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THE VOICE OF LIBERTY MUST BE HEARD

This newsletter **No. 1 of 2003**

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.

Tort Law Reform

The State Government, with the support of the Opposition, recently legislated to reduce significantly the right of injured persons to sue for compensation. This arose from the so-called "insurance crisis", in which insurers have been charging greatly increased premiums or indeed refusing to provide cover at all.

Liberty Victoria does not contend that the common law system of compensation is to be defended at all costs. To the contrary, Liberty supports no-fault schemes where the removal of individual rights is justified by the introduction of universal coverage and a focus on the needs of the injured person.

There were, however, several aspects of the changes which caused serious concern to Liberty. First, there was no consultation with Liberty Victoria, with victims' groups, or with legal bodies affected. Legislation which removes rights ought to be the subject of careful consultation before it is introduced.

Secondly, the legislation appears to have been based on a false premise. Victoria has gone further than any other State in restricting rights to compensation, yet in Victoria claims for compensation for injury of the types concerned have been in decline. The chief causes for the insurance crisis lie with the loss of competitive pressure following the collapse of HIH. There are more complex reasons in relation to the mutual arrangements involving doctors. There has in fact been no increase in the number of claims – which is probably why the insurers have not opened their books to public scrutiny.

Thirdly, there has been no guarantee from insurance companies that premiums will fall. The relevant insurers are presently announcing record profits, but these changes will provide hundreds of millions of dollars to their bottom lines at the expense of victims.

The successful campaign to reduce rights mirrored almost exactly similar campaigns by insurers and doctors in the United States in the 1980s – even down to obstetricians threatening to withdraw services, in a manner which distressed expectant mothers. The result in the US was a reduction in common law rights in 41 states very similar to the changes here. There was, however, no net reduction in premiums.

Liberty would welcome a properly informed debate about the best way to protect the rights of

Chroming
The Victorian Parliament has passed the *Drugs Poisons and Controlled Substances (Volatile Substances) Act* 2003. Once again, Liberty Victoria was not consulted.

This legislation is of particular concern. Under its provisions, police are empowered to apprehend and detain indefinitely persons under 18 years of age who are suspected of inhaling volatile substances and who they believe are likely to cause serious bodily harm to themselves or another.

Police are also given wide powers to search and seize. These powers are not subject to supervision by a magistrate or any other independent person. Detained persons may not be held in a jail or police lock-up, but no facilities for holding such persons are identified.

These powers are quite inappropriate to dealing with what is essentially a medical problem. Police will have to make medical judgments which they are not trained to make, and the powers are plainly open to abuse. The legislation should be repealed and the Government should think again.

Brian Walters

Juvenile Justice: a Model Worth Preserving
At an international Children and Family Law conference in October 2002, it was acknowledged that Victoria's juvenile justice system remained the envy of other countries for its consideration of the needs and developmental support of young people and children. Representatives of Scotland and Canada waxed lyrical about how lucky Victoria was to have one of the most respected juvenile justice systems in the world.

Many of us remember the dark ages before the Carney Review of children's services; before the passage of the *Children and Young Person's Act* in 1989; before the establishment of the dual track system (which allows 17-21 year olds, if they are considered vulnerable by a court, to be placed in the juvenile justice system in the Department of Human Services).

The juvenile justice system in Victoria is completely different in character and operation from the adult correctional system. The adult system should never be seen as a progression from the juvenile justice system. The aim of juvenile justice is to offer opportunities and assistance to the development of the child or young person, not merely to hold the young person in custody.

In mid-December 2002, shortly after the State election, certain sections of the Victorian public service wanted to transfer part of the juvenile justice system from the Department of Human Services to the adult corrections system. As a result of swift action by Liberty Victoria and other community, church and legal groups, this attempt to erode the dual track system was prevented. Although the Minister for Community Services, Sheryl Garbutt has stated "there are no plans for removing the dual track system",[1] there are still strong rumours that some in the bureaucracy are keen to dismantle it as it might prove cheaper.

But it would not be cheaper. Immersing young people in the adult criminal justice system will cost more in the long term, both in imprisonment rates and the cost of earlier and longer imprisonment terms. In addition, it is likely to result in more young people resorting to criminal activities as there is less effective intervention/diversion.

Liz Curran

Asylum seekers *(What country, friends, is this?)*
Recent months have seen the courts reject three regressive positions adopted by the Department of Immigration. The first was an attempt to strip the courts of their traditional powers to review government decisions for unlawfulness. (This was rejected by the High

[1] Ministerial Juvenile Justice Roundtable on 20 February 2003

Court in the ***privative clause*** cases). The second was the indefinite detention of asylum seekers (rejected by the Full Federal Court in the ***Al Masri*** case). And the third was an attempt to prevent the Family Court from exercising its protective jurisdiction in relation to children in detention. (The Full Family Court this month held that its jurisdiction did not stop at the razor wire).

Unfortunately, only the first of these has been blocked for good. The Minister still believes he has, or should have, the power to detain indefinitely. A particular question concerns the fate of those asylum seekers who have failed to obtain protection visas, but who cannot be removed from Australia. (Iraqis are a prime example: for years Australia had no diplomatic relations with Saddam Hussein's Iraq, and most days now there is no-one at the end of the phone to have relations with).

In ***Al Masri***, the Full Federal Court rejected the Minister's argument that these people could simply be held in quasi-permanent detention. The Minister is seeking special leave to appeal to the High Court.

Similarly, the Minister is seeking special leave in relation to the Full Family Court's decision about the scope of its protective jurisdiction.

In the meantime, the Minister has introduced into Parliament the ***Migration Amendment (Duration of Detention) Bill*** 2003. It is a makeshift response to ***Al Masri***, and another attempt to strip courts of traditional powers. Its purpose is to prevent a court from making an interim order for the release of an ***Al Masri***-style applicant pending the court's final determination as to the legality of his or her detention. In other words, the court must not make interlocutory orders of the kind that it usually would, for example, where an applicant had already suffered lengthy detention, but the Minister was not ready for a final hearing.

What does it all add up to? Test it with a hypothetical. A husband, wife and young children – genuine refugees - flee a country like Iraq, to seek asylum in Australia. They are detained on arrival. Government officials bungle their case by ignoring obvious, crucial evidence. The family is refused refugee status, but cannot be removed from Australia, because Australia has no diplomatic relations with their country of origin. The family is kept in detention, for months, or years. The mental health of the children begins to break.

If the Minister's initiatives were in place, no court could review the government's decision in the family's case. No court could order the family's release from detention. And the Family Court could do nothing at all to help the children.

John Manetta

<u>On Saturday 4th October 2003 Liberty Victoria and Free Speech Victoria will host an all day symposium at Melbourne University Law School entitled:</u>

Be Alarmed! Freedoms Under Threat
A number of speakers have already committed to the day, including:
Julian Burnside QC; Di Otto; Liz Jackson; Prof Marcia Neave; Paul Chadwick; Jude McCulloch and **Spencer Zifcak**

Other groups sponsoring the symposium include - the Catholic Commission for Justice, Peace and Development; the Human Rights Alliance of Australia; the Institute for Comparative and International Law, at Melb Uni; and the Federation of Community Legal Centres.

<u>The day will conclude with Liberty Victoria's</u> **Missen Memorial Oration and Dinner** to be held at **University House, Melbourne University. Guest Speaker: David Marr**
At this stage prices are not finalised. You may wish to attend both the symposium and the dinner, or choose between them. More information on pricing will be available soon.

Legal Aid Taskforce
Chris Maxwell and Greg Connellan have represented Liberty Victoria at the Legal Aid Taskforce, established by the Law Institute of Victoria to address the critical shortage of legal aid funding for summary crime and family law. As part of a successful campaign leading up to the State budget, the Law Institute and the Bar Council organised two public protest meetings on the steps of the Magistrates' Court. On each occasion, Chris Maxwell spoke on behalf of Liberty Victoria calling for an increase in both Commonwealth and State contributions to legal aid.

A Bill of Rights for Victoria
On the initiative of Greg Connellan, the committee at the planning day in early April agreed to adopt as a priority project for 2003 a campaign to persuade the Victorian Government to introduce a charter of rights. Although Liberty's preferred position has for a long time been to have a national charter of rights, there is no prospect of action at the Commonwealth level in the short-term.

The Iraq War
There was a vigorous debate at the Committee in February and March about whether it was appropriate for Liberty to comment publicly on issues raised by the prospect of military action against Iraq. It was argued on the one hand that the threat of war did raise issues of human rights and the rule of law on which it was appropriate for Liberty to comment. The counter view was that the question of war with Iraq was essentially a matter of foreign policy and not within the scope of our constitution.

By a vote of 13 to 4, with three abstaining, the Committee resolved on 18 March to authorise the Executive –

> *"to make a public statement concerning issues of human rights and the rule of law raised by the prospect of military action against Iraq."*

It was resolved that the statement be limited to issues of illegality under international law and breaches of human rights which would result from a military attack against Iraq.

Counter-Terrorism (Bill) Victoria
In February, the Department of Justice invited Liberty to comment on a proposal for counter-terrorism legislation in Victoria. The view of the Committee was that, unlike the Commonwealth anti-terror laws which Liberty addressed in 2002, the proposals were generally acceptable. The most controversial was the conferral of power on police to obtain a warrant for a search without the knowledge of the occupier of the premises. Liberty submitted that, as a means of detecting possible terrorist activity, such searches were preferable to the Commonwealth proposal for detention and interrogation, but must be the subject of safeguards such as video recording.

Liberty Victoria archives
Through the efforts of June Factor, Vice-President of Liberty Victoria, we have had an offer from the Melbourne University archives to be the archivist for Liberty Victoria. This will involve the development of a document archiving policy and the proper organisation and storage of Liberty's archives. The Committee resolved to accept the offer. An application was subsequently made to the Victoria Law Foundation, which approved a grant of $10,000 towards the cost of this project – in particular, the transfer to compact disc of the historically important audio tapes of Liberty's 3CR radio program in the 1980s.

Staffing changes
Two valuable members of staff, Michal Morris and Chris Atmore, have recently resigned to take up other employment. We have greatly valued their assistance during their time with Liberty Victoria and we wish them well in their new employment.

Chris Maxwell