

Journal of the Public
Interest Advocacy Centre

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PIAC BULLETIN

PIAC

MENTAL HEALTH MONTH

**MENTAL ILLNESS
and Social Housing**

**INSURANCE
Mental illness and
discrimination**

**JOEL MAGAREY
on solitary
confinement**





Mental Health Month

PIAC class action in court: wrongful imprisonment

Working for a fair, just & democratic society

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Cover: Early morning on the Mathew Talbot Hostel rooftop
 Photo: AJ from StreetCare



CEO REPORT

This edition of our Bulletin focuses on mental health. PIAC has long had an interest in protecting the fundamental rights of people who have a mental illness or other mental health issue.

Mental illness is prevalent across our community. According to the Australian Institute of Health and Welfare, almost half of Australia's adult population (7.3 million people) reported a 'mental disorder' in their lifetime.

A person's mental health is often invisible. To assess it properly, it may be necessary to draw inferences from behaviour that is itself open to multiple interpretations. This can be a difficult task, and yet it is often crucial to understanding why a person acts in a particular way.

This, coupled with the difficulty we can have in properly understanding another person's behaviour, explains how hard it can be to develop effective, targeted responses to mental illness. PIAC's work on homelessness shows that simply criminalising behaviour that might stem from a mental health issue does very little to protect the community and, of course, does nothing to assist the individual to stop committing crime.

This edition of the Bulletin also introduces our recent work on the difficulties faced by people with mental illness who wish to obtain insurance. It shows that a simplistic understanding of mental health can have unfairly discriminatory impacts.

PIAC works in a broad range of areas to achieve social justice. The prevalence of mental illness in our community helps to explain why it represents a key unifying thread that runs through almost all of our work.

This edition of the Bulletin gives a sense of the diversity of the areas in which issues of mental health can impact on fundamental questions of dignity and social justice.

It is a bitter irony that in tough



Edward Santow, PIAC Chief Executive

economic times, demand from disadvantaged people for many of our services increases, and yet funding levels are threatened.

An enlightened approach might be for a policy of 'counter-cyclical' funding for organisations that promote social justice. This would require strong discipline on the part of government and other funders, but it would make big practical difference.

Meanwhile, like many community organisations, PIAC has endured a significant cut to its funding. This year alone, our core funding has been cut by almost 20 percent.

PIAC relies on a range of funding to enable us to do good and important work. The current restrictions on our traditional sources of funding have been a prompt for us to diversify our funding base further.

Our new project, the International Crimes Evidence Project, is made possible by a range of new PIAC funders. This funding is augmented by pro bono support from generous individuals and law firms, including long-time partners Henry Davis York, Herbert Smith Freehills, King & Wood Mallesons and Allens.

We are also increasingly reliant on donations from generous individuals as well as the corporate and philanthropic sectors. We are very grateful to our existing supporters. There has never been a better time to help us help disadvantaged people!

Edward Santow,
 PIAC Chief Executive Officer.

Photo: Amanda James

The first substantive hearing has been held in our class action on behalf of a number of young people who claim to have been wrongfully imprisoned for breach of bail conditions.

The class action, run by PIAC and Maurice Blackburn, was commenced in 2011. The case started after PIAC became aware that many children and young people were being arrested, detained (sometimes overnight) as a result of a flaw in

the Police computer database. The problem stems from inaccurate or out of date information on the system known as COPS (Computer Operational Policing System). The problem is ongoing.

The hearing last month considered the interpretation of the relevant provisions in the Bail Act relied upon by police officers to arrest and detain people on suspicion that they have breached their bail conditions. The court's decision was reserved.

Improving train announcements

Sydney Trains (formerly known as RailCorp) and Graeme Innes AM have reached agreement on all of Mr Innes' outstanding complaints about the lack of audible next-stop announcements on trains.

Mr Innes said that, as a result of discussions with RailCorp, he is now 'satisfied with measures that have been put in place to make on-train announcements clear, consistent and audible.'

PIAC represented Mr Innes, who is blind, in his case relating to the failure to provide audible announcements

on Sydney's commuter trains. These announcements are crucial because they allow passengers with vision impairment to know they are getting off at the right station.

On 1 February 2013, the Federal Circuit Court found RailCorp had breached federal disability discrimination law by failing to make audible announcements on 36 train journeys undertaken by Mr Innes between 28 March 2011 and 9 September 2011.

Sydney Trains has agreed to take specific steps to continue

Conference: Creating fairer energy and water markets for all

PIAC's Energy + Water Consumers' Advocacy Program (EWCAP) will hold its biennial conference on 9 October 2013 in the Sydney CBD.

The conference, entitled 'Creating fairer energy and water markets for all', will investigate the safeguards and strategies needed to achieve equitable access to electricity, gas and water.

Dr Richard Denniss, Executive Director of the Australia Institute, will deliver the keynote address. The Australia Institute is an independent policy organisation that promotes

new solutions and ways of thinking about important issues. PIAC believes Dr Denniss is ideally placed to speak about the elements needed to foster energy, and water markets that are accessible to all.

The conference will see the launch of PIAC's recent research report, *Cut Off III*, focusing on the social impact of utility disconnection.

There will also be three panel discussions, examining whether social policy can deliver equity in utility markets, lessons from price deregulation in Victoria and the



monitoring and improving on-train announcements. In light of this, Mr Innes has withdrawn further complaints.

Mr Innes, who is the Disability Discrimination Commissioner, pursued this matter in his private capacity.

safeguards needed to facilitate energy and water markets that deliver benefits to consumers.

Panel members will include representatives from Sydney Water, the NSW Council of Social Services, St Vincent de Paul, the Victorian Consumer Utilities Advocacy Centre, Choice and the Australian Competition and Consumer Commission.

For further information or to register, visit www.piac.asn.au or call 8898 6520.

Seclusion: are we hooked on bad medicine?

Controversial coercive practices used on psychiatric wards, such as solitary confinement, can cause extreme harms and have raised human rights concerns, writes freelance journalist JOEL MAGAREY.



Seclusion and its associated coercive psychiatric practices are in a sense themselves 'secluded'.

Occurring behind the closed doors of an apparently benign health care system, and imposed on many of the most vulnerable in society, seclusion - otherwise known as solitary confinement - and its fellow measures are well called 'invisible' by human rights advocates.

Their concealment from public view perhaps also explains how the practices, which include chemical restraint via forced injection and physical restraint, remain common even while the 'recovery' philosophy drives consumer-focused practice improvement in the psychiatric sector.

They continue also as psychiatric and psychological research scientists

throughout the world are beginning to quantify the damage they inflict, finding it so prevalent and serious that researchers have coined new research terms to describe it: 'sanctuary trauma' and 'sanctuary harm'.

In most states legal provisions allow seclusion and restraint to be used to prevent violence or for a range of other reasons, such as preventing patients leaving wards or destroying property. In a typical scenario a patient will be "taken down" by a group of nurses or security guards, carried or walked into a bare cell with a bed on the floor, sometimes forcibly injected with tranquilisers and sometimes forcibly stripped before being locked into the cell. The cells have no furniture or in-built toilets, with patients having to defecate and urinate in disposable

containers.

Mid-last year a striking figure about these practices appeared briefly on a screen at a public seminar I attended. Unpublished research, the speaker remarked, had found that 47 per cent of a group of psychiatric patients subjected to seclusion had emerged with levels of trauma as high as those found in people with post-traumatic stress disorder.

This was confronting. It turned out that the study, at Melbourne's Alfred Hospital and since published internationally, was a world-first. How many thousands of individuals would that finding translate to on a national scale? On an international scale? I began researching, and in July and August of this year I wrote a series of articles published by *The Australian* on these topics.

Following a successful application under freedom of information law, the stories exposed for the first time Australia's national and state-by-state statistics on seclusion. The released 'sensitive' government study revealed that - despite a 2005 national agreement to reduce or eliminate seclusion and restraint - hospitals across Australia are continuing to lock patients into seclusion at high and highly variable rates, which were branded 'totally unacceptable' by psychiatric experts.

Former patients, human rights advocates and mental health lawyers were quoted describing illegal uses of seclusion as common and alleging widespread human rights abuses. These claims were supported by the government study itself, which acknowledged the



The cells have no furniture or in-built toilets, with patients having to defecate and urinate in disposable containers. Photos: Wil Gleeson.

enormous seclusion use variations were 'unlikely to be explained by demographics or other patient factors'.

The articles also revealed a magnitude and variety of harms linked to seclusion and its typically co-occurring measures of physical and chemical restraint. A senior clinician broke ranks to estimate the practices were linked to one death a year in Victoria alone on average. (Such patients most commonly die while being held face down on the floor and/or while being forcibly injected with powerful tranquilisers.)

Injuries to patients and staff, the experts and research suggested, were occurring in about 20 per cent of the thousands of restraint episodes that occur nationally each year. Although the practices are intended primarily to prevent violence, including self-harm, committed by patients who can struggle to self-regulate or be subject to psychotic delusions, experts said the measures were largely avoidable, as there were more effective, non-coercive alternatives.

The practices were also, experts said, creating a 'vicious cycle' of staff coercion and patient violence on wards, which partially explained another shocking finding - that 43 per cent of mental health nurses themselves suffer mental illnesses.

In response to *The Australian's* articles, the Australian Human

Rights Commission, the National Mental Health Commission and others called for change, particularly for independent monitoring and oversight of the treatment of patients in psychiatric detention. The AHRC called for Australia to ratify the Optional Protocol to the Convention against Torture, which would require such independent monitoring. Most of the states dismissed or ignored the calls for greater regulation.

It seems, then, that even as a new federal project on seclusion and restraint gets underway, many states' politicians and bureaucrats may continue to reform coercive practices and relevant laws at a laggardly pace.

Meanwhile, however, dramatic advances are occurring in the relevant international law that may

bring pressure to bear on Australian authorities.

Prime among these has been the declaration in February this year by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, that there should be an 'an absolute ban ... [on] restraint and solitary confinement' in all places of detention, 'including in psychiatric ... institutions'.

It will be interesting to see how much notice is taken by Australian politicians and administrators responsible for what goes on behind those benignly white doors.

Joel Magarey is an author and freelance journalist based in Melbourne: joelmagarey@gmail.com.

PIAC has for many years advocated for better treatment of patients in mental health facilities. In the 1970s and 80s, we were involved in the inquiry into the use of deep sleep therapy at Chelmsford Private Hospital. The therapy, touted as a treatment for depression and compulsive behaviour, had fatal consequences for many Chelmsford patients.

PIAC has also worked to ensure the Optional Protocol to the Convention Against Torture (OPCAT) is ratified and implemented by all Australian governments.

The Australian Government signed OPCAT on 19 May 2009, but has not yet ratified the agreement.

If OPCAT is ratified, Australia would be required to 'set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment'.



47 percent of a group of psychiatric patients subjected to seclusion had emerged with levels of trauma as high as those found in people with post-traumatic stress disorder.

Mental illness and the criminal justice system

It remains a shocking fact that people with a mental illness are hugely over-represented in the criminal justice system. This is borne out in PIAC's work through the Homeless Persons' Legal Service (HPLS) (See box).

In fact, a 2008 study found that close to a third of Australian prisoners had experienced a mental health disorder in the preceding year, and that many had a cognitive impairment. The numbers are even worse for young people, with a 2011 report finding that 87% of young people in custody in NSW had a psychological disorder.

The question for policy-makers is how best to manage the complex needs of people with a mental illness within the framework of the criminal justice system, and reduce the likelihood of re-offending by addressing the causes of crime.

PIAC has recently released

KM's Story*

KM was charged with theft and use of credit cards. She had a lengthy history of drug abuse, mental illness and a lengthy criminal record for theft and fraud, and had previously spent time in prison.

After the offence, KM had started a stable relationship and had made serious attempts to get off drugs. At the time of pleading guilty, KM faced the real prospect of a further term of imprisonment. Given the change in her circumstances and her attitude, KM was referred to the CREDIT program. She can obtain financial and drug counselling together with referral to self-development programs.

If KM successfully completes the program, it is likely that she will not be sentenced to full-time custody.

*Case studies from the Homeless Persons' Legal Service

From January 2010 to December 2012, the HPLS Solicitor Advocate provided court representation to 241 individual clients facing criminal charges. Of these:

- 48 % disclosed that they had a mental illness;
- 63 % disclosed that they had drug or alcohol dependency;
- 41 % disclosed that they had both a mental illness and drug/alcohol dependency;
- 72 % had either a mental illness or drug/alcohol dependency.



a discussion paper, *Sentencing Contradictions*, which illustrates some of the benefits and problems with alternative diversionary sentencing initiatives available in New South Wales. Using case studies from HPLS, the report also details some other 'best practice' programs available in Australian states and internationally.

In particular, the paper examines 'justice reinvestment' and 'problem-solving justice' approaches. These move funds away from more expensive, end-of-process crime control options, such as incarceration, towards programs that target the causes of crime.

Problem-solving justice in NSW

'Problem-solving justice' redirects public resources away from custodial responses to crime, instead addressing the underlying factors that can contribute to offending and re-offending. Examples include strengthening programs that support housing, job training, education, and treatment.

The overall aim is to reduce recidivism through early intervention and the provision of targeted support.

In NSW, there are a number of programs that incorporate elements of problem-solving justice. Recently, in June 2013, the NSW Attorney General announced a new case

management service aimed at reducing adult reoffending by linking adult offenders assessed as being at risk of reoffending, with support services that may assist in addressing the underlying causes of offending. The "Life on Track" program will be based on the CREDIT program, which is a program that diverts offenders into drug treatment rather than imprisonment.

These programs offer some therapeutic responses to people with mental illness who commit offences. However, diversionary measures are often refused by magistrates on the basis that the charges are too serious or the monitoring period is not considered sufficient. In addition, the CREDIT program has limited availability as it currently operates at only two Local Courts in NSW - Burwood and Tamworth.

There are a range of Australian and international examples of justice reinvestment and problem-solving justice initiatives that have had significant positive effects on the communities in which they have been implemented. They are explored in detail in PIAC's discussion paper.

A copy of the report, *Sentencing contradictions: Difficulties faced by people living with mental illness in contact with the criminal justice system*, is available at www.piac.asn.au

Photo: Flickr/Key Foster

Skating on thin ice

For some people living with mental illness, lack of money, stigma and discrimination from private landlords and real estate agents prove to be insurmountable obstacles to renting privately, so access to social housing is the only option for safe, secure accommodation.

PIAC's Homeless Persons' Legal Service (HPLS) has recently released an issues paper exploring the difficulties people living with mental illness face accessing and maintaining social housing.

Skating on thin ice includes the stories of HPLS clients.

Almost half of the clients assisted by the HPLS Solicitor Advocate between January 2010 and December 2012 disclosed that they had a mental illness.

In 2012, HPLS provided advice and assistance to 77 people who had tenancy and/or housing related disputes with Housing NSW.

The main problems identified were:

- inappropriate housing offers;
- delayed responses and poor client service from Housing NSW;
- delayed or refused transfer of accommodation;
- inflexible application of Housing NSW policy in relation to accessing priority status;
- housing debt and rent arrears;
- neighbor disputes and difficult behaviours;
- classification as 'unsatisfactory former tenants' by Housing NSW.

Skating on thin ice identifies several key areas for improvement, including:

- All staff in customer service operations in Housing NSW should be trained in how to effectively



engage with homeless people who live with mental illness.

- Housing NSW should ensure that there is consideration of a person's background and experience of mental illness before placing them in public housing, so that they are not placed in areas or accommodation that is inappropriate or where they may feel unsafe.
- Housing NSW should ensure people with a history of mental illness can transfer to more appropriate locations if they are fearful for their safety or have concerns about becoming homeless.
- Where a social housing tenant

has fallen into arrears with their rent payments, or is facing other tenancy related debt, Housing NSW should adopt an 'eviction as a last resort' policy.

- Housing NSW should develop procedures to enable identification of social housing tenants in financial crisis or hardship, by virtue of a history of falling into rental arrears, and provide warm referrals for such tenants to appropriate welfare support and financial counselling organisations.

Skating on thin ice - Difficulties faced by people living with mental illness accessing and maintaining Social Housing, is available on the PIAC website: www.piac.asn.au

K's Story*

K is a tall woman in her 40s. She suffered domestic violence as a child, and as a result has a significant mistrust of men. She is on a Disability Support Pension, has some learning difficulties, and suffers from anxiety and stress for which she is seeing a counsellor. She received temporary accommodation from Housing NSW in Western Sydney, which then became transitional accommodation at the same premises. However, she did not feel safe in her accommodation and approximately eight months ago she applied to Housing NSW for a transfer. She reported a high incidence of violence, and drug and alcohol abuse among other people living in those premises, and indicated to Housing NSW that she was in constant fear and suffering from anxiety and depression, given her history of domestic violence.

Given her level of anxiety and stress, she decided not to stay in those premises, preferring to live in her car. At the time she approached HPLS she had been sleeping in her small car for approximately six months. There was no information from Housing NSW as to the status of her application for transfer.

Photo: Flickr/spacedetmarko

In practice: mental illness, homelessness and crime

Jeremy Rea is the solicitor advocate for the Homeless Persons' Legal Service. Since 2008, he has represented people who are homeless, or at risk of homelessness, when they face criminal prosecution.

Jeremy spends his days at the legal coalface, representing clients in the Local, District and Supreme Courts, in applications for bail, sentence reviews, defended hearings, appeals on conviction or on sentence, and in bail review applications.



He has over twenty years practical experience dealing with clients with complex needs and sees first hand the challenges many face in dealing with mental illness, substance abuse and entrenched disadvantage.

Mostly, his clients face 'street charges' such as possession of drugs, offensive conduct or language, intimidation, assault, resisting arrest and assaulting police. Jeremy attributes this to the fact that 'they are much more exposed to observation and apprehension by the police'.

Jeremy also deals with more serious offences, such as robbery, break and enter, and sexual assaults. Around seventy percent of his clients plead guilty, largely, he said, because they want to have their matters dealt with quickly.

Jeremy noted that alcohol and drug dependency were two of the most common underlying problems facing his clients, and that many have a history of childhood abuse.

A very large proportion of Jeremy's clients have mental health conditions, affecting how they react with others, especially the police. Their progress through the system can depend heavily on how connected



From left Justin, Jeremy and Martha outside Downing Centre Court. Photo: Dominic O'Grady.

they are to mental health services. Those who are left without medical treatment tend to have more interactions with the criminal justice system.

Jeremy also noted that many people are only diagnosed with mental health issues after they arrive in jail. This is often because they have not sought treatment, or because their condition has been masked by drug or alcohol problems.

The key change that Jeremy would like to see made to the system is the introduction of a special circumstances court. Specialising in

criminal matters involving people dealing with mental health issues, drugs or alcohol, it could streamline the process for those defendants.

Jeremy's view is that overall our criminal justice system, within the limitations of its framework and budget, does what it can do. Ultimately, he said, it is up to governments to face up to the issues, and resolve to provide the resources needed to address what are often complex social problems.

Ben May, Homeless Persons' Legal Service

JK's Story*

JK was homeless. He was initially found guilty of criminal offences, especially offensive language, offensive conduct and goods in custody. His consumption of alcohol and methylated spirits increased. He was charged with wielding a knife in a public place, the ninth such charge on his record since 2001. On many occasions he had received a short jail sentence and then was back on the street. In recent times, his matters had been diverted from the correctional system under NSW mental health legislation. However, none of his underlying issues had been addressed.

The HPLS Solicitor Advocate worked with a treatment provider to ensure that a treatment plan for JK was put together, which would help him address his long-term problems, not just his short-term legal problem. This meant that when JK received a good behaviour bond, he was released, not back to the streets, but straight into long-term accommodation with 24-hour support and medical care.

*Case study from the files of the HPLS Solicitor Advocate

Photo: Flickr/yewenyi

Sri Lanka: towards healing

The International Crimes Evidence Project (ICEP), a recent project of PIAC, was established to conduct objective, independent investigations into serious alleged violations of international law in our region.

ICEP investigates situations that have not yet been addressed formally by the international criminal justice system: where States are unable or unwilling to investigate and prosecute those most responsible for the commission of serious international crimes; and where the international community has not yet ensured a form of post-conflict accountability.

For some time prior to its incorporation within PIAC, ICEP has been engaged in an investigation into the final months of the Sri Lankan civil war. Through its work, ICEP aims to contribute to achieving justice for victims of alleged crimes committed during this civil war.

There are many forms that post-conflict justice can take. Those most relevant to the work of ICEP include truth telling and documentation, and criminal prosecutions.

For witnesses who speak to ICEP, some of whom are experiencing or

I could see dead bodies all over the road. There were many injured people all around me but I could not go out of my bunker to help. All I could do was watch as it happened.

have experienced trauma, the witness interview process may be exhausting. It tends to bring to the surface painful memories and experiences.

However, the witness interview can also be an opportunity for the witness to share their story and for them to contribute to future accountability. Giving one's own account is often an essential part of the healing process for those who have experienced the horrors of conflict.

In Australia, there is a large population of people originally from Sri Lanka. By including these people in our work, together we can help them work towards achieving some form of justice for their past suffering as they re-build new and safe lives in

Australia.

The taking of witness statements, and documenting other evidentiary material such as photographs and videos, is also an important way of contributing to justice. This documentation helps to construct an accurate historical narrative and to ensure the horrors are not forgotten.

Finally, and most aligned with the work of ICEP, holding those people who are most responsible for mass and gross violations of human rights criminally accountable is another way of achieving justice. Justice is important both for the current generation of survivors and for their descendants.

Holding people accountable today helps to ensure that these violations do not happen again in the future because when impunity is allowed, violations continue. The current ICEP investigation will culminate in a confidential report for key UN agencies and Governments. This report will analyse all the available evidentiary material within a framework of international criminal law and international humanitarian law (the laws of war).

In this way, ICEP will continue the dialogue on the possible violations of international law and the need for credible and independent investigations into events that occurred in Sri Lanka in the final stages of the war.



Alleged aerial bombing in the Vanni region of Sri Lanka. Photo: ICEP.

Respect and understanding: assisting people with energy and water bills

Earlier this year, PIAC released *Cut Off III: the social impact of utility disconnection*. The third in a series of reports released over the last eight years, *Cut Off III* reported the findings of a survey of 171 NSW households that had been disconnected from electricity, gas or water.

Thirty per cent of respondents reported that someone in their household had a mental health condition. How should energy and water companies be more responsive to the needs of these consumers?

PIAC Senior Policy Officer, Carolyn Hodge, sought the advice of two key advocates in this space: Elizabeth Priestly, CEO of the Mental Health Association NSW; and Ka Ki Ng, Senior Policy Officer at NSW Consumer Advisory Group Mental Health Inc.

Here is an excerpt from the conversation.

Responding to diversity

Not all people with mental illness are alike. A person's individual circumstances, needs and capacity should be accommodated in providing an essential service like energy or water.

Carolyn: What would you like customer service staff at energy and water businesses to know about helping people with mental health issues who might be struggling to stay connected?

Elizabeth: I think one of the issues we must keep in mind is you must not put everybody with a mental health issue or mental illness into the same bucket because people can be as different as chalk and cheese. Just because they have a mental illness doesn't necessarily mean that they can't pay their bills or they are not able to understand the process.

I think that a lot of people have so much happening in their lives. They may be particularly unwell,



Ka Ki Ng, Carolyn Hodge and Elizabeth Priestly. Photo: Julie Leitch.

haven't got a job, their social network is falling apart, they are having problems dealing with the medical systems, they are having problems dealing with their landlord or finding appropriate accommodation. Being told that their electricity will be cut off or their water will be restricted might be such a small thing compared to everything else. I guess it is just a matter of understanding where that person is coming from.

Carolyn: So do you think some kind of empathy training could be a good idea?

Elizabeth: There's maybe one in four or one in five people everywhere that have experienced a mental illness. If it's not you then there's a good chance that it is someone that you know, someone who is close to you. It could be your mother or my sister or my boyfriend that has had experience with mental illness. Maybe it is realising how broad the scope of people who have mental health issues is. That sort of realisation about how common these issues are is what we all need to be aware of.

Ka Ki: I agree with you. It's impossible to put people with mental health issues all in the same bucket. I wonder how comfortable would people be to say upfront that 'I am having difficulty with my bills and I have a mental health issue'? I don't know how much of that is really correlated.

In my experience consulting with lots of mental health consumers one of the issues that we come across more often is actually people saying that they don't have budgeting skills - that they don't know how to manage their finances.

It might actually also be the case that the front-line person needs to be able to offer a range of options to try and find out what is helpful to the person rather than focussing particularly on whether they have mental health issues.

Overcoming embarrassment

Although the stigma associated with mental illness has reduced over the years, feeling 'judged' is still an issue for many people living with a mental health condition. With this in mind,

service providers need to look for ways to overcome barriers caused by embarrassment and shame.

Carolyn: *Cut Off III* found that embarrassment was a key barrier to asking for assistance. What could help people feel more comfortable about seeking help or talking to people at utility companies about their circumstances?

Ka Ki: It is about having conversations that are respectful rather than demeaning and patronising. I would imagine if someone is having difficulty paying their bills and the person who picks up the phone is a little bit, or even sounds a little judgemental, it doesn't matter whether the person has a mental illness or not they are probably going to be put off.

Elizabeth: In many ways it is an issue to do with stigma. There is still that stigma associated with mental illness. I think it is reducing but it is still out there and is an issue to do with blame, or thinking people have a mental illness because of something they have done or it is their own fault.

Carolyn: So is it really about having systems that can assist people who are vulnerable without that stigma or without that label being placed on them?

Ka Ki: I think it is actually more about options. Some people don't mind having the label, some people are actually very happy to say look this is my situation, I have X Y & Z diagnosis and my symptoms are that I like to leave the heaters on even during summer. It is actually about staff being trained well enough to be able to have that conversation with people and to be able to identify if this is going to be an ongoing issue for the person that they need to be aware of. It's also setting the scene for the person to be able to

say, 'look I have been in hospital for three months, I have just come out, someone was living in my home and who knows what that person did and now I can't afford to pay the bills, can you help out?'

Better Communication

Being sensitive to an individual's circumstances and finding the best communication method can reduce misunderstandings and make communication more productive.

Carolyn: One of the things you mentioned earlier, Liz, was that people might not be coping with keeping up with matters like payment of bills when they were unwell. Our research told us that many people felt they hadn't had any contact with the retailer before they were disconnected - even though there are obligations for the retailer to make contact. Mostly, retailers send out letters yet when people are under stress, they don't open those window envelopes. Do you have any ideas about other ways to communicate with people?

Elizabeth: I actually think text messaging is a great idea-not specifically for people with mental health issues but more generally. It is a good communication tool-especially if people are finding other methods confronting.

Carolyn: Maybe when companies sign somebody up they could ask whether they prefer to be contacted by email, text, phone call, letter or some other way. That way people could nominate a couple of methods that work for them.

Ka Ki: I'm thinking more of that small group of people who are disadvantaged, possibly literacy is an issue, who have mental health issues and do not want to open the post and may not have very good access to mobile phone communications.

I think the letter and then the texts is like an escalation isn't it - that if a letter does not get a response then you aim for whatever is the next best communication the person has in place and then what is the next step and the next step.

Elizabeth: For people with serious cases they can be very isolated. Their life is isolated because of their illness and that personal contact is something that they actually crave. If people are not working, if their family is not around to help them and they have no other support network, there is a chance they are sitting at home on their own and just having someone knock on the door to offer them help seems to me to be the way to go.

Community Partnerships

Carolyn: Do you think that the retailers could partner with community services to try and link people to assistance? I wonder whether there is enough integration between the services that are offered and trusted by people with mental health concerns and a whole lot of essential service providers?

Ka Ki: I think those companies should aim to at least have a community engagement team that are out there engaging with people and working with community services to say 'hey do you know that there are options available out there for your clients?' Many services may know somebody who is about to be cut off but they may not be resourced enough to know what to do about it.

Carolyn Hodge, Senior Policy Officer, Energy & Water Consumers' Advocacy Program

Cut Off III and PIAC's recommendations about reducing disconnections are available at www.piac.asn.au. Click on 'Projects', then 'EWCAP'.

Beyond the Prison Gates: straight from prison to homelessness

When a person is released from prison, one of the biggest challenges is creating a stable life on the outside. The high risk of becoming homeless shortly after release makes such a stable life hard to attain.

The Homeless Persons' Legal Service together with its consumer advisory committee, StreetCare, undertook a consultation project to record the experiences of homeless people who have recently been released from prison.

The project involved interviews with 26 people who had left prison in the previous two years into housing crisis or homelessness. The interviews discussed what support and assistance were available prior to release, as well as difficulties with finding accommodation after release.

The project report, *Beyond the Prison Gates*, was released by PIAC in August 2013. It finds that a lack of transitional housing and support for people leaving prison may be forcing many ex-inmates into homelessness, and perpetuating a cycle of disadvantage and incarceration.

The report also details concerns about lack of appropriate exit-planning for all people released from prison, with over a third of interviewed ex-inmates indicating that they spent their first night out of jail sleeping rough or in some other form of primary homelessness.

'The research shows we need to do more to support ex-prisoners to find stable housing and employment so that they can escape the cycle of disadvantage, re-offending and incarceration,' said Lou Schetzer, Senior Policy Officer at PIAC.

'Most interviewees were shocked by the lack of support they received in the lead-up to, and after, release. In particular, the report highlighted a chronic shortage of crisis and short-

term accommodation for people exiting prison,' Mr Schetzer said.

'Ensuring that people have somewhere to live, a job, and support in the community is the best way to prevent re-offending, and to help them create a positive new life.

Ensuring that people have somewhere to live, a job, and support in the community is the best way to prevent re-offending, and to help them create a positive new life.

'Our research suggests that the NSW Government needs to increase transitional accommodation options and have them administered by non-government, community organisations with expertise in providing accommodation and case management for people exiting prison,' Mr Schetzer said.

Key recommendations:

- The NSW Government should take immediate steps to increase the available stock of crisis, transitional and short-term accommodation options for people exiting prison.
- The NSW Government should provide funding to increase the

availability of community-based transitional accommodation options for people being released from prison and remand, which is administered by non-government, community organisations with expertise in providing accommodation and other supports for people exiting prison.

- The NSW Government should take active measures to increase the availability of affordable social and private rental housing stock in NSW.

- The NSW Government should make further amendments to the Bail Act, in accordance with the recommendations of the NSW Law Reform Commission's review, that all current presumptions in relation to bail be replaced with a uniform presumption in favour of release, to enable a reduction in the remand population.

• In order to reduce the remand and short-term-sentence prison population, the NSW Government should develop and implement appropriate diversionary sentencing options that employ problem-solving approaches to criminal offending. These should focus on underlying medical and social problems that contribute to recurring contacts with the criminal justice system.

- The NSW Government should ensure that adequate support measures are implemented for people released from remand, particularly those released from court.
- The NSW Department of Attorney General and Justice should establish a court-based brokerage and support service for remandees released from court to ensure that such people are provided

"What would have helped me before I got out is if I had been able to get photo ID and all of those sort of things. I've been out for three months and I'm still trying to get photo ID. Things like that. Opening a bank account. All these simple things that would have enabled me to get out and straight into a job. But yet I got out of jail with no ID, nothing and I'm still trying to get ID. I can't get a job without photo ID."

"A bloke's suddenly let out of jail, no money, nowhere to go. He had no idea what to do. He had no home, no clothing, no accommodation, no family support and there is a lot of guys out there, a lot of people... and they've got no support. They get out and they are just dumped on the street like a piece of flotsam. What do they do? They commit a crime and go back to jail because at least they get four walls and a roof and a meal."

"Well I firstly went to all the boarding houses that I know of and they've asked me where I've been and where I've been living and I said I just got out of jail. As soon as I say I got out of jail their whole manner changes, don't want to know me, shut the door in my face."

"I have been on the Department of Housing list for eleven and a half years. Eleven and a half years and I'm still waiting..."

with appropriate direct referrals for accommodation and support services, and that personal possessions and medication that belong to the person and may still be held at the prison, are expeditiously forwarded to the person.

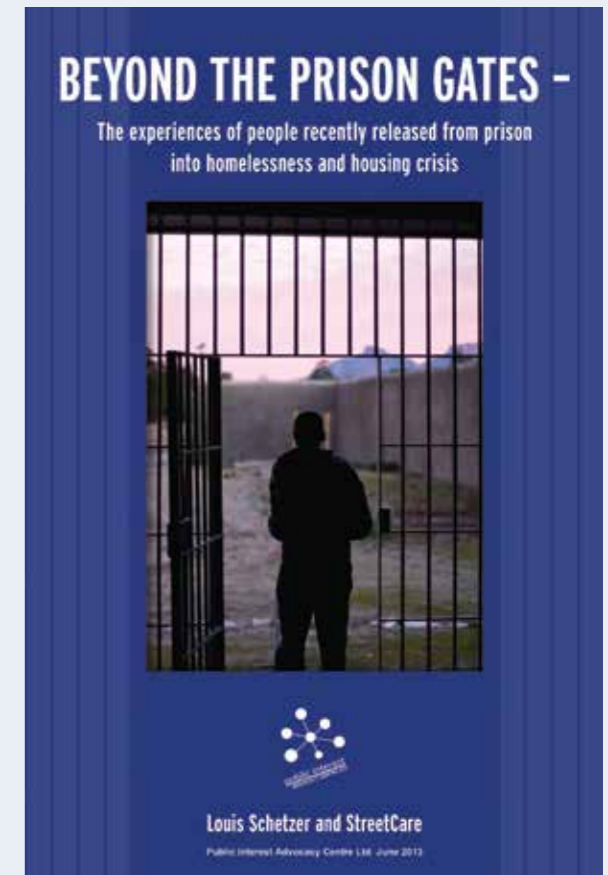
- Corrective Services NSW should undertake a review of all processes and policies in respect of exit planning for prisoners.
- The NSW Government should undertake appropriate legislative,

policy and educational initiatives to reduce discrimination against people exiting prison in order to ensure access to necessary accommodation and support services.

- The NSW Government should provide resources for specialist and generalist homeless services for specific case management and support programs targeting ex-prisoners
- The NSW Government should provide additional resources to

community-based accommodation and support services that focus on people released from prison, to enable more intensive, higher quality case management and support for people about to be released from prison, and continuing post-release.

The full report, including a briefing paper with detailed recommendations, as well as a short video that includes the story of Dale, who left prison in 2011 and found himself in housing crisis, can be downloaded at www.piac.asn.au.



Mental illness and insurance: is unlawful discrimination rife?

Nearly half of the Australian population will experience a mental disorder at some stage of their life. Despite this, discrimination against people with mental illness appears to be significant.

For instance, in 2011/2012, around one in five complaints to the Australian Human Rights Commission under the *Disability Discrimination Act 1992* (Cth) were made by people who have a mental health issues.

Recently, through discussions with the Mental Health Council of Australia and beyondblue, PIAC has become aware that people living with, or with a history of mental illness, find it more difficult than others to obtain insurance.

We have received reports that concerns about mental illness are causing some insurers to offer cover that is more expensive, or deny insurance altogether, despite there being no diagnosis of a mental illness from a mental health professional. For example, a person may be denied insurance cover for all forms of mental illness in the future, just because they have seen a work counsellor for a short period, but have no other history of mental illness.

In other cases, some insurers appear to be overestimating the risks involved in insuring people who can demonstrate a high level of functioning despite their mental illness.

For example, a person may be denied income protection insurance at a certain level because they have been diagnosed with depression, even though their doctor reports that their illness is highly unlikely to affect their ability to work, and despite the person being able to prove that they have not taken any sick leave at all during the years that they have been experiencing the depression.

These practices do not seem to exist in relation to people with physical ailments. A history of one



mental illness can mean that people are refused insurance for other mental illnesses. We would not imagine that a person with a broken leg that they obtained from a car crash would be excluded from making claims in relation to any physical injury that they obtained in a car crash in the future.

PIAC believes that such practices will, in some instances, be unlawful under state and federal anti-discrimination law. PIAC is providing legal advice to a number of people in this situation.

The *Disability Discrimination Act 1992* (Cth) and the *Anti-Discrimination Act 1977* (NSW) provide that insurance companies can discriminate against someone with a disability, including a mental illness, but only if it is reasonably based on relevant actuarial or statistical data, and other relevant factors, such as a medical opinion. Where no actuarial or statistical data exists upon which it is reasonable for an insurer to rely, the insurer may only rely on relevant factors to determine risk.

In other words, the law recognises that mental illness may increase the risk of a person making a claim on their insurance. The law allows for the different treatment of people with mental illness, but only where such

discrimination is based on data that proves an additional risk.

The law does not allow for such different treatment to be based on a hunch or on outdated notions about mental illness. It is not known what data insurance companies rely on to assess the insurance risks of people experiencing mental illness.

In the case of *QBE Travel Insurance v Bassanelli* [2004] FCA 396, the Federal Court found that an insurer must not rely solely on general assumptions about people of a particular age or sex or particular disability in deciding to refuse cover. In a practical sense, this might mean that insurance companies should consider whether a person who is receiving treatment for their mental illness, such as taking a prescribed course of medication or seeing a psychologist, should be treated as less of a risk than a person who is not receiving any treatment for their condition.

Ensuring insurance companies do not discriminate against people with mental illness falls squarely in the public interest. If you think that an insurance company has treated you unfairly because of a mental illness, you can contact Michelle Cohen, Senior Solicitor, at (02) 8898 6504 to see if PIAC can assist you.

Photo: Flickr/visibleducts

Minister Goward hears about life on the street

During Homeless Persons' Week, the NSW Minister for Family and Community Services and Minister for Women, Pru Goward, came to PIAC to listen to StreetCare - a group of people with experience of homelessness - as they presented opportunities to reduce homelessness.

This year's theme is 'The Hidden Homeless'.

'It's easy to associate homelessness with sleeping on the streets, but the reality is that only 6% of homeless people sleep rough,' said Lou Schetzer, Senior Policy Officer at PIAC.

The "hidden homeless" are people who can't live at home, perhaps due to domestic or family violence. They find themselves couch surfing, sleeping in cars or temporary accommodation.

'StreetCare reflects the diversity of homelessness in New South Wales. The members include men, women, transgender people, young people, and representatives from inner Sydney, the outer suburbs, as well as



StreetCare members with Minister Goward, from left Tony, Dave, Renae, the Minister, Dale and Mary

rural and regional areas.

'We are pleased that Minister Goward had the opportunity to hear directly from them about their experiences,' Mr Schetzer said.

To celebrate the great work that StreetCare has done since it was established in 2009, PIAC has released a video featuring StreetCare

members. View the video at www.piac.asn.au

'There are so many hard-working volunteers making a real difference to homelessness in NSW. I congratulate StreetCare on the advice it provides to the NSW Government and the work it does to improve the lives of homeless people,' said Ms Goward.

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For more information or to register:
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'I wanted to thank you again for the two days you spent with us. The feedback from staff has been very positive. It has also energised a number of staff re progressing the systemic issues they looked at in the training?'

Ken Hardacker, CEO, Advocacy Tasmania Inc

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