Liberty
VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC.
February 2005
Liberty News

"Go Directly to Jail!" Symposium and Allen Missen Dinner review by Michael Pearce

Following the success of the 2003 Symposium *"Be Alarmed! Freedoms Under Threat"* the challenge was there for Liberty and Free Speech Victoria to follow up in 2004 with a similarly stimulating program. The challenge was accepted and met with our 2004 symposium entitled *"Go Directly to Jail! A symposium on detention without trial from Guantanamo Bay to Nauru to Baxter to Abu Ghraib"*. The symposium was held on Saturday 2 Oct 2004 at the Law School of Melbourne University and was attended by over 100 people. It was followed that evening by the annual Allen Missen Dinner at University House.

The symposium was divided into four sections: the legal view, the view from Guantanamo Bay, the psychological view and the ethical view. In the first section Prof Spencer Zifcak from La Trobe University analysed the High Court decisions of *Al-Kateb* and *Al Khafaji* in which the Court by a bare majority upheld the validity of the indefinite mandatory detention of asylum seekers. His colleague from La Trobe, Joo-Cheong Tham, gave an equally disturbing review of the latest anti-terrorist legislation and its powers of detention without trial.

The view from Guantanamo Bay was provided via video-link from Washington, DC, by Major Dan Mori, defence counsel for David Hicks. Major Mori's dedication and outspoken commitment to securing a fair trial for David Hicks shone through and was inspirational. He was supported by Lex Lasry QC back in Melbourne who reported on his mission to Guantanamo Bay as a legal observer at the Hicks proceeding on behalf of the Law Council of Australia.

Under the heading of the psychological view, Prof Richard Harding, the Western Australian Inspector of Custodial Services, demonstrated the importance of rigorous scrutiny of the conditions of incarceration to prevent the kind of abuses that have come to light in Abu Ghraib. Following on from this, Dr Ida Kaplan, from the Victorian Foundation for Survivors of Torture, gave a moving account of the effects on victims of this kind of abuse.

The concluding session brought together the different strands of the program in a consideration of the ethics of the exercise of governmental power. Dr Joseph Camilleri of La Trobe spoke to this subject and was followed by Prof Raimond Gaita on video-link from London. Their contributions provided a thought provoking conclusion to what was a stimulating and engaging program.

A good crowd attended the evening Allen Missen Dinner. The guest speaker was David Marr. In his oration he speculated on how the late Senator Missen would have reacted to the big issues of today in the light of his commitment to civil liberties. The oration entertained and educated in equal measure.

Special thanks are due to Laura Thompson and Sean Huggins for their general organisation, to Wayne Gibcus of Melbourne University for his assistance with the video-links and to Arnold & Porter LLP who provided their facilities free of charge for the link to Washington, DC.

Video Link with Major Mori

Jack Thomas – dignity denied

You may have noticed the occasional headline in the Herald Sun about "Jihad Jack". This is the Herald Sun's way of referring to the Australian citizen Jack Thomas. It is not a name he has ever taken or used. It is irresponsible, and undermines the rule of law, for media organisations to carry out this kind of gratuitous vilification of a person subject to criminal charges. To its great discredit, "The Age" and other media has now taken to using this insulting name as well.

Eighteen months after his return from Pakistan, where he was interviewed by Australian officials, Mr Thomas was charged with three terrorism related offences.

Awaiting his committal hearing, Mr Thomas (who is not accused of engaging in any violence) has been classified to the Acacia High Security Lock Up at Barwon Prison. At Barwon he is locked down for 21 hours. He is in solitary confinement. He must wear handcuffs, a body belt and leg irons when outside the High Security Unit. He is permitted only one contact visit per month with his family. He has requested, but has found it very difficult to obtain access to a psychiatrist.

In the view of Liberty Victoria, these conditions violate Mr Thomas's human rights. He is, after all, a prisoner on remand, who has not been convicted of any offence.

Article 10 of the International Covenant on Civil and Political Rights provides:

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their station as unconvicted persons.

The Correctional Service Commission's Operating Procedure Manual. states (1.17) that a person may be separated, in the sense of being placed in a high security unit or in solitary confinement, only where this is necessary and desirable for the safety of the prisoner or other persons, or the security good order or management of the prison. The separation of the prisoner must only be for as long as the conditions above endure. It is difficult to see how any of these criteria are met with Mr Thomas. Further, the manual states clearly that where a person is separated for the purpose of management, that prisoner is entitled to an out of cell minimum of 8 hours including 4 hours of work/programs per day; one contact visit per week; and fourteen non-legal phone calls per week among other things. None

of these entitlements are being conferred on Mr Thomas – evidently because the crimes with which he is charged are related to terrorism.

Liberty has written to the Correctional Services Commissioner about these conditions of imprisonment but to date has received no reply.

Liberty remains gravely concerned that there continues to be hysteria, instead of sober judgment, about the issue of terrorism. Liberty opposes the anti-terror laws as unnecessary and as abrogating basic human rights. The treatment of Mr Thomas is a practical example of the damage these laws have done. They should be repealed.

Brian Walters

Nb. At the time of writing, Mr Thomas's third bail application was under consideration in the Magistrates Court and was subsequently granted on 15/2/05. Indications are that the Government will appeal the decision.

Gunns Litigation

Just before Christmas, Australia's biggest woodchipper and Tasmania's largest company, Gunns Ltd, issued a writ out of the Supreme Court of Victoria against 20 (mostly Tasmanian) environmentalists, including Senator Bob Brown and the Wilderness Society. The writ claims damages of more than $6 million for "corporate vilification" and "conspiracy to injure by unlawful means".

The writ is extremely lengthy (227 pages). The Plaintiffs take exception, amongst other things, to conservationists' correspondence with the Japanese buyers of Gunns' woodchips in which they were asked to "review and cease … sourcing of native woodchips from Tasmania". There is a complaint that representations were made to the Banksia environmental awards to oppose Gunns being included as a finalist. There are allegations arising out of some direct actions in the forest. There are many complaints about public statements made by opponents to logging.

Now that the writ has been issued, it will be for the courts to determine the merits of the proceeding, and whether it has been issued for a proper purpose.

This case has raised public debate about the issue of SLAPP suits (Strategic Litigation Against Public Participation). SLAPP suits became a major PR tactic in the United States in the 1980s. These were cases brought not for the purpose of righting a wrong, but for the purpose of using the corporations' financial power to silence public criticism. Since then US State legislatures have passed "protection of public participation" statutes.

Liberty Victoria has lobbied the Victorian government for over a year to legislate to protect public participation here. Such legislation would not stop companies accessing the courts, but would empower the courts to award punitive damages if an action is found to have been issued for the improper purpose of stifling public debate.

Anne O'Rourke

The Creeping Gag

The Commonwealth and Victorian government have now legalised the detention of people for the sole purpose of forcing them to answer questions and provide information. In the Commonwealth's case it is under the guise of special powers relating to terrorism offences provided to ASIO to enable forced questioning of non-suspects – i.e. people, including young people, not suspected of involvement in terrorism but thought to have information about those who might be. In Victoria it is coercive powers to tackle organised crime - where the definition of organised crime could encompass two or more teenagers involved in computer hacking, gang rivalry or shop theft.

The granting of such extraordinary and repulsive powers to the executive, even with supposedly built in safeguards, is very concerning. The potential misuse of these powers, including for domestic political ends, is both real and frightening.

What is perhaps even more concerning are the gags put in place to prevent the publication of any information concerning even the application for a warrant or the arrest of a person pursuant to a warrant. Both governments have seen fit to create offences carrying up to 5 years imprisonment for doing so.

The Victorian Legislation

In the case of the Victorian gag it appears that it could well be a permanent gag. Under s. 7 of the *Major Crime (Investigative Powers) Act 2004* a report of an application, before the Supreme Court, to exercise coercive powers cannot be published unless the Court orders otherwise. Once the Court has determined the matter before it there is no mechanism for coming back before the Court provided by the legislation. Whilst the Court has a wide discretion to order that the proceedings can be reported it is not expressly required to consider freedom of speech, freedom of expression, the accountability of executive government or the right to engage in political activity when considering whether to make an order allowing publication. It does not even have to consider whether it should make an order allowing publication. If it does not make an order allowing reporting of the proceedings then that becomes the status quo indefinitely.

There are other relevant provisions under the Victorian Act. The Chief Examiner can prohibit or restrict the publication of evidence and any information that may identify a person questioned pursuant to a Supreme Court order. Presumably if the Supreme Court has not made an order allowing reporting the Chief Examiner cannot do anything but prohibit publication for to do otherwise would be contrary to the spirit if not letter of s. 7. There is no mechanism provided for challenging the Chief Examiner's direction.

Under s. 48 the Magistrates Court is closed to the public when dealing with claims for legal professional privilege or determining what lawful action can be taken in respect to things seized by the Chief Examiner. Again unless the Magistrates Court orders otherwise it is an offence to publish a report about any part of those proceedings. The Act does not require the court to consider whether it should allow publication, if it does not the situation is permanent and if initially the Supreme Court does not allow publication then logically the Magistrates' Court cannot.

Everything in the Victorian legislation conspires to keeping the public ignorant of the process of exercising coercive powers. The potential for abuse, particularly by corrupt desperate governments, is built in to the legislative framework. Even the Special Investigations Monitor who is meant to be the guarantee that abuse will be prevented will face criminal prosecution under the s. 68 Secrecy provision if he or she makes a record of or divulges any information obtained in the course of their functions under the Act. Although the Special Investigations Monitor can report to Parliament at any time (s. 61) those reports must not identify any person who has been examined or the nature of any ongoing investigation.

The Commonwealth Legislation

The secrecy provision of the *ASIO Act 1979* (s. 34VAA) makes it an offence to disclose the fact a warrant has been issued or anything relating to its content before the warrant expires. For

two years after the warrant expires it is an offence to disclose operational information (the definition of which is so broad it may well include the mere fact the warrant was issued).

An offence is not made if the disclosure was a permitted disclosure. Essentially permitted disclosures that would involve any disclosure to the public are disclosures at the discretion of the executive arm of government, including the relevant Minister. The prohibition does not apply to the extent it would infringe any constitutional doctrine of implied freedom of political communication – but you would have to risk 5 years imprisonment to find out from the High Court what that might mean.

The only area of doubt in relation to the prohibition under the *ASIO Act* appears to be where a person seeks a remedy from a federal court in relation to the warrant or the treatment of a person in connection with such a warrant. In those circumstances disclosure is permitted for the purpose of initiating, conducting or concluding the legal proceedings. On its face that permitted disclosure probably only extends to a disclosure to the lawyers acting for the person and the court – not to the public.

The absence balance

Whilst it is possible to imagine situations where the extent of the gag imposed under the Victorian and Commonwealth legislation could be justified the presumption in favour of the gag and the automatic imposition of the gag cannot be justified. Each situation involves balancing the public interest in knowing what the executive arm of government is up to, particularly when it exercises such far reaching powers of detention & compulsory interrogation, against other public interests associated with detecting, solving & preventing crime.

The current powers can be readily misused. There are many examples of governments manipulating information and exploiting the fear of minorities in the lead up to elections in this country. These powers are ripe for abuse. Such general and ongoing coercive powers should not exist. When appropriately given to a Royal Commission such powers must be exercised in the full public gaze unless an independent tribunal determines that there is very good reason in a particular case for requiring secrecy. Even in such a case secrecy should be for a limited time and only extended by the tribunal if a strong case for ongoing secrecy is made out.

The disregard of fundamental democratic and human rights principles by government in Australia is fast becoming the norm. The absence of a Charter of Rights and Freedoms from the Victorian and Commonwealth constitutional arrangements means that there is no appropriate framework against which such dangerous powers must be measured when considered by our parliaments.

Greg Connellan

Respecting Women's Voices and Choices

Liberty Victoria recently issued a press release on the current abortion debate and took part in a press conference on Sunday 6 March supporting women's right to choose.

Liberty is disturbed by the current debate and the depictions of women by conservative (mostly male) politicians and religious organisations. It has been suggested that women are promiscuous, frivolous and that those who get pregnant willy-nilly are dumb. These comments are childish and offensive and fail to recognise that the decision to terminate a pregnancy, whether by a single woman or by couples, is a difficult and emotional one and should not be distorted or derided by government ministers.

Liberty respects the right of religious groups and individuals to have opinions in opposition to abortion. However, we do not believe that such groups and individuals have a right to impose their beliefs onto others who hold opposing views nor do we believe that such individuals should deprive women of medical services by suggesting restricted access to Medicare funding. We believe that such decisions are a private matter between women or couples and their medical practitioners.

At the press conference, Liberty stated that if the abortion debate is to be revisited it should be to repeal the anomalous provisions in the *Crimes Act* that makes abortion illegal. Liberty also pointed out that if conservative politicians from both parties wished to see the termination rates drop then they needed to examine how their own economic and social policies contribute to the decision to terminate. Liberty offered the following suggestions:

- that politicians should raise the Single Mothers Pension above the poverty line;
- that they could implement a program to reduce housing prices as many young married couples put off having a family due to their desire to secure a home first; and
- that instead of promoting 'flexible' employment and attacking workers' rights that they could promote secure work and decent wages in order that couples can properly plan their family development.

Anne O'Rourke

David Hicks – the injustice continues

David Hicks remains detained at Guantanamo Bay. His trial before the Military Commission appears to have stalled. A directions hearing was held on 25 August 2004. The future of the case against David Hicks was debated at that hearing, some motions foreshadowed and some directions given by the Presiding Officer.

Lex Lasry QC as an independent observer for the Australian Law Council attended the directions hearing. In his September 2004 report Mr Lasry stated "I have come to the view that apart from other criticisms made about impartiality and the qualifications of members, the process is so lacking in the genuine independence required for criminal justice and so *ad hoc* and effectively dependent on the procedural improvisation of the Presiding Officer, that now is the time to articulate those criticisms on a preliminary basis because the process appears fundamentally flawed."

The Military Commission is partial in every sense. The Pentagon purchased, captured or kidnapped and detained the prisoners at Guantanamo, defined the offences it laid against Hicks & others after interrogating them for years by means including alleged torture, established the Military Commission, and proposes to determine guilt and impose punishment. There is no independent appeal process available to those granted a "trial". This process can never be accepted in a democracy. To lower the integrity of our institutions in the name of fighting terror is simply stupid. To debase fundamental human rights and democratic principles in this way is the work of autocrats and dictators. It is even more frightening that those setting up and condoning this approach have been democratically re-elected to power.

Hicks' trial was to begin on 10 January 2005. That has not occurred, in part no doubt, because of flaws in the Military Commission process. The problems are numerous. In addition to the extremely partial system created by the Pentagon there are problems that:

1. The rules of evidence are effectively inapplicable and the rules which exist appear to facilitate the admission of evidence unable to be tested by cross examination and lacking any probative value,
2. The conspiracy charge alleged against Hicks is extremely broad so that the allegation could be proved on the flimsiest of circumstances,
3. The appellate process created by the Pentagon does not provide an impartial mechanism to correct errors or remedy a miscarriage of justice.

David Hicks deposed in his August 2004 affidavit to the District Court of Columbia that he had been beaten before, after and during interrogations. He further deposed he had been beaten while blindfolded and handcuffed, struck with objects including rifle butts, hit on the face head, feet & torso, had medication forced upon him against his will, deprived of sleep as a matter of policy and told if he cooperated during interrogations he would be sent home to Australia after interrogations concluded. Those actions are not only illegal if true, but are typical of the cowardly acts of brutal dictators.
The Australian government must demand the immediate return of Hicks to Australia and establish an impartial independent open investigation of David Hicks' allegations and the treatment of all detainees at Guantanamo Bay. By its acquiescence our government demonstrates an inability to recognise the damage caused when the leaders of the free world resort to the tactics of dictators. Surrendering to the ways of terror and flouting international human rights law does not protect freedom and democracy.

Greg Connellan

Roadside Drug Testing

Liberty has received calls in unprecedented numbers expressing concerns about the new roadside drug testing. Liberty supports road safety, and does not regard driving as a "right". We also support appropriate measures to remove drivers affected by drugs from the road.

However, Liberty holds several concerns about the current arrangements for roadside drug testing:

- Only illicit drugs will be tested – there are several prescription drugs which can also have a deleterious affect on driving: is this a measure designed to catch drug users or to promote road safety?
- Several illicit drugs stay in the system for weeks – long after they would have any affect on driving – the test will not demonstrate that a driver is drug-affected;
- Some of the claims by senior police made to promote these tests are extraordinary – including the claim that 30% of accidents are caused by drivers under the influence of "illicit" drugs. Calls for the evidence in support of these claims have gone unanswered, but Liberty continues to demand the evidence for such a claims.
- There remain real doubts about the technical efficiency of the tests.

When police genuinely target driving so as to make our roads safer, Liberty will support them. However, the nature of this program suggests it may have more to do with using driving as an excuse to chase illicit drug users, not to make the roads safer.

Brian Walters

New Victorian Police Powers

The Victorian Government has granted unprecedented ongoing coercive powers to Victorian police. The coercive powers, contained in the *Major Crime (Investigative Powers) Act 2004*, are intended to force persons summonsed pursuant to a coercive powers order to answer questions and produce documents.

The process is a two-step process. First the Supreme Court must grant a coercive powers order in relation to an organised crime offence. It may do so if satisfied that the police officer making application for the order suspects on reasonable grounds that an organised crime offence has been, is or is likely to be committed. If so satisfied the Supreme Court must then be satisfied that it is in the public interest to make the order having regard to the gravity of the alleged offence and the impact of the use of coercive powers on the rights of members of the community.

The second step involves the Supreme Court or the Chief Examiner, who will use the coercive powers with the support of the Victoria Police, issuing a summons to a person requiring them to attend to answer questions or produce documents or both. For a summons to issue the Supreme Court or the Chief Examiner must be satisfied that in the circumstances it is reasonable to do so after considering the evidentiary or intelligence value of the information sought and the age and any mental impairment suffered by the person.

There are significant problems with these powers. It is unacceptable that ongoing coercive powers should be given to the police, even with the safe guards presently provided. Coercive powers are extraordinary and should not form part of the ongoing armory of the executive arm of government. Such powers should only be available in exceptional circumstances, for a limited period and a defined objective as part of the powers of a Royal Commission in appropriate circumstances.

The definition of "organised crime offence" is so broad that it encompasses a whole range of petty and teenage offenders. Any offence carrying a maximum of 10 years or more imprisonment, involving 2 or more offenders, substantial planning & organisation that forms part of a systemic and continuing criminal activity for profit, gain, power or influence fits the bill. Teenage computer hackers can certainly qualify as can ticket scalpers or sports drug cheats. This is a long way from police corruption and gangland murders.

Certainly the Supreme Court must consider the gravity of the alleged offence, but some may consider computer hacking or tarnishing Australia's sports reputation extremely serious. In their own context these are serious matters but they are not remotely related to the circumstances giving rise to these ongoing powers now legislated into our legal, constitutional and cultural framework. It is difficult to understand what impact coercive powers might have on members of the community not subject to, or the beneficiary of, their use. The creeping acceptance of government coercion within the justice system and the broader community will be very damaging to the security and rights of every Victorian, but is this what the government had in mind when it required the Court to consider this matter before determining to grant a coercive powers order?

The enacting of these ongoing broad coercive powers is a serious infringement of civil liberties and an unacceptable shift in power into the hands of the executive, even with the safeguards that are provided. These powers must be looked at as part of a dramatic shift in power to the executive arm of government at both state and federal level since the establishment of indefinite mandatory migration detention and the introduction of other extraordinary powers in the guise of fighting terrorism. The civil liberties and human rights of Australians are being seriously eroded without any serious resistance by opposition parties and little serious analysis in the mainstream media.

Greg Connellan

Review of ASIO's power to compulsorily question and detain

In the last two years, at least 3 persons were taken in by the AFP and the ASIO and forced to answer questions. All together, these individuals were questioned for nearly 70 hours. During that time, they had a heavily circumscribed right of legal representation.

These persons were forced to answer questions by ASIO not because they had committed a crime or were even suspected of committing any crime. It was simply because they were believed to have had information relating to terrorism.
These powers raise important issues. Not least they point to the erosion of civil liberties in the name of the 'War on Terror'. Equally important, they prompt the question: what kind of 'security' is being advanced when innocent people can be imprisoned and forced to answer questions?

These far-reaching powers have been insulated from public scrutiny by unprecedented secrecy offences. It is now illegal to disclose identity of persons compulsorily questioned or the reason they were placed in such coercive circumstances. Even if these persons were illegally questioned, there is a five-year maximum penalty for reporting such breaches of law. So it is that we do not know who has been forced to answer questions and whether they were subsequently charged with a criminal offence. We cannot even be assured with any real certainty that these powers were exercised legally and properly.

This year, however, there is an important opportunity to put these powers in the spotlight. The Parliamentary Joint Committee on ASIO, ASIS and DSD is currently conducting a broad-ranging inquiry into this regime of detention without trial and compulsory questioning. Submissions for this inquiry must be made by **24 March 2005.** The committee will then hand down its report by January 2006. Its report is extremely significant in light of the sunset clause which has the effect of this regime ceasing operation in the middle of next year.

The committee's inquiry presents a crucial opening for proper debate on the nature and effect of the 'War on Terror'. It is an opportunity that should be seized.

The website for the Parliamentary Joint Committee on ASIO, ASIS and DSD's inquiry is
http://www.aph.gov.au/house/committee/pjcaad/asio_ques_detention/index.htm

Joo-Cheong Tham

Mamdouh Habib's return – the unanswered questions

After 3 years of unlawful detention in Pakistan, Guantanamo Bay and allegedly Egypt, the US Government returned Mamdouh Habib to Australia apparently without any request from the Australian Government. It has taken 3 years to establish there was no basis for charging him, even under the Pentagon's highly partial system of extracting information from detainees and then framing offences to fit the information extracted.

It is far from clear that Mr Habib was ever associated with terrorist groups in a fashion that would make him a terrorist or terrorist sympathiser. It is said that he was present at training camps and knew shortly before Sept 11 2001 something 'big' was going to happen in the US. This is in a context where it is likely that many rumours were circulating in Afghanistan, Pakistan and elsewhere.

The challenge for opponents of terror and supporters of human rights and democratic governance is to win the commitment of communities and individuals around the globe to protect human rights, including the right to participate in democratic governance of local communities, nation states and the international community. It is clear that terrorists oppose democratic governance and the protection of the human rights of all peoples. They allege, with some apparent foundation, that governments like the US is two faced in its support for democracy and the protection and enhancement of human rights.

Mr Habib alleges, like other Guantanamo Bay detainees able to voice their complaints, that he has been tortured in several countries and secretly moved from one country to another to facilitate his torture and interrogation. Attorney-General Ruddock says he does not know if Habib has been tortured as alleged (*The Age* 5/2/05 Insight pg 5) and he shows no interest in finding out. That is a disgrace. Even if Habib were an active terrorist – and clearly there is no evidence he was – allegations that he was tortured must be fully and independently investigated by an Australian appointed public Commission of Inquiry. Habib should also be afforded the opportunity to answer the often-vague allegations made against him. We must not threaten to impose silence on Habib – the Australian community must demand to hear and test his account of ill treatment and the allegations said to justify it.

Such a Commission must also examine the treatment of David Hicks & other Guantanamo detainees. Australia is an active and full member of the coalition in the "War on Terror". For any member of that coalition to use, or condone torture (through inaction) and other systematic abuses of human rights is an insult to the generations of Australians who have worked and at times died to preserve our commitment to democracy and the protection of human rights through a system of international agreements and institutions. Worse still it jeopardises the real battle; the battle to spread the institutionalised protection of human rights, including the right of all to participate democratically in their communities, nation state and the international system of governance among peoples and nations.

Greg Connellan

A Word from the Liberty Office

With Christmas and the New Year well behind us, activity has returned to full swing at the Liberty Victoria office. Bridget Nettelbeck and Laura Thompson, who staff the office on a part-time basis, are kept busy by our members, supporters and the general public.

The main activities performed at the office include processing membership applications, responding to inquiries, organising public events, distributing media releases and mail outs and general administration and financial management. Essentially, there is always something to do.

Recent issues which have prompted requests for media comments and inquiries include: Police powers, sniffer dogs, roadside drug testing, privacy matters, and the Gunns case, just to name a few. Unfortunately, the office often finds it very difficult to respond to all of the inquiries. This is partly due to the overwhelming number of civil liberties impingements, Liberty Victoria's inability to provide legal advice to individuals and also, restrictions with the office being staffed on a part-time basis. Although, it is rewarding when Liberty Victoria is able to help members of the community with human rights and civil liberties matters, or suggest other avenues that inquirers could pursue.

The organising of public events, such as the Symposium, is also greatly rewarding as it enables members of the community to gather together to inform themselves of civil libertarian issues and discuss

their views with other like-minded people. Such events are enjoyable and promote public awareness of human rights and civil liberties.

Finally, Bridget and Laura would like to take this opportunity to thank the members for their ongoing support. Here's to another enjoyable year at Liberty Victoria!

Laura Thompson

Establishing a Human Rights Legal Centre

Liberty Victoria and the Public Interest Law Clearing House (PILCH) have combined to establish the Human Rights Legal Centre (HRLC). If successful, this will surely prove to be one of the most important, exciting and innovative developments in the protection and furtherance of human rights in Victoria.

The HRLC 'will aim to promote, protect and contribute to the fulfilment of human rights and the development of a human rights respecting culture in Victoria and Australia"[1] It is intended the HLRC will achieve its central aim by:

- Identifying human rights issues and needs through community consultation,
- Conducting strategic litigation and casework,
- Providing community education and public advocacy on strategies for the realisation of human rights as an incidental activity arising from litigation and casework,
- Promoting and coordinating collaboration between the private legal profession and community organisations to enhance human rights and alleviate disadvantage,
- Monitoring and reporting on human rights outcomes in Victoria & Australia.

The services of the HRLC will be targeted to marginalised and disadvantaged groups through services of pro bono lawyers, academics, law students and where practical in conjunction with community legal centres, Victoria Legal Aid and human rights organisations.

Prior to establishing the HRLC Liberty & PILCH convened a Reference Group comprised of representatives from key stakeholders including academics, NGO's, private law firms, Victoria Legal Aid, the Law Institute of Victoria and the Victorian Bar. The Reference Group has met three times to advise Liberty & PILCH on the need for and subsequently the development and implementation of the HRLC. A number of other key stakeholders made valuable written submissions to Liberty & PILCH on the proposed HRLC.

In September 2004 the Victoria Law Foundation provided a small grant to the working group to enable further consultation regarding the need for a HRLC. A report was prepared by Phillip Lynch (PILCH) and Chris Maxwell (Liberty) in consultation with the Reference Group and input from other key stakeholders, particularly Allens Arthur Robinson, Blake Dawson Waldron, Mallesons Stephen Jaques and Minter Ellison.

Liberty & PILCH submitted a proposal for the establishment of the HRLC as an independent autonomous company limited by guarantee to the Department of Justice and Attorney-General Rob Hulls in December 2004. Liberty understands that the joint proposal has been received with strong interest from Attorney Hulls and the Department. Freehills has agreed to provide pro bono legal services to incorporate the HRLC.
In December 2004 the Law Institute of Victoria resolved to offer to accommodate the HRLC for its first two years of operation, subject to a review 12 months after commencement.

Liberty would like to thank PILCH for co-sponsoring this initiative and to acknowledge in particular the work of Phillip Lynch and Chris Maxwell in getting the project to this point.

Greg Connellan

Free Speech and Corporate Power

There has been a strong tendency in the United States for corporations to invoke rights under the Constitution to prevent state governments from regulating their behaviour and to silence public criticism of some of their practices. For example, corporations have relied upon constitutional rights to avoid retrial (*United States v Martin Linen Supply Co* 1976); to thwart federal inspections conducted under the Occupational Safety and Health Act (*Marshall v Barlow's Inc* 1977), and relied on the first amendment to overturn state regulations designed to lower utility rates (*Pacific Gas & Electric Co v Public Util. Commission* 1986). Of particular concern for civil liberties organisations is the emerging trend of invoking rights, threatening defamation or using the *Trade Practices Act* to silence critics and stifle public debate about corporate activity.

The *Trade Practices Act* (TPA) is the latest legal mechanisms to be used by corporations to stifle public debate. TPA is intended to improve the welfare of Australians by the promotion of competition and fair trading and provision of consumer protection. Now, in a move that promises to endanger some of the very consumer freedoms the Act strives to protect, an industry organisation has resorted to that legislation in an attempt to silence a community group which has criticized its industrial practices.

This month, People for the Ethical Treatment of Animals (PETA), which has conducted a public campaign against the wool industry's practice of "mulesing" sheep and against live exports, has been sued by the Australian Wool Innovation (AWI), a wool promotion group, for speaking out. Our position is that consumers are fully entitled to know what mulesing and live export involve and to make up their own minds about the utility and desirability of such practices, and to stifle speech rights through use of the TPA affects all Australians and those who conduct business here.

AWI requested the Court to grant an injunction preventing PETA from publishing material that would be harmful to the retailers' trade, and from holding demonstrations outside its premises. The issue of concern for Liberty Victoria is not whether one supports PETA's cause but rather whether corporations should use court actions to silence public discourse and the democratic process. Many past campaigns such as those against apartheid, child and sweatshop labour, and the practices of a powdered milk company in Africa encouraging women not to use breast milk, would not have seen the light of day had it not been for activists such as PETA who consistently raised public awareness of these issues.

Now that the dispute is before the Court, it is, of course, entirely a matter for the Federal Court to decide what the parties' legal rights and responsibilities are and PETA will have an opportunity to present its case to the Court in opposition to the grant of injunctive relief.

However, Liberty Victoria along with Free Speech Victoria are concerned that if the Federal Court decides that the *Trade Practices Act* enables an industry organisation to use that legislation in response to criticism of an industry practice, it will have serious adverse implications for public discussion of controversial issues that are of interest to consumers.

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[1] Human Rights Legal Centre – Proposal by PILCH and Liberty Victoria to the Department of Justice for the Establishment of a Human Rights Legal Centre, December 2004, pg 4

Neither Liberty Victoria nor Free Speech Victoria has a policy position on the practice of "mulesing". But we strongly believe that the community should be able to mount and hear a campaign on the issue without the threat of legal action stifling such a campaign.

Anne O'Rourke

Brian Walters SC – new Liberty President

Last November I was elected president of Liberty, taking over from Greg Connellan who has served so well for the past 2 years.

I am a practicing senior counsel and am keen to bring my legal experience to the role. I am also vice president of Free Speech Victoria, which has co-sponsored recent symposiums with Liberty. My work with Free Speech Victoria led me to write "Slapping on the Writs – Defamation, Developers and Community Activism" about the rise of SLAPP (Strategic Litigation Against Public Participation) suits in Australia.

I have a long interest in the environment, and co-founded *Wild* magazine twenty five years ago.

There are many challenges to civil liberties in our community. These include the Australian government's acceptance of the detention of Australian citizens at Guantanamo Bay in defiance of basic norms of human rights, the mandatory detention of asylum seekers and the raft of "anti-terrorism" legislation. On a proactive front Liberty has many things that we would like to achieve, including legislation for a charter of rights and freedoms, so that Australia's international human rights obligations are enshrined in domestic law.

Liberty's role is to educate, advocate, and build a public discourse in which human rights cannot be ignored. We have an excellent committee, but we can always use more help! Thanks for your ongoing support.

Brian Walters – President

Reflecting on Liberty – thoughts from our Immediate Past President

To have lead Liberty Victoria as its president for the past two years has been a great privilege. LV is independent of government, receiving no recurrent funding. Our funding is derived almost entirely from our membership fees and donations from the public. Independence is one of our greatest assets.

Members make a great contribution. Those members who are active on the committee provide the energy and momentum that makes us seen & heard by the public and they are also the volunteer workforce carrying out LV's work, supported by the modest administrative assistance of the 2 dedicated part-time staff. I have been proud to play a leadership role, working with such dedicated people.

The hard work of the two presidents before me, Felicity Hampel and Chris Maxwell, to develop a more proactive role for LV is bearing fruit. A number of LV projects now under way are testimony to the foresight and commitment of Felicity & Chris and the committee members working with them. I am pleased to have provided assistance in progressing projects such as; the Charter of Rights and Freedoms, the Human Rights Legal Centre, the annual Symposium and Missen Oration, the proposed Missen Small Grants and the annual Castan Human Rights and Civil Liberties Award.

The LV newsletter has been a difficult ongoing task for LV during the past few years. Thanks to the work of Adam Pickvance and some of The ALSO Foundation volunteers LV's newsletter is now becoming a more regular feature. Our newsletter is an important reflective stimulus for LV members, politicians, community organisations and individuals.

The Tampa case was an important moment for LV as well as the nation. It served to crystallise some very serious human rights and civil liberties issues for LV and the nation. LV is not a popularist organisation – that is also one of its great strengths. The price of the Tampa case for LV could easily have been our demise as an organisation. The government sought to bankrupt LV for having the temerity to challenge the legality of what it was doing. The lesson for LV is not that we should not risk all when the stakes are high – the lesson is that we can succeed even when the stakes are high and the decision is against us in the short term.

The debate over the treatment of asylum seekers and refugees is far from over. Likewise the implications of the new anti-terrorism laws for government ministers, Australian diplomats, opposition politicians, political parties, business groups and community organisations and activists has not yet become apparent. It may be that the role of the TNI in the implementation of Australia's $1billion contribution to the rebuilding of Aceh will emphasise that often the terrorists are the government agencies and the labelled terrorists are a product of long-term abuse of human rights and fundamental civil liberties.

LV has consistently pointed out that the terrorism laws, based on coercion, guilt by association and the abdication of fundamental principles and protections, could easily be applied to Australians working to secure and enhance human rights and civil liberties at home and abroad. That reality will come into focus sooner or later and LV must be able to stand for what is right despite the interest of the government of the day in characterising its opponents as un-Australian or worse still as terrorists and traitors.

LV has much work to do and its strength lies in its proven legacy of independence supported by its members and voluntary committee members. In our new President, Brian Walters we have yet another outstanding person to help guide LV into the future.

Greg Connellan – Immediate Past President

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Layout and Design assisted by
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Special thanks to:
Adam Pickvance, Greg Connellan and Alana Wignell

Liberty News February 2005
Published by:
Victorian Council for Civill Liberties Inc
ABN: 23 236 210 735

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WHO ARE WE

Liberty is an independent non-government organisation which can trace its history back to 1936.

Liberty is committed to the defense and extension of human rights and civil liberties. It seeks to promote Australia's compliance with the rights and freedoms recognized by international law.

OUR WORK

Education
Much of our work is directed towards educating the community about the importance of civil liberties and human rights.

Campaigning
Liberty's work involves liaison with government, police and regulatory authorities to prevent erosion of rights and freedoms or to enhance their protection. This includes making submissions, conducting law reform campaigns and meeting with members of Parliament.

YOUR CONTRIBUTION

Liberty is an independent organisation. It relies solely on membership fees, and donations and grants from progressive philanthropic trusts.

Become a Member
Joining **Liberty** is a significant contribution which you personally can make to the promotion of the individual freedoms and rights which we all value.

MEMBERSHIP FORM (FOR FINANCIAL YEAR (2004 – 2005)

(Please photocopy and pass on to your friends and colleagues)

TAX INVOICE

LIBERTY VICTORIA
ABN 23 236 210 735

🕐 **Renewal** 🕐 **New Member**

If Renewal, please go to next box.

If New Member, please complete:

I, _____, _____ (occupation)
Desire to become a member of The Victorian Council for Civil Liberties Incorporated.

In the event of my admission as a member, I agree to be bound by the Constitution of the Council for the time being in force.

Signature of Applicant: _____

Date: ____/____/_____

I would be happy to assist in the work of Liberty. I can offer the 🕐 following skills _____

Membership fees:

I enclose my membership fee of (inclusive of GST):

🕐 $55 Individual Membership

🕐 $90 Joint membership for two adults at the same address

🕐 $90 Voluntary Organisations

🕐 $25 Student/Pensioner/Unemployed

🕐 $150 Organisations

Liberty needs your help! I also enclose a donation of:

🕐 $25

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Method of payment:

I enclose a cheque for $ _____ (payable to Liberty Victoria); OR

Please debit my credit card in the amount of $ _____

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