

Journal of the Public
Interest Advocacy Centre

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PIAC BULLETIN

PIAC

**ICEP REPORT:
fresh evidence of
war crimes in Sri
Lankan civil war**

**New clinic for the
Homeless Persons'
Legal Service**

**Using front line
experience to solve
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**Mandatory
sentencing:
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Support social justice: Support PIAC

Working for a fair, just
& democratic society

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CEO REPORT

If a person commits assault or murder, there's a very strong chance they will be caught and sent to trial. Justice might not be immediate, but we invest heavily in our legal system to ensure that the law catches up with people. And rightly so.

But what happens to the person who commits a hundred assaults and murders? Or a thousand? Perversely, it seems that the perpetrator is far more likely to get away with it.

PIAC took on the International Crimes Evidence Project (ICEP) to try to address this tragic irony.

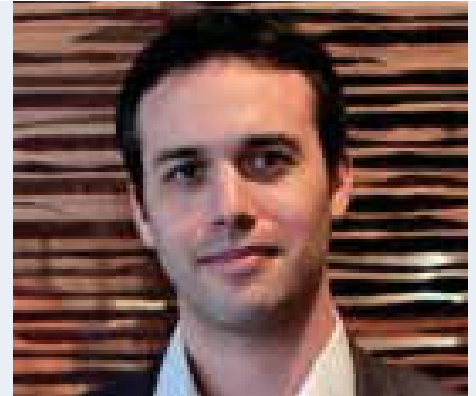
Since 2012, ICEP has been investigating alleged war crimes and crimes against humanity committed in the final phase of the Sri Lankan civil war, culminating in May 2009. Our investigation has brought together some of the world's leading experts on international criminal law and international humanitarian law.

Earlier this year, we released our first ICEP report, which details credible allegations of war crimes committed by both the Sri Lankan Government and the Liberation Tigers of Tamil Eelam.

In March, the United Nations Human Rights Council resolved to establish a comprehensive international investigation into war crimes and other breaches of human rights committed during the conflict. PIAC's report proved very influential in the UN member states' deliberations.

After the catastrophe of civil war, lasting peace can only be guaranteed if there is truth, justice and accountability. The conflict in Sri Lanka matters to us in Australia for many reasons.

First, Australia has a large population of Sri Lankans from all ethnicities. The wounds of a far-away conflict still cut deeply notwithstanding temporal and geographic distance (think of sectarian divisions between



Edward Santow, PIAC Chief Executive

Australian Catholics and Protestants).

Secondly, Australia has a growing relationship with Sri Lanka. Without an enduring peace in Sri Lanka, that relationship will continue to fixate on the issue of refugees, rather than trade and social development.

Thirdly, Australia has seen itself as a principled force for peace in the Asia-Pacific. Australia co-sponsored UN Human Rights Council resolutions in 2012 and 2013 to help resolve the accountability deficit in respect of crimes committed in the Sri Lankan civil war. But Australia chose not to do so in 2014.

Winter appeal

With traditional sources of funding contracting, PIAC needs philanthropic support for our important work. We are fortunate and appreciative to have individuals and corporations help us to help the vulnerable and disadvantaged in our community.

Now, with even more people in need of our assistance, we hope that your interest in our work will encourage you to make a generous tax-deductible donation to PIAC.

Some of our readers may have already received PIAC's 2014 Winter Appeal, but if not you can make a donation online by visiting our website www.piac.asn.au.

Your gift will support PIAC's innovative programs in the areas of homelessness, social justice, equality and public interest litigation.

Edward Santow,
PIAC Chief Executive Officer.

Focus on young lawyers - Dominic Woolrych

Dominic Woolrych recently undertook a six-month secondment to PIAC's Homeless Persons' Legal Service (HPLS) from Minter Ellison Lawyers. He tells us what he learned from working with PIAC.

'HPLS taught me to think on my feet. Often, the first time you meet a homeless client is just before you walk into the courtroom. The clients don't have time to prepare for their legal matters. They're too busy trying to find shelter and a meal.

'It's not uncommon for police to hand you a new charge as you walk into court, or for your client to not show up as they're in a detox facility. The ability to think on your feet means that you can take these issues in your stride and still get the best outcome for your client.

'Many of our HPLS clients have no-one to turn to. Getting to know my clients on a personal level was the best part of my secondment.

'I had a client on bail who was living in the city. He had to report

daily to Bankstown police station. I was able to change his reporting station. This made a huge difference to his life. He was very appreciative and called me most weeks to have a chat.

'I've also had the chance to work closely with Jeremy Rea, HPLS Solicitor Advocate, who is a wealth of knowledge with 20 years as a criminal solicitor. Jeremy gave me the responsibility to run my own files but was always ready and able to share his advice. He strikes a perfect balance between autonomy and supervision.

'Before PIAC, I had no social justice experience but I did have an interest in helping people. I'd volunteered at a homeless shelter in Kings Cross but often felt helpless



Dominic Woolrych. Photo: Gemma Pearce

listening to their problems.

'PIAC has given me the opportunity and platform to use my legal skills to help disadvantaged and homeless clients and given me a greater understanding and respect for all aspects of the Australian legal system.'

Support PIAC's winter appeal



Artwork produced for HPLS' tenth anniversary by Chris Barwick. See page 14. Image: Chris Barwick

This year marks the 10th anniversary of PIAC's Homeless Persons' Legal Service (HPLS). During that time we have helped over 8,000 homeless men, women and young people.

We know there are many more people needing our help. But we can't do it alone.

You can help make a difference to a homeless person's life by making a tax-deductible donation to PIAC's Winter Appeal before 30 June 2014. Your generosity will support HPLS - a program that works directly with people experiencing homelessness to ensure they can access services and receive free legal assistance.

In 2013, HPLS helped over 1,300 of Sydney's homeless people, and those at risk of homelessness, with legal advice, assistance and representation. HPLS solicitors also assisted homeless people in obtaining medical treatment and supported accommodation.

We ask you to give generously by donating online today: www.piac.asn.au, sending a cheque to PIAC, Level 7, 173-175 Phillip St, Sydney NSW 2000 or calling (02) 8898 6523 to make a donation over the telephone.

Your tax-deductible donation will help us to continue helping others. Support social justice. Support PIAC.

Challenging impunity in Sri Lanka

Since 2012, PIAC's International Crimes Evidence Project (ICEP) has been investigating alleged war crimes and crimes against humanity in the final stages of the Sri Lankan civil war, a conflict that spanned almost three decades and which violently ended in May 2009.

The recent phase of our investigation culminated in the release of ICEP's landmark report, *Island of impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war*, in February 2014. The purpose of the report was to assist the United Nations Human Rights Council (UNHRC) consider how best to promote accountability and reconciliation in Sri Lanka.

After intense negotiation among member states, the United States put forward Resolution 25/1 for consideration at the UNHRC 25th session in Geneva. On 27 March 2014, the resolution was passed. Among other things, the resolution will lead to the establishment of a comprehensive international investigation into events in between February 2002 and May 2009 Sri

Lanka. This investigation, led by the UN's Office of the High Commissioner for Human Rights (OHCHR), will be an important step towards achieving accountability for credible allegations of international crimes in Sri Lanka.

Background to the Sri Lankan civil war

Since gaining independence from Britain in 1948, Sri Lanka has had a volatile social and political history, dominated by conflict between the majority Sinhalese population and minority Tamil population.

In response to majoritarian policies instituted by the government from 1956, Tamil militant groups, including most prominently the Liberation Tigers of Tamil Eelam (LTTE), demanded the establishment of a separate Tamil State in Sri Lanka. Large-scale communal violence in July 1983 shifted Tamil militancy into civil war. From the 1990s, the LTTE exerted control over large parts of north-east Sri Lanka by employing guerilla tactics, suicide bombings and assassinations.

After a temporary and uneasy ceasefire starting in 2002, hostilities recommenced in 2006.

The Government's Security Forces achieved important victories in Sri Lanka's Eastern Province before turning their attention to the Northern Province into which, by late-2008, hundreds of thousands of Tamil civilians had been displaced by the fighting. An intensification of the war from January 2009 meant that these civilians were trapped inside the conflict zone with limited means of escape.

The government's final military offensive commenced in September 2008, when UN agencies and civil society organisations were effectively forced to leave what remained of the LTTE-controlled Vanni region.

On 19 May 2009, the Sri Lankan President declared victory over the LTTE, as more than 250,000 survivors were transferred into closed detention facilities or 'rehabilitation centres'.

Sri Lanka has not yet undertaken a full and impartial investigation into credible allegations that international crimes were committed by both sides of the conflict. In the aftermath of the war, there have been persistent reports of ongoing human rights abuses in Sri Lanka.

Past efforts to promote accountability in Sri Lanka

Past inquiries by the Sri Lankan Government have been criticised for lacking transparency and independence, especially where government agencies and officials may be implicated. On 22 June 2010, the UN Secretary-General appointed a panel of experts to advise him on challenges that existed for accountability in Sri Lanka (UN Expert Panel). On 31 March 2011, these experts published their report on alleged violations of international humanitarian law and human rights law during the final stages of the conflict.

By late-2008, hundreds of thousands of Tamil civilians had been displaced by the fighting.
Photos: Flickr/trokilonichichi





PIAC's CEO, Edward Santow and Senior Policy Officer, Daniela Gavshon, were in Geneva for the meeting of the UN Human Rights Council. Ms Gavshon addressed the Council on 26 March. PIAC also co-hosted a side event.



Sri Lanka initiated its own inquiry into the conflict by establishing the Lessons Learnt and Reconciliation Commission. However, it failed to address the vast majority of these alleged violations of international law.

In March 2012, the UNHRC passed the first of three resolutions that have raised serious concerns with the human rights situation in Sri Lanka and called on the Sri Lankan Government to investigate the civil war. The UN's peak human rights agency, the OHCHR, has also played an important monitoring role in Sri Lanka since that time.

Key findings in *Island of impunity?*

PIAC's investigation found reasonable grounds to suspect that acts, which could amount to war crimes or crimes against humanity or both, took place. These allegations include that:

- the Sri Lankan Security Forces intentionally or recklessly attacked civilians in government-designated No Fire Zones;
- members of the Security Forces engaged in extrajudicial judicial killings of senior LTTE leaders and people associated with the LTTE;
- rape, sexual violence, torture and enforced disappearances were committed by members of the Security Forces both during the

final months of the conflict and in the post-conflict period.

- members of the Sri Lankan Government denied essential humanitarian assistance to civilians trapped in the conflict zone;
- LTTE members prevented civilians from fleeing the conflict zone, including shooting those who attempted to leave;
- the LTTE launched attacks from among civilians and near protected sites such as hospitals, and engaged in fighting after changing from military uniforms into civilian clothing, which exposed the civilian population to heightened danger;
- the LTTE recruited child soldiers.

In relation to the ongoing violations, the report stated, 'The ongoing nature of these violations indicates an environment where people are not held accountable for credible allegations of serious crimes. When a culture of impunity exists, violations continue.'

New witness testimony provided to ICEP points to the urgent need for further investigation to examine whether, in the years since the end of the conflict, the security forces were involved in the systematic destruction of mass civilian burial sites.

Worldwide coverage of ICEP's report

ICEP's report has received extensive media coverage in Australia and overseas, including from: *The New York Times*, *The Washington Post*, *The Times* (UK), *Al Jazeera*, *The Guardian*, *Agence France Presse*, *The Sydney Morning Herald*, *The Age*, *Daily Telegraph* (UK), *Reuters*, *ABC Radio*, *SBS* and *Sky News*. It was also covered in the Sri Lankan media.

The report was tabled in the Australian Parliament and the findings were presented to the Human Rights Council at the 25th Session.

Next steps for ICEP

ICEP's investigation has revealed that there is much more work to be done in this area. ICEP continues to hear of witnesses who may be willing to provide statements and there is a need to document these statements in a timely manner. ICEP intends to continue this investigative work and to gather key evidence that might complement the work of the OHCHR on Sri Lanka.

To download the full report and the executive summary, please visit www.piac.asn.au.

For inquiries, please contact icep@piac.asn.au

HPLS: compassionate and effective - a student's perspective



*No act of kindness,
however small,
is ever wasted.*

~Aesop

From left: Nicholas Simone, Isabella Kang, Gilbert + Tobin partner Rachel Saunders and lawyer Richard Francis.

As part of their placement with PIAC's Social Justice Clinical Program, several Sydney University law students had the opportunity to visit a Homeless Persons' Legal Service (HPLS) clinic. PIAC runs weekly clinics at welfare agencies throughout the city, providing free legal advice to people who are experiencing homelessness. Nicholas Simone and Isabella Kang visited the Matthew Talbot Hostel in Woolloomooloo for a two hour HPLS clinic with lawyers from Gilbert + Tobin.

On the way from the PIAC office to Woolloomooloo, we mused that it is easy to walk by homeless people on the streets without giving them a second glance and we were eager for this opportunity to learn first hand about the challenges they face.

As we stepped out of our comfort zone and into the Matthew Talbot Hostel, we were greeted by the welcoming staff and accompanied the Gilbert + Tobin lawyers to the interview rooms.

Prior to attending the clinic, we

thought that the types of issues that clients would present to us would revolve solely around tenancy due to the clients' homelessness. It quickly became clear, however, that there were many more underlying issues with which these individuals were dealing on a daily basis.

The clients needed help with matters ranging from criminal charges and upcoming court appearances to debt recovery. However, it seemed that for many the real issues underlying the

legal matters were mental illness, substance abuse, and histories of violent abuse and loneliness. It was interesting to observe how the lawyers took this into consideration as they assisted clients with their legal problems.

The people who attended the HPLS clinic were diverse. While some clients attended with very little understanding of legal procedures and processes, others were well-prepared.

Many were simply victims of circumstance and, after talking with them about how they had become homeless, whether by losing a job, a destroyed relationship or some other hardship, we realised just how easy it might be for anyone to fall into an impossible position, leading to homelessness.

Our visit to the HPLS clinic also offered us a glimpse at the pro bono work that the lawyers who partner with HPLS generously provide. Knowledge is power, and as law students, it can be easy to take our education in the legal system for granted.

We were inspired to see that this safety net for those who fall through the cracks not only exists but is also compassionate and effective.

By Nicholas Simone and Isabella Kang

New clinic for the Homeless Persons' Legal Service

Attorney General Greg Smith SC launched PIAC's newest homelessness legal clinic at the Mission Australia Centre (MAC) on Tuesday, 11 February.

The clinic, which PIAC runs in partnership with Maddocks law firm and Mission Australia, provides free legal advice to people who are homeless or at risk of homelessness every Thursday from 12 - 2 pm.

The new legal clinic will build on the services already offered at the MAC, which include accommodation, counselling as well as access to a doctor and a dentist.

Homelessness is increasing. The City of Sydney Homeless Street count this year recorded an increase in the number of people sleeping rough in the inner city, and the new clinic will assist in meeting an increased demand for services.

The Homeless Persons' Legal Service (HPLS) is a project of PIAC and receives funding from the NSW Public Purpose Fund and the NSW and Australian Governments.

Since its establishment in 2004, HPLS has assisted more than 8000 clients.

'PIAC is thrilled to provide an additional clinic at the Mission Australia Centre,' said PIAC CEO, Edward Santow.

'The new legal clinic adds to the ten HPLS clinics already run by PIAC, which are managed with the pro bono assistance of over 350 commercial lawyers at welfare agencies across Sydney.

'Last year alone, HPLS lawyers provided advice to more than 1300 clients with a range of legal problems including tenancy, credit card and debt issues, social security, victims compensation and fines.

'This would not be possible without the support of our partners, and funding from the NSW Government and NSW Public Purpose Fund.'

'However, our traditional sources of funding are decreasing. More than ever, we are relying on the generous support of donors.'

'Through HPLS PIAC is able to leverage approximately \$1.95 million in free legal services from commercial law firms and Legal Aid NSW, in order to assist some of the most vulnerable members of the community,' said Mr Santow.

From left: James Toomey, NSW/ACT State Director, Mission Australia; Greg Smith SC, NSW Attorney General; Lisa Chung, Partner, Maddocks; Edward Santow, PIAC's CEO.
Photo: Kareena Denley



The Homeless Persons' Legal Service holds legal clinics at the following times and locations.

The Station Ltd

82 Erskine Street Sydney
Monday 10 am - 12 noon

Wayside Chapel

29 Hughes Street Potts Point
Monday 10 am - 12 noon

Matthew Talbot Hostel

22 Talbot Lane Woolloomooloo
Tuesday 11 am - 1 pm

Norman Andrews House

77 Roscoe Street, Bondi
By appointment only

Parramatta Mission

119 Macquarie Street Parramatta
Wednesday 11.30 am - 1.00 pm

Salvation Army Streetlevel

Derby Lane (off Albion St) Surry Hills
Wednesday 1.00 pm - 2 pm

Thursday 12 pm - 2pm No drop-ins.
Both clinics by appointment only

Vincenzian House

Surry Hills
Call 8093 6798 to make a booking or obtain address.

Mission Australia Centre

Surry Hills
Call 9356 0711 to make a booking or obtain address

Edward Eagar Lodge

348a Bourke Street Darlinghurst
Thursday 1 pm - 3 pm

Women's & Girls' Emergency Centre

174 Redfern St Redfern
Friday 11.30 pm - 1.30 pm

Newtown Mission

280A King Street Newtown
Friday 1.30 pm - 2.30 pm

Woolloomooloo Integrated Services Hub (WISH)

Access to legal advice is available at the monthly WISH, held at the Ozanam Learning Centre 99 Forbes St, Woolloomooloo from 9.30am on the following Wednesdays in 2014: 21 May, 16 July, 20 August, 17 September, 15 October, 19 November.

Using front line experience to solve the bigger issues

Improving access to justice is not just about ensuring that all sectors of society can equally obtain legal information, services, advice and representation. It also involves reviewing existing laws and policies to identify where justice is being denied systemically and to propose reform.

Much of the policy work that community legal centres (CLCs) undertake is in response to government inquiries or parliamentary committees conducting community consultation.

CLCs can offer effective and creative solutions to legal problems based on their experience with their clients - commonly people who face economic, social or cultural disadvantage. Their community may be a geographically-defined community (generalist legal centres), or it may be defined by an area of law or a particular client group (specialist legal centres).

Because of their specialised knowledge of particular client communities, CLCs are well positioned to recognise trends or patterns in legal problems that indicate a systemic issue. Problems could be substantive, such as the disproportionate negative impact of a particular area of law on the identified client community, or procedural, such as particular difficulties the client community has in accessing or interacting with legal services or the legal process.

CLCs can make a valuable contribution to finding a solution by researching how such problems may

have been addressed elsewhere, and to develop and promote solutions. CLCs can assess the likely effect of proposed changes on their client community and facilitate consumer input. This is a successful and cost effective model, as the following example illustrates.

The genesis of the NSW Work and Development Order (WDO) system lies in PIAC's work providing legal assistance and representation to homeless people. PIAC identified problems with the fines system in NSW that caused unintended negative consequences for this group of people, contributing to the cycle of poverty and disadvantage that was very difficult to escape.

The Homeless Persons' Legal Service (HPLS) first raised this issue in March 2006 in a report entitled *Not Such a Fine Thing*. The report collected experiences of homeless individuals with the fines system, and identified that for people living in poverty, the imposition of fines

A parliamentary perspective

Sydney University law students participating in the Social Justice Clinical Summer Course interviewed Niall Blair MLC, who is the Chair of the Standing Committee on Social Issues. Mr Blair commented:

"We need to have contact with people who are impacted by decisions or changes within government. We don't have the resources or the ability to understand how a particular piece of policy will impact every industry or community group. The beauty about our state is that it's made up of fantastic communities - but they're all very different... So I think that it's a very useful process for different industry or community groups to be able to come in and present their case on either side of any argument."

We asked Mr Blair for his advice on drafting a useful submission to government. He nominated the following:

- "Use the terms of reference." This lets the reader know that your submission has relevance to the issue in question.
- "Make recommendations or suggestions" as government is looking at solutions as well as the issues.
- Structure it clearly, make it easy to read and get to the point. If necessary, "write an executive summary at the start that outlines your key arguments. At the last social issues committee hearing, we had over 7,500 submissions. We're constricted with time, so we need to be able to get to your key point."

Sydney University law student and interviewer Isabella Partridge

reflected: "whilst individual cases are important, they are sometimes a 'band-aid' solution to the bigger issue. The way to truly achieve systemic change is through well-researched and thoughtful policy reform, which empowers communities and reduces entrenched disadvantage. Social justice requires government to listen to the voices of the marginalised and vulnerable members of our society. Unfortunately, these voices sometimes aren't the ones heard or considered in litigation. Policy submissions prepared by community organisations ensure the voices of our society's most disadvantaged members are fed into the policy process."



ABC News reported on PIAC's recommendation to change some problematic provisions of the Electoral Act that disenfranchise people with disability as they are of "unsound mind".

they cannot pay compounds their social and economic disadvantage.

The report suggested options for reforming the fines system in NSW, especially in relation to on-the-spot fines. HPLS drew on its casework experience and that of other community-based organisations that assist disadvantaged people who cannot afford to pay their fines, or who feel they have been treated unfairly.

HPLS worked closely with the NSW Attorney General's Department to develop a solution. HPLS recommended that a voluntary work model be included as an option to 'pay off' fines, and that alternative treatment programs for individuals whose offending was the result of mental health, drug and alcohol problems, be introduced.

The NSW Government introduced a pilot program to trial WDOs in

2008. In 2011, following a successful evaluation, the WDO program was made permanent. Since that time nearly 16,000 WDOs have been approved, clearing more than \$18 million of outstanding debt.

Systemic policy work can actually reduce costs to government, through savings made in diverting matters from the court and prison systems, and reducing related health and welfare costs.

Because of their specialised knowledge of particular client communities, CLCs are well positioned to recognise trends or patterns in legal problems that indicate a systemic issue.

PIAC's recent policy work

PIAC has recently made a submission in response to the Productivity Commission's Issues Paper about Access to Justice Arrangements. The Productivity Commission is undertaking an inquiry into Australia's system of civil dispute resolution, with a focus on constraining costs and promoting access to justice and equality before the law.

PIAC suggested that the following groups face particular systemic barriers in accessing justice services:

- Aboriginal and Torres Strait Islander peoples;
- People with disability;
- People with intellectual disabilities or cognitive impairments;
- People who are homeless or at risk of homelessness; and

- People in rural and remote areas. The submission considered a wide range of access to justice issues, including unmet legal needs, the costs of accessing civil justice, avenues for improving access to civil justice, and preventing issues from evolving into bigger problems. PIAC also recommended ways to use informal mechanisms to best effect, improve the accessibility of tribunals and courts, and ensure there are effective and responsive legal services.

In January 2014, PIAC made a submission to the Australian Law Reform Commission's review of equal recognition before the law and legal capacity for people with disability. PIAC has a long history of involvement in the area of disability, and PIAC's submission reflected our

experience assisting people with disability.

Based on PIAC's experience, there are a number of issues in relation to Commonwealth anti-discrimination law that may affect the equal recognition before the law of people with disability and their ability to exercise legal capacity.

PIAC's submission also addressed issues for people with disability in relation to administrative law, competition and consumer law, privacy law, electoral matters, identification documents, jury service, access to justice, insurance, health care and restrictive practices. People with disability need to be able to make decisions and act on their own behalf where possible.

PIAC's submissions are all available at www.piac.asn.au.

Excessive use of force? Police tasing of Einpwy Amom

While tasers could be an effective, non-lethal weapon for police, the recent firing of a taser on a young person in concerning circumstances highlights the need to improve police training and procedures.

PIAC is representing Mr Einpwy Amom who was tasered by NSW Police last year. Mr Amom was 17 years old and handcuffed at the time the taser was fired.

His case raises serious questions about how the police are using tasers. It also raises concern about whether NSW Police on some occasions use excessive force in effecting the arrest of young people in NSW.

Closed Circuit Television (CCTV) and other video footage shows Mr Amom being restrained by six police officers after falling down the stairs and hitting his head at Blacktown Railway Station. Mr Amom appears motionless for around 30 seconds after he falls and while being dragged down the stairs. The police handcuffed Mr Amom, and then tasered him as he lay on the ground, on his stomach.

The New South Wales Police Force Use of Conducted Electrical Weapons (Taser) Guidelines state that a taser should only be used to provide protection to officers and others from a violent force or confrontation, or actual risk of bodily harm. They specifically state that a taser should not be used when a person is offering no physical resistance, and should not be used on persons who are handcuffed unless there are exceptional circumstances.

NSW law also requires police officers to immediately arrange for a person to receive medical attention if it appears that they require it. Mr Amom's experience raises serious concerns about police compliance with the Guidelines and NSW law.

Mr Amom was charged with five



offences following his arrest. Mr Amom was found not guilty on all charges, except for a charge of failure to comply with a lawful move on direction. The Magistrate found that all six police officers involved acted outside of the execution of their duties in the conduct of Mr Amom's arrest.

In December 2013, the CCTV and other video footage of Mr Amom being tasered was aired on the on ABC's 7:30 program. The Police Integrity Commission is currently conducting an independent investigation into the incident. Meanwhile, the NSW Police have been ordered to stop all internal investigations into the matter.

The inappropriate use of tasers can cause serious harm, and even death. In February 2013, the NSW Ombudsman released a report into the death of Brazilian student Roberto Laudisio Curti, who died in 2012 after being repeatedly tasered by the police. The report found that NSW Police must improve their training, policies and accountability in the use of tasers.

Recently, a NSW District Court judge found that two police officers used excessive force in the arrest of Mr Jamie Jackson, who was kicked and assaulted by two police officers during the 2013 Sydney Mardis Gras.

PIAC welcomes the Police Integrity Commission inquiry into the arrest and tasing of Mr Amom. We believe that Mr Amom's case highlights the need for the NSW Police to exercise their powers with caution so that all members of the community are protected.



Einpwy Amom was tasered by NSW police at Blacktown Railway Station while handcuffed and lying on the ground. Photos: Still images taken from mobile phone footage.

False imprisonment of young people: obligations on solicitors

PIAC and Maurice Blackburn represent a large group of young people who allegedly have been wrongfully arrested for breach of bail, in a class action against the State of NSW.

The case started after PIAC became aware that many children and young people were being arrested and detained (sometimes overnight) as a result of a flaw in the police computer database. Proceedings were commenced in the NSW Supreme Court in June 2011. In 2013, the court handed down its decision (*Konneh v State of New South Wales (No. 3)* [2013] NSWSC 1424). The decision clarifies police arrest powers for breach of bail under section 50 of the *Bail Act 1978* (NSW).

The Supreme Court found that group members who were arrested for breach of bail, when they were not in fact on bail at the time, are eligible for compensation for false imprisonment, assault and battery. This decision has broader implications and may apply to people arrested in similar circumstances, outside of the class action.

Locating potential class members has been difficult. All current group members are young people; one third identify as Aboriginal or Torres Strait Islander; and most are from non-English speaking backgrounds. Raising awareness of the class action or the ability of class members to claim compensation for unlawful arrest has been problematic.

Obligations on the plaintiff's solicitors

As solicitors for the plaintiff in these proceedings, we have a number of duties to potential group members.

We have a responsibility to locate



PIAC senior solicitor Michelle Cohen, Sami Sarraf and journalist Wendy Carlisle. ABC Background Briefing spoke to several members of the class action for a program in December 2013.

All current group members are young people; one third identify as Aboriginal or Torres Strait Islander; and most are from non-English speaking backgrounds

as many group members as possible for the purpose of the 'opt out' procedure which is required for class actions such as this in the Supreme Court. This procedure allows potential group members to decide whether or not they wish to be bound by the resolution of the class action.

Obligations on other solicitors

In the February 2014 edition of the *NSW Law Society Journal*, Miranda Nagy SC and Mallory Tuckey, both of Maurice Blackburn Lawyers, wrote an article that discusses the obligations on any lawyer who has acted in criminal proceedings for a person who was unlawfully arrested.

The article points to lawyers' general 'duty to advise' and notes that this duty may be breached if a lawyer exercising reasonable care and skill fails to bring to the attention

of a client a reasonably foreseeable event likely to cause financial loss or other kind of damage to a client.

So, where a criminal lawyer becomes aware of sufficient information to suggest that a client (or potentially ex-client or person not yet on retainer) may have been unlawfully detained or arrested, those lawyers may have a continuing obligation to advise those clients of any potential claim in false imprisonment. They may also have a continuing potential liability in negligence if they fail to give this advice.

PIAC encourages all lawyers to review the article in the *Law Society Journal*. If you are a lawyer representing a young person who you think could fall within the class action, please contact PIAC Senior Solicitor Michelle Cohen on (02) 8898 6504 to discuss the process for referral.

Staying connected: new energy rules for residential parks

When it comes to the provision of essential services such as energy and water, consumer protections are particularly important for people living in residential parks such as retirement villages and caravan parks.



Access to essential services for residents of residential parks is a key focus for EWCAP.

Photo: Flickr/Bush philosopher Dave Clark

Residential park tenants often rent from the same person who supplies their utilities, so energy bills can easily become part of disputes about rent. Residents also worry about losing their home if they make complaints.

For this reason, access to essential services for residents of residential parks and villages is a key focus of PIAC's Energy + Water Consumers' Advocacy Program.

In the middle of 2013, new rules (known as the National Energy Customer Framework or NECF) came into force governing the sale of electricity by retirement village and caravan park operators to their residents. Under the NECF there are some changes to the rules governing the sale of electricity by so-called 'exempt suppliers'. Here is a brief summary of some of the key points.

Exempt suppliers

Residential park or retirement village operators who sell electricity to their residents are known as 'exempt suppliers'. This is because they are exempt from having to hold an electricity retailer's licence.

Under NECF, exempt suppliers cannot charge their customers a higher price than the Standard Contract in that area. The price of a Standard Contract is regulated by the Independent Pricing and Regulatory Tribunal.

What happens if a customer experiences financial difficulty?

Like conventional retailers, exempt suppliers are required by law to offer their customers payment plans and other assistance.

Importantly, any payment plan needs to make it affordable for the customer to stay connected to electricity or gas (if possible).

Exempt suppliers must also tell the customer about any government energy efficiency and energy saving programs, as well as making sure the customer is aware of all government energy rebates, concessions and relief schemes.

Preventing disconnection

Before a customer of an exempt supplier can be disconnected, the supplier must give them a reminder notice and a disconnection warning letter.

After that, the customer can still only be disconnected if they have refused or failed to take any reasonable action towards settling the debt.

NSW Energy rebates and assistance

The Low Income Household Rebate is the biggest energy rebate offered

by the NSW Government. People who pay their bill to an exempt supplier in a retirement village or caravan park receive a rebate 10% higher than customers who pay their bill directly to a retailer. For such eligible customers, the rebate is worth \$247.50 a year, increasing to \$258.50 on 1 July 2014.

The Medical Energy Rebate, which is also available to customers of exempt suppliers, is worth the same amount as the Low-Income Housing Rebate, and customers of exempt suppliers again receive an extra 10%.

For more information visit <http://www.energy.nsw.gov.au/customers/rebates> or call 13 77 88.

Complaints about exempt sellers

For customers of exempt suppliers, lodging a complaint can be a difficult decision, because the supplier is also their landlord.

If an issue cannot be resolved, contact the AER on 1300 585 165, or visit www.aer.gov.au.

Because the AER is new to retail energy regulation, it is important that consumers report complaints as it will help to raise awareness of the problems customers are facing. This is one way policy makers can learn about the problems that need to be addressed.

Mandatory sentencing: an alternative perspective

A couple of years ago, Trent (not his real name) came into one of the free legal clinics that PIAC offers for people who are experiencing homelessness.

Trent had been charged with assault after drinking a substantial amount of alcohol. Trent said he was abused by another man, and in response, in his highly agitated and slightly intoxicated state, he grabbed the other man and pushed him over. Trent had never been in trouble with the police before.

When Trent appeared in court, the magistrate recognised that he had some anger management and alcohol problems that needed to be dealt with. Given Trent had not previously offended, he ordered that Trent undertake an alcohol rehabilitation program, and then report back to court.

After four months, Trent returned to court having completed the program. He was no longer drinking alcohol and had secured stable accommodation. As a result, the magistrate placed Trent on a 12-month good behaviour bond.

Trent is one of many clients seen by our Homeless Persons' Legal Service each year, who have a significant alcohol problem. For those facing criminal charges, more than half of our homeless clients disclose an addiction to drugs or alcohol, and 46% say that they have previously been in prison.

Many of these clients have benefited from the NSW Government's suite of programs that address the underlying causes of criminal offending. Just as doctors try to treat the disease and not just the symptoms, our experience has shown that the community will be safer by addressing the underlying causes of offending through appropriate treatment and rehabilitation programs.

It is also a more efficient and effective use of taxpayers' money, than locking up offenders from



dysfunctional, disturbed and disadvantaged backgrounds, only for them to return to society in a couple of years, potentially more hardened and angry after the experience of prison.

In fact, in the United States, two bipartisan bills now under consideration by Congress aim to unwind a decades-long focus on mandatory minimum sentencing laws. Since 2000, 29 states have moved to cut back on mandatory sentences, reserving prison for the most violent offenders, and increasing programs to target re-offending for low-risk inmates.

The NSW Government has shown great initiative in developing therapeutic programs, as well as expanding existing programs.

One scheme is the Court Referral of Eligible Defendants into Treatment (CREDIT) program, which Trent participated in. It can direct offenders to education, treatment or rehabilitation programs.

Similarly, the Life on Track program announced by the NSW Attorney General last year aims to link offenders with support services before they attend court.

Another scheme is the Work and Development Order scheme, which enables people in financial hardship facing large fines to pay them off by attending drug or alcohol counselling services, certain education and

There are better ways than prison to hold low-risk offenders accountable ... and a lot cheaper

- Newt Gingrich

training programs, or volunteer work.

For homeless people like Trent, these programs provide a pathway out of the cycle of crime.

However, the social and economic benefits of these programs are at risk of being undermined by the introduction of mandatory minimum prison sentences for alcohol or drug fuelled violent offences.

There is no doubt that some assaults, which are fuelled by alcohol or drugs, warrant harsh sanctions such as imprisonment. The damage that such violence can have on individuals and families is devastating.

The problem is that mandatory sentencing laws can 'trap' individuals who are in significant hardship, having endured years of abuse or addiction, and are vulnerable to being involved in violent incidents on the street because of their homelessness.

HPLS experience has shown that programs such as CREDIT and Life on Track, which address the causes of crime, are far more effective than mandatory sentencing in making our communities safer, and encouraging people at risk of reoffending to become positive actors in the social and economic life of our society.

New artwork for HPLS' tenth anniversary



*'Home Sweet Home' by Stephen Corry.
Aquarelle and pen on paper.
Photo: Alison Muir*



Mitchell from HPLS attended OLC on Wednesday afternoons in December last year to talk to the artists and engage them in the project.

PIAC then commissioned Stephen Corry, someone who has experienced homelessness firsthand, to produce artwork work specifically for HPLS.

Another artist, Chris Barwick, connected to PIAC through the Mission Australia Centre, was also commissioned to produce original art works.

These artworks reflect the daily issues associated with being homeless. The strong images will be reproduced on postcards and posters to help promote the services and work of HPLS in the community.

You can find a complete list of HPLS clinic times and locations on page 7.

For further information about the Homeless Persons' Legal Service visit www.piac.asn.au

This year PIAC's Homeless Persons' Legal Service (HPLS) will celebrate its tenth birthday. To mark the event, PIAC has been working with HPLS contacts who are also artists, to develop new, meaningful and inclusive artwork for HPLS.

Following on from an idea initiated by Queensland's Homeless Persons' Legal Clinic, HPLS partnered with Ozanam Learning Centre (OLC) in Woolloomooloo and their art coordinator, Luke Arnold, to meet and brief artists.

Samantha Sowerwine and Sarah



Focus on young lawyers - Chelsea Tabart

On a six-month secondment from King & Wood Mallesons, Chelsea Tabart worked with PIAC's strategic litigation team focusing on freedom of information, disability discrimination, and the false imprisonment of young people.

The 2011 University of Sydney Law medallist, Chelsea was admitted to legal practice in February 2013. In 2014, Chelsea was awarded a Sir John Monash Scholarship, Australia's most prestigious postgraduate scholarship. Monash scholars are recognised for their leadership skills, academic excellence and their commitment to the Australian community.

Before finishing her secondment, Chelsea reflected on her time with PIAC. As Chelsea had only recently commenced practising as a solicitor, she particularly enjoyed the opportunity to take responsibility, under supervision, in important cases.

'PIAC offers the opportunity to work on complex social justice matters and to take significant responsibility in relation to how those cases are run. These opportunities are not generally available to solicitors in the early stages of their careers at a corporate law firm or in the public service.'

Chelsea spoke about how PIAC's small, dedicated strategic litigation team punches above its weight. 'When you consider the important cases the team is winning, and the impact those cases are having on, for example, the accessibility of NSW public transport, it's pretty impressive.

'I think it's amazing that there are only five designated casework lawyers, a secondee and supervised Practical Legal Training students, yet we achieve so much on a very tight budget.

'PIAC's focus on strategic litigation gives its lawyers an important and creative mandate. When PIAC decides to take on a case it's about ensuring it will have a systemic impact and address underlying social justice problems for disadvantaged people. Few lawyers have the opportunity so directly to challenge unjust laws and policies.

'I'm really fortunate to have had this wonderful opportunity. Indeed, my work at PIAC has inspired me to focus on strategic litigation in Australia in my Masters studies. Whatever I do in the future I know that the understanding of the importance of social justice and government accountability I have gained at PIAC will always guide my legal career.

'I don't think there's another organisation like PIAC in Australia.'

PIAC hosts law students for university summer courses

In February, PIAC hosted students from the University of Sydney, Macquarie University and the University of Western Sydney, as part of the Practising in the Public Interest (PIPI) and Social Justice Clinical Summer Course (SJCS) programs.

Practising in the Public Interest challenges later-year law students to think creatively about how legal and broader advocacy skills and strategies can be used to achieve social justice and exposes them to organisations that are directly involved in public interest and pro bono initiatives. PIPI is accredited as part of the law degree at Macquarie University and UWS.

The SJCS is a summer intensive for final year law students and provides a strong grounding for students who are contemplating a career in public interest law. Students are introduced to the legal and non-legal strategies that are used to achieve social justice outcomes for disadvantaged clients and the broader communities that they represent.

See page 6 for the reflections of two SJCS students after their visit



Dr Peter Cashman (left) with SJCS students and PIAC staff. Photo : Gemma Pearce.



Dominic O'Grady (left). PIPI students. Photos: LLowe.

to a Homeless Persons' Legal Service clinic.

Through its training courses, PIAC develops the skills of workers in the community sector and beyond. The workshops and training programs that PIAC offers enable course participants to be more effective advocates for their clients and communities.

For more information on PIAC's courses visit our website www.piac.asn.au.



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