significant sex discrimination claims in Australian legal history focused on women at the Port Kembla Steelworks. As Associate Professor ANDREA DURBACH* explains, the case was a watershed in employment rights.

One of the longest-running sex discrimination claims in Australian legal history settled in February 1994, bringing to an end 14 years of public campaigning and litigation by over 700 women, represented by PIAC with considerable assistance from Legal Aid NSW.

For many years prior to the litigation, hundreds of women had sought work at the Port Kembla Steelworks, owned by Australian Iron and Steel Pty Ltd (AIS), a subsidiary

of BHP. Although the introduction of the *Anti-Discrimination Act 1977* in New South Wales had facilitated equal employment opportunities for women, discriminatory attitudes in heavy industry (often based on paternalistic or protectionist notions) continued to bar women's employment. AIS excluded women from certain work, telling them there were no jobs for women, despite hiring men in analogous roles.

In 1980, Donka Najdovska and



33 women affected by the AIS hiring policy, lodged discrimination complaints with the NSW Anti-Discrimination Board (ADB). These women won.

Following conciliation, AIS agreed to engage women as ironworkers, employing over 150 at the steelworks.

But the victory was short-lived. Within two years, a downturn in the Australian steel industry prompted AIS to retrench many of the women employed pursuant to the initial claim. The women claimed that their retrenchments (executed in accordance with the 'last on, first off principle') amounted to indirect discrimination, the earlier discriminatory conduct by AIS delaying their initial employment. In 1989, after a series of appeals by AIS, the High Court held that AIS employment practices amounted to unlawful direct and indirect discrimination, awarding the women approximately \$1.4 million.

During this period, numerous additional complaints, primarily from migrant women alleging similar conduct by AIS, had been lodged with the ADB.

In a separate action, PIAC, led by the then barrister, now the Hon Justice John Basten QC, acted in representative proceedings on behalf of close to 300 women. The Equal Opportunity Tribunal ultimately found that AIS had discriminated against all women who had applied, or had

Once we realised that the laws covered us and that we weren't going nuts, we were entitled to a job, we knew we were right. We knew we had a good case, but we also knew if we were going to fight for women's rights we had to fight for the rights of migrant women. We knew that no case would be legitimate if migrant women weren't standing next to us. That was the beginning. We had no idea that 13 years later we'd still be talking about it and that we'd see 700 women involved in the fight. I don't think it registered that we'd taken on one of the biggest companies in the world, and that we'd taken on laws that hadn't been tested. We just did what we saw we needed to do.

Robynne Murphy, *Jobs for Women* advocate and PIAC client





applications pending, for employment as ironworkers during the period mid-1977 to end 1981. In relation to AIS 'last on, first off' retrenchments, the Tribunal held that the relevant date was the date when work was first sought, not the date of actual employment.

Although the class of actual and potential complainants had been defined, orders made pursuant to representative proceedings initiated under the *Anti-Discrimination Act* at the time, could only be made concerning liability and not damages. So despite a positive finding on liability, individual complainants were required to pursue individual claims for damages through the ADB. Attempts to determine damages were accompanied by an ever-increasing number of complainants, with the total number of complainants growing to over 700.

In May 1993, after years of lobbying, publicity and strategic advocacy spearheaded by the Jobs and Justice for Women Campaign, AIS and PIAC signed a mediation agreement "with the aim of settling all outstanding and potential complaints of sex discrimination against AIS by women who had applied or who had an application pending for employment as an ironworker with AIS between 1 June 1977 and 30 September 1988." In January 1994,

the last of the complaints of some 709 women were settled and the legal proceedings were withdrawn.

Despite arguments that the final mediated settlement of the AIS litigation undermined and 'privatised' the public interest objectives and potential gains of litigation (with disappointing consequences for some of the women in the representative proceedings), the AIS case stands as a landmark in Australian legal and industrial history. The Jobs for Women campaign, the litigation and the national and international mobilisation of support for the women combined to trigger significant changes to employment practices and policies, including:

- demonstrating the inefficiency of sex-segregated workforces and the need for flexible job structures based on merit;
- initiating changes in attitudes to the employment and treatment of women with the implementation of anti-discrimination and affirmative action workplace policies;
- reforming OH&S manual handling legislation, enabling safer work practices for all workers - both women and men.

The right to equal opportunity in the work place remains key to women's entitlement to work. The gains secured by Najdovska, Banovic, Murphy and others against such a



Bottom left, left and above: the first International Womens Day street march on Crown Street, Wollongong, 8 March 1979.



Robynne Murphy (far right) with some of the women that took on the 'Big Australian' and won the appeal. Photos: Illawarra Mercury.

large company continue to influence and inspire Australian women in their struggle to gain productive employment and ensure ongoing access to work and long-term economic security.

* Associate Professor Andrea Durbach was PIAC's assistant director from 1991 to 1997 and PIAC director from 1997 to 2004. She is now director of the Australian Human Rights Centre, Faculty of Law, the University of New South Wales.



The remarkable case of seven-year-old Scarlett Finney

Scarlett Finney's battle with the Hills Grammar School was the first real test of the federal *Disability Discrimination Act* in relation to school education. ALEXIS GOODSTONE* considers it to be one of PIAC's great cases.



Scarlett Finney with her parents ... unlawfully discriminated against by the Hills Grammar School. Photo: AAP

I began my long association with PIAC in 1998 as a student on placement from the College of Law. This is when I first came to work closely on Scarlett Finney's case. It was an amazing case to be involved in and it helped inspire me to become a public interest lawyer. I'm now PIAC's Principal Solicitor, and Scarlett's story remains, to my mind, one of PIAC's most important cases.

Scarlett was born with spina bifida. The physical symptoms of spina bifida include problems with mobility, and brain fluid circulation (hydrocephalus). Scarlett's family wanted to enrol her in the Hills Grammar School, a private, non-denominational co-educational school that catered for children from Kindergarten to Year 12.

Scarlett could walk short distances and otherwise used a wheelchair. She required some assistance with toileting once a day, for which the Finneys had arranged a community nurse to visit the school. She had no learning problems. She required approximately five hours of teacher's aide assistance per week, which was provided by the government.

Hills Grammar School rejected her application for enrolment on the ground of her disability. The school said that it couldn't accommodate her special needs. Scarlett's parents made a complaint to the then Human Rights and Equal Opportunity Commission, which at that time had the capacity to hear discrimination matters. The Commission found the school had unlawfully discriminated against Scarlett. Hills Grammar was ordered to pay her \$42,628 in compensation. The school appealed to the Federal Court but lost.

It was a remarkable case because it was the first to test the provisions of the *Disability Discrimination Act 1992* (Cth) in relation to enrolment in a private school. The Commission found that the school had not undertaken a proper assessment of Scarlett's needs, but instead had

The school had not undertaken a proper assessment of Scarlett's needs, but instead relied on stereotypical assumptions about spina bifida ...

relied on stereotypical assumptions and general information about spina bifida, which can affect children differently.

The case made clear that schools cannot refuse education to a child simply because she has a disability. Instead, the case showed that schools must engage conscientiously with parents and professionals in assessing the needs of children with disability.

The Commission also found that accommodating Scarlett's needs would not have caused the school 'unjustifiable hardship'. Thus all schools, particularly private schools, were put on notice that the law required them to make reasonable adjustments and commit a reasonable amount of resources to integrate students with disability.

The case received considerable media attention, which did much to stimulate community discussion about the issue. Scarlett was an articulate and confident child, and spoke to the media, alongside her parents and PIAC. She said she was upset that she could not go to the Hills Grammar School.

PIAC continues to work hard to uphold anti-discrimination law,



with a focus on public transport. We await a decision in the Haraksin v Murrays case, relating to wheelchair accessible coaches, as well as in Innes v Railcorp, relating to audible announcements on trains for blind and vision-impaired passengers. We have also undertaken case and policy work on airline travel and wheelchair accessible taxis.

We've made some gains but we've also come up against some of the same barriers, again and again. The primary barrier is the difficulty of finding clients willing to take on the significant financial risk involved in pursuing a disability discrimination claim. People with disability suffer discrimination in so many aspects of their lives and to risk huge amounts of money on a discrimination claim is beyond the capacity of most.

The introduction of Disability Discrimination Standards has gone some way towards addressing this deficiency. Still missing, though, is an enforcement mechanism that doesn't rely on individuals taking the risk of bringing litigation. If we want real advances in regard to accessible education, transport and other services for people with disability, we need governments to design and fund a method of enforcing compliance.

Until then, it will take the courage of clients like Scarlett and her parents, and other people with disability, to forge the way ahead and ensure that schools, transport and other service providers accommodate their needs and comply with the law.

* Alexis Goodstone is PIAC's Principal Solicitor.

Scarlett Finney writes:

What impact did the Hills Grammar School case have on you at the time?

From a very young age my parents worked hard to instill the belief in me that my disability is not a problem, and I could still do anything I wish, just like my able-bodied younger sister.

The unfair way in which Hills Grammar treated me was the first time my disability stood in the way of me being able to do anything, to the point that I was unable to attend my parents' (and my) first choice of school.

Being of such a young age at the time that the discrimination occurred, my understanding was quite limited to the extent that I believed the school did not want me to attend Hills Grammar because they didn't like me personally. As a little girl, I found this to be extremely upsetting.

How do you feel now about that time?

Now at the age of 20, I have a deeper understanding of the issues involved with my discrimination case and feel very thankful to my parents and our legal representation for taking this important matter so seriously and having the issue of access in education tested in such a significant way.

Was it worth taking action against Hills Grammar?

Definitely. This was such an important area of the law that had not been tested previously and the positive outcome of my case has developed a strong precedent which has made it impossible for any school to exclude any student based on their special needs – this was no small feat. It took two years to resolve the case but it was absolutely worth it.

Scarlett Finney is currently living in Sydney and taking some time to travel before pursuing further study.

'Off peak' power consumption is not always an option

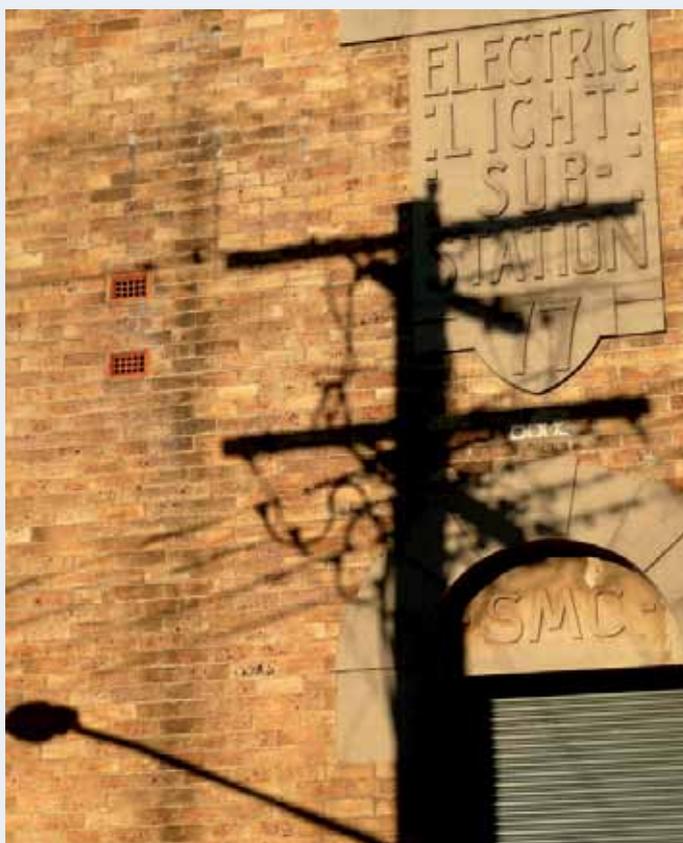
PIAC and the Physical Disability Council asked people with disability about the impact of electricity price rises. As CAROLYN HODGE* discovered, disadvantage can be compounded for people with disability, as they cannot always opt to use electricity at 'off peak' times.

Rising electricity prices seem to be a given in today's energy market, just as 'energy efficiency' and 'time of use pricing' are presented to consumers as the best way to manage electricity costs. But scant regard is paid to the barriers that sometimes make electricity unaffordable.

Disadvantage can be particularly acute in households where a person has a physical disability because their electricity consumption cannot always be reduced or shifted to cheaper price periods. For this reason, PIAC and the Physical Disability Council NSW (PDCN) surveyed affected households to get a better understanding of how rising electricity prices impact on people with physical disability. PIAC and PDCN ran a focus group, distributed a questionnaire (completed by 146 people) and undertook further research to put the survey findings into context.

Government payments are the primary source of income for most people with physical disability. This means that people with physical disability face all the usual challenges associated with low incomes and high electricity costs.

The general costs associated with disability include lost employment or education opportunities, together with the costs of home modification, transport, in-home services, aids, equipment and medical expenses. Then there are specific, energy-related costs such as running life



Flickr/Pedro Moura Pinheiro

support equipment, motorised wheelchairs, and heating or cooling.

A person with physical disability may also rely more heavily on appliances to help them with domestic tasks. In addition, if they rely on someone to assist them at home, his or her work schedule can make it unavoidable that they will use electricity during peak periods.

Our research showed that electricity plays such a key role in maintaining mobility and independence that people with physical disability give priority to paying their electricity bills, sometimes to the detriment of their health. Many respondents said the essential item they were most likely to give up to pay their electricity bill

was heating and cooling, even though three quarters of respondents said they have a physical condition that requires them to heat and cool their living space.

There are initiatives that could be pursued to assist people with the energy-related costs of disability. We could move away from the current, prescriptive eligibility criteria of the Life Support and Medical Energy Rebates and instead offer payments on the basis of need. This would remove the current scenario where some disability-related energy costs are completely unsupported.

PIAC and PDCN will use this research to inform the development of better policies and programs that help people with physical disability to stay connected to electricity and to stimulate market innovations that deliver benefits equitably to all consumers.

* Carolyn Hodge is the Senior Policy Officer at PIAC's Energy & Water Consumers' Advocacy Program.



CULTURAL MASH-UP IN CABRA-VALE

Leaders of Sydney's Spanish, Timorese, Turkish, South American and Islamic communities met at the Cabra-Vale Diggers Club earlier this year to learn advocacy and campaign skills. PIAC joined the cultural mash-up, as SARAH LUDOWICI* reports.



Photo: Flickr

Leaders from Sydney's south-west culturally and linguistically diverse (CALD) communities gathered at Cabra-Vale Diggers on a sunny Saturday in May to participate in PIAC's advocacy and media skills training program.

By the end of the day, the 30 or so Spanish, Timorese, Turkish, Indian, South American and Islamic community leaders had learnt some useful advocacy and campaign skills. The training helped these leaders identify ways in which they could advocate on behalf of their communities and campaign for human rights.

'It's inspiring to be amongst such passionate driven people. Thank you for the opportunity to be involved,' said one participant. 'It has confirmed for me that I want to be more involved in advocacy,' said another.

PIAC's focus on education and training for not-for-profit organisations and community groups is designed to empower individuals and the communities they represent.

PIAC's Introduction to Advocacy & Campaigning, for example, is a one-day training workshop that gives participants the opportunity to learn how to advocate for their issues with government, how to identify legal and other strategies, and how to engage and empower their community members. A version of this course was presented to the CALD community leaders in May.

PIAC offers a range of other training courses throughout the year, across NSW. This year, as in previous years, PIAC took its Homeless Law for Non Lawyers training program to community workers in regional NSW, running workshops in Wagga Wagga and Goulburn in partnership with Legal Aid NSW and the Homeless Persons' Legal Service (HPLS).

Law for Non Lawyers helps community workers to better assist clients who face homelessness. Participants in this one-day course hear from lawyers, consumer advocates, and people who have first-hand experience of homelessness.

Participants are helped to identify the best ways to address their clients' housing problems before they spiral out of control.

People's training needs change over time. Recent increases in electricity and water prices have led to an increased risk of disconnection for low-income households. Many vulnerable consumers are unaware of their rights when approached by door-to-door salespeople spruiking an electricity retailer.

In response to these concerns, PIAC's Energy + Water Consumers' Advocacy Program recently developed a workshop for community workers so they can help their clients stay connected to energy and water services by gaining access to available rebates and assistance programs.

Participants in PIAC's training courses have learnt how to effectively represent their community's interests and how to achieve systemic change through strategic campaign and advocacy work.

Negotiation Skills for Advocates

Tuesday 23 October
9am - 4.30pm
Cost: \$225

Law for Non-Lawyers

Monday & Tuesday
5 - 6 November 2012
9am - 5pm • Cost: \$790
\$395 for non-profits

Advocate for Clients

Monday
12 November 2012
9am - 4.30pm
Cost: \$225

Media Skills Training

Tuesday
20 November 2012
9am - 4:30pm
Cost: \$400

CUSTOMISED TRAINING PIAC's training courses can be tailored to meet the particular requirements of your organisation, network or group. Courses can be delivered in-house at a time and venue (including regional and interstate locations) that's convenient to you. *Contact Senior Training Officer Sarah Ludowici on 02 8898 6506.



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PIAC is an independent, non-profit law and policy organisation. We work for a fair, just and democratic society by empowering citizens and communities through training and advocacy, and by taking strategic action on public interest issues.

PIAC publications & papers

PIAC made 16 submissions in the six months from March to August 2012. This includes submissions on:

- Boarding houses
- The exposure draft national Homelessness Bill 2012
- Energy affordability
- The NSW Victims Compensation Scheme
- The Optional Protocol to the Convention Against Torture (OPCAT)
- Consolidation of Commonwealth Anti-Discrimination laws

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

Peter Dodd, 'The Holcroft Inquest: Prisoners deserve more humane prison transportation' (2012) Vol 7, Issue 29, *Indigenous Law Bulletin* 3-7

Edward Santow, 'What sort of inquiry is needed?' in Dr Alison Broinowski (ed), *Why did we go to war in Iraq?: a call for an Australian inquiry* (2012)



PIAC OFFICE WARMING



PIAC's Edward Santow with then Sydney Law School Dean, Gillian Triggs.

PIAC hosted an 'office-warming' earlier this year to celebrate its joint venture with Sydney Law School and its move to new premises at 173-175 Phillip Street, Sydney.

'The move brings PIAC to the heart of the legal precinct and an activist stone's throw from Parliament,' said PIAC chief executive, Edward Santow.

'This is exactly where we want to be. Our location symbolises our desire to be at the heart of decision-making, but to do so in a way that brings our clients and partners with us.'

Mr Santow said the joint venture enables PIAC to tap into students' ideas and energy, and to work with academics on areas of shared interest.

'I'm delighted that we've entered this joint venture with Sydney Law School and I thank the University of Sydney for recognising that PIAC's independence and autonomy are sacrosanct, and for their encouragement that we continue to work with other universities and centres of learning.'

Dean Gillian Triggs (now President of the Australian Human Rights Commission) thanked PIAC chair Peter Cashman for helping to bring the joint venture with PIAC to fruition.

'Many students come up to me and say it's the best part of their training,' she said.



From left to right: Terry Purcell, Alexis Goodstone, Alan Kirkland, Coralie Kenny.



From left to right: The Hon Justice Terry Sheahan AO, Peter Dodd, Peter Cashman.

Below, from left to right: Jane Sanders, Alison Peters, Padma Radman; John Corker, Edward Santow; Tamara Heligman, Jane von Beek, Mary Walker, Carolyn Hodge.



Above: Ralph Pliner, Gillian Triggs. Left: Lou Schetzer, Tony and Ricky. Right: Deirdre Moor with the Hon Elizabeth Evatt AC.



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

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