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Libertynews

ISSUE 4 JULY–AUGUST 2009

LIBERTY VICTORIA VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

FEATURE

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ISSUE 4
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PRESIDENT'S COLUMN

LIBERTY BEYOND VOLTAIRE

Liberty President Michael Pearce reflects on the success of July's Voltaire dinner.

There are three major developments at Liberty to report on since my last column. The first is the completion of the National Consultation on Human Rights which occurred on 15 June 2009. Liberty made a major submission which was coordinated by Vice-President Prof. Spencer Zifcak, with the assistance of a working group of the Liberty Committee. The submission can be accessed from our website. It provides a cogent and compelling argument for a federal Human Rights Act, similar to the Victorian Charter.

The Liberty submission to the National Consultation was one of a massive 40,000 submissions. Many of these submissions were standard form and generated by interest groups such as GetUp! (for a Human Rights Act) and the Australian Christian Lobby (against). But there were many considered individual submissions and even the standard form ones showed some degree of involvement in the debate.

The consultation committee, chaired by Father Frank Brennan, is to be congratulated for generating this level of interest in its work. It resulted in no small part from the numerous community consultations conducted throughout Australia by the committee.

We now await the committee's report and the Federal Government's response to it. Liberty is confident of a considered and balanced report from the committee and even hopeful that it will recommend some form of federal legislative enactment of human rights protections. However, caution is advised in anticipating the Federal Government's response. The opponents of a Human Rights Act have strong connections to the Government, irrespective of the weakness of their arguments.

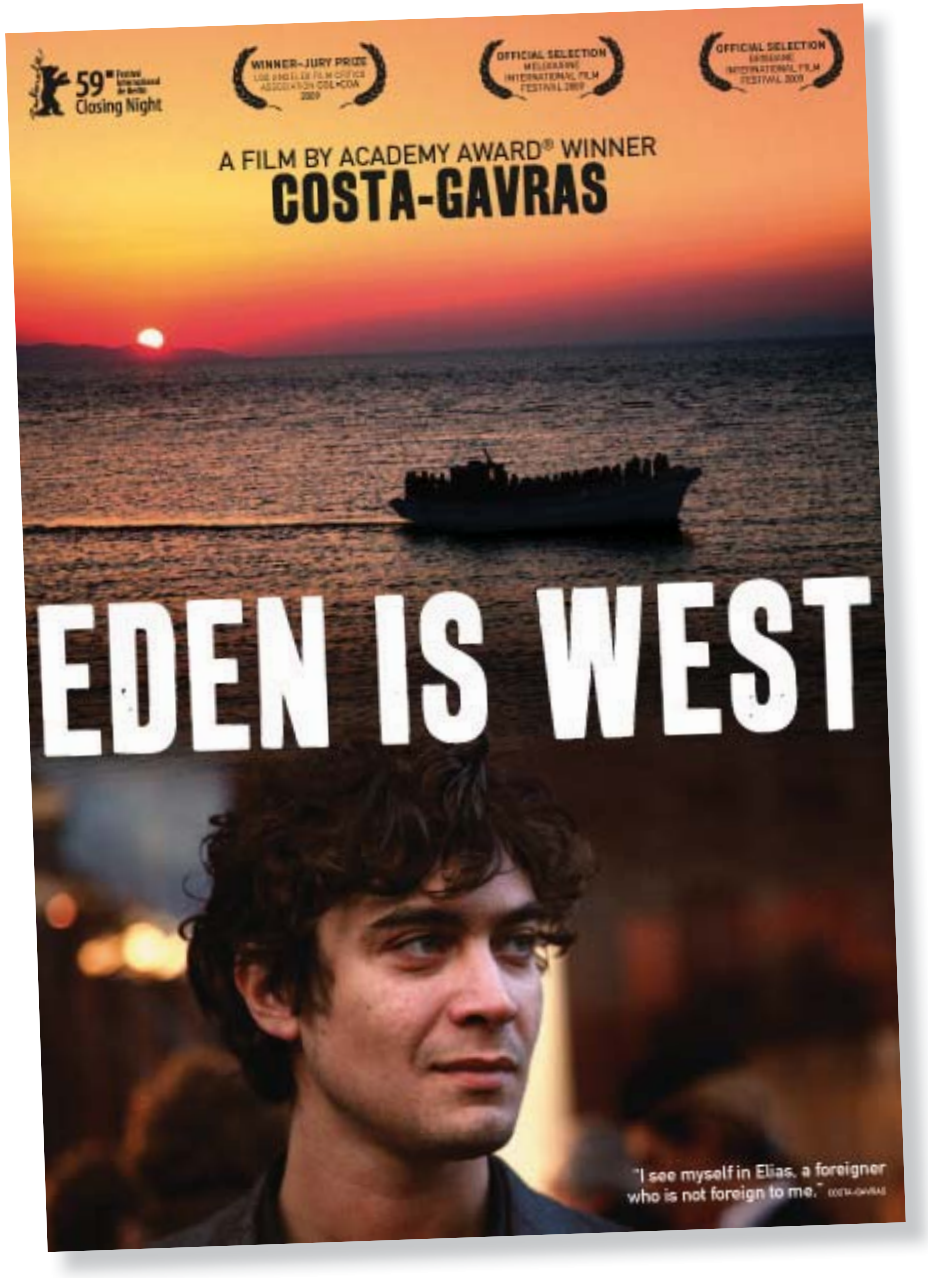
The second major development at Liberty was the passing of its annual budget at the committee meeting in June. As previously reported the outlook for Liberty is challenging and we have set ourselves three major goals to ensure we stay in the black. The first was to break even on our annual dinner. The second is to attract at least 50 new members. The third is to increase annual donations by $2000.

I am pleased to say that, in the wake our annual dinner on 18 July 2009, we have made great strides in achieving all these objectives. The dinner was attended by almost 200 people, which enabled us to make a small profit. We also signed up 26 new members at the dinner. In addition we netted about $1300 from the silent auction and another $1000 in donations. So we are on track for achievement of our budgetary goals but more needs to be done.

The Voltaire Award Dinner was more than just a financial success. Thanks in particular to the organising efforts of committee member Marian Steele and Office Manager Alex Krummel, it was the best attended dinner for many years. MC Julia Zemiro (who donated her services) was delightful and kept us entertained all night. Brain Walters SC, a former President of Liberty and Vice-President of Free Speech Victoria, made the Voltaire Award to GetUp! Unfortunately, GetUp! National Director Simon Sheikh was unable to attend because of illness but he was ably replaced by Ed Cope, who accepted the award on GetUp!'s behalf. Ed's acceptance speech detailed the difficulties that even GetUp! faces in getting an alternative voice heard in the mainstream media and reinforced

the need for vigilance in the area of free speech.

I am sure I speak for all who attended the dinner in saying it was an unqualified success. For those members who were unable to attend, there are some more events coming up later this year. These include a film night (on 19 August at the Nova, Carlton) and the Allan Missen Oration, which will be held this year in conjunction with our Annual General Meeting in November. I hope to see you there.



LIBERTY VICTORIA
MOVIE NIGHT

Wednesday 19 August, 6.30pm

CINEMA NOVA, 380 LYGON ST, CARLTON

Full Price: $20
Member/Concession: $15

Tickets can be purchased online at:
www.libertyvictoria.org.au
Please note a booking charge applies.

If you would prefer to purchase tickets on the night please RSVP to info@libertyvictoria.org.au by Monday 17 August. You are also invited to join us for drinks afterwards in the Cinema Nova Foyer.

ABOUT THE FILM

Master filmmaker Costa-Gravas crafts an epic story of our times — the journey of an emigrant in search of a better life — full of heart, humour and wondrous complexities. Eden Is West is a glorious travelogue where the assumptions of others prove to be the best passport of all.

CINEMA NOVA
www.cinemanova.com.au

‘Give me the gist of it’

A strong democracy depends on a good knowledge of how our institutions of government work, write Brian Walters SC and Hugh Crosthwaite.

Sir Robert Menzies once said that Australia would only ever have a perfect democracy when every Australian was educated to their absolute capacity. In aid of this ideal, Liberty Victoria, in association with the Australian Lawyers Alliance and Amnesty Australia, has launched a website called ‘The Gist of It’ (www.thegistofit.com.au).

The purpose of the website is to enhance democracy by making basic information about key policy areas and the institutions of government widely available. Liberty Victoria recognised that this foundation of knowledge is a crucial and often omitted element of political discourse. Liberty decided to create a place where this information could be obtained easily, by all Australians and at any time.

In its first season the website features 12 short videos, each anchored by Mary Kostakidis, and each featuring an interview with a well-regarded expert in the subject area. The website is not designed to persuade the audience member of one political position or another. The goal of the project is simply to equip the audience member with the information they need to understand political discourse in the Australian context. For instance, whilst concepts like the separation of powers are very much alive in the Australian system of government, the virtues in giving judges tenure until the age of 70 may seem odd to someone who doesn’t understand this fundamental concept.

The subject areas and experts currently available online are:

- The Courts and Judiciary, with the Hon. Michael Kirby AC CGM
- The Parliament, with Dr Nick Economou
- The Executive, with Prof. George Williams
- The Constitution, with Prof. Cheryl Saunders AO
- The Separation of Powers, with the Right Hon. Malcolm Fraser AC CH
- The Health Care System, with Dr Mukesh Haikerwal
- The Economy, with Dr Beth Webster
- The Education System, with Prof. Peter Dawkins
- Water Distribution and Availability, with Dr Tom Hatton
- Taxation, with Dr Bill Orow
- Sovereignty and Nation States, with Prof. Spencer Zifcak
- Human Rights, with Geoffrey Robertson QC

These interviews provide a well-rounded, albeit basic, foundation in Australian civics, delivered by the most qualified of Australian experts. In addition to the videos, the website contains ‘Quick Facts’ reference sheets for those short on time or bandwidth. Following in the philosophy of the project, each subject area is confined to simple language, delivered in point form and on one A4 sheet.

‘The Gist of It’ is a helpful resource for anyone seeking to learn about Australian government, and it deserves to be widely used. The website will be updated regularly to provide further resources and to delve deeper into the Australian political and legal landscape.

Before we can own our institutions of government, we need to understand how our current system fits together. ‘The Gist of It’ is one contribution towards educating and empowering the community to know the gist of how things work.

Brian Walters SC and Hugh Crosthwaite are Liberty committee members.

Nothing less

Liberty volunteer Andrew Vincent warns that anything less than a binding Human Rights Act for Australia will fail to provide adequate protection.

The National Human Rights Consultation Committee will report to the Australian Government on 30 September 2009, having received more than 40,000 submissions in the ten months since the consultation process began. It would be extremely disappointing and a testament to the effectiveness of the anti-charter fear campaign if the Committee recommends anything less than a British-style Human Rights Act.

Nevertheless, *The Australian* has reported that the Committee is 'poised to recommend a British-style parliamentary committee that will review all legislation for potential breaches of human rights'. The report suggested that the parliamentary committee would exist instead of a charter of rights, not in addition.

If this prophecy is accurate, it would be an enormous victory for Charter opponents, a victory gained in spite of logic, reason and the domestic and international experience. Such an outcome would condemn Australia to remain the only Western democracy in the world without a charter of rights. It would be bad policy, pandering to the fear campaign of those who suffer from a phobia of all things unelected.

I do not suggest that it would be undesirable to form an Australian parliamentary committee similar to the UK's Joint Committee on Human Rights (JCHR). The JCHR has been a productive and useful part of UK's human rights model. I do suggest, however, that the success of the JCHR is inseparable from the existence of a Human Rights Act applied by the courts. The JCHR and the UK judiciary are engaged in a constant dialogue that has promoted increased respect for human dignity in all spheres of government.

A mere parliamentary committee, without independent judicial enforcement of a charter of rights, would constitute a wholly ineffective half-way house. It would be an unacceptable policy compromise leaving Australia languishing behind modern democratic standards.

The UK system works precisely because of the dialogue it stimulates between the parliament and the judiciary. The parliament brings its public accountability and broad policy knowledge. The judiciary brings its independence and legal expertise. Moreover, the courts provide an essential mechanism through which individuals can protect their human rights against unreasonable state intrusion (which, far from being undemocratic, is something that empowers people against their government).

Given that charter opponents now recommend a British-style parliamentary committee, it is interesting to note that the JCHR is currently advocating increased human rights protection in the UK. In late 2008, the JCHR recommended the replacement of the UK Human Rights Act with a stronger Bill of Rights. The JCHR expressed a desire to take a leading role in developing international human rights jurisprudence, expanding the capacity of the UK judiciary to interpret human rights beyond the lowest common denominator of Strasbourg decisions and adding new human rights that have arisen in the fifty years since the European Convention was drafted.

The UK Government responded positively to the JCHR report and noted the growing need to 'correct public misperceptions about the current regime of human rights protection'. The perceptive response of the JCHR provides guidance for how the Consultation Committee should respond to Australia's fear-mongering charter opponents: 'The Government should seek to proactively counter public misperceptions about human rights rather than encourage them by treating them as if they were true.'

If this is the view of UK policymakers after ten years of experience with a charter of rights, it is increasingly difficult to understand what the doomsday anti-Charter movement is warning us about. There is no need to take baby steps on this issue; international guidance is already in great supply. The time is now to adopt a federal charter and launch Australia's contribution to the global human rights phenomenon.

Andrew Vincent is a Monash University law student and volunteer for Liberty.

Rights lost in transit

Privatised prisoner transport in Victoria could have tragic consequences, argues Lucie O'Brien.

The ABC's *Four Corners* program recently aired the story of Mr Ward, a West Australian indigenous man who died in custody in January 2008. Mr Ward had been drink driving and was on his way to the Kalgoorlie Magistrates' Court. The transport was provided by a private contractor, Global Solutions Limited.

As graphically depicted on *Four Corners*, Mr Ward travelled 360km in a steel pod without any windows, ventilation or effective means of communicating with the driver. The temperature that day was over 40 degrees. Despite this, GSL's employees failed to check that the van's air-conditioning system was working properly prior to commencing the trip. They didn't give Mr Ward any food or water, and didn't stop even after they saw him lying on the floor of the pod via the van's CCTV.

When the GSL officers finally stopped to check Mr Ward's condition, just outside Kalgoorlie, he had third-degree burns on his stomach where his skin had touched the metal floor of the pod. Incredibly, they left him where he lay as they drove to Kalgoorlie Hospital. By that time the temperature in the pod was well over 50 degrees. Mr Ward died shortly afterwards in hospital.

When questioned by the Coroner, the officers said that to remove Mr Ward from the pod would have been contrary to GSL policy. GSL is part of a multinational private prison consortium. It holds contracts with the Victorian Government for the provision of prisoner transport and prison management.

GSL has attracted equally fierce criticism for its practices in Victoria. In 2004 it transported five detainees from Maribyrnong Detention Centre to Baxter Detention Centre in cramped, overheated steel compartments. The detainees endured these conditions for seven hours without food or access to toilet facilities, and in most cases, without any water. The Human Rights and Equal Opportunity Commission found that the five were subjected to degrading treatment and, as persons deprived of their liberty, were not treated with humanity or respect for the inherent dignity of the human person. As a consequence, it found, GSL had violated articles 7 and 10(1) of the International Covenant on Civil and Political Rights.

In light of this record of human rights abuses, it is time for the Government to rethink privatised prisoner transport in Victoria. It is imperative that its current arrangements undergo a thorough, independent review. The review should scrutinise GSL's efforts to safeguard prisoners' health, safety and human dignity, including training and disciplinary measures to ensure staff compliance. It should also consider compliance with the Charter of Human Rights and Responsibilities Act 2006. As a public authority, GSL is obliged to act consistently with the Charter, which guarantees the right to protection from torture and cruel, inhuman or degrading treatment, and the right to humane treatment when deprived of liberty.

As things stand, it is quite possible that privatised prisoner transport in Victoria breaches the Charter and the ICCPR. We must hope that this does not have tragic consequences.

Lucie O'Brien works as a policy officer for the Federation of Community Legal Centres (Vic). She is also a solicitor and a committee member of Liberty.

Dignity, autonomy, privacy

The Victorian Guardianship and Administration Act needs to be amended to better reflect the rights of people with disabilities, argues Ergun Cakal.

With the recent international push for renewed recognition of rights of people with disabilities and Australia's recent ratification of the United Nations Convention on the Rights of Persons with Disabilities 2006, the instigation of the Law Reform Commission's review of Victorian guardianship and administration legislation has been quite timely.

Being the surrogate decision-making tools that they are, the concepts of guardianship and administration seek to assist people with disabilities in making decisions they are unable to make themselves; or, as the libertarian might say, as a means to legitimise the law's encroachment into the private lives of people with disabilities, for better and, regardless of intention, for worse.

The Victorian Guardianship and Administration Act, which was enacted 23 years ago, has become dangerously lacklustre in guiding VCAT's determinations in this area. It seems incomplete at its most central points, offering no more than nebulous criteria and guidance. In sum, for a guardianship or administration order to be granted, the Act requires there to be a 'need for a guardian' and the person proposed to be represented to have a disability which makes them unable to make 'reasonable judgments'.

What is more, the Act offers little by way of guidance to the guardian or administrator's assessment of the 'best interests' of the person when making a decision for the represented party. It does not include a clear definition of 'least restrictive' means or 'best interests', nor does it adopt a well-defined notion of capacity.

Such wording barely promotes the importance of the dignity, humanity, identity, autonomy and privacy of people with disabilities as the Convention does. Although the right of protection from exploitation is a significant consideration for VCAT, the practice of its Guardianship List, which is responsible for matters under the Act, has also lacked a strong overarching direction to protect such basic rights.

In *XYZ v State Trustees Ltd & Anor*, the Supreme Court case which exposed some problems with VCAT's guardianship and administration jurisdiction, Cavanough J emphasised the need for VCAT to 're-examine the exercise of its guardianship and administration jurisdiction generally to determine whether the balance has swung too far in favour of paternalism or protection as against individual autonomy'.

Be it the Act or the practice, something has to change. More direction and safeguards need to be put in place to reflect the seriousness of the civil liberties at stake or the practice has to be tightened up. If, as Bill Deane once said, 'the ultimate test of our decency and our worth as a democratic community is how we treat the most disadvantaged and vulnerable of our people', then we need a hard rethink about how we are currently going about guardianship and administration.

Ergun Cakal is a Liberty volunteer.

Storm in a teacup

Dr Paul Gardner AM responds to Larry Stillman's *Liberty News* article on free speech and the controversial play *Seven Jewish Children*.

Dr Larry Stillman ('Free Speech and Intercommunal Conflict', *Liberty News*, Issue 3) doesn't argue the case explicitly, but he seems to imply that the organised Jewish community reacted to the *Seven Jewish Children* play by seeking to stifle free speech. He offers no evidence to support such an implication. As far as I am aware, there were three forms of response to the play.

First, some members of the community commented critically about what they perceived as the anti-Israel bias in the play. Whether or not the play's content can be considered as antisemitic — or as potentially promoting antisemitism — can be legitimately debated, but the critics did no more than exercise their freedom of speech. No one called for the play to be censored or banned.

Second, one major Jewish social welfare organisation withdrew its invitation to Miriam Margolyes to be a guest speaker at a function after it learned that she would be acting in the play. It took no action against the play itself.

Third, a group of Jews, mostly university students, took part in a peaceful demonstration outside the venue on the night of the play reading and handed out leaflets. They took no action other than exercising their right of freedom of expression and assembly. So what is Dr Stillman's problem?

Where is the justification for all those emotive words peppering his piece: 'free speech', 'intercommunal conflict', 'pressure', 'lobby groups', 'very strong response'? Dr Stillman even draws on old and unrelated Greek/Macedonian conflicts to warn of 'threats of violence' to bolster his rather unsubstantiated position. The terms 'straw man' and 'storm in a teacup' come readily to mind.

Dr Gardner is a retired academic and a former chairman of the B'nai B'rith Anti-Defamation Commission.

HUMAN TRAFFICKING

Natalie Simpson reveals Australia's human trafficking problem.

The sinister practice of transporting women over international borders for the purpose of imprisoning them as sex slaves is something that most people choose to believe does not happen in their own backyard. Unfortunately the reality is that trafficking in persons is a very real problem in Australia.

Generally, trafficking crimes occur when young women from impoverished countries are sought out by traffickers who offer them jobs in a foreign country. Some of the women are aware they will be working in the sex industry (although under much more civilised conditions); others are promised jobs unrelated to the sex industry, often in hospitality or teaching.

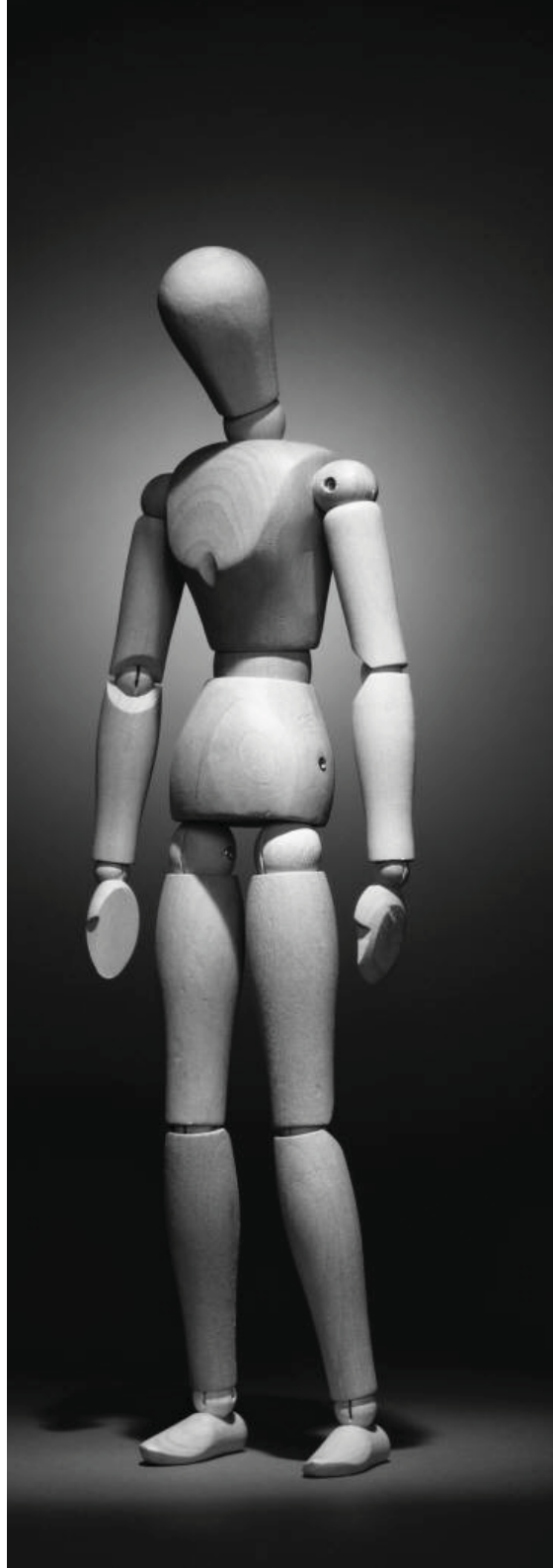
The women are then brought to their intended destination city by the traffickers who take their passports, imprison them and often subject them to systematic beatings and rapes in order to 'prepare' them for the submissive nature of the work they will be required to perform. Many women are ordered to perform any sex act their customers request, irrespective of the health or safety implications. They are kept in brothels as sex slaves, and stripped of their dignity, autonomy and their basic human rights.

The women are also told they owe their traffickers large amounts of money in 'debts' incurred from bringing them to Australia. These debts are completely fabricated and usually run into the tens of thousands of dollars.

Just recently, trafficked women were found enslaved in a brothel on Brunswick Street in among the fashionable restaurant district of North Fitzroy. These women had been trafficked from Thailand and held as sex slaves by Wei Tang, who forced them to work 10 to 12 hours a day in order to work off a 'debt' of $45,000. The women had to service 800 to 900 clients in appalling conditions.

There have been several recent changes to the Australian law dealing with human trafficking, all of which are good steps towards managing the sex slavery problem. Human trafficking is a manageable problem as long as there is a true commitment from the Australian community to work together, acknowledge the problem and deal with this sinister practice head-on.

(Continued next page.)



The term human trafficking refers to the use of coercion, deception or exploitation to bring a person into a country for the purpose of sexual slavery. Although it is not widely publicised, human trafficking is a serious problem within the Australian prostitution community. Within the last year there have been three significant steps forward in the legal recognition of human trafficking and the protection of victims of human trafficking.

In August 2008 the High Court of Australia, in the case of *R v Wei Tang*, defined the crime of slavery in a way that addresses the reality of women trafficked into Australia. Project Respect's media spokesperson, Katherine Maltzahn, outlined the High Court's decision as having the following impact: 'One, the Court has provided powerful clarity to investigators, prosecutors, and governments about what elements of slavery need to be proved in order to secure convictions. Two, the Court has embraced a modern understanding of how the crime of slavery operates. Three, the Court has found that consent to come to Australia for prostitution is not equal to consent to enslavement or the conditions of slavery.'

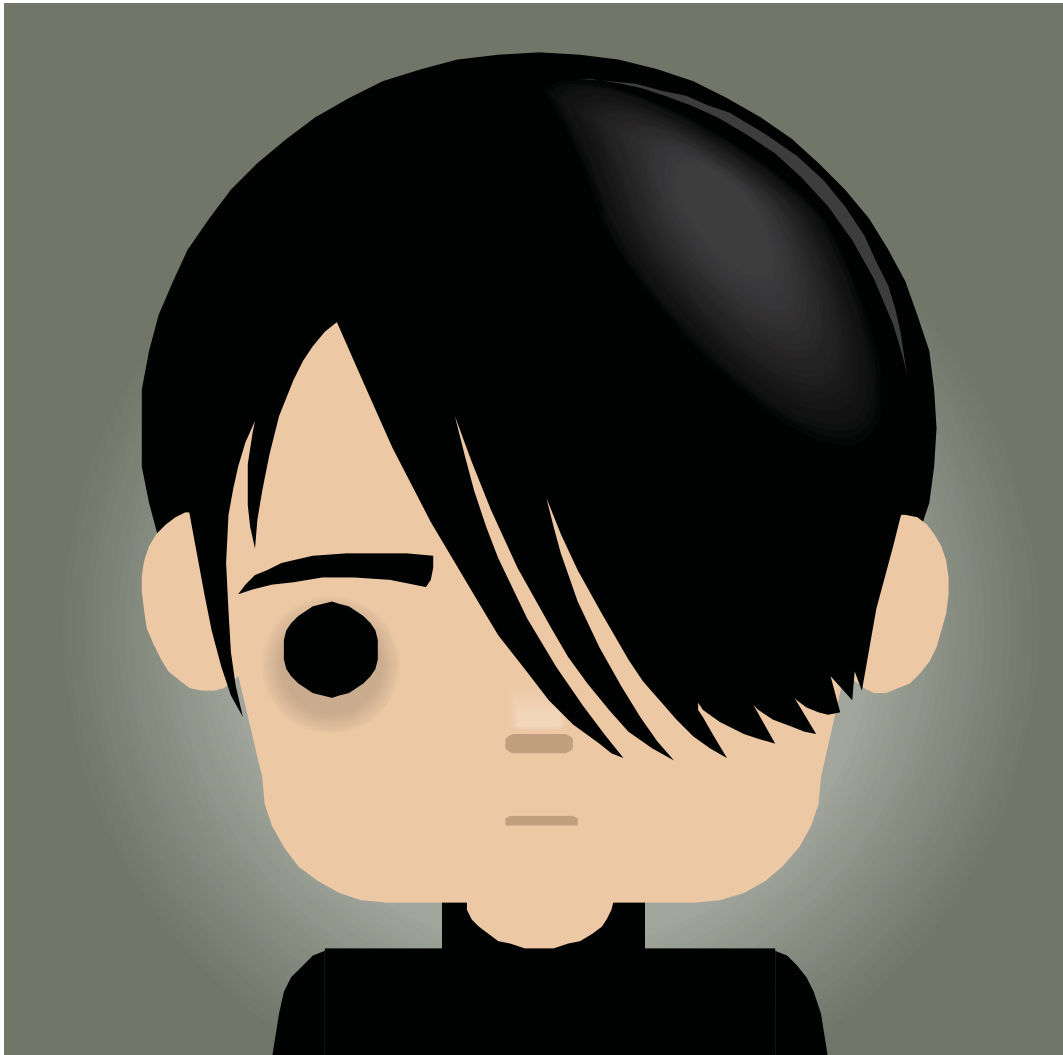
On 27 June 2009 two men were found guilty in the Supreme Court of Victoria of possessing a slave in relation to sexual slavery and human trafficking. This case marked the first formal legal action in Victoria dealing with sex slavery and human trafficking.

On 17 June 2009 the Federal Government announced significant changes to the visa structure used to support victims of human trafficking. These changes included:

- Extending the initial stage of the Support for Victims of People Trafficking Program from 30 to 45 days, and making it available to identified victims irrespective of whether they are willing to assist police, which will provide all victims with an opportunity to recover and seek advice about their future options;
- Providing up to 90 days' assistance for victims who are willing but not able to assist police, due to factors such as trauma. Where the victims do not hold a valid visa they can be granted a second Bridging F visa;
- Allowing access to the Support for Victims of People Trafficking Program to identified victims who hold any kind of valid visa so victims do not have to relinquish existing visas in order to receive support;
- Providing up to 20 days' transitional support so victims assisting law enforcement can consider their future options, seek legal advice, arrange travel and find support networks after involvement in the Support for Victims of People Trafficking Program;
- Removing the temporary visa stage in the Witness Protection (Trafficking) visa process, and starting the process before the completion of a prosecution, which will reduce the pathway to a permanent visa for eligible victims by at least two years;
- Reducing the threshold for a Witness Protection (Trafficking) Certificate from having made a 'significant contribution' to making 'a contribution'; and
- Enabling immediate family members who are outside Australia to be included in an application for a Witness Protection (Trafficking) visa.

These recent changes to the Australian law show a growing commitment within the government and legal community to manage human trafficking and sex slavery. These steps have been significant, but there is still much work in the field that needs to be done.

Natalie SImpson is a Liberty volunteer.



Australia's report card

Rachel Ball summarises the findings of two United Nations committees on Australia's compliance with international human rights law.

In the first half of 2009, two United Nations committees issued report cards on the state of human rights in Australia, following extensive reviews of Australia's compliance with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The UN Human Rights Committee — reviewing Australia's compliance with the ICCPR and reporting in March 2009 — commented on, among other things, the incompatibility of aspects of Australian counter-terrorism laws with fundamental human rights, the excessive use of force by police without adequate oversight, and the need to increase access to justice and legal aid.

In May 2009, the Committee on Economic, Social and Cultural Rights recommended that Australia increase its levels of international development assistance and address the high unemployment rates among Indigenous people, asylum seekers, migrants and people with disabilities. For the first time that committee addressed the human rights implications of climate change, recommending that Australia introduce carbon reduction schemes and take measures to mitigate the adverse consequences of climate change.

Significantly, both committees commented on the need for Australia to do better in addressing violence against women, Indigenous disadvantage and homelessness, and on the need to reform the immigration system to ensure that it complies with human rights standards, including by ending mandatory immigration detention.

Both committees welcomed the National Consultation on Human Rights and reminded the Australian Government of its obligation to ensure that human rights are protected through the enactment of comprehensive human rights and equality legislation.

The findings of these committees, known as concluding observations, were significantly informed and influenced by Australian civil society's involvement in the review process (see Liberty News, Issue 3). The task now is to ensure that the concluding observations are brought to life through community education and government action.

The Federal Government has already taken action on several of the issues raised by the committees — for example, by introducing a bill to enhance protections for victims of trafficking and by announcing support for a taxpayer-funded paid parental leave scheme. However, there remains much more to be done to ensure adequate protection and promotion of human rights in Australia. In the next few years, the concluding observations should be used as a roadmap for the Government, non-government organisations and the community to guide the improvement of human rights in Australia.

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