



VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

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## THE VOICE OF LIBERTY MUST BE HEARD

**This newsletter**

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Responsibility for media comment by Liberty on a day-to-day basis falls traditionally to the President and other members of the executive, with the monthly Committee meeting as the forum for discussion and decision on major policy questions. As Liberty's membership continues to grow, it is important that members be kept informed of the issues with which we are involved.

You should regard the newsletter as an invitation to provide comment or suggestions on positions which Liberty has taken, or should take. Fuller details of our policy positions (including copies of press articles and speeches) can be found on our new, much-improved website. Have a look for yourself:

[www.libertyvictoria.org.au](http://www.libertyvictoria.org.au)

### **Anti-terror laws**

The campaign against the Federal Government's proposed anti-terror laws remains a top priority. Anne O'Rourke coordinated the two written submissions which we made to the Senate Committee examining the Bills. The Committee received an astonishing 431 submissions, the vast majority of which called for the abandonment of the proposed legislation.

Although the Committee stopped short of recommending (as Liberty and others had urged) that the Bills be scrapped, it did recommend major changes. This was particularly significant since the Committee was chaired by a Liberal senator. In particular, the Committee recommended –

- amendment of the definition of "terrorism";
- rejection of the proposed conferral of power on the Attorney-General to ban organisations. The Committee described the provisions as "not acceptable to a large proportion of the Australian community" (3.156);
- the removal of absolute liability offences (ie. imposing criminal liability without the need to prove knowledge, and precluding any defence of honest and reasonable mistake).

A second parliamentary committee has this week reported on the related proposals to give ASIO power to detain individuals incommunicado for days on end, purely in search of intelligence. This committee, too, has made a stand in defence of civil liberties, calling on the Government to make major changes.

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The Attorney-General, Daryl Williams, is looking for a compromise position. Everything therefore depends on how strong a position is adopted by the Labor Opposition. Of course, every week that goes by weakens the Government's "September 11" propaganda, and strengthens the hand of those who oppose the legislation.

I will be speaking at another public meeting on the legislation, to be held on Thursday, 13 June at 6:30 pm at Australian Volunteers International, 83 Curr Street, Fitzroy.

### **Competing rights: free press, fair trial and privacy**

The lurid coverage by the "Herald/Sun" of what it called the "society murders" prompted intense media interest in the competing issues of press freedom, the right to a fair trial and the right of a grieving family to its privacy. Liberty's position was that the "Herald/Sun" had gone way beyond what was either necessary or appropriate in its coverage of the Wales/King murder investigation and had rendered a fair trial for the individuals charged almost impossible. It had also completely ignored the right of family members to privacy in a time of grief.

The "Herald/Sun" does not, however, have the field to itself in this regard. "The Age", in its notorious "Power and Rape" articles about Geoff Clark and in its exposé of the prime suspect in the Tynong North murders, also trampled on the presumption of innocence.

Liberty will be convening a roundtable later in the year to discuss how the competing interests can be better reconciled. It is proposed to invite editors and journalists, senior police, privacy and free speech advocates, criminal lawyers, victims' representatives and other interested parties.

### **The separation of powers**

The Minister for Immigration, Mr Ruddock, is fond of referring to "the separation of powers". But his recent attacks on the Federal Court suggest that he has little real idea what the term means.

The current fracas arises only because the Federal Court has, once again, been doing its job. Over recent years, the Parliament has sought to limit, but not exclude, the Court's ability to review administrative decisions in migration matters. The question which has inevitably – and repeatedly – arisen is how those words of limitation are to be interpreted.

In Court the Minister (through his counsel) restated his view that the "trend" of recent migration decisions represented an attempt by the Federal Court to "deal itself back into the review game." Such language is not only offensive to the judges concerned but it betrays the Minister's complete misunderstanding of the judicial function.

Unfortunately, Mr Ruddock's assault on the Federal Court is only the most recent chapter in a sorry history of attacks on the judiciary by representatives of the Coalition Government.

### **Natural justice and migration decisions**

Liberty endorsed a submission made by the NSW Council for Civil Liberties to the Senate Legal and Constitutional Legislation Committee, regarding the Migration Legislation Amendment (Procedural Fairness) Bill 2002. The Bill sought to exclude the requirements of procedural fairness from administrative decision-making in migration matters. In our covering letter we said:

*“There is, and always will be, a tension between the objectives of speed and efficiency, on the one hand, and the requirements of procedural fairness on the other. While Liberty Victoria accepts that visa applicants and visa holders have an interest in speedy disposition of questions concerning the grant or cancellation of visas, there is no warrant for abrogating the fundamental common law safeguards of procedural fairness.”*

### **A typical week: the phone never stops**

The credibility, and high profile, which Liberty has established over many years means that the phone never stops ringing. Here is the range of topics on which we were asked to give media comment in the course of a week in early May:

- the interception by the Defence Signals Directorate of telephone calls to the *Tampa* from PILCH and Eric Vadarlis;
- the anti-terror laws;
- the RSL’s ban on public comment by candidates for the Victorian presidency;
- the decision of the City of Casey to ban the possession of spray cans;
- the exclusion of women from “elite” men’s clubs;
- the ALP’s policy regarding criminal record checks for applicants for jobs working with children;
- the media coverage of the Wales/King murder investigation;
- police reluctance to frisk suspects because of fear of legal action;
- the Budget allocation for the war on terror;
- the return visit of the *Tampa* to Australia.

### **Powers of public (private) transport inspectors**

Brian Walters has been coordinating Liberty’s support for the campaign, led by the Consumer Law Centre, to oppose the use of force by private company inspectors on the public transport system. These issues are under review by a parliamentary committee but the Transport Minister, Peter Batchelor, has pre-emptively introduced an amendment to the *Transport Act* to confer on these inspectors the right to demand name and address. Liberty has joined other groups in calling for the amendment to be deferred until the parliamentary committee reports.

### **Juvenile justice**

Liz Curran has continued to be actively involved in consultations with the State Government about issues in the area of juvenile justice, in particular through the Ministerial Round Table. One of the key challenges is to preserve the dual track system within the Department of human Services.

### **Elderly drivers: public safety versus privacy**

Julian Burnside has had the carriage of Liberty's response to the enquiry by the Victorian Government Road Safety Committee into the question of safety for older road users. One issue concerns the responsibility of doctors to report patients who are continuing to drive though clearly unfit to do so.

### **Inquiry into the *Vagrancy Act 1966***

Liberty endorsed a detailed submission by the Homeless Persons' Legal Clinic, associated with the Public Interest Law Clearing House, to the inquiry into the *Vagrancy Act 1966*.

### **Children in detention**

Liberty endorsed a substantial submission made to HREOC in relation to the detrimental effects on children of being held in immigration detention.

### **Diary note: Missen Memorial Lecture 19 September – Bob Brown to speak**

PLEASE NOTE: The Missen Memorial Lecture will be held on Thursday, 19 September 2002 at 7:30pm. We are very fortunate that Senator Bob Brown has agreed to be the guest speaker.

The dinner will be held at University House at the University of Melbourne, Royal Parade, Parkville. The cost will be \$55 per head (\$40 concession), liquor to be purchased according to individual requirements. BE THERE!

### **Spreading the word**

In the interests of promoting both our policies and the organisation itself, I have been accepting speaking engagements far and wide. Since early March, I have addressed:

- members of Philanthropy Australia, in Sydney, on asylum-seekers and the anti-terror laws;
- a Schools Constitutional Convention, organised by Eltham High School, on the need for a bill of rights;
- the Prahran branch of the ALP, about the anti-terror laws;
- partners and staff at Maddock, Lonie and Chisholm, about the *Tampa* litigation;
- the Law Institute President's lunch, about the anti-terror laws and the *Tampa* litigation;
- staff and students at Deakin University, about human rights advocacy on a range of issues;
- the Rotary Club of Melbourne, on current threats to human rights;
- criminology students at Melbourne University, on the *Tampa* litigation, the *McBain IVF* case in the High Court, and the anti-terror laws.

**Chris Maxwell**  
7 June 2002

