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Libertynews

ISSUE 5 SEPTEMBER-OCTOBER 2009

LIBERTY VICTORIA VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC



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FEATURE

Australians say 'yes' to a Human Rights Act

ISSUE 5
SEPTEMBER–OCTOBER 2009

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EDITORIAL

Contributions to *Liberty News*, including letters to the editor, should be sent by email. The next deadline is 1 December. Please include any photos. Publication is at the editor's discretion.

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PRESIDENT'S COLUMN

CHURCHES AND RIGHTS

Liberty President Michael Pearce argues that religious objections to a Human Rights Act are ill-conceived.

One of the most troubling developments in human rights in recent times has been the antagonistic stance adopted by many within the Christian churches. The Australian Christian Lobby was the leading organisation opposed to a national charter of rights during the recent national Human Rights Consultation. It organised submissions to the committee against a national charter and arranged for its members to be present at many consultation meetings to argue against a charter.

At a public meeting which was part of the consultation, committee chair Father Frank Brennan explained the opposition this way. He said that many within the Christian churches perceive a vast Victorian-based conspiracy against organised religion.

(Continued next page.)



Churches and rights (continued)

The conspiracy comprises the *Racial and Religious Tolerance Act*, the *Abortion Law Reform Act*, the *Victorian Charter of Human Rights* and the moves to narrow religious exemptions in the *Equal Opportunity Act*. Liberty Victoria is seen to be at the centre of this ungodly conspiracy.

Like most conspiracies, this one does not stand up to much scrutiny.

First of all, Liberty Victoria was one of the few organisations which opposed the Victorian *Racial and Religious Tolerance Act*. It did so on free speech grounds and has also opposed federal vilification legislation for similar reasons.

The churches' complaint about the Victorian Act has much to do with the *Catch the Fire Ministries* case, which ran for months in the Victorian Civil and Administrative Appeal Tribunal, was taken successfully on appeal and did little but entrench hostile attitudes on each side.

One of Liberty's reasons for opposing the *Racial and Religious Tolerance Act* was the concern that it would have just this sort of result.

So the truth of the matter is that we have much in common with the churches on this legislation.

On the other hand, Liberty's support for the *Abortion Law Reform Act* is at odds with some Christian opinion, especially in the Catholic Church. However, Liberty has never opposed the application of the Charter of Human

Rights to that legislation, including the controversial section requiring doctors to provide effective referrals if they will not perform an abortion. The reason why the Charter does not apply is because of s 48. This little known section expressly excludes the Charter's operation to any law concerning abortion. Liberty did not seek the inclusion of s 48 in the Charter and sees no reason for it.

Like many in the Catholic Church, Liberty would welcome the application of the Charter to this legislation.

The churches' opposition to the Victorian Charter and its opposition to a national charter is based on the belief that human rights restrict religious freedom. This is not correct. Amongst the most important human rights in the Victorian Charter are freedom of thought, conscience, religion and belief (s 14) and freedom of expression (s 15). These rights explicitly support the free exercise of religion.

In Victoria, the Charter now requires that legislation be read wherever possible in accordance with human rights. As a result, the operation of legislation like the *Racial and Religious Tolerance Act* is likely to be circumscribed. Its impact on the free exercise of religion should be significantly reduced thanks to the Charter.

So the churches should, logically, support a national charter of rights.

An even more important reason why

the churches should support a national charter of rights is this: anecdotal evidence about the operation of the Victorian Charter suggests that its most important effect has been in the delivery of public services. Victorian public servants are now obliged by the Charter to respect human rights in the performance of their duties. The most vulnerable and underprivileged in our community are usually also those most reliant on government services. Many stories are emerging about the transformation in the way these services are now being delivered in Victoria because of the requirement to respect human rights.

To give just one example: a public hospital refused emergency services to asylum seekers because they were not eligible for Medicare benefits. But when told of its obligations under the Charter the hospital reversed its policy and provided emergency services to an asylum seeker.

This and many similar stories are collected here: <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/case-studies/>. They show how the lot of many vulnerable and underprivileged people has been improved because their human rights must be respected by those responsible for their basic needs.

The Christian churches have a fine record of pastoral care, especially in recent years in the areas of Aboriginal rights, support for refugees, the

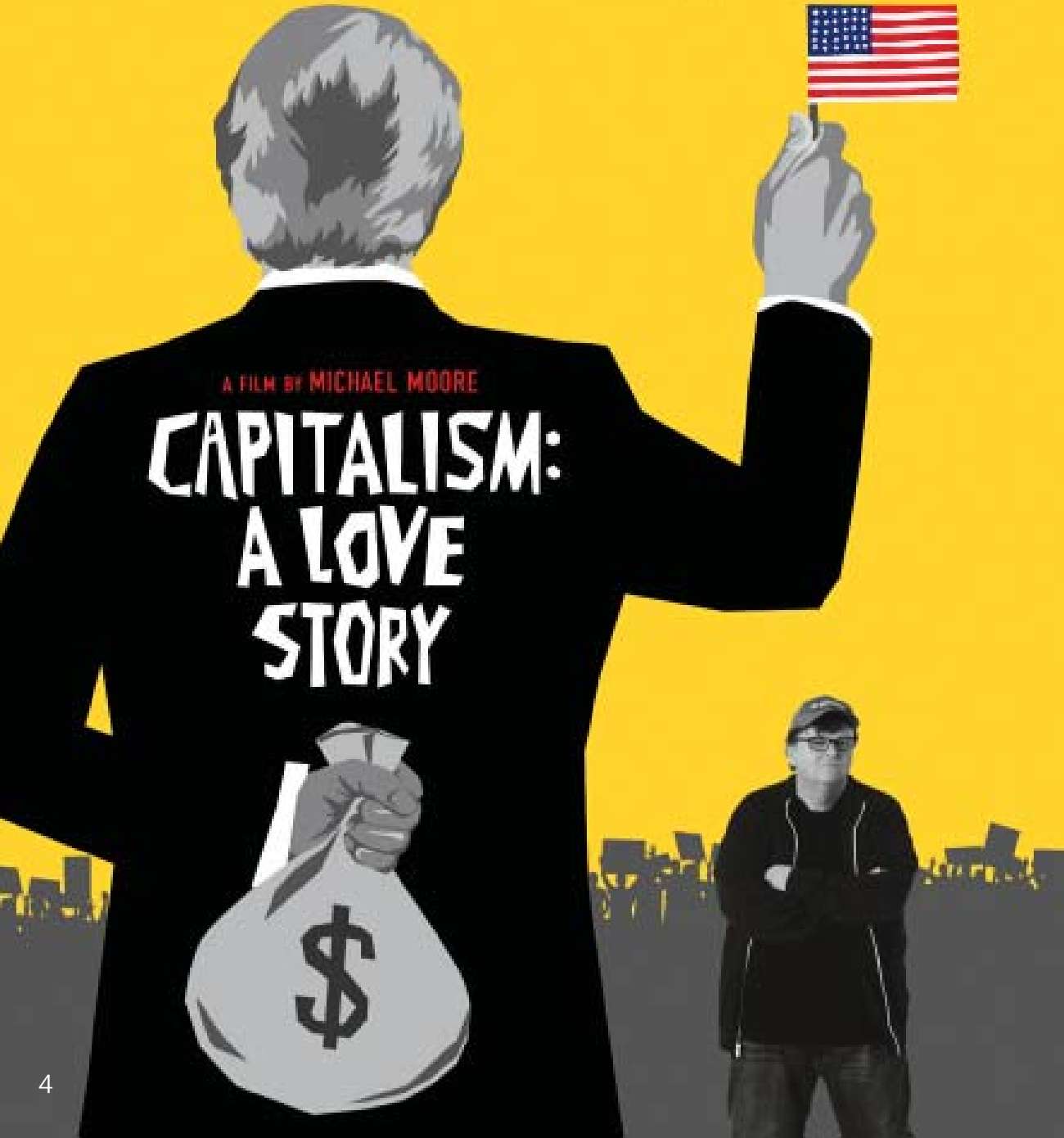
homeless and the needy. There is an obvious convergence between the churches' pastoral role and the promotion of human rights for the most needy and vulnerable. The churches' concern for the needy and vulnerable should therefore translate to support for a national charter so the gains that are emerging in Victoria can spread nationally.

There are no doubt many hardliners within the churches who will remain impervious to this logic. But most church members must be amenable to it if only the message could get through. Fortunately, there are signs that it is starting to.

Bishop McIntyre put a balanced and reasoned view about exemptions to the *Equal Opportunity Act* in *The Age* on September 29: <http://www.theage.com.au/opinion/society-and-culture/a-betrayal-of-the-faith-20090928-g95o.html>. An excellent website has been established promoting human rights awareness among Christians: www.isaiah1.org. However, more needs to be done.

Because of the importance of this issue, Liberty Victoria has invited the Rev Tim Costello to give this year's Allen Missen Oration, following the Annual General Meeting on Monday November 23. He will speak on the subject of human rights and the churches. It promises to be a most interesting occasion. Full details are on page 5 — please mark it in your diaries.

MICHAEL MOORE



Liberty Victoria movie night

Wednesday 28 October, 6.30pm

CINEMA NOVA, 380 LYGON ST, CARLTON

Full Price: \$20

Member/Concession: \$15

Tickets can be purchased 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 26 October.

You are also invited to join us for drinks afterwards in the Cinema Nova back bar.

CAPITALISM: A LOVE STORY

Michael Moore's latest film comes home to the issue he's been examining throughout his career: the disastrous impact of corporate dominance on the everyday lives of Americans (and by default, the rest of the world). With both humour and outrage, Moore's *Capitalism: A Love Story* explores the taboo question: what is the price that America pays for its love of capitalism?

CINEMA
NOVA
www.cinemanova.com.au

Liberty's Annual General Meeting and Alan Missen Oration

Monday 23 November

Tim Costello is to give the Alan Missen Oration. The AGM is to commence at 5.30pm and the Oration is to commence at 6pm followed by drinks and nibbles.

Capitol Theatre, 113 Swanston Street, Melbourne
RSVP to info@libertyvictoria.org.au by 20 November



HUMAN RIGHTS

arts & film festival

The Human Rights Arts and Film Festival (HRAFF) will take place from April 30 to May 9 in 2010, and film submissions for the event are now open!

All emerging and established filmmakers are invited to submit their music videos, shorts, features, documentaries and experimental films for the 2010 program. The only criterion is that the film engages with human rights and social justice issues.

Throughout May 2010, HRAFF will again travel Australia with events and screenings taking place in Melbourne, Sydney, Canberra, Perth, Adelaide and Brisbane.

For submission guidelines see www.hraff.org.au. Please contact submissions@hraff.org.au with all enquiries. Over \$5000 in cash and prizes up for grabs!



Inquiry update

Georgia King-Siem

AUSTRAC

The Australian Transactions and Reports Centre (AUSTRAC) is the Australian government's anti-money laundering and counter-terrorism financing regulator, as well as its specialist financial intelligence unit. In its regulatory role, AUSTRAC has responsibility for the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the *Financial Transactions Reports Act 1988* (FTR Act).

AUSTRAC has a Privacy Consultation Committee (PCC) which considers consumer and civil rights issues relevant to AUSTRAC's operations. In the last few months, the PCC has met and considered a range of issues including the committee's terms of reference, proposed changes to the AML/CTF Act, rules accompanying that AML/CTF, international agreements and other administrative issues.

The proposed AML/CTF changes extend AUSTRAC's reach and are contained in the Crimes Legislation (Serious and Organised Crime) Bill (No.2)

2009. Due to significant issues with the first draft of this Bill, the current incarnation is before the Senate Legal and Constitutional Affairs Committee.

In addition to comments provided to the PCC, Liberty has made a separate submission to the Senate committee. You can find more information about AUSTRAC at www.austrac.gov.au and more information on the Bill and the Senate's inquiry into it at www.aph.gov.au/Senate/committee/legcon_ctte/.

Royal Commissions inquiry

The Australian Law Reform Commission's review of the *Royal Commissions Act 1902* commenced in January 2009. Since that time, the ALRC has released an issues paper (IP 35), held consultations and released a discussion paper (DP 75) before its final report, which is due October 30.

Liberty has been actively involved along the way and has made written submissions to both IP 35 and DP 75. At the moment it appears that the ALRC will recommend a two-tier approach to

public inquiries with Royal Commissions retained at the highest level (for matters of significant public importance) and other 'public inquiries' for matters of public importance.

Liberty has consistently argued that strong and independent modes of public inquiry are an important tool in a democratic society. In some instances, the use of coercive powers may be warranted, but only where the civil liberties of those subjected to those powers are equally protected. The proposed Inquiries Act offers the chance to simplify and consolidate public inquiries under one Act whilst providing a range of powers to those inquiries as required.

Notwithstanding the ALRC's final report, it remains to be seen whether the government will implement an effective and workable Inquiries Act which will ensure government accountability and adequately protect civil liberties. You can find more information on the inquiry on the ALRC website at www.alrc.gov.au.

Australia's secrecy laws

Following Liberty's initial submission to this inquiry in February, the ALRC released its discussion paper (DP 74) in June this year. This review is a long overdue look at Australia's range of often contradictory secrecy laws. The final report is due to be delivered to the Attorney-General by October 31.

Overall Liberty believes that the ALRC has missed a golden opportunity to recommend fundamental reforms to the laws and systems which govern the control and release of information to the public. In particular, Liberty had recommended a single classification system for all government information (whether secret or not) which could be used across all levels of Government.

Despite this, the proposals contained in DP 74 would streamline the current legislative arrangements (particularly for the various secrecy offences). You can find more information about this inquiry on the ALRC website at www.alrc.gov.au.

The people have spoken

Liberty Victoria welcomes the National Human Rights Consultation report.

Liberty Victoria has welcomed the report of the National Human Rights Consultation and congratulated Fr Frank Brennan and his committee on the report. Liberty President, Michael Pearce SC, said the widespread consultation and thorough research of the committee demonstrated that human rights are a matter of concern to ordinary Australians and that they want better human rights protection under the law than we currently enjoy.

Mr Pearce said the various recommendations in the report contained the building blocks for a human rights culture in Australia.

'Of particular importance are the obligations to be cast on federal government agencies to respect human rights in the performance of their functions,' he said. 'In Victoria, we have found that the biggest impact of the *Charter of Human Rights* has come from the obligation on State Government agencies to respect human rights. It is slowly transforming for the better the way government services are provided to the most needy and vulnerable in Victoria.' Mr Pearce said he looked forward to this transformation expanding nationwide.

Mr Pearce also welcomed the recommendation to introduce a

federal Human Rights Act. He said the recommendation vindicated the stance adopted by Liberty Victoria and other human rights organisations. 'We always thought that a fair-minded analysis of all the relevant considerations for and against a Human Rights Act would find the case "for" to be overwhelming,' he said. 'We hope now that the Federal Government can have the courage of its convictions to legislate for this important reform.'

Mr Pearce dismissed the Federal Opposition's call for a referendum before the Human Rights Act is passed by Parliament. He said there was no precedent for a referendum for an

ordinary Act of Parliament and there was a danger that it would result in the constitutional entrenchment of the Act. 'This is the very thing that a Human Rights Act is aimed at avoiding,' he said.

'A Human Rights Act does not encroach on parliamentary sovereignty because it is liable to be amended or repealed by Parliament. Parliament may be unwilling to amend or repeal an Act passed following a referendum thus resulting in its entrenchment, even if only de facto.'

Mr Pearce called on the Opposition to abandon scare-mongering and irrelevancies and to make a positive contribution to the debate.



The verdict: write in rights

The Federal Government has been given a clear mandate by the Australian public to legislate to protect human rights, argues [Alexandra Krummel](#).



The report of the National Human Rights Consultation committee was released on October 8 to a full house at the Victorian Parliament. The report is very substantial with almost 500 pages and 31 recommendations.

The release of this landmark report signifies the end of the most extensive consultation on human rights in Australia's history. The committee received 35,014 submissions and conducted 66 community roundtables and public hearings in 52 locations across Australia.

The consultation utilised new media to further engage with the public, including the consultation's website, a Facebook page and an online forum facilitated by legal experts.

Two research projects were commissioned: the first involved a national telephone survey with a random sample of Australians and the second was to conduct focus group research into the experiences and opinions of marginalised and vulnerable groups who might not have otherwise been able to participate in

the consultation. In early July 2009 the committee hosted public hearings over three days with more than 60 speakers participating in panel discussions and debates. Throughout the consultation the committee met with a diverse range of individuals and organisations.

The clearest finding for the committee was that Australians know little about their human rights — what they are, where they evolved from and how they are promoted and protected. It is not surprising, then, that the committee recommended 'that education be the highest priority for improving and promoting human rights in Australia'.

The committee offers a number of recommendations as to how a human rights culture can be fostered and maintained in Australia. Most significantly, the committee recommends that Australia adopt a federal Human Rights Act which promotes a dialogue about human rights between the federal parliament, the executive and the judiciary.

In the report the committee states that a 'Human Rights Act would redress

the inadequacy of existing human rights protections'. Of the total submissions received by the committee, 32,091 discussed the option of a Charter of Rights or a Human Rights Act. Statistically well over 80 per cent of submissions received on the topic were in favour of a Human Rights Act, 27,888 to be precise. Liberty Victoria's submission was one of those calling for the enactment of an Australian Human Rights Act.

Further, the committee recommended that a federal Human Rights Act should:

- Protect civil and political rights and possibly social and economic rights, with priority given to the right to an adequate standard of living, the right to health and the right to education;
- Require statements of compatibility for all Bills introduced into the federal parliament;
- Empower the proposed Joint Committee on Human Rights to review all Bills and legislative instruments for compliance with human rights;
- Contain an interpretative provision

that requires federal legislation to be interpreted in a way that is compatible with the human rights expressed in the Act and consistent with parliament's purpose in enacting the legislation; and

- Require Commonwealth public authorities to act in a manner compatible with human rights (excluding economic and social rights) and to give proper consideration to relevant human rights (including economic and social rights) when making decisions.

The Hon. Robert McClelland MP, Attorney-General, welcomed the report of the National Human Rights Consultation on behalf of the federal government. He said that the 'debate is not about whether we protect human rights — it is about how we protect human rights'. The Australian government is now to 'carefully consider the Committee's report and outline its response in the coming months'. The time is now for the Government to act and write in human rights!
Alexandra Krummel is the Liberty Victoria office manager.



When fear wins

Aggy Kapitaniak argues that continuing to maintain a separate regime for terrorism offences cannot be justified.

Liberty is disappointed with the proposed reforms of the terror laws as outlined in the Attorney-General's 500-page discussion paper. Liberty's anti-terror law sub-committee wrote a submission expressing disappointment in relation to the proposed changes that we say don't go far enough. You can access the full submission on our website, but here is a flavour.

We stated that these proposed reforms needed to be read in light of these matters: the serious failure on behalf of our security authorities in relation to the Dr Haneef affair; serious intrusions by authorities into particular communities who have been targeted as terrorist or potentially terrorist; and extremely lengthy and expensive trials in terrorism matters, in part occasioned by the complexity of the laws in question.

One main criticism is the proposed extension of the meaning of 'terrorist offence' to cover reference to 'psychological harm'. It is likely to greatly expand the scope of already broad legislation. Psychological harm is recognised by the courts as extending broadly – see, for example, *Giller v Procopets (No 1)* [2008] VSCA 236, where the court divided on the precise degree required.

Take a situation in which a particular international sporting event were to be held in Australia, and the administrators refused to permit a team from a particular country to compete because of the policy of that country on some particular issue – such as its treatment of an oppressed section of the population. It is reasonably foreseeable that this would cause psychological harm to athletes from that country. It is difficult to see how this would not become a terrorist act under this provision. Liberty was critical about this proposed expansion.

The provisions to hold a person in custody during investigation for terrorist offences

came to the public's attention in the case of Dr Haneef. The sections have only been used twice, so far as Liberty Victoria is aware: in relation to the questioning of Dr Haneef over many days, and in relation to the questioning of one of the recently charged Somalis, who was questioned for several hours.

Under the current proposals, the outer limit of detention remains undefined. Liberty argued that it was unsatisfactory, after the controversy surrounding the Dr Haneef affair, and the Clarke Inquiry which succeeded it, to leave the outer time for detention of suspects for questioning undefined. Further, we submitted that even an outer limit of eight days cannot be justified from experience to date. The time limit should be no greater than for non-terrorism offences.

Most disappointing was the exclusion of areas for reform. There are several serious issues in relation to the terror laws which are not dealt with in the review, but in our submission should have been. These include in particular: control orders, the use of which in relation to Jack Thomas and David Hicks (the only two occasions these provisions have been used) was controversial, unnecessary, and ultimately discontinued; preventative detention orders, which have never been needed; ASIO powers, notably the power to hold in custody for questioning both suspects and non-suspects; and the offence of 'association' with terrorist organisations, which has wide effects on those who belong to particular communities with unavoidable ties to organisations which have been listed as 'terrorist'.

Overall we remain unconvinced that a separate regime of legislation in relation to terrorism offences can be justified and are hoping that this call will be heard loud and clear.

Aggy Kapitaniak is a barrister and Liberty Victoria committee member.

Inadequate reforms

Despite the positive changes to refugee policy under the Rudd government, much work still needs to be done to make it humane, argues [Jessie Taylor](#).

There have recently been some wonderful changes to the laws affecting asylum seekers in Australia. Through the passage of the Migration Amendment (Abolishing Detention Debt) Bill, the abhorrent practice of charging asylum seekers for the daily cost of their own detention was finally brought to an end. And through modifications to the Migration Regulations, the so-called '45 day rule' affecting Bridging Visa E was also abolished.

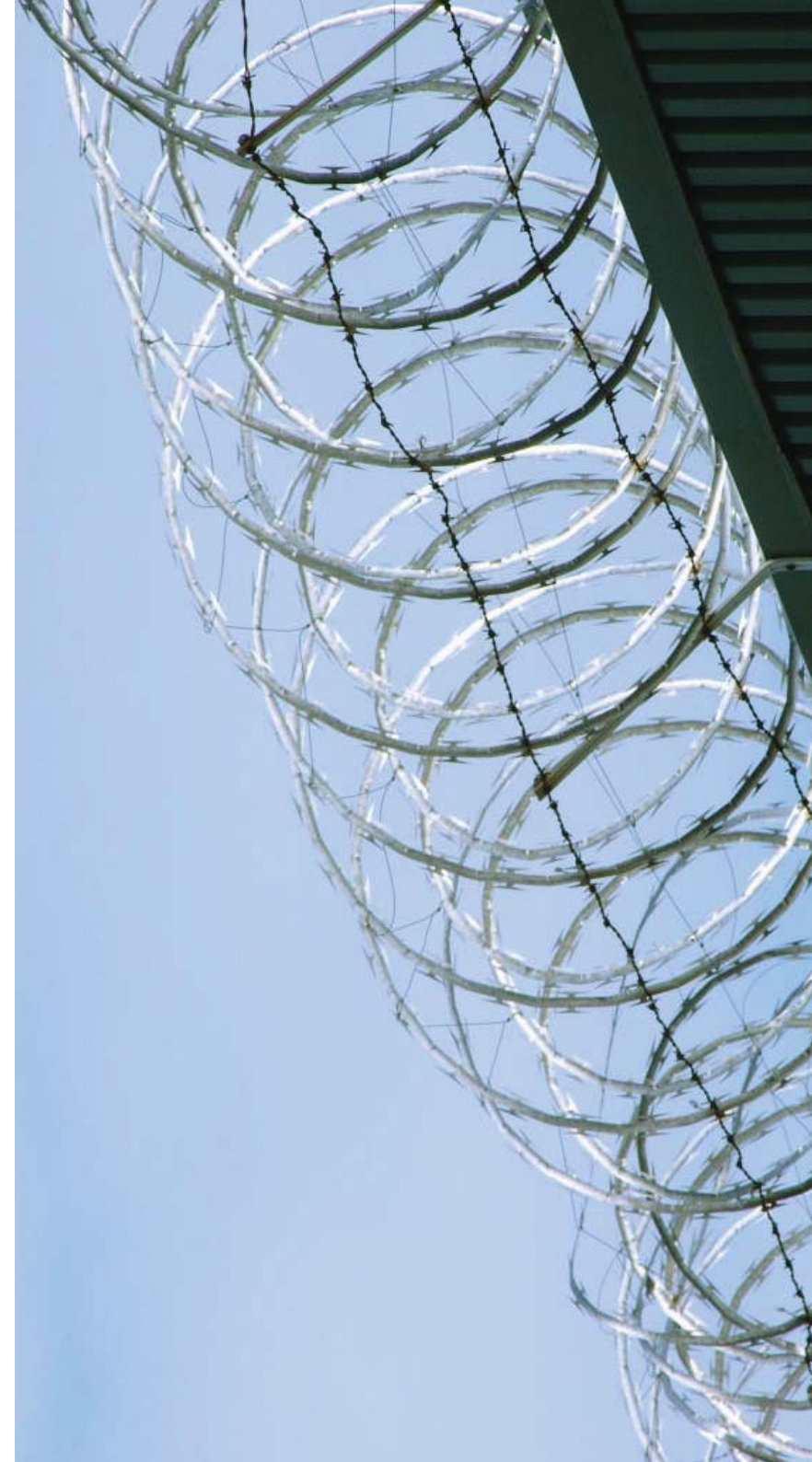
Liberty Victoria is delighted by these changes to the law affecting asylum seekers in Australia. The bizarre policy of imposing detention debts has put enormous pressure on many already traumatised and troubled members of the Australian community, some of whom were due to be paying off their debts at a rate of \$100 a month for the next 170 years!

One man, removed from Australia in late 2008, incurred a debt of more than \$512,000 over nine years of detention. Liberty Victoria congratulates the government on the pragmatic, sensible and compassionate decision to remove such burdens from the shoulders of former immigration detainees.

The '45-day rule' was a punitive measure introduced to block access to work rights for some people on bridging visas if they did not lodge their asylum applications before 45 days had elapsed after they first arrived in Australia. This was often coupled with denial of access to Centrelink and Medicare benefits, which frequently led to serious healthcare crises and a high level of homelessness among asylum seeker families. After the changes to regulations, the 45-day rule no longer exists, which is wonderful news.

It's great to see those changes. However, there is a long way to go! The Rudd government sticks to its guns around excision of Australian islands from the migration zone, the practice of mandatory and indefinite detention, warehousing asylum seekers in Indonesia, and the use of the offshore detention facility on Christmas Island, among others. Liberty Victoria is glad to see progress but urges supporters not to get too complacent just yet – there is still a lot of work to be done.

Jessie Taylor is a Liberty Victoria committee member.



Revealing the gay agenda: equality

Anne O'Rourke comments on the growing movement for same-sex marriage in Australia.

Since the last newsletter Liberty Victoria has been busy writing submissions to a number of state and federal inquiries on issues such as politicians register of interests, privacy, anti-terror laws and marriage equality.

The last inquiry was established as a result of Senator Sarah Hanson-Young's Marriage Equality Amendment Bill 2009, which seeks to remove discrimination against same-sex couples from the *Marriage Act 1961*.

Liberty Victoria endorsed the Bill, urging the Senate to pass it. Liberty addressed a number of issues in its submission including the often unquestioned belief that marriage is primarily a religious institution.

Liberty pointed out that marriage in Australian law is a civil partnership or civil union established by an Act of the Commonwealth Parliament, the *Marriage Act 1961*, and is governed by that Act and the *Family Law Act 1975*. Indeed most marriages in Australia are formalised by civil celebrants under the *Family Law Act*. That Act also permits some authorised officials of approved religious bodies to act as civil celebrants in addition to or simultaneously with conducting their own rituals, but it does not establish marriage as a religious institution. In many European countries religious bodies have no role at all in civil marriage: all marriages, to be lawful, are conducted by civil officials.



Religious rituals, if any, come later.

Liberty pointed to the recent unanimous decision in *Varnum v Brien*, 763 N.W.2d 862 (Iowa 2009 USA), where the court stated that there are no valid reasons in a jurisdiction which respects the right to the equal protection of the laws and equality under law to deny access to the institution of marriage to same-sex couples.

This view is not restricted to the state of Iowa. A number of countries now recognise equal marriage: Canada, South Africa, Spain, Belgium, the Netherlands, Norway, Sweden, and in addition to Iowa, the US states of Massachusetts, Connecticut, Maine, New Hampshire and Vermont.

It is often said in support of the discriminatory law adopted in 2004 that it 'reflects the widely held view

in the community that marriage is between a man and a woman' or is an institute sanctioned by God. This assertion is spurious. It merely panders to prejudice. But as it is asserted frequently it needs to be challenged.

First, the claim that a monogamous marriage between a man and woman is recognised by God and thus is the only legitimate form is pure bunkum. Such a marriage is in fact not endorsed by the Bible. The norm in biblical marriage is polygamy and not a monogamous relationship between one man and one woman. Indeed, Solomon was said to have had 600 wives, a record by any standard.

Secondly, resorting to religion as a basis for prejudicial marriage practices belies the fact that the Christian religion does not mandate or

support the form that is pushed by the Australian Christian Lobby and similar groups. Indeed, in examining marriage practice there is no indication that Christianity or religion of any persuasion has a positive impact on marriage.

Statistics in the United States on divorce rates demonstrate unequivocally that the red states (religious or bible-belt states) have a much higher divorce rate than the northern blue states. Indeed, as the *New York Times* pointed out in 2004, the state with the lowest divorce rate is Massachusetts, home to John Kerry, the Kennedys and same-sex marriage.

Exclusion from marriage sends a strong message to same-sex couples: you are unworthy! This message of exclusion harms people directly, reinforcing the prejudice that leads to heightened risk of depression and suicide.

And it harms them indirectly, by making it harder for friends and family to be supportive, to celebrate milestones in life that others take for granted, and by inhibiting their full citizenship in the life of the community.

Liberty Victoria urged the Senate committee to stop this cycle of abuse. To send the decent and right message: marriage is for every couple who have a mutual commitment to a shared life.

Anne O'Rourke is a vice-president of Liberty Victoria.