

Liberty Victoria Press Release

20th Anniversary of the Tampa Affair

On the 26 August 2001, the Norwegian vessel the MV Tampa rescued 433 people seeking asylum who were stranded at sea. Most of those rescued were Hazaras fleeing from the Taliban in Afghanistan.

What followed was a defining moment for our national character. Australian SAS forces boarded the Tampa and most of those onboard were subsequently detained on Nauru. The incident became a pivotal episode in the 2001 Federal Election.

Two decades later we continue to see the politicisation, and criminalisation, of refugees and people seeking asylum.

The late Mungo MacCallum, in his 2002 Quarterly Essay "Girt By Sea", concluded with the following observation about the Tampa affair:

"In 2001, John Winston Howard feasted well, but we have still not seen the full extent of the bill. And as the dyspepsia, if not the heartburn, sets in, even he must be wondering if it was worth it. His hopes of public vindication through a third election win are now irretrievably dashed. He has his third term, but history will record that he gained it at least partly through playing fast and loose with the facts and the corruption of the nation's defence force, civilian infrastructure, public trust and international standing; the gold will be forever tarnished. What has emerged so far this year confirms everyone's worst fears: in simple terms, Howard's debauch has done a lot of damage and left a terrible mess. We must now wait to see just when and if the mammoth task of cleaning it up begins, and who in the currently debilitated Australian political landscape will be strong and brave enough to undertake it."

We have not seen either of the major parties willing to undertake that mammoth task.

Despite our obligations under international law, including the Refugee Convention, forged in the aftermath of the Second World War and the devastation wrought by fascism and the Holocaust, we continue to demonise and penalise those who flee persecution and the risk of serious harm. We have not learnt our lessons from history and we keep repeating the same mistakes.

Our fundamental legal norms have continued to be eroded. People seeking asylum have languished in detention for years, in conditions largely out of reach of the Courts, supporters and the media. Some have tragically died. Many are seriously ill because of the conditions they are being held in, with no relief or release in sight. We now adopt legal fictions. Australia's maritime territory, and the Australian mainland itself, has been deemed by legislation to not be Australian territory for the purposes of migration law. This was in order prevent those people seeking asylum from having recourse in our courts to review the life and death

decisions made by the executive. The executive has locked out the judiciary, despite the fundamental role the judiciary plays in reviewing the exercise of executive power and correcting errors.

Liberty Victoria (then known as the Victorian Council for Civil Liberties) and Eric Vardalis, with Holding Redlich as instructing solicitors, took the Government to court in 2001. Liberty Victoria was proud to take a stand for those on board the Tampa, led by Julian Burnside AO QC and Chris Maxwell AC QC.

We sought an order for the asylum seekers being held on the Tampa to be released and a declaration that they were being held unlawfully by the Government.

Justice North agreed and ruled that those on the Tampa were being held unlawfully and that the Government had to release them.

The Government appealed against the decision and the majority of the Full Federal Court overturned Justice North's order (Justice Beaumont and Justice French, with Chief Justice Black in dissent).

Although we did not ultimately succeed in the litigation, it was in many respects Liberty Victoria's proudest moment as a civil liberties and human rights organisation. In 2002, our then-President, Chris Maxwell QC, spoke about the proceedings and the impact of the Tampa Affair on the political and legal landscape, which continues today.

The Government wanted Liberty Victoria and others to pay for its legal costs. However, the Full Federal Court refused the Government's application. In refusing the costs application Black CJ and French J said:

"This is a most unusual case. It involved matters of high public importance and raised questions concerning the liberty of individuals who were unable to take action on their own behalf to determine their rights. There was substantial public and, indeed, international controversy about the Commonwealth's actions. The proceedings provided a forum in which the legal authority of the Commonwealth to act as it did with respect to the rescued people was, and was seen to be, fully considered by the Court and ultimately, albeit by majority, found to exist."

Twenty years after the Tampa affair, we have another humanitarian crisis before us. The Taliban has reclaimed control of Afghanistan and we have withdrawn our forces. Many face the imminent risk of death and serious harm, including those who assisted our military, and, once again, the Hazara people.

We now have another choice and another moment to define our national character. Will we retreat, once more, into Fortress Australia and turn our backs on those in need?

We can, and must, do better.

Julia Kretzenbacher

President, Liberty Victoria