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Libertynews

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LIBERTY VICTORIA VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

FEATURE

The rights way

Spencer Zifcak on why Australia
needs a Human Rights Act — 6



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PRESIDENT'S REPORT

2009 THE YEAR AHEAD

Under the Rudd Government, there has been a winding back of many of the most egregious civil liberties infringements, allowing Liberty to focus inwardly, writes **Michael Pearce SC.**



LIBERTY Victoria, like many civil liberties and human rights organisations, has endured a decade or more of non-stop action: we have spent much of the last 10 years reeling from sustained and escalating attacks on rights and liberties. However, the change in the Federal Government in 2007 has changed this. While the new Government has not ushered in a utopia (and, of course, was never going to), there has been a welcome winding back of many of the most egregious infringements and a promise of more reforms. This has given Liberty a welcome respite and an opportunity to focus inwardly.

IMPROVING OUR FINANCIAL BASIS

In part because of the demands on our meagre resources and despite the efforts of our dedicated staff and committee, our administrative capacities regularly fall short of our needs. We live from hand-to-mouth and lack a sufficient financial basis to sustain our activities over the long term. Much of my focus in the coming year will be to attempt to work out a sustainable financial and administrative model for Liberty. This will require, in particular, the identification of fresh sources of income and we will be asking members to help in this regard. If you have any ideas please feel free to communicate them to us.

AUSTRALIAN COUNCIL FOR CIVIL LIBERTIES

Another area of inward focus in the coming year will be in our relationship with the Australian Council for Civil Liberties. The ACCL was recently established by Liberty Victoria and its sister organisations in New South Wales and Queensland because of a shared view that the time has come for an effective national body. Much of Liberty's work, and that of its interstate counterparts, is federal in nature. Federal authorities increasingly expect to deal with national, rather than State-based, bodies. In addition, there are potential costs savings from sharing resources via a national body. The lack of a permanent civil liberties body in certain States could also be redressed by a national body.

The precise nature of Liberty's interest in and relationship with the ACCL has yet to be determined. It is currently envisaged that the existing State-based bodies will remain members of the ACCL but that eventually individual memberships would be possible, for example in those States without a civil liberties organisation. It is also envisaged that much of the ACCL's work will be done initially by those already involved in the State-based bodies. Thus, I expect that the State-based bodies will continue for some time to predominate and that it will be some time before a separate and well-resourced national body emerges.

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MERGER WITH FREE SPEECH VICTORIA

A final area of inward focus results from our merger with Free Speech Victoria, which was completed last year. I am pleased as a result to welcome many new members of Liberty Victoria, whose FSV memberships were converted to Liberty memberships. I hope all of you will continue with your Liberty memberships. We are dedicated to continuing the activities of FSV, especially the annual Voltaire award. I would welcome any input from former FSV members on other ways we can carry on the work of FSV.

LIBERTY'S POLICY CONTRIBUTION

Despite the focus I have foreshadowed on internal matters in the coming year, rest assured that our policy work will continue. We will continue our public advocacy on a large range of subjects, especially for a national charter of human rights, privacy law reform, the humane treatment of asylum seekers, reform of anti-terror laws and improved access to justice, and against internet

ensorship. We already have working groups in these areas preparing public submissions. No doubt there will be other issues arising over the year. If there are issues our members think we should take up, please let us know.

THE YEAR PAST

Finally, as we look forward to the year ahead it is fitting to cast an eye backwards. In particular we should acknowledge the efforts of Julian Burnside AO QC as our President for the last two years and congratulate him on his well-deserved honour. We should also acknowledge the invaluable contribution of Evelyn Tadros who stepped in as Office Manager in difficult circumstances last year. Evelyn has substantially revamped our office procedures and created an administrative basis on which we can now build. She has now left that position to pursue her legal career but is not lost to us as she has been co-opted to the committee. ♥

Michael Pearce SC was elected president of Liberty Victoria at last year's annual general meeting.

CIVIL LIBERTIES CALENDAR

EVENTS

20 FEBRUARY 2009

Loddon Murray Community Leadership Program Event

Speaker: Julian Burnside AO QC, Immediate Past President, Liberty Victoria. Golden Dragon Museum Gardens, 5-11 Bridge Street, Bendigo, 7.00-9.00pm, \$25 including finger food and drinks. More information at www.lmclp.org.au.

2 MARCH 2009

'The human rights spoilers and what to do about them'

Speaker: Carroll Bogert, Associate Director, Human Rights Watch. Blake Dawson, Level 26, 181 William Street, Melbourne, 5.45pm for 6.00-7.30pm, \$25/\$15 concession. More details, including booking information, at www.hrlrc.org.au.

INQUIRIES

SECRECY INQUIRY

Submissions to the federal inquiry into secrecy laws can be made online at www.alrc.gov.au or addressed to the Australian Law Reform Commission, GPO Box 3708, Sydney NSW 2001. They must be received by 19 February 2009. (See page 10.)

NATIONAL HUMAN RIGHTS CONSULTATION

Submissions to the national human rights consultation can be made online at www.humanrightsconsultation.gov.au or addressed to the National Human Rights Consultation Secretariat, Attorney-General's Department, Robert Garran Offices, Barton ACT 2600. They must be received by 31 May 2009. (See page 6.)

HANEEF INQUIRY

HAVE ANY LESSONS BEEN LEARNED?

The Clarke Inquiry needed greater powers to conduct a proper and full investigation into the case of Dr Mohamed Haneef, argues Georgia King-Siem.

AS MOST readers would be aware, Dr Mohamed Haneef was arrested, detained, charged and prosecuted by the Australian government in connection with terrorist bombings in the UK. At the time, the Australian government was strongly criticised for its handling of the matter. Some notable issues included a failure by the prosecution to reveal key facts about the matter to either the defence or the court and an apparent abuse of process in cancelling Dr Haneef's visa.

An inquiry into the government's handling of the case was announced in March 2008. The terms of reference for the inquiry were relatively limited and the independent investigator – the Hon. John Clarke QC – was not given any powers to compel documents, protect witnesses or otherwise conduct the inquiry as effectively as one might have hoped.

A large number of submissions were made to the inquiry, ranging from government departments to civil rights groups to interested individuals. Rather than re-invent the wheel, Liberty endorsed the submission of the NSW Council for Civil Liberties and worked with other organisations to ensure the inquiry was not swept under the rug.

Under the terms of reference, there was no requirement for the government to release the report to either the Parliament or the public. In November last year, Liberty along with several

other prominent civil rights groups issued a press release and wrote to the Attorney-General seeking assurances that the report would be made public. The government did so in late December – suspiciously close to Christmas.

Although beyond the terms of reference, the *Clarke Report* vindicated Dr Haneef of any wrongdoing. Interestingly, it also found that both the Australian Secret Intelligence Service and the Australian Federal Police had concluded that there was not enough evidence to charge or prosecute Dr Haneef. The decision to do so was taken at a higher level.

Moreover, the *Clarke Report* found the cancellation of Dr Haneef's visa mystifying – largely due to the timing, but also because of the apparent failure of the Acting Secretary of the Department of Immigration and Citizenship to provide accurate advice to the Minister who made the decision. Ultimately the *Clarke Report* made 10 recommendations including greater oversight and coordination between government agencies and the appointment of an independent reviewer of counter-terrorism laws.

Given the terms of reference, the Hon. John Clarke QC is to be congratulated on conducting an independent, if limited, inquiry into the Haneef case. However, this inquiry has highlighted several shortcomings in Australia's approach to counter-terrorism and civil rights.

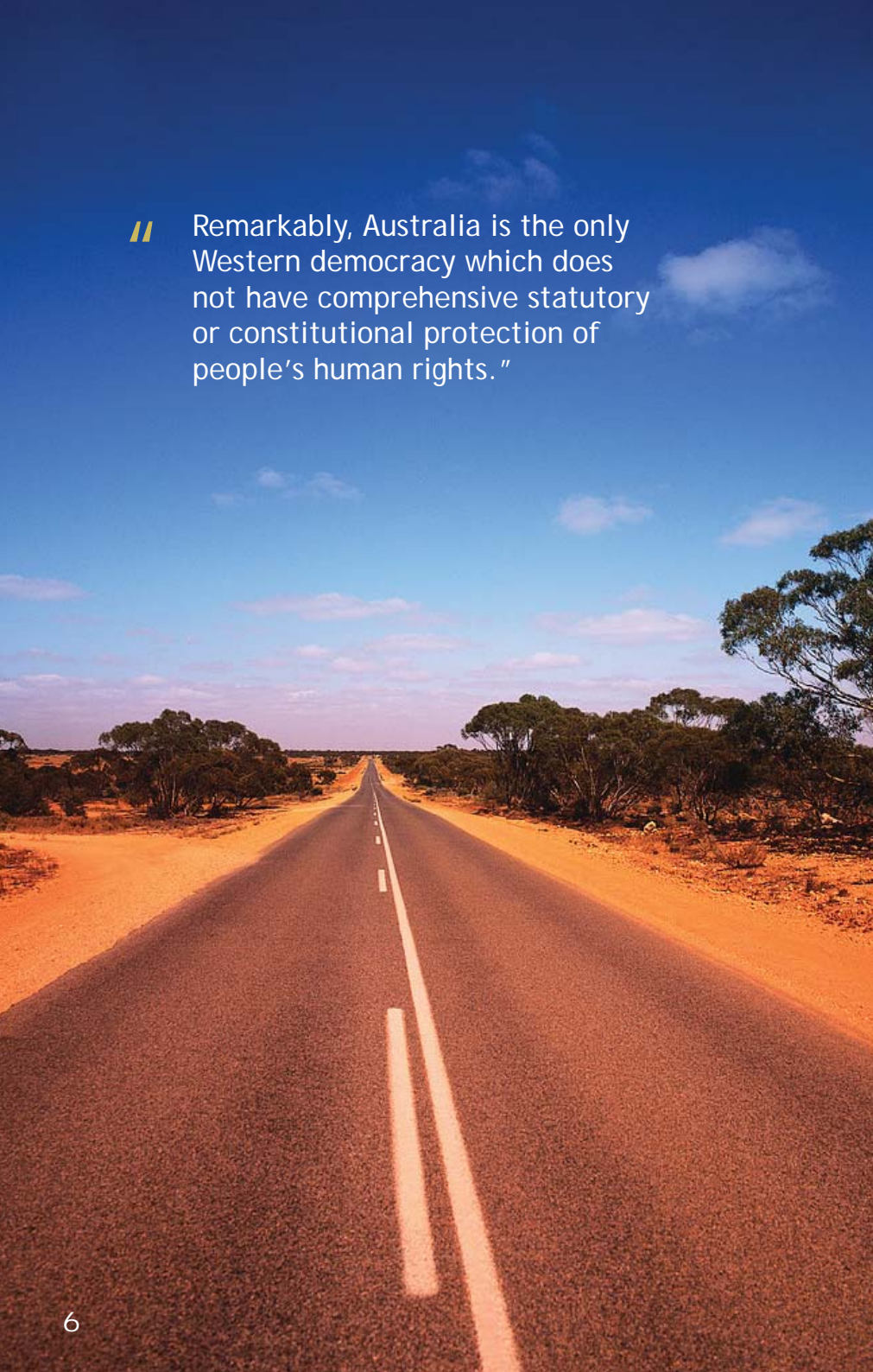
First and foremost, it illustrates how our increasingly draconian terrorism laws can be used to arrest and detain people for extended periods of time with little or in fact no evidence of any wrongdoing. From a governance point of view, it shows that our security and intelligence agencies have insufficient oversight and that greater judicial oversight is needed.

Finally, the failure by the government to afford the Clarke Inquiry sufficient powers to conduct a proper and full inquiry into such an important matter is of great concern. Good government is founded upon openness and accountability, without which corruption and incompetence can flourish. It is hoped that incidents such as this will prompt action in the right direction.

Georgia King-Siem is a vice-president.

THE CLARKE REPORT

- Copies of the report and submissions are available from the inquiry website (www.haneefcaseinquiry.gov.au)
- Copies of Liberty's press releases can be found on Liberty's website under 'media' (www.libertyvictoria.org.au)



// Remarkably, Australia is the only Western democracy which does not have comprehensive statutory or constitutional protection of people's human rights."

FEATURE

THE RIGHTS WAY FORWARD

BY SPENCER ZIFCAK

LATE last year, the Rudd Government made good on its promise to establish a national consultation on human rights. The purpose of the consultation is to make recommendations to the Federal Government and Parliament about how Australians' human rights might best be protected.

A consultation panel has been selected. It is chaired by Frank Brennan, a Jesuit priest with a long history of involvement in Aboriginal and refugee issues; Mary Kostakides, the former SBS news anchor; Mick Palmer, former Australian Federal Police Commissioner; and Tammy Williams, a Queensland barrister of Aboriginal descent.

The principal question before the panel will be whether Australia should enact a Human Rights Act setting down the fundamental human rights Australians should possess and providing mechanisms for their implementation and enforcement.

Remarkably, Australia is the only

Western democracy which does not have comprehensive statutory or constitutional protection of people's human rights. Every other comparable nation does. These countries include Canada, New Zealand and the United Kingdom.

The principal arguments for the adoption of such an Act are that it would improve the quality and accountability of government; it would consolidate and strengthen human rights protections for all Australians; it would encourage social inclusion; it would improve Australia's reputation abroad;

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and it would constitute one effective, legal and political response to human rights violations that have taken place and are taking place in contemporary Australian society.

Presently, the favoured model for a Human Rights Act is that adopted 10 years ago in Britain. Under this model, the Act would set down the fundamental human rights to be protected. These would include, for example, freedom of speech, assembly, association and movement; freedom of thought, conscience, religion and belief; the right to privacy and to fair trial; and the right to life, liberty and security.

From the time of the Act's adoption, every law passed by the Federal

Parliament would have to be compatible with the preservation of these rights. And, every agency of government would have to act in its dealings with members of the public in a manner that is consistent with them, that is, in a manner that is consistent with respect for and the dignity of the people with whom they interact.

The Courts would have a role in determining whether a law passed by the Parliament is consistent with the Human Rights Act and in deciding whether an agency of government has breached its obligations when dealing with the public. Where, however, a law is determined to be inconsistent with the Act, the matter would be

referred back to the Parliament for reconsideration. In this way, the ultimate sovereignty of the Parliament would be preserved.

“ Presently, the favoured model for a Human Rights Act is that adopted 10 years ago in Britain.

This model has worked exceptionally well in Britain and is worthy of replication here.

The national consultation panel is taking submissions on this and other questions until 31 May. Submissions may be made through the panel's website

(www.humanrightsconsultation.gov.au); through the GetUp and Amnesty websites; or by letter or email to the consultation panel's mailing address.

Further information on the Campaign for a Federal Human Rights Act can be obtained at the website of the national campaign (www.humanrightsact.com.au) and the Australian Human Rights Group (www.humanrightsact.com.au/ahrg). Detailed guidance on how to write a submission is available on the website of the Human Rights Law Resource Centre (www.hrlrc.org.au). ♥

Spencer Zifcak is a vice-president of Liberty and a professor at the Australian Catholic University.



Time to remove another unjust policy

Last year Victoria decriminalised abortion up to 24 weeks. Now the Federal Government must lift its foreign aid abortion ban, argues [Anne O'Rourke](#).



HISTORY was made in Victoria on 22 October 2008 when, after a long and often acrimonious debate, the Abortion Law Reform Bill became law with convincing votes in both houses of parliament. The Abortion Law Reform Act 2008 (Vic) decriminalises abortion up to 24 weeks. Put simply, this means that there are no laws governing abortion up to 24 weeks.

This brings Victorian law into line with ACT law and the law in Canada, Denmark, France, Germany, the Netherlands, Norway, Sweden and Switzerland. After 24 weeks an abortion can only proceed if a doctor 'reasonably believes that abortion is appropriate in all the circumstances', and that they have consulted one other medical practitioner who also 'reasonably believes that abortion is appropriate in all the circumstances'.

The Act also contains provisions relating to health practitioners who hold a conscientious objection to abortion. The Act requires that such practitioners inform the woman of their objection

to abortion and refer the woman to another practitioner who does not have a conscientious objection to abortion. However, in the event of an emergency a medical practitioner is under a duty to perform an abortion to save a woman's life and cannot rely on the conscientious objection to refuse medical treatment.

“ Despite the reform in Victoria, struggles over the issue of reproductive rights continue and are now on the agenda again at the federal level.

Achieving law reform in this area was not an easy process. Many politicians were under extreme pressure throughout the debate. Politicians from both parties were inundated with letters and emails, often enduring name-calling and abuse from the public gallery during the parliamentary debate. Liberty Victoria also received a number of emails and letters objecting to its position, the majority basing their

objection on religious beliefs.

From the start of the law reform process, Liberty made its position clear. Liberty believes that abortion is not morally objectionable and decisions regarding pregnancy or termination properly belong to the woman or couple involved and should not be dictated by the state or a religious body. In our submission to the Victorian Law Reform Commission, we stated that our position on this issue starts from a number of core premises. First, that women have the intellectual and moral capacity to make decisions about their own fertility. Secondly, that the law governing this area should rest upon, and recognise, Australia's obligations under international human rights instruments, specifically the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Copies of Liberty's submission can be found on our website.

Despite the reform in Victoria, struggles over the issue of reproductive rights continue and are now on the

agenda again at the federal level. The latest battle concerns the 'global gag rule', which restricts funding to non-government medical organisations or reproductive health services operating overseas which provide information on contraception and abortion. Every year 78,000 women die from unsafe abortion, the vast majority in developing countries.

This horrendous figure could be significantly reduced by the provision of reproductive health services, but due to amendments introduced by the then Senator Brian Harradine in 1996 such services are refused Australian aid if they give women that information. Some federal politicians have called upon Prime Minister Kevin Rudd to end that prohibition. Liberty Victoria supports the campaign to eliminate this unjust policy. The Federal Government should follow US President Barack Obama's lead and end this prohibition which undermines the human rights of women in developing countries.

Anne O'Rourke is a vice-president.

HUMAN RIGHTS TREATIES

Australia under review

Rachel Ball describes the formal process for reviewing Australia's compliance with the major human rights treaties.

It's a busy time for Australia in the international human rights arena. In the coming months our performance under the two main human rights treaties will be reviewed by UN treaty bodies. The Rudd Government has also recently prepared reports on the implementation of treaties dealing with race discrimination and discrimination against women.

The review process is an important part of the international human rights system. When a country ratifies a human rights treaty, it undertakes to submit periodic reports examining its compliance with treaty obligations. The UN treaty bodies' consideration of these reports is one of the primary ways in which implementation is monitored.

In March the Human Rights Committee will review Australia's compliance with the International Covenant on Civil and Political Rights (ICCPR) and in May the Committee on Economic, Social and Cultural

Rights will conduct a similar review of compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, these two conventions contain all of the rights set out in the Universal Declaration of Human Rights.

“ After a long period of disengagement, Australia is increasingly involving itself in the UN human rights system.

Late last year, the Human Rights Committee released the list of issues that it will focus on in its review. Among these are Australia's anti-terror legislation, the disproportionate number of Indigenous Australians in conflict with the criminal justice system, violence against women, mandatory migration detention, and mental health care in prisons.

Geneva and New York-based treaty-body reviews are sometimes criticised as being process-driven exercises that have little to offer in terms of on-the-ground protection and promotion of human rights. However, they can make a significant contribution in two important respects.

First, the review process provides an opportunity for non-government organisations (NGOs) to discuss and mobilise around important human rights issues. Last year major civil society reports were prepared for both the ICCPR and ICESCR reviews. Together these reports constitute a comprehensive analysis of the state of human rights in Australia and make a range of targeted recommendations. They were endorsed, in whole or in part, by over 200 Australian NGOs, including Liberty Victoria.

Second, the Concluding Observations issued by the treaty bodies can be powerful tools in the hands of human

rights advocates, particularly in the current political climate where the Government has made a public commitment to engaging with the UN and harmonising Australian law with international human rights standards.

For example, last year the Committee against Torture's Concluding Observations included 27 recommendations about Australia's implementation of the Convention against Torture. Since then the Government has taken steps to implement several of the most significant of these recommendations.

After a long period of disengagement, Australia is increasingly involving itself in the UN human rights system. This is a positive development that has the potential to address disadvantage and promote human dignity at home.

Rachel Ball is a committee member and a lawyer at the Human Rights Law Resource Centre (www.hrlrc.org.au).

Opening up government

Our security and way of life depend on an open and accountable government which protects civil liberties, writes [Georgia King-Siem](#).

IN AUGUST 2008, the Attorney-General announced that the Australian Law Reform Commission (ALRC) would undertake a review of Australia's secrecy laws. In particular, the ALRC will look at the scope and appropriateness of the current laws, their consistency and application to other relevant laws such as privacy, freedom of information (FOI), archives, whistle-blowing and data-matching.

Among other things, it is possible the ALRC will recommend that, at least federally, Australia's secrecy laws be consolidated into the *Crimes Act 1914* with specific provisions for the protection of national security and other sensitive Commonwealth information.

The ALRC has now published a 262-page issues paper, available at www.alrc.gov.au, which identifies 63 discrete questions, organised into six broad topics: overview questions, secrecy provision elements, exceptions and defences, penalties, framework, and comparison and interactions with other laws.

Although the timeframe is relatively short, Liberty Victoria will make as

comprehensive a submission as it is able to. Liberty's submission will address most strongly those issues which touch upon civil liberties including how any inconsistencies in Australia's secrecy laws, at any level, can lead to uncertainty and unfairness.

“ Over the last 10 years, Australia's civil liberties have been greatly eroded. This is most apparent in our terrorism laws ... ”

Secrecy laws must also be clearly worded to ensure there is no ambiguity and to avoid confusion; it is far easier to obey a law one understands! This applies equally to any exceptions or defences.

While Liberty recognises the need to protect Australia's security, any penalty imposed for breaching our secrecy laws must be commensurate with the crime. Moreover, they should work in harmony with our privacy laws, where applicable.

Most importantly, secrecy laws must not be used as they have been in

the past to prevent government from being held open and accountable to its citizens, whether through whistle-blowing or FOI laws.

Over the last 10 years, Australia's civil liberties have been greatly eroded. This is most apparent in our terrorism laws, which give sweeping powers to authorities to act independently and often with little in the way of checks and balances.

Australia's secrecy laws are the starting point. If framed and used properly, they will help keep Australia safe. If ill thought out and badly executed, they will lead to abuse and ultimately make Australia less secure.

Liberty Victoria urges anyone interested in this important issue to consider making their own submission to the ALRC – even if it's only a one- or two-page letter to the ALRC urging that Australia's secrecy laws protect both Australia's security and our way of life, which depend upon an open and accountable government which protects, not abuses, our civil liberties.

Georgia King-Siem is a vice-president.

MAKE A SUBMISSION!

Submissions can be made online at www.alrc.gov.au or addressed to the Executive Director, Australian Law Reform Commission, GPO Box 3708, Sydney NSW 2001. They must be received by 19 February 2009.