



VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC.

April 2006

Liberty News

Freedom of Speech – Why the Danish cartoons should be published

In 'On Liberty' John Stuart Mill wrote "Strange it is, that men should admit the validity of the arguments for free discussion, but object to their being 'pushed to an extreme'; not seeing that unless the reasons are good for an extreme case, they are not good for any case."

Liberty was criticised for opposing the banning of "Piss Christ" and a pro-Palestinian work featuring the Star of David exhibited in Flinders Street.

Liberty opposed banning David Irving because contesting what he said exposed the truth. Putting him behind bars in Austria risks making him an odious martyr to his dishonest cause in his supporters' eyes.

Liberty takes the same position on the cartoons depicting the Prophet Muhammad published by Danish newspaper *Jyllands-Posten* – they should not be banned.

The claim Islam prohibits images of the Prophet Muhammad is highly questionable. Many images of the Prophet can be found in historical Islamic documents.

Freedom of speech and expression is the cornerstone of democracy and fundamental to the exercise of all human rights. Without freedom of expression the oppressed cannot claim their rights nor expose their oppressors. Opponents of civil liberties and human rights recognise this and start their oppression by brutally shutting down the means of expressing opposition.

Freedom of expression gives life to the exchange of ideas and views underpinning the democratic process. Freedom to dissent, argue and propose – even in robust insulting language – makes possible the process of election, representation and implementation.

Where authoritarians rule or religious fundamentalists control society this process is lacking. The current focus is on extreme Islamic fundamentalists but other authoritarians and extremists, including Christian extremists, pose the same threat.

Ridicule is a powerful tool in the contest of ideas that is democracy. We can all feel offended and insulted when it is directed at us or things dear to us. This is a small price compared to oppression and the denial of human rights.

The death of so many Muslims as a result of the often-orchestrated demonstrations against the cartoons is a great tragedy. Responsibility lies with those who exploit others to achieve power and dominance.

There is no monopoly on the correct way to live or beliefs to hold. Banning unpopular views and enforcing sedition laws may fuel dissent rather than counter the threat of terrorism. Actions, not voices or pictures, should be rendered criminal. It is better to hear what others think than persecute them for their beliefs.

Greg Connellan

Some thought from the President

Liberty Victoria traces its origins back to the Brian Fitzpatrick led Australian Council of Civil Liberties, established in 1936, so 2006 marks 70 years of continuous civil liberties activism in Victoria. This year is the centenary of Captain Dreyfus' exoneration and release. Dreyfus was tried in the midst of racist hysteria in France; secret evidence (later proved to be false) was used against him. His wrongful conviction was covered up for many years, while he languished in prison. His case is worth remembering. It exemplifies what happens when those who stand to gain politically ignore civil rights.

Liberty is concerned by the many reports of racist division in our community, often exacerbated by ill-judged hysteria over terrorism. We aim for an inclusive, tolerant society subject to the rule of law.

Two of the 'Bali nine' drug traffickers face death sentences. Once again Australia's mixed international message on capital punishment has resulted in our citizens facing execution. Drug trafficking is to be condemned, so to the death penalty. The Australian Federal Police bear direct responsibility for what has occurred.

The AFP tipped off the Indonesian authorities in relation to the Bali nine. They did so knowing they were exposing Australian citizens to death. True it is those citizens are also responsible for their fate, but that does not justify using Australian public resources to bring about this result. Legislation requires Australia to have an undertaking from a foreign power not to impose the death sentence before an extradition is granted or assistance provided under the *Mutual Assistance in Criminal Matters Act*. Whilst co-operation between national police forces is to be encouraged, it should be on the basis of undertakings those targeted and convicted will not be executed.

The Victorian terror laws quietly passed parliament early this year. This was despite the privacy commissioner's damning critique, and concerns expressed by the Scrutiny of Acts and Regulations Committee. Victoria's 2002 legislation was due to sunset this year, and there was to be an inquiry to consider whether to extend it. The new legislation removes the requirement for an inquiry and the sunset provisions. The new laws are more draconian than any other terror laws, permitting, for example, detention without charge and court supervision for 14 days. Once again hysteria in relation to terrorism has been used to sweep away long established human rights fundamental to democracy and the rule of law.

It appears the Charter of Rights and Responsibilities will become law later this year. This legislation is to be applauded and has wide support, despite some factually incorrect scare mongering from a few extreme columnists. Liberty has worked hard on achieving this outcome strongly endorses the legislation.

Liberty will hold a number of events for members this year. We need you all more than ever – thanks so much for joining in the work for human rights in our country.

Brian Walters, SC
President

Human Rights Law Resource Centre – update

Liberty Victoria (LV) and the Public Interest Law Clearing House (PILCH) joined forces to incorporate the Human Rights Law Resource Centre (HRLRC) in January 2006.

The Advisory Committee (representatives from key NGOs, universities, & lawyers) recommended the HRLRC Board consider the following key priorities:

- Content, implementation, operation and review of the foreshadowed Victorian Charter of Human Rights and Responsibilities,
- Treatment and conditions of detained persons, including asylum-seekers, prisoners and involuntary patients,
- The importance of economic, social and cultural rights,
- Equality rights, particularly the right to non-discrimination on the grounds of race, religion, ethnicity and poverty.

In addition it recommended the HRLRC, in its priority work, have particular regard to people with a disability or experiencing mental illness, indigenous people, people experiencing poverty, people subject to marginalisation or discrimination on the grounds of race, religion and ethnicity and children and young people.

The Board is yet to finalise its priorities but the HRLRC's direction is emerging.

The 1st HRLRC's Human Rights Seminar, held on 14 March 06, featured Geoffrey Robertson QC and Justice Maxwell QC.

HRLRC's education and training program commences with a 3 half-day Induction Training program with sessions covering "An overview of international human rights law" (29 March). "The implementation of human rights in domestic law and advocacy" (5 April) and "Using international human rights complaints and monitoring mechanisms" (12 April).

The HRLRC is underway and we will keep you posted.

Greg Connellan & Di Sisley

Banning of Kurdish Workers Party (PKK) as a 'terrorist organisations' under the *Criminal Code*

In December 2005 the federal government banned the Kurdish Workers Party (PKK) as a 'terrorist organisation' under the *Criminal Code* because it had been proscribed elsewhere and was engaged in politically motivated violence.

The PKK ban is the most significant proscriptions so far under the *Criminal Code*. It illustrates why the proscription regime is unnecessary. If the aim is to prevent politically/ideologically motivated violence and acts that intentionally assist such violence, a power to ban organisations is unnecessary because such acts are already illegal.

The Attorney General cites conduct claimed or attributed to the PPK that is characterised as 'terrorist activities'. This includes killing Turkish soldiers, kidnapping and attacks on passenger transport. Even without the ban these acts were illegal with many, notably murder, punishable by severe penalties. Similarly those deliberately assisting such acts, while not directly engaged in them, would be caught by conspiracy or incitement offences.

Not only is proscription unnecessary, it carries serious dangers. The flawed process banning the PKK illustrates the risk of an arbitrary approach and this is underlined by the government's failure to provide justification based on preventing political violence, especially in Australia. Despite the Attorney-General's statement announcing the ban that '(t)he Government will not tolerate involvement with groups or activities that *threaten the safety and security of Australia*', the information he provided to support the listing made no reference to the PKK's links to Australia or any threat to Australian interests. It is difficult to see any specific threat to Australian citizens given PKK's objective is said to be 'promoting and advancing the rights of Kurds living in Turkey'. Nothing attributed to the PKK happened in Australia or was directed at its interests.

There are reasons to suspect the ban was motivated by foreign policy considerations. The Attorney General announced the ban a week after the visit to Australia by Recep Erdoğan, Prime Minister of Turkey. The closeness in time raises suspicion the ban was instigated by Erdoğan. The dangerous possibility is the proscription power was not used to prevent political violence, but to aid foreign policy goals.

The possibility is proscription was used as a foreign policy tool of repression. As the Attorney General indicated, the PKK has engaged in protracted conflict with the Turkish government since the 1980s. Neither side is innocent. Human Rights Watch, for instance, draws attention to the 'gross violations (of human rights) committed by state forces and armed opposition groups fighting in the countryside and cities in the early 1990s'. Such accounts leave no doubt the PKK and Turkish government are engaged in armed conflict. Some Australians may consider the PKK's cause just, as many considered Fretilin's attacks on Indonesian forces to be.

The repressive consequences of banning PKK are exacerbated by other circumstances. The *Criminal Code* proscription power imposes criminal liability upon an entire group and persons who engage in certain forms of association with the proscribed group. It imposes guilt by association and breaches the principle that criminal liability is based on an individual's actions in causing harm or damage.

The 'terrorist organisation' offences criminalise conduct distantly related to acts like bombings and hijackings. The 'terrorist organisation' training offence vividly illustrates this. A 'terrorist organisation' can, for example, be an organisation predominantly

involved in charitable work but also indirectly involved in a 'terrorist act'. Moreover, the training does not have to be related to a 'terrorist act': it suffices that any training is received or provided to a 'terrorist organisation'. A lawyer training PKK parliamentarians on the legal criteria applying to Turkey's possible EU membership would clearly be committing a training offence.

The effect of the 'terrorist organisations' offences is likely to be made worse by the fragmented nature of the PKK. The Attorney General identifies at least 18 different names for the PKK and distinguishes between the 'military' and 'political' wings of the PKK. The PKK ban, however, draws no such distinction. A person supporting elements of the PKK solely for the purpose of encouraging peace negotiations will still be caught by the 'terrorist organisations' offences.

This dragnet might catch Turkish Kurds accepted as refugees on political persecution grounds. A recent decision of Refugee Review Tribunal Member McIntosh in *Re N05/50976* concluded the applicant was entitled to a protection visa because of a well-founded fear of political persecution due to his PKK sympathies. The PKK ban raises the danger refugees are criminalised for the very reason they were granted asylum.

Liberty Victoria's submission opposing the banning of the PKK is available at <http://www.aph.gov.au/house/committee/pjicis/pkk/subs/sub6.pdf>

Joo-Cheong Tham

Update on David Hicks

David Hicks' grant of British citizenship is up in the air whilst that government's appeal against the court decision in Hick's favour is pending.

Hicks languishes in Guantanamo Bay, ignored by the Australian government. It fears losing face if it ends support for the illegal treatment of the detainees. It is never too late, nor a loss of face, to support human rights.

We cannot win against the human rights abusing dictatorial aspirants of al-Qaeda whilst accepting Guantanamo Bay and the practice of enforced disappearance. People in the Middle East and Asia are more alert to our hypocrisy than we are ourselves.

Others directly linked to bin Laden have been released from detention. Abdallah Tabarak (assisted bin Laden avoid capture in Afghanistan) was released from Guantanamo Bay in 2004. Former Taliban spokesman and bin Laden confidante, Rahmatullah Hashemi, is reportedly studying terrorism at Yale University.

Hicks' US military commission "trial" cannot commence until the US Supreme Court determines detainee Hamdan's argument the commissions are illegal.

The Australian government's abandonment of Hicks to illegal kidnapping and detention is a low point in human rights in this country.

Greg Connellan

West Papuans in immigration detention

Liberty welcomes the release of 42 West Papuans on TPVs following their flight from West Papua and detention. West Papuans are vulnerable to persecution in their homeland and to Australia's Indonesian foreign policy objectives. There is a serious risk conflict between the West Papuan independence movement and the Indonesian government will escalate.

If the Australian government succumbs to Indonesian pressure to ban the West Papuan independence movement as a terrorist organisation, West Papuans fleeing persecution will find Australia's shores hostile.

The West Papuans plight will severely test our Indonesian relationship. It may demonstrate Australia's terror laws inadequately distinguish between resistance to oppression and governments using terror. The PKK ban does not auger well for West Papuans fleeing their homeland.

Greg Connellan

Liberty lost some important contributors at the AGM. Gone from the 2005 committee are Prof Marcia Neave (now Justice of Appeal), Bryan Keon-Cohen QC, Steven Tudor, Sarah Porritt, Mark Moshinsky, Chris Maxwell QC (now Justice Maxwell, President of the Court of Appeal) & Ed Lorkin.

We thank them for their contribution and wish them well. Bryan Keon-Cohen QC served for well over 10 years. Mark Moshinsky put in 6 years as secretary. Sarah Porritt served as treasurer and like Mark was on the committee for about 10 years. Ed Lorkin was also an LV treasurer. Steven Tudor departs after a second stint.



Marcia Neave

We say a special farewell and thanks to Professor Marcia Neave. It gives Liberty great pleasure to congratulate Marcia on her appointment as Justice of Appeal to the Victorian Court of Appeal, where she joins former Liberty president, Justice Chris Maxwell.

Charter of Rights and Responsibilities

Liberty welcomes the Brack’s government announcement it will introduce a Charter of Rights and Responsibilities prior to the election. We congratulate it for protecting human rights.

Liberty will assist Victorians learn more about the Charter. Predictable voices claim disaster will follow if the Charter is made law. Yet drastic consequences did not occur in countries, including New Zealand, Canada & United Kingdom, that introduced similar Charters.

A Charter of fundamental civil and political rights is well overdue and a step in the right direction. However, Liberty considers the proposed Charter inadequate, as it will not protect economic, social and cultural rights.

Residents of Swifts Creek will appreciate the protection afforded by the Charter should a future government decide to close their local school. Whilst a Charter incorporating economic, social and cultural rights cannot absolutely prevent the closure of a school it would force the government to justify doing so against the backdrop of the Charter rights. Rural and regional Victorians are entitled to have fundamental rights protected.

Kerang residents would also appreciate the Charter’s protection should a future government seek to close their medical and ambulance services.

Shutting down rural rail services would not be impossible if the Charter included economic, social and cultural rights – but a local member’s work is easier if other parliamentarians must justify their proposed action against the Charter.

The right to privacy protects all Victorians. We live in a world where intimate details of our medical, financial, educational and even sexual lives are recorded by virtue of credit card, prescription and email records. It is not true you have nothing to fear if you have done nothing wrong. Selective use of records paints a picture that suits the storyteller – we see it in the media every day.

A Charter will enhance democracy by providing parliamentarians a valuable framework when facing issues affecting the rights of Victorians. The Charter will create a culture of respect for fundamental rights – particularly of those who are vulnerable to the arbitrary assertion of political power.

A Charter guides the courts when a dispute raises matters not covered by legislation. Without a Charter the courts seek guidance from the case law. With a Charter the courts seek guidance from parliament by examining parliament’s Charter of rights and responsibilities.

To denigrate the rights of others with extravagant claims is easy – it is harder, more challenging and responsible to build fundamental rights framework for all. A Charter encompassing economic, cultural, social, civil and political rights will build a stronger democracy.

Greg Connellan

In December 2005 the Center for Human Rights and Global Justice (CHRGJ) at New York University released a report entitled ‘Fate and Whereabouts Unknown: Detainees in the “War on Terror”’. The report presents factual summaries of 28 individuals who may be in different secret detention sites around the world. It urges the United States (US) government to clarify the fate of the individuals and argues that the US violates international law when it holds such individuals in secret detention.

1. Evidence of “Disappeared” Individuals?

While the level of certainty about the status of these individuals varies, the facts in each case are sufficient to indicate they may be a victim of enforced disappearance by the US. In each case there is at least some evidence of the following:

- Apprehension by or with the involvement of US agents, or apprehension by foreign agents followed by transfer to US custody;
- US suspicion that the individual is involved in terrorist activities; and
- The fate or whereabouts of the individual is unknown.

2. What is Enforced Disappearance? How are Individuals “Disappeared”?

According to international human rights law, enforced disappearances happen when individuals are deprived of their liberty by state agents and the state fails to provide information about their fate or whereabouts. The detainees are thereby placed outside the protection of the law. These detainees have been referred to as “ghost detainees”, “secret prisoners” or “detainees in black sites”.

There are various ways in which detainees are “disappeared”. The individuals may be:

- Held in US-controlled secret detention facilities or in foreign facilities run with US involvement;
- Held in foreign facilities at the direction of the US;
- Extraordinarily rendered, that is transferred to other states where they are likely to be tortured in order to extract information; and/or
- Detained in conflict zones and not properly registered, such as, CIA “ghost prisoners” held in military facilities.

3. How do “Disappearances” Relate to Other Practices in the “War on Terror”?

The report draws attention to the connections between covert procedures being used in the “War on Terror.” Examining the overlap between extraordinary rendition and enforced disappearances, the report stresses that “disappearances” often happen in conjunction with other abuses. Several cases included in the report detail the successive transfer of detainees among secret sites and even between nations. The report concludes the US is trying to maintain a secret system of transport and detention for those it suspects of terrorism. However, it argues that the US cannot avoid the application of human rights standards by hiding detainees.

In addition to acts of enforced disappearance carried out by the US, the report also criticizes US collaboration in “disappearances” by other states. Reporting on the case of Abdullah Khadr, the report explains that US agents have allegedly interrogated individuals while they were held in secret detention by other countries. Mr. Khadr, a Canadian, claims he was interrogated by US officials while in detention in Pakistan in 2004 and 2005.

4. Who are the “Disappeared” Detainees?

The 28 named in the report include well-known terrorism suspects such as Ramzi Binalshibh and Khalid Sheikh Mohammed, whom the US has acknowledged holding. However, there are also individuals who have not been widely reported as “disappeared”. Included in the latter category are Suleiman Abdalla, a Yemeni abducted in Somalia and Abu Naseem, a Tunisian apprehended in Pakistan. Also included in the report is Aafia Siddiqui, a woman who has been missing since 2003.

5. CHRGJ and its reports

Through a series of reports CHRGJ’s legal analysis has exposed the practices of “extraordinary rendition”, “disappearances”, and “proxy prisons” as violations of domestic and international law. CHRGJ works closely with human rights organisations and litigators working

to end abuses by the US in the "war on terror". Future CHRGG reports will address the international, regional and domestic law applicable to "disappearances".

7. Further information:

- Center for Human Rights and Global Justice, New York University, *Fate and Whereabouts Unknown: Detainees in the "War on Terror"* (17 December 2005) <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>

Andrew Hudson, co-author of CHRGG report, candidate for LLM (Global Public Service) (NYU)

Appointment of Judges

Liberty responded to Andrew Bolt's comment concerning the appointment of former Liberty members as Victorian judges. The Herald Sun didn't print our reply so we produce it your information.

Addressing the H R Nichols Society recently Senator Minchin said that whilst the Howard government had appointed conservative judges to the High Court he was concerned the Court might not interpret the corporations power in a manner favourable to the government when considering its IR legislation.

In short Senator Minchin admitted what is obvious – the Howard government, like its many predecessors, seeks to stack the High Court with judges it considers aligned with its outlook on society. Andrew Bolt raises no complaint about such stacking of our High Court.

The Howard and Bracks governments have appointed former Liberty presidents and committee members to respective federal and state courts. The score, if that is the way it should be considered, is Howard two, Bracks three. Liberty is proud such eminently qualified and dedicated supporters of civil liberties, human rights and justice saw fit to give time voluntarily to Liberty before they were appointed to judicial office. We take no credit for their appointment – they earned the privilege and responsibility of judicial appointment by their outstanding talent and hard work in the law.

The number of judicial appointments by the Howard and Bracks governments is substantial – very few of those people have had any involvement with Liberty. Without knowing the background of those people I cannot say what church groups, political parties, business interests or clubs they have in common – but certainly those common links would make association with Liberty pale into insignificance.

Like Senator Minchin we expect all judges will be faithful to their oath of office. Not only do we expect it – we are absolutely confident they will.

Liberty has successively criticised the Cain, Kennett and Bracks governments for denying Victorians access to the Supreme Court by altering its jurisdiction to prevent people taking the government to court. A recent example is the fisherman from eastern Victoria whose right to sue the government over the cancellation of his commercial fishing licence was removed.

The Howard government used the same approach to remove Liberty's right of appeal to the High Court following the decision of the Full Court of the Federal Court in the Tampa case. This serious issue, which attracts no media interest despite its negative impact on democracy, underlines the fact that those who appoint our judges know they cannot be diverted from their duty.

Politicians are not accountable for their meetings with powerful lobbyists who increasingly influence their decisions and sometimes contribute to party funds. Liberty regularly calls for such accountability

In contrast judges must do their work in open court, on the record and cannot meet with those who will be affected by their decisions. Judges decisions must be based on detailed reasons published to the parties and on the internet. Judges are subject to appeal in all instances except the High Court. Judges are subject to privileged criticism by politicians and journalists for they are generally constrained from descending into the fray of public comment. Neither journalists nor politicians are so constrained.

Liberty is not left wing nor is it left Labour. We seek to hold governments of all persuasions accountable from a civil liberties and human rights framework. We are fortunate many talented and hard working people have given their time voluntarily to Liberty over the past forty years since we emerged from the Brian Fitzpatrick led Australian Council for Civil Liberties. Many of those people have gone on to hold prominent positions in many walks of life including parliament, the judiciary and business sector. We didn't make them, but they certainly helped make Liberty. Fortunately Liberty continues to attract such people and we expect former members will continue to make their mark.

We thank Andrew Bolt for highlighting some of many things Liberty stands for. Despite his assertions, the things Liberty stands for are part of the mainstream of views in our society.

Unfortunately he did not recognise that Liberty has a long-standing position that all judicial appointments in Australia should be made by an independent non-partisan body. We do not hold that position because we lack faith in the people who have been appointed to our courts. Rather we hold that position because we believe the perception created by comments such as those of Senator Minchin and Andrew Bolt unjustly damage the standing of our courts. These comments do not reflect the reality of our staunchly independent court system and unnecessarily damage an essential part of our democratic fabric. It is that very commitment to independence by our judges that gives rise to the often partisan criticisms too frequently made of them.

Should state and federal governments, the Liberal and Labour parties, ever have the courage to implement an independent system for judicial appointments Australians will be better for it. Under such a system it is likely former members of Liberty will be appointed to judicial office because talented, dedicated people in the mainstream of society recognise the importance of protecting and enhancing civil liberties and human rights and they recognise Liberty plays a very important part in that process. Our detractors often highlight how important independent organisations, such as Liberty, continue to be.

Greg Connellan

Liberty Victoria - Committee of Management 2006

Executive President

Brian Walters SC

Vice Presidents

Jamie Gardiner
Anne O'Rourke

Treasurer

Robert Niemann

Assistant Treasurer

Michael Pearce SC

Secretary

Damian Abrahams

Assistant Secretary

Adam Pickvance

Committee

Elizabeth Brimer
Liz Curran

Julie Debeljak (Dr)
John Manetta
Di Sisely

Joo-Cheong Tham
Professor Spencer Zifcak

Lucie O'Brien
Larry Stillman

Mary-Lou Jelbart
Julian Burnside QC

Melissa Castan
Greg Connellan
Urfa Masood

Joo-Cheong Tham
Penny Underwood
Jonathon Wilkinson
Melanie Young

Office Administration

Laura Thompson
Karina Geddes

Contributors

Greg Connellan
Brian Walters
Di Sisley
Ann O'Rourke
Laura Thompson
Andrew Hudson
Joo-Cheong Tham

Layout and Design

assisted by
The ALSO Foundation
www.also.org.au

Special thanks to:

Adam Pickvance, Greg Connellan,
and Alana Wignell



VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

Address

Liberty Victoria
GPO Box 3161
MELBOURNE VIC 3001
Tel: 9670 6422

Web: www.libertyvictoria.org.au

Liberty News April 2006

Published by:

Victorian Council for Civil Liberties Inc

ABN: 23 236 210 735