

PIAC Annual Report 2002-2003



Public Interest Advocacy Centre Ltd

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About PIAC

The Public Interest Advocacy Centre (PIAC) seeks to empower citizens, consumers and communities through strategic legal and policy interventions in public interest matters to foster a fair and just society.

PIAC is an independent, non-profit legal and policy centre. PIAC was established in July 1982 as an initiative of the (then) Law Foundation of New South Wales with the support of the NSW Legal Aid Commission. It has since grown from a staff of four to paid staff at the end of the 2002-03 financial year of 19 of whom four work on a part-time basis. In addition to core staff, PIAC has a College of Law student on placement, a solicitor seconded to the Public Interest Law Clearing House (PILCH), a student from the University of Sydney one day a week and, from time to time, additional secondees, consultants and volunteers.

In order to achieve its aims, PIAC, whenever possible, works co-operatively with other public interest groups, community and consumer organisations, Community Legal Centres, private law firms, professional associations, academics, experts, industry and unions. PIAC provides its services free or at minimal cost.

What PIAC does

PIAC aims to:

- expose unjust or unsafe practices, deficient laws and policies;
- seek redress in public interest matters for those who are marginalised or unrepresented;
- promote accountable, transparent and responsive governance;
- facilitate, influence and inform public debate on public interest matters;
- promote the development of case and statutory law that better reflects the public interest;
- enhance the capacity of community organisations to pursue the interests of the communities they represent;
- promote and develop the protection of human rights; and
- maintain a national profile and impact.

PIAC Criteria

As demand for services often exceeds capacity and resources, PIAC must be selective in targeting the issues it will work on and matters or projects to be undertaken. PIAC gives priority to issues affecting identified groups within the general community where there is significant harm or adverse impacts being experienced by or likely to affect disadvantaged sectors of the community

The key questions asked by PIAC when selecting issues are:

- Is the issue consistent with PIAC's Charter and Strategic Plan?
- Can PIAC make a significant impact in the short to medium-term?
- Does PIAC have the capacity and resources to act effectively?
- Would PIAC be duplicating the efforts of others or can PIAC work in alliance with others?
- Can legal, policy, communication and training strategies be integrated?

PIAC turns 21

Since PIAC was opened in 1982 by the then Attorney General of New South Wales, Frank Walker, QC—initially part of the Law Foundation of NSW with a staff of four—its work has grown. Rather different to the current complement of fifteen permanent staff and many part-time staff, consultants, volunteers, students, College of Law placements and solicitors seconded to the Public Interest Law Clearing House.

The Centre's objectives upon establishment were broad ranging and, to many at that time, impossibly idealistic. Within the first five years of operation the Centre had achieved more than most would have believed possible. Not only had it set out with a 'breathtakingly ambitious charter', as Justice Kirby, as President of the NSW Court of Appeal, wrote, but its work had come in the face of what was considered to be an environment hostile to the advocacy of public causes.

Some of the Centre's work in those early years concerned issues that will still resound in the hearts and minds of people throughout Australia. Two of these issues bear mentioning, if only to remind ourselves of the important role that PIAC played in the formative years of public interest litigation in this country.

The first involved the Dalkon Shield, which as most of you will recall, was a faulty intra-uterine contraceptive device fitted to over 100,000 Australian women. Even following suspension of its sale in the US in 1973 following a variety of reports of injuries suffered by users, the device continued to be heavily promoted in the rest of the world. Following a request by the Leichhardt Women's Health Service in 1983 to assist in giving legal advice, PIAC helped to publicise litigation being undertaken in the US.

PIAC continued to publicise the general issues of contraceptive safety and undertook to file claims on behalf of Australian women before a US Court imposed deadline in 1986. PIAC filed claims for over 1,700 women by the due date, an enormous number given the limited resources of the Centre. The litigation was eventually handed over to a firm of private solicitors, but not before the heavy burden of informing Australian women about the dangers of the device and the need to file claims before the deadline had been met head on.

The 'Chelmsford Hospital' case is an equally resonant one, at least to many of us here tonight. At a small private hospital in Sydney in the sixties and seventies, patients were subjected to massive doses of barbiturates, kept in a comatose state for days or weeks on end, and subject to convulsive electric shock treatment. This was claimed to be a cure for depression and related compulsive behaviour such as drug and alcohol addiction. Many people lost their lives during this treatment, and many committed suicide shortly afterwards. The public exposure of the horrors inflicted at Chelmsford owed much to the persistence of a small number of people and growing media exposure in the early 1980s, prior to the existence of PIAC.

PIAC became involved in providing assistance in unravelling the bureaucratic processes that followed this public exposure. At the time—of course it is not true today!—many such processes were impenetrable to people in the community without some form of legal advice. PIAC helped force the Investigating Committee, responsible for dealing with complaints against doctors, to start investigating complaints laid against several doctors from Chelmsford. PIAC became further involved when it represented the relatives of a number of deceased patients before the Royal Commission into Deep Sleep Therapy in the late eighties. PIAC continues its work to this day in the areas of access to justice and fair treatment; helping to ensure individuals and communities are afforded appropriate care by institutions such as hospitals, schools, prisons and detention centres.

One of the key program areas of PIAC is access to justice. The provision of *pro bono* legal services through the Public Interest Law Clearing House (PILCH) has been a significant focus. The relationship between PIAC and PILCH must be acknowledged and applauded.

PILCH was established in 1992 as PIAC's major *pro bono* project. It is an assessment and referral service for *pro bono* legal matters meeting certain public interest criteria. Membership includes law firms in New South Wales, individual barristers and chambers, the Law Society of NSW, the NSW Bar Association, mediators and accountancy firms. PILCH has provided a link between the private legal profession, communities and the community sector. The effective partnership between PIAC and the private legal profession helps enhance the work of community organisations with otherwise limited resources.

Those involved from the private legal profession must be recognised for the significant contribution they are making to the cause of public interest advocacy through the growth in *pro bono* work that they have overseen as part of PILCH. They have contributed greatly to meeting the concerns of the original Director, Peter Cashman, who said in 1984 that:

... [a]lthough somewhat grandiose in its objectives, the Centre has modest resources and thus it is dependent upon the good-will, expertise and support of others in order to go even some small part of the way towards providing representation, in the broadest sense, to currently unrepresented and relatively powerless groups.

PILCH has gone a long way towards providing the good will, expertise and support that Peter Cashman was talking about.

To conclude, I wish to once again congratulate PIAC and PILCH on the milestones they have achieved over the preceding years and I wish them all the best for the many years of public interest advocacy that lie ahead.

The Hon Bob Debus
NSW Attorney General
Speech delivered to PIAC's 21st Birthday Dinner Fundraiser
February 2003

PIAC People

PIAC's Board

The Hon Elizabeth Evatt AC, Chair

Philip Bates	Barrister, Sir Owen Dixon Chambers
Alan Cameron AM	Management Consultant
Bill Grant	Chief Executive Officer, Legal Aid Commission of NSW
Shauna Jarrett	Solicitor, Agostini Jarrett (Law Society of NSW nominee)
Joanna Kalowski	Management / Training Consultant
Rodney Lewis	Partner, Dormers Legal
Gary Moore	Director, Council of Social Service NSW (NCOSS)
Annette O'Neill	Consultant (Law & Justice Foundation of NSW nominee)
Merrilyn Walton	Faculty of Medicine, University of Sydney
Margaret Allison	Managing Director, NSW Legal Aid Commission (resigned)
Gabrielle Trainor	John Connolly & Partners (resigned)
Stephen Walmsley SC	Maurice Byers Chambers (resigned)
Bob Wilson	Management Consultant (resigned)

PIAC's Staff

Andrea Durbach	Director
Amanda Cornwall	Senior Policy Officer (resigned March 2003)
Anne Marie Devereaux	Senior Solicitor (resigned April 2003)
Madeleine Bennison	Financial Manager
Bassina Farbenblum	Solicitor (commenced September 2002)
Alexis Goodstone	Senior Solicitor (from May 2003)
Marion Grammer	Bookkeeper (commenced June 2003)
Carolyn Grenville	Training Co-ordinator
Jane King	Centre Co-ordinator
Sarah Mitchell	Administrative Officer (Policy and Training)
Simon Moran	Principal Solicitor
Annie Pettitt	Policy Officer (appointed March 2003)
Melissa Pinzuti	Legal Secretary
Patricia Ranald	Principal Policy Officer
Shahzad Rind	Solicitor, Indigenous Justice Project
Fabiola Rofael	Administrative Assistant (commenced July 2002)
Cathy Sharpe	Casual Trainer
Louise Southalan	Policy Officer (AFTINET) (commenced February 2003)
Jim Wellsmore	Senior Policy Officer (UCAP)
Trish Benson	Senior Policy Officer (UCAP)

PILCH Staff

Andrea Durbach	Co-ordinator
Sandra Stevenson	Solicitor
Madeleine Bennison	Financial Manager
Melissa Pinzuti	Legal Secretary
Kathleen Searles	Locum Solicitor

College of Law placements

Mustafa Qadri
Cathy Stirling

Student Placements

Jonathon Pickering
Azadeh Dastyari

PILCH Secondees

Andrew O'Keefe
Sharon Sukilic
Clare Wiseman
Bassina Farbenblum
Marcel Savary

Allens Arthur Robinson
Mallesons Stephen Jaques
Freehills
Minter Ellison
Minter Ellison

Volunteers

Louise Pounder

Consultants

Tilda Communications
Glenys Clarke

Computer consultants
Library consultant

PIAC's Projects

Access to justice

Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) continued to provide an assessment and referral service for *pro bono* legal matters that comply with certain public interest criteria. Utilising the *pro bono* assistance of PILCH members—comprising private law firms, barristers, barristers' chambers, accountancy firms and mediators—PILCH continues to meet the legal needs of individuals, communities and non-profit organisations who cannot be accommodated within the range of PIAC's services and resources.

National Pro Bono Resource Centre

Late in 2001, the Federal Attorney-General, the Hon Daryl Williams AM QC MP, announced that PIAC, with national project partners, had been awarded the tender to establish a National Pro Bono Resource Centre (NPBRC). The key role of the now-established NPBRC is to promote and facilitate the development, expansion and co-ordination of *pro bono* services across Australia. The Centre, initially housed at PIAC, moved to premises at the University of New South Wales in November 2002.

In 2002, PIAC worked with the NPBRC, with funding from the Commonwealth Government, to organise the National Pro Bono Workshop, *Overcoming Barriers: A National Workshop on Pro Bono*. The workshop held in August 2002 was designed to assist the future work of the National Pro Bono Resource Centre in considering how best to address the legal needs of rural and remote communities.

Advocacy Training

Practising in the Public Interest

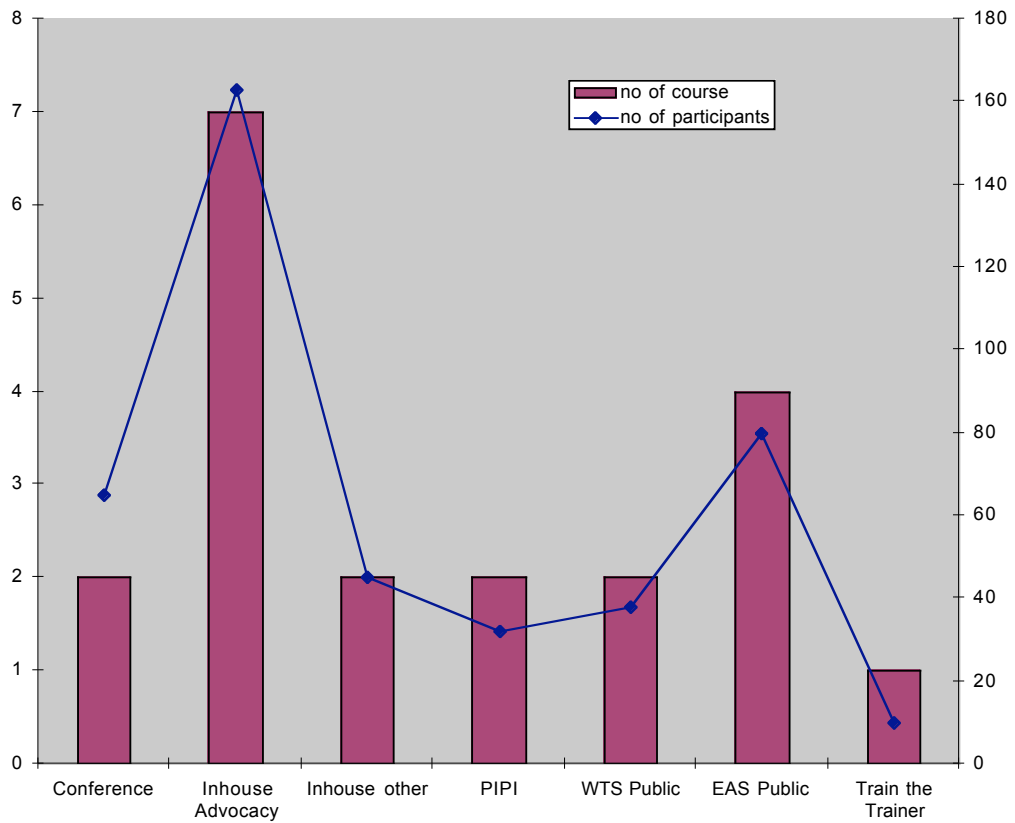
PIAC continues to conduct its Practising in the Public Interest (PIPI) Summer and Winter Schools in partnership with NSW university law schools. The course, designed to encourage the practice of public interest and *pro bono* law among law students, attracts considerable interest from the students. The course comprises three days of training and two days of clinical placements at PILCH member law firms, Community Legal Centres, the NSW Legal Aid Commission, the Legislative Council, and HREOC. It uses a mix of lectures, case studies, interactive discussions and exercises.

Work the System

PIAC's nationally accredited training program, *Work the System: An Introduction to Advocacy*, is designed to equip citizens, consumers and communities with the knowledge and skills necessary to effectively participate in and influence decision-making at all levels of government. On 21 June 2002, PIAC was re-registered as a registered training organisation (RTO) under the Australian Quality Training Framework until June 2007.

The course, based on PIAC's book, *Working the System: a guide for citizens, consumers and communities*—the second edition of which was published in May 2003—is regularly offered as a public course and is also adapted to meet specific organisational needs and presented as an in-house course.

The demand for PIAC's training program, particularly for in-house courses, has increased steadily during 2002-2003. During the year PIAC has also offered a one-day public training course called *Effective Advocacy Skills and Strategies*, which covers lobbying, negotiation and media skills. Short courses have also been offered on specific topics, such as civics, lobbying, effective community representation and media and negotiation skills.



Advocacy Courses conducted during 2002-2003

Health

PIAC has continued to play a lead role in the health sector as the only broadly based consumer advocacy organisation with legal expertise and a focus on health consumer rights.

Open Disclosure

During 2000-2003, PIAC worked with the Australian Council for Safety and Quality in Health Care as a member of its Consumer Reference Group promoting the consumer perspective on improvements to the safety and quality of health services and rights to compensation. As a member of the Open Disclosure project consortium with Northern Sydney Health and Standards Australia, PIAC conducted national consultations with stakeholders that formed the basis for a national standard on open disclosure. The Open Disclosure Standard promotes open communication with patients when an injury occurs as a result of medical treatment

Medical negligence reforms will harm health care

PIAC, the Australian Consumers Association and the Health Issues Centre joined together to urge state and federal governments to provide long-term, sustainable solutions to the crisis in medical indemnity and insurance. Regrettably, the Commonwealth and NSW Governments have taken the position that a short-term appeasement of some elements of the organised medical profession is sufficient to solve a complex problem with ramifications for the entire community.

The Commonwealth Government proposals are seen as an attempt to shore up an indemnity and insurance system that is not commercially viable by subsidising high-risk practitioners and limiting consumers' right to sue for negligent care.

PIAC is particularly concerned about legislative changes to the role of judges in deciding the appropriate standard of care provided to a patient, which requires them to be guided by 'peer professional opinion'. This was recommended by the IPP Review and forms part of the *Civil Liability Amendment (Personal Responsibility) Act 2002*, introduced into the NSW Parliament on 23 October 2002. The Act allows the court not to rely on 'peer professional opinion' if it considers the opinion is 'irrational'.

This legislation reverses important improvements in health care over the past decade that have supported an evidence-based approach to appropriate health care. It has the potential to protect inferior practitioners to the detriment of consumers and undermine the quality and safety of health care in Australia.

PIAC and the other consumer groups support a single national insurer, with cross-subsidies between the high- and low-risk areas of practice. In the long term, these groups support a 'no fault' compensation scheme for people injured while receiving health care, similar to schemes operating in New Zealand or Sweden. A number of medical colleges and many presidents of medical training colleges, also support this position.

PIAC supports the more considered and evidence-based reforms to the medical indemnity and insurance industry put forward by the Australian Health Ministers Advisory Council Medical Indemnity Working Party and Consultative Forum. PIAC has been a member of the Consultative Forum since its inception last year. The Working Party has provided detailed proposals to Health Ministers on structured settlements, long-term care and, most recently, published a review of legal processes.

Patient records go electronic

Earlier this year, PIAC's Senior Policy Officer, Amanda Cornwall, completed a Churchill Fellowship study tour examining electronic health records schemes in Canada, England, France, Ireland and Germany. The study focussed on the potential benefits of schemes that link patient information across the health system and on measures to protect privacy and confidentiality.

Development of electronically linked patient records is a priority in many countries as part of a new era in health service delivery. They are part of a vision for health care services using telephone call centres, websites, internet-linked patient records and telehealth. Usually the records are linked to software programs that support decision-making by health professionals, providing up-to-date information and automatic checks, such as adverse drug reactions.

Electronic Health Records schemes (EHRs) have been designed to perform a number of different functions. The most well-established schemes are used to process financial claims, such as hospital billing, health insurance claims and government benefits. Some EHRs keep basic patient information that would be useful to travellers, such as allergies, immunisation status and blood type.

The more ambitious EHRs aim to provide a comprehensive, summary, lifetime patient record across the whole health system. The primary purpose of these schemes is to assist health care providers in diagnosis and treatment. The schemes will also provide government and insurers with much more information for use in health service financing and planning and for research purposes.

The Australian public has generally embraced the benefits of electronic health records, but only if the confidentiality and security of their medical record is protected. People want to be able to control what information will be shared by each health care professional that is treating them. Many are also concerned about the security of information transmitted over the internet. Another risk is unauthorised browsing of patient records if security measures and audit trails are not in place. Effective privacy laws and security measures are therefore a fundamental requirement for EHRs.

All of the countries visited are developing and planning EHR schemes. Like Australia, they are based on publicly funded health systems. In all of the countries, including Australia, a high priority is a scheme that provides a complete record of each patient's medications as many injuries occur due to incomplete information about a patient's current or past medication history.

Health Ministers in Australia have strongly supported EHRs and have provided substantial funding for their development. The Federal Government has initiated development of *HealthConnect*, an internet-based network providing for national collection, storage and exchange of summary patient information across the health system. The Better Medication Management System is also planned, to provide a nationally linked patient medication record, using records held by doctors, pharmacists and hospitals. The NSW Government has announced *NSW EHR*Net* to provide web-enabled access to a lifetime summary record of patient information held by the NSW public health system. Participation in these schemes will be voluntary for patients.

The projects are in the research and development stage, with field tests being conducted during 2002-2003 and introduction scheduled for late 2003 or 2004. Privacy laws have been introduced at the national level and in some states and territories. The result is a confusing patchwork of laws rather than a clear and consistent national privacy standard.

The report of the study tour, *Connecting patient records*, makes a number of recommendations about EHRs in Australia based on the experiences of Canada and Europe. It recommends that the field tests for the EHRs in Australia should test the ability of EHRs to improve the quality of health care, not just specific functions of the schemes. EHRs are only a tool; they cannot in themselves improve communication between providers and patients, which is crucial to good

health care. The report also recommends that field tests need to be conducted for a sustained period to discern valuable lessons. Field tests in England have provided a wealth of information about the best design of EHRs after testing for two years.

The report recommends that governments need to do more to achieve a nationally consistent framework for privacy laws in the health sector, a fundamental building block for EHRs. It also recommends that privacy commissioners play a more active and public role in providing advice on the privacy and security aspects of EHRs. In France and Ontario, Canada, for example, the privacy commissioners provided publicly available reviews of proposed EHRs.

PIAC Submission on National Health Privacy Code

In April PIAC wrote a submission to the National Health Privacy Working Group on the proposed National Health Privacy Code. The Code is designed for use by all organisations and individuals who collect or handle personal health information.

The PIAC submission emphasised the right of health consumers to privacy and argued that the consent of the health consumer must always be sought before personal health information is disclosed to another party. The submission also supported the right of individuals to have access to their own health care information. The submission opposed proposals to allow the charging of fees for such access, since fees would impact most on those with greater health care needs who often have the least capacity to pay.

Human Rights

Protecting Human Rights

Since its inception, PIAC's human rights work has tended to address civil and political rights, in particular discriminatory conduct based on race and/or sex. Over the last three years, with the emergence of global networks and an increasing focus on state obligations under international human rights covenants, PIAC has taken up issues that emphasise the parallel importance of social, cultural and economic rights.

United Nations human rights conventions contain civil, political rights, economic, social and cultural rights that have been endorsed by successive Australian governments. These include:

- freedom from arbitrary arrest or detention;
- the right to due process and fair trial;
- the right to asylum;
- freedom of opinion and expression;
- freedom from discrimination;
- the right of association and assembly, including the right to join trade unions;
- the right to take part in government and in cultural life; and
- the right to a minimum standard of food, housing education and health services.

Recent legislation in Australia has eroded and attempted to encroach on many of these rights. Legal and administrative changes have included the detention of asylum seekers, reductions in the right to join unions and anti-terrorism legislation that extends police powers. There are also proposed amendments to the role of the Human Rights and Equal Opportunity Commission (HREOC) and proposed reductions in affordable access to health and education services. The debates over these issues have given rise to a resurgence of interest in protecting human rights.

At the academic and political levels, there has been significant discussion in Australia about the need to promote and protect human rights through a Charter or Bill of Rights. For example, there is now some political commitment to examining a federal Charter or Bill of Rights from

Opposition parties, including the ALP, the Democrats, and the Greens. However, this issue has not yet been widely debated at the community level.

In keeping with PIAC's commitment to work in the area of human rights protection for the benefit of all in Australia, PIAC has designed a two-year community education project. The project has been designed to work with various sectors of the Australian community to develop a broad appreciation of the need for and increased protection of basic human rights in Australia.

Stage One of the project will produce education and discussion materials for use by community groups. These materials will explain human rights in plain language and introduce the various debates about the protection of human rights.

Stage Two of the project will promote community discussion of these human rights and their protection mechanisms. PIAC will conduct train-the-trainers sessions in each state and territory, and 'graduates' will then conduct training in their own organisations or for their local communities.

Having conducted an extensive national human rights education and training program, in Stage Three of the project PIAC will focus on policy development and law reform advocacy work with political parties and key stakeholders.

To date, PIAC has consulted with a wide range of community organisations about the project. It has received indications of support from faith groups, unions, social welfare organisations and human rights groups, all of which have indicated a keen desire to participate.

Australian Human Rights Commission Legislation Bill 2003

In March 2003, the Commonwealth Government introduced into Parliament the *Australian Human Rights Commission Legislation Bill 2003*. The legislation, which proposed amendments to the executive structure and functions of HREOC, was the third attempt by the current Government to implement legislative reforms that would restrict the independence and capacity of HREOC. The two previous Bills (1996 and 1998) failed to pass through the Senate.

The Bill was referred to the Senate Legal and Constitutional Legislation Committee for public inquiry. The Committee received over 120 submissions, conducted public hearings in Sydney and Canberra and tabled its report on 29 May 2003.

PIAC made a written submission and appeared at the Committee's public hearing. PIAC's submission raised concerns that the Bill would reduce the powers, functions, role and independence of Australia's only national human rights institution; and that in doing so the observance of Australia's human rights obligations would be further compromised.

Terrorism bills

During the year, the Federal Government proposed extensive amendments to the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*. The proposed amendments were referred to the Senate Legal and Constitutional Committee and PIAC made a submission to the Committee's inquiry in 2002. The amendments received royal assent on 22 July 2003. Together with many concerned individuals and community organisations,

Indigenous Justice

Indigenous Justice Project

In recent years, PIAC has expanded its links with Indigenous communities via its work on a Stolen Generations Reparations Tribunal proposal and the Aboriginal Women and Discrimination Projects. In addition, PIAC has participated in the *Working it Out* project, providing legal education to isolated Indigenous communities in western New South Wales.

To build on these initiatives and increase PIAC's capacity to provide a culturally appropriate service to Indigenous people, PIAC developed an Indigenous Justice Project and with financial support from Allens Arthur Robinson continues to employ an Indigenous solicitor. The Project aims to strengthen PIAC's links with Indigenous organisations, identify public interest issues that impact on Indigenous people and communities and conduct litigation, policy work and training on behalf of and for Indigenous clients.

In its 18 months of operation, PIAC's Indigenous Justice Project has represented clients in race discrimination proceedings and police harassment and wrongful arrest cases; provided advocacy training to law students at Tranby Aboriginal College; conducted policy work in relation to developing a best practice model for accessing records for members of the Stolen Generations.

Race Discrimination

PIAC represented an elderly Indigenous woman in a complaint against a hospital. Our client had suffered a stroke and consequently has slurred speech and a limp. Our client had sought medical treatment at her local hospital where the doctor on duty made several remarks that she should 'give up the grog'. Despite our client's attempts to inform the doctor that she does not drink or smoke, he continued to make similar remarks in her presence and that of family friends, hospital staff and patients. The matter was settled with our client receiving damages and an apology.

In another complaint, race discrimination reared its head in the workplace. Fellow employees of our client displayed racist material on a workplace notice board. In resolving the matter, our client did not seek damages but requested that the employer draft and implement an equal employment opportunity policy (EEO) and a grievance procedure, and appoint an employer contact for Indigenous personnel. The company has drafted its EEO policy and our client continues to be employed by the company.

Stolen generations victory

The Human Rights and Equal Opportunity Commission, in its *Bringing them home* Report, estimated that one in six witnesses who appeared before its National Inquiry had been subjected to sexual or physical abuse. Since the tabling of the Report in 1996, PIAC and PILCH have sought to secure compensation for clients who are members of the stolen generations. Legal proceedings initiated in the Supreme Court were unsuccessful and many clients were unable to sustain proceedings that were adversarial, protracted and expensive.

In a recent test case, the NSW Victims Compensation Tribunal (VCT) awarded \$35,000 to Mrs Valerie Linow, an Aboriginal woman from NSW who is a member of the stolen generations. The compensation was awarded for sexual assaults that occurred while Mrs Linow was a domestic worker on a rural property in NSW. The Aborigines Welfare Board removed Mrs Linow from her family when she was 14 years old.

The award of compensation, awarded by a tribunal that considers claims for harm arising from criminal acts, has been heralded as a first for the stolen generations. The success of Mrs Linow's case gives some hope to other members of the stolen generations who suffered

similar harm and are able to demonstrate such harm by way of documentary evidence. Similar schemes to the VCT in other states may take a different approach. What remains uncompensated, is the act of removal itself and its harsh consequences that continue to plague the lives of many Indigenous people and communities. For this reason, PIAC's will continue to advocate for the establishment of a Stolen Generations Reparations Tribunal.

Reparations tribunal supported

PIAC has called for state and federal governments to review their programs for the stolen generations and to establish reparations tribunals. The call was made at the launch in September of *Restoring Identity*, the final report of the *Moving forward* consultation. The call was echoed by project partners, the Aboriginal and Torres Strait Islander Commission, the National Sorry Day Committee, the Human Rights and Equal Opportunity Commission and Northern Territory stolen generations groups. The South Australian, Western Australian, Victorian and Queensland Governments made public statements about what they are doing to implement the report.

The *Moving forward: achieving reparations* project consulted with Indigenous communities across Australia and revealed broad support for a reparations tribunal from stolen generations members, politicians, Indigenous organisations, churches, Indigenous health organisations and lawyers. The initial findings of the consultations were presented to a major national conference in Sydney in August 2001. The final report on the consultation project, *Restoring Identity*, which included content from the *Moving Forward* Conference, was published in 2002.

Restoring identity reveals that many government and church programs have, since the publication of HREOC's *Bringing them home* Report, failed the stolen generations. It reflects the views of Indigenous people who were consulted during the project and calls for the adoption of a number of recommendations:

- establishment of programs to ensure effective access to government- and church-held personal and family records for Indigenous peoples;
- provision of counselling services that target members of the stolen generations effectively and meet their needs, especially at times of family tracing and reunion;
- establishment of an appropriate forum, or tribunal, for Indigenous peoples to tell of their experience of forcible removal and have it officially acknowledged;
- recognition by governments of the distinct identity of the stolen generations and consultations to ensure that programs meet their needs;
- provision of compensation for the harm caused by forcible removal policies, especially where crimes were committed against people in state care.

The measures recommended offer an important model for all governments keen to demonstrate a commitment to the needs of the stolen generations. They are modest and can be achieved with minimal financial cost.

In our discussions with some state governments, PIAC has been encouraged to discover that some of the recommendations have been implemented. The Victorian Government has established a Stolen Generations Taskforce to provide a voice for the stolen generations and achieve co-ordination of government programs. The Queensland Government's Community and Personal Histories Section has provided access to historical state records about Aboriginal and Torres Strait Islander peoples and assisted many people to piece together family histories and genealogy since 1992. More than half the archivists and historical researchers are Indigenous peoples.

Community initiatives and activities at the local level are also part of achieving rehabilitation. The success of the Journey of Healing, as a community initiative with minimal funding, in bringing people together for reconciliation and healing, demonstrates the benefits of local and regional initiatives.

Our Strong Women: Indigenous Women, Law and Leadership

At a celebration in Darwin on 12 August 2002 the National Network of Indigenous Women's Legal Services (NNIWLS) launched its national advocacy training program, *Our Strong Women: Indigenous Women, Law and Leadership*. The program is a joint project of NNIWLS and PIAC and is funded by the Commonwealth Office of the Status of Women under the National Women's Development Program.

Our Strong Women is a national project that aims to improve levels of contribution by Indigenous women to public policy and service development and establish momentum for continuing improvement over time.

PIAC has been working closely with the NNIWLS to present a series of two-day workshops for Indigenous women in nine locations around Australia. Since its launch, PIAC has conducted workshops with women in Darwin, Broome, Port Augusta, Kalgoorlie, Townsville and Brisbane.

The training aims to enhance community leadership skills of Indigenous women and promote their status and interests at a community, regional, state and national level. It also seeks to change policies and improve the quality and delivery of services to Indigenous communities. Participants learn about systems of government, methods of challenging government decisions, effective campaigning and community representation. In addition, they learn media, negotiation and skills and lobbying skills.

The workshops have attracted capacity attendance. The Darwin workshop saw Indigenous women travel from remote communities across the Top End, as well as from Katherine and Alice Springs. For the Broome workshop, Indigenous women came from across the Kimberley and the Pilbara and many participants travelled long distances from Kununurra and Fitzroy Crossing.

Refugees and Asylum Seekers

Indefinite detention challenged

When the most wanted alleged mastermind of the largest corporate scandal in Philippines history succeeded in manipulating the Australian immigration system and was granted Australian citizenship in 2002, the Minister for Immigration, the Hon Phillip Ruddock said that it was 'a concern that a man of this character was able to bypass our mechanisms'. Mr Ruddock evidently regretted what had happened and agreed 'to look into how we might improve the [Australian immigration] system'.

One way might be to overhaul a system that permits indefinite detention. In a series of applications that PIAC brought before the Federal Court earlier this year, our clients—four Iraqis, one Kuwaiti Bidoon and one stateless person, who had been in detention for between three and four years—were initially refused release from their indefinite detention

Our clients had one ray of hope: the pending decision of the Full Federal Court in the case of the *Minister for Immigration & Multicultural & Indigenous Affairs v Al Masri*.

At the initial hearing of the PIAC applications, Justice Emmett held that there was no limit on the government's power to detain people, as long as their detention could be broadly characterised as being 'for the purpose of removal'. Justice Emmet said that 'unfortunate though it may be from a humanitarian point of view, the [Migration] Act is clear'. He, however, delayed making final orders pending the outcome of *the Al Masri* decision, which addressed similar issues

In April, the Full Federal Court handed down the *Al Masri* decision and confirmed that where there is 'no real likelihood or prospect of an applicant's removal [from Australia] in the

reasonably foreseeable future, an applicant's continued detention is unlawful'. Justice Emmett was accordingly bound to follow this decision and PIAC's clients were released.

David Marr Seminar: Rescuing the Rule of Law

Award-winning author and journalist, David Marr, addressed a PIAC / PILCH seminar about *Dark Victory*, the book he wrote with journalist Marian Wilkinson. *Dark Victory* is an account of the political and legal manoeuvring that surrounded the *Tampa* case. David Marr gave a chilling account of the lack of transparency and accountability that has increasingly become a feature of Australian politics.

Trade Justice

Partnership with the Australian Fair Trade and Investment Network

PIAC has worked with the Australian Fair Trade and Investment Network (AFTINET) this year on the impact of proposed changes to the World Trade Organisation (WTO) Global Agreement on Trade in Services (GATS). The inclusion of essential services such as health, education and water in the GATS could result in forms of commercialisation and privatisation that would reduce access to these essential services, especially for low-income groups. Other proposed changes to GATS could reduce the right of national, state and local governments to regulate to ensure continuing access to these services. AFTINET and PIAC have produced several new publications on these issues and have visited a number of federal Members of Parliament to express concerns about the proposed changes to GATS. As a result, all national opposition parties have adopted trade policies that reflect PIAC's concerns about GATS.

PIAC and AFTINET were also successful in their lobbying for a parliamentary inquiry into Australia's relationship with the WTO. The resulting inquiry adopted some of the PIAC and AFTINET recommendations about public consultation on trade policy.

A membership-based organisation established by PIAC, AFTINET continues to expand its membership and to conduct community education on WTO and trade agreements. AFTINET has been able to consolidate and expand its work this year with funding from the Mercy Foundation and the UnitingCare NSW/ACT.

Local Councils seek consultation on GATS negotiations

In an unprecedented move to link local and global regulation, Marrickville, Waverly and Leichhardt Councils and the NSW Local Government Association Conference passed resolutions asking for the Federal Government to consult about the implications for local government of the WTO negotiations on (GATS). PIAC and other community organisations been raised these issues with local government as part of their community education campaign about the impact of GATS on essential services.

GATS rules are binding on all levels of government but there was little if any consultation with local government about the negotiations and their implications.

The resolutions passed by local Councils and the NSW Local Government Association Conference stressed that public policy regarding the regulation, funding and provision of essential services should be made democratically by governments at the national, state and local level, and that such services should not be included in trade agreements. They called for full transparency and consultation on GATS with state and local government.

Trade in Services Campaign: 'confidential' information released

As part of its joint work with AFTINET, PIAC has been advocating for greater transparency and accountability for Australia's policy in the GATS negotiations.

Until now, the negotiations have been conducted in secret, with governments claiming that they were 'commercial in confidence'. PIAC and AFTINET wrote submissions to the Federal Government seeking publication of key documents in the negotiations, and sought access to them under Freedom of Information legislation.

In early April, the Federal Government published its initial 'offer' in the GATS negotiations, acknowledging that the publication was a response to widespread community concern.

This is an important victory for the work of PIAC and other community organisations through AFTINET. It is the first time that such offers have been published, and is an important step towards transparency in trade negotiations. The European Union, Canada, the USA and New Zealand Governments have also published their offers in response to similar community campaigns.

The substance of the offer shows the influence of a well-supported community campaign. No new offers have been made on health, education, postal services, water for human use, or audio-visual services. There are no changes to the Foreign Investment Review Board or to the limitations on foreign investment in Telstra or Qantas.

While PIAC welcomes this first step, much is still to be achieved in relation to transparency and accountability given the following concerns:

- The offer was only published after it had been lodged with the WTO in Geneva despite PIAC and AFTINET seeking public discussion before it was lodged.
- The offer is an initial offer only, subject to change at any time over the next 18 months of further negotiations. PIAC and AFTINET argue that community consultation process should occur before any changes to the offer are made.
- The Federal Government has not released its requests to other countries, disclosure of which has been part of the community campaign. We do not know, for example, whether Australia has made requests about health, education or water to other countries, including developing countries.
- There is still ambiguity in the definition of public services in the GATS. PIAC and AFTINET are asking that all public services be clearly excluded and for a review of the impact of the existing GATS agreement before any new commitments are made.

PIAC and AFTINET will continue to raise these issues with government and in the community.

US Free Trade Agreement poses threat to social policies

Dr Meredith Burgmann, President of the NSW legislative Council, hosted the launch of a publication, *Trading Australia away?* in May 2003 at NSW Parliament House.

Trading Australia away? outlines the concerns of PIAC and other member organisations of AFTINET about the possible impact on Australian governance of identification by the USA Government of some social policies as barriers to trade.

The publication discusses current negotiations between the Australian and USA Governments on a legally binding Free Trade Agreement (FTA), which would remove all barriers to trade between the two countries. The negotiations are proceeding despite economic studies that predict no significant economic gains for Australia from such an agreement.

The USA Trade Representative is required to inform Congress of the USA's targets in the negotiations. Corporate lobby groups have also given evidence to the USA Trade Representative in public hearings. The USA's targets include the following government programs:

- The Pharmaceutical Benefits Scheme, which ensures that prescription medicines are affordable in Australia, especially to those on low incomes. Medicines are over three times the price in the USA of those in Australia, and pharmaceutical companies in the USA want higher prices for their products in Australia.
- Essential services like health, education and water, which in Australia are regulated and often delivered by governments to ensure equity of access. Private service companies in the USA want to invest in these services in Australia, as they do in their own country. This is the same agenda as is seen in the negotiations on the GATS in the World Trade Organisation, but it is more comprehensive, in that it is a 'negative list' agreement, which would include all services unless

they were specifically excluded. By contrast, the GATS is a 'positive list' agreement, which only includes those services listed by each government.

- Labelling of genetically modified food and regulation of genetically modified crops, which gives Australian consumers choice about their consumption. Agribusiness companies in the USA have successfully lobbied against labelling laws in their own country.
- Local content rules in film, television and music that ensure that Australian voices are heard and Australian stories are told. Without them, Australia's cultural identity and diversity could be swamped by imports from the USA, which already have a large share of the Australian market.
- The Foreign Investment Review Board and limits on foreign investment in media, telecommunications and airlines. The USA also wants to give corporations the right to challenge laws and sue governments if such laws harm their investments. Under similar provisions in the North American Free Trade Agreement (NAFTA), companies based in the USA have challenged environmental regulation and sued Canadian and Mexican Governments for millions of dollars.

Most Australians support the existence and maintenance these social policies and programs, which make Australia a more equitable society with a distinctive culture. *Trading Australia away?* argues that social policies that protect the public interest should be publicly debated in Australia and decided by parliaments at the national or state level, rather than negotiated in a trade agreement.

Utilities

The New South Wales Government continued with major reforms to the electricity, gas and water industries. Importantly, by January 2002 both the energy markets had been opened to full retail competition (FRC). The reforms have continued to present important challenges to consumers, the NSW Government, regulators, and the industry. Commercial objectives have had to be balanced by protection for the interests of low-income and disadvantaged households. A critical element to this has been the work of PIAC's Utilities Consumer Advocacy Program (UCAP).

Social Responsibility in Utilities Conference

A successful conference on the theme of *Social Responsibility in Utilities* was held by UCAP on 11 September 2002. The conference was opened by the NSW Minister for Energy, the Hon Kim Yeadon, who emphasised the strength of the consumer protection arrangements in NSW. Participants and speakers were drawn from a range of community and consumer organisations as well as utility providers and representatives of the Government. We were delighted that delegates included representatives of the recently established Consumers' Utility Advocacy Centre (CUAC) from Victoria.

Speakers discussed the legislative framework for providing households with essential services in energy and water and how this can facilitate a greater emphasis on positive social outcomes. Several examples were highlighted of the utility businesses' existing social justice initiatives. EnergyAustralia has responded to an approach by a Migrant Resource Centre to vary its policy on waived security deposits for newly arrived refugees. Both EnergyAustralia and Country Energy have begun providing capital to community organisations for the creation of 'no interest loans' schemes that are directed towards funding purchases of new, energy efficient appliances by households. The conference was a small step in encouraging the providers to rethink their role as good corporate citizens by supporting initiatives in the communities they serve.

Consumer Protection Review

The NSW Ministry of Energy and Utilities has commenced its scheduled review of the consumer protection arrangements in electricity and gas. This aims to take account of the initial experience with retail competition and 'customer choice'. Many of the changes foreshadowed for the regulations are limited to 'tidying up'. One major issue being considered is the possible introduction of pre-payment meters for NSW household users of energy. PIAC has long since established the conditions under which it would favour households being given the option of taking up this new technology. While it is vital that customers have the choice over whether to accept these new meters, PIAC understands also that commercial realities may discourage retailers from offering these new meters.

Importantly, residential users of electricity continue to enjoy price protection where they choose not to switch to new competitive retail contracts. The Independent Pricing and Regulatory Tribunal (IPART) has introduced minor changes to the price caps it previously determined for these 'standard' customers. The costs allowed the standard retailers have risen slightly and some customers will experience price rises higher than the CPI. This compares favourably with, for example, South Australia where households are likely to see electricity prices increase by 25% with the commencement of competition. In particular, PIAC welcomed the rejection once more of calls for households to face much higher prices as a means to fostering competition between retailers.

Undergrounding

PIAC also welcomed the release of IPART's report to the Minister for Energy on the proposal to underground all electricity cables in metropolitan areas. PIAC had argued that the costs of widespread undergrounding would outweigh the benefits for all but a minority of households. Further, PIAC had argued that the community ought to consider whether the resources needed to complete such a massive project would better be allocated to areas such as health and education. It was pleasing that the Tribunal echoed many of these arguments in its final report. The recommendation to Government is that undergrounding be funded by those communities who support and can afford such a scheme at a local level.

The price of water

The current focus of UCAP in relation to water is on prices. IPART is conducting its scheduled review of the prices permitted for the four regulated water supply agencies and the Sydney Catchment Authority. It is not expected that significant changes to prices will result from IPART's next determination. However, it is becoming clear that a greater effort is required from both the likes of Sydney Water and household users in order that overall water consumption remains within environmentally appropriate limits. PIAC has welcomed recent proposed changes to the Operating Licence for Sydney Water, in particular, that will ensure more detailed information in future about the water-use behaviour of residential, commercial and industrial consumers.

Government election commitments

The recent NSW State election saw the returning Labor Government commit itself to a number of important initiatives in relation to utilities and residential consumers.

One of the key commitments was the allocation of a further two years of funding for UCAP. This follows a very positive external review of UCAP undertaken in 2002. The results demonstrated not only the effectiveness of the Program in advocating for low-income and disadvantaged consumers, but the strength of support from other stakeholders in these industries.

Particularly noteworthy was the decision of the Government to take up the proposal of providing additional funds to UCAP to undertake specific research projects. To date UCAP has lacked the

resources and capacity to undertake research into specific questions about low-income households and their consumption of energy and water. This research will inform future debates about the affordability of essential services.

Other key initiatives were announced in relation to water. In particular, the NSW Government has flagged its intention to improve consumer protection for households living outside the Sydney and Hunter regions. This includes providing a similar level of access to the Energy and Water Ombudsman (EWON). Also targeted are guidelines for disconnection of rural households by local government water providers. PIAC is especially pleased with this commitment as it echoes some of the concerns PIAC has raised previously over the regulation of local government water supply in NSW.

Price pressure follows industry reforms

PIAC has continued to give attention to the affordability of essential services in electricity and gas for low-income and disadvantaged consumers. Despite the recent restructuring of the electricity and gas markets in NSW household users continue to experience pressure for increases in the cost of these essential services.

A large hike in NSW retail gas prices has been implemented by AGL, which had to be approved by IPART. PIAC pointed out that the rise sought by AGL was well beyond the expectations of consumers following competition reform and, importantly, would impose an added burden on households with a large reliance on gas. AGL claimed rises in the wholesale cost of gas are the main reason behind the move. This is a difficult argument for consumers to assess since AGL has insisted that, for competitive 'commercial-in-confidence' reasons, it cannot reveal the details of its various wholesale gas supply contracts. The result is that 'competition' has seen default customers experience an increase in regulated prices while being denied access to crucial information detailing the rationale for the increase.

Consumers also face costs for the distribution of electricity: the local systems of 'poles and wires'. These costs comprise, on average, 50% of household utility bills. The electricity distributors, too, are regulated by IPART, which sets an annual revenue cap. The distributors are arguing that significant increases in the revenue cap are needed to fund large additional investment in their systems. PIAC supports public investment in utility infrastructure. However, PIAC is concerned at the impact of the proposed increases on some residential users. In particular, two distributors have proposed a change to the structure of their prices that could see some households experience increases in their total electricity bills of around 15%.

In response, PIAC has expressed the concern that the networks have not placed a greater emphasis on assisting customers of all sizes to reduce their use of electricity and thus postpone the need for some capital spending.

It is worth noting, however, that the commencement of a competitive market for household electricity in South Australia last January saw household prices rise 25% overnight.

Cost and benefit of meters

Innovations in metering of household consumption remain a major focus of discussion in the electricity industry. PIAC continues to assert that new technology should be mandated for households only where the benefits clearly exceed the costs. With Victoria proposing to force some households to adopt new 'time of use' meters, it is becoming increasingly important to accurately gauge the costs of new meters and to assess where the benefit lies: with customers or the electricity suppliers.

The NSW industry is continuing to debate a possible introduction of electronic 'pre-payment' meters. PIAC remains cautious about whether all customers could benefit from this technology. Of particular concern is whether all the current consumer protections can be retained if pre-payment meters are introduced.