



LibertyNEWS

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ISSUE 8 WINTER 2010

LIBERTY VICTORIA

VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

FEATURE STORY

Stuck in the middle.



P3 MICHAEL PEARCE
ON AUSTRALIA'S
LEADERSHIP
DEADLOCK

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Leadership Deficit

THE IMPLICATIONS OF THE FEDERAL ELECTION RESULT

MICHAEL PEARCE SC



PRESIDENT'S COLUMN

As I write this column, Australia remains in caretaker government mode, the result of the 21 August general election still not certain and likely to remain so for another couple of weeks. Our plan to delay this newsletter until after the election - so our future course could be examined in the light of the result - has been frustrated. Like so many other things, no doubt.

It is very tempting to launch into a general diatribe about the poverty of politics exposed by this election. I will try to resist that and concentrate on the implications for civil liberties and human rights. But to understand those implications it is necessary to say something about the general political situation.

The inconclusive result of the election undoubtedly reflects public disenchantment with politics as we know it. It is a repudiation of a Labor Government which ultimately stood for nothing except its own re-election. But there was no endorsement of a Liberal-National opposition whose themes were essentially negative and reactionary. Both major political parties, controlled by careerist politicians disconnected from the community, are now incapable of tapping the public mood for any positive or constructive purpose.

The public, in its wisdom, reacted to this by wishing a plague on both their houses. Who could blame them?

The only major party which emerged enhanced from the election was the Greens. It is no coincidence that it is only the Greens who have consistently articulated and adhered to clear policy positions on the issues that matter.

The lessons of the election are obvious enough to the clear eye. The public expects leadership from its leaders, not focus-group inspired manoeuvring for perceived political advantage. It expects politicians to stand for something. It would prefer a politician who stands for something they disagree with, rather than one who only stands for his or her own re-election.

John Howard proved that, so did Bob Hawke and Paul Keating. Their governments each proposed and saw through important reforms which were unpopular but which they believed were in the nation's best interests. The public expects, responds to and rewards that kind of leadership. It is entirely lacking in Australia today.

And so to the implications for civil liberties and human rights.

It must be acknowledged that the return of a Liberal-National coalition government is almost certain to result in the further erosion of civil liberties as happened during the Howard years. The revival of the Access Card (a de facto ID card) was mooted in the last days of the campaign. "Skipper" Tony Abbott's promise to turn the boats around also presages even more harsh and inhumane treatment of asylum seekers. The prospect of any liberalisation of anti-terror laws would disappear. The Coalition has openly and loudly opposed a national Human Rights Act or Charter of Human Rights.

The influence of the independents, who would support a minority Coalition Government, might temper to some degree the worst effects of this likely reversion to the repressive policies of the past. From July next year the Labor-Greens majority in the Senate could block any legislation; however, Labor's pusillanimous record in opposition during the Howard years does not give any confidence that it would oppose anti-human rights legislation.

It is difficult to predict the impact on civil liberties of a minority Labor Government because it is difficult to predict what impact the election result would have on such a government. It may only reinforce the political timidity and caution which characterised the Rudd and Gillard Governments. That timidity and caution resulted in its early abandonment of any human rights agenda, with its reversal of early and welcome reforms in the treatment of asylum seekers and its rejection of a Human Rights Act.

There may be a slim prospect that a minority Labor Government would learn the lessons of its near-death experience in the election and rediscover some of the core values which have characterised the long history of the Labor Party. Those values include the promotion of civil liberties and human rights, especially for the most vulnerable and also for the unpopular.

Labor's historical record on these issues is not without blemishes. But it can claim many fine achievements, such as opposition to military conscription, opposition to the banning of the Communist Party, Doc Evatt's contribution to the United Nations Declaration on Human Rights and, more recently, the apology to the stolen generations.

A Labor Government which reclaimed that heritage would rise above the public hysteria about boat people and restore decency and humanity to our treatment of asylum seekers, repudiate the racist policies of the Northern Territory intervention, embrace a Human Rights Act and revise the anti-terror laws. Surely the penny would drop that its cowardice on these issues has not brought it electoral success.

To be fair, the Liberal Party can also claim some heritage in this area, having welcomed boat people and introduced the first Aboriginal land rights legislation in the mid 1970s. It was Robert Menzies who said in 1939:

“The greatest tragedy that could overcome a country would be for it to fight a successful war in defence of liberty and to lose its own liberty in the process.”

But Menzies himself turned his back on this strain of liberalism by his (unsuccessful) attempt to ban the Communist Party in the mid-1950s. That strain of illiberalism has predominated in the modern Liberal Party and Menzies' warning from 1939 was completely ignored in the Howard Government's war on terror.

It is very difficult to see the modern Liberal Party recovering the human rights mantle of people like Alan Missen, Malcolm Fraser, Fred Chaney and Ian McPhee. The last standard bearer of this tradition, Petro Georgiou, has now left the Parliament. And yet the party's late but welcome opposition to Labor's internet filter was a flicker of the flame of liberalism that once burned brightly. Might that flame one day reignite?

It may be that the tantalising prospect of a minority Labor Government, supported by the Greens and recommitted to its core values, is the only real glimmer of hope for civil liberties and human rights in Australia in the immediate future. It may be that prospect is little more likely than the prospect of the Liberal Party rediscovering liberalism. Our task can only be to work towards these prospects, however far-fetched they now appear.

Melbourne Writers Festival 2010

BIG IDEAS

ANNUAL ALAN MISSEN ORATION

PRIVACY - DO WE NEED IT?

FRANK MOORHOUSE

FRIDAY **SEPTEMBER 3**

6PM-7PM

RMIT CAPITOL THEATRE

Society, as a whole, seems to be confused about privacy. We express concerns about what the state should know about us; what our neighbours and employer knows; and there are even things we do not want our children (or even spouses) to know.

We're frightened about what online commercial operators such as Google are learning about us when we use the internet, yet in other ways we are voluntarily revealing more about ourselves, especially online.

So what information about ourselves do we fear to disclose. And why? Frank Moorhouse has won a number of literary prizes including the 2001 Miles Franklin Literary Award for *Dark Palace* and was shortlisted for the NSW Premier's Literary Award.

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People smugglers: friend or foe?

A NEW PROJECT BY
LIBERTY VICTORIA AND
THE JEWISH MUSEUM
OF AUSTRALIA

GLYN AYRES

Glyn Ayres is a Melbourne law student interested in the defence of basic liberties in Australia. He has worked on The Gist Of It, a Liberty Victoria project on Australian law and politics, and for the UN Tribunal for Rwanda.

In April 2009, Kevin Rudd said they were the “scum of the Earth”. In July 2010, Julia Gillard said they were “evil” and must be deterred. And in May, the Parliament passed legislation making it a criminal offence, with a maximum sentence of 10 years imprisonment, to provide them with “material support”.

This may sound like a description of the Government’s response to terrorists or drug syndicates, but in fact it is a response to people smugglers. Using the language of criminality and invasion, national politicians on both sides have insisted that harsh refugee policies are necessary to “deter” people smugglers and to make sure they have “nothing to sell”.

The unspoken implications of this are all too clear: heaping opprobrium on people smugglers has become a socially acceptable way of vilifying asylum seekers by proxy.

FRIEND OR FOE?

That is why Liberty Victoria and the Jewish Museum of Australia have joined forces to explore the issue of people smugglers in a series of interviews with people who owe their lives to them. Starting with Jewish Australians who arrived in Australia in the 1940s and continuing to those of diverse backgrounds who are arriving today, we will ask refugees what they think about the people who smuggled them across borders and seas to safety.

Do they see their smugglers as saviours? Or as a necessary evil? Are they opportunistic criminals, exploiting people when they are at their most vulnerable? Or are they heroes, guiding those who have suffered harsh persecution to a new life?

We expect surprises, and we anticipate contradictions and moral ambivalence. But although we doubt there will be clear answers, we think it is important to question the Government’s account of people smugglers and to look carefully at the moral ambiguities of the people smuggling trade. Even the most mercenary of people smugglers may still save lives.

HOW YOU CAN HELP

We will display the interviews at an exhibition at the Jewish Museum and on a website so that as many people as possible can hear and understand the stories of those who came to Australia as refugees. By focusing on individual stories, we hope to humanise the asylum seeker debate and to encourage the public to think beyond slogans and scaremongering.

BUT WE NEED YOUR HELP TO MAKE IT HAPPEN.

Liberty Victoria is currently seeking funding for project, and we invite any organisation interested in providing support to contact us at info@libertyvictoria.org.au or on 03 9670 6422.

Members of the public can pledge donations to support the project by going to <http://www.libertyvictoria.org>.



Liberty responds | TO THE PRIME MINISTER'S SPEECH ON ASYLUM SEEKERS

On 6 July 2010, Prime Minister Julia Gillard delivered a speech at the Lowy Institute on the subject of asylum seekers. During that speech, she said that “[moving forward]... means respecting the anxieties that are held by many in our community, but basing our policy and our discussion on the facts, moving beyond the false promises and simplistic slogans. It means speaking frankly about the difficulties we face, and seeking common ground, consistent with the values that Australians share – values of fairness, respect for the rule of law, tolerance, compassion and responsibility”.

Liberty Victoria responds to that speech as follows.

THE FACTS ABOUT ASYLUM SEEKERS

Liberty Victoria welcomes the references in the PM’s speech to the facts about asylum seekers and urges concentration in this debate on those facts. The true facts about asylum seekers undercut the public hysteria about this issue. They expose that hysteria as the product of dishonest and opportunistic politics from both sides of the political divide. Accordingly, Liberty rejects the PM’s attempts to validate or justify anxieties held by many in our community about asylum seekers. Those anxieties are based on wrong information, misleading political commentary and xenophobia. It is the PM’s responsibility, indeed the responsibility of all politicians, to defuse those anxieties rather than encourage them.

Liberty Victoria does, however, agree with the PM that the asylum seeker question should be approached with the commonly shared Australian values of fairness, respect for the rule of law, tolerance, compassion and responsibility. On that basis, both the Government and Opposition policies fail miserably, as explained below.

FAIRNESS

Asylum seekers should be treated fairly, in a way that reflects their humanity, their vulnerability and the difficult circumstances they face.

Liberty Victoria condemns the continuing use of the term “illegal” to describe the act of seeking asylum. Such a label is incorrect as a matter of law, and unfairly tarnishes asylum seekers with the accusation of having committed an offence.

It is unfair - and prohibited under Article 31 of the Refugees Convention - to impose penalties on asylum seekers based on their mode of arrival. As such, Liberty Victoria condemns the harsh treatment of boat arrivals, including offshore detention and exclusion from access to mainland legal processes and judicial oversight.

Liberty Victoria condemns the continuation of the mandatory indefinite detention regime, which is unnecessary, cruel and costly.

RESPECT FOR THE RULE OF LAW

Liberty Victoria deplores the use of offshore processing for those who have reached Australian soil. The removal from Australia of people who have invoked their rights under Australian law is a travesty of justice and displays a blatant disregard for the rule of law. Liberty Victoria advises against a policy of removal from Australia.

Liberty Victoria condemns the establishment of separate legal channels for processing of refugee claims placed by boat arrivals. This system is discriminatory, disallowing access to the court system and severely hampering people's access to the protections of the Australian legal system.

If Australia establishes a processing centre in South-East Asia for Australia-bound asylum seekers, it must ensure that the rule of law is properly respected in that centre, that human rights are not sacrificed for political ends, and that processing and treatment of asylum seekers is in line with international best practice and subject to international scrutiny.

However, Liberty opposes the establishment by the Australian Government of an off-shore processing centre (whether in South-East Asia or the Pacific) either for people who have reached Australia or are still bound for Australia. Any asylum seeker who reaches Australian territory should be accepted and assessed for protection within Australia, in accordance with Australia's international and national legal obligations. To assist those asylum seekers bound for Australia and held in camps in Indonesia and Malaysia, the Australian Government should contribute to, and participate, in their processing off-shore to facilitate and speed up their protection and assessment.

TOLERANCE

Liberty Victoria urges tolerance in Australia's approach to asylum seekers. We discourage the use of terms like "queue jumper" and reference to people arriving "the right way". Tolerance of asylum seekers means seeking to understand what brings people to our shores and appreciating that fleeing for your life can be a disorderly and chaotic process.

The continued use of the expression "border protection" inflames and distorts the picture, with its connotations of invasion and military threat. It is high time for politicians to dispense with such misleading and cynical language.

Liberty Victoria urges tolerance, and rejects any manipulation or leveraging of the asylum seeker issue for political gain as exploitation of the world's most vulnerable people. Further, we condemn the demonisation and scapegoating of people smugglers.

Liberty accepts that many people smugglers are mercenary and trade on the misery of others. However, irrespective of their motivations, many perform a humanitarian service by delivering to safety people in fear of their lives. We know that because boat people are overwhelmingly assessed as genuine refugees.

Liberty Victoria sees attacks on people smugglers as attacks on asylum seekers, by proxy. Attacks on people smugglers have become the socially acceptable way of attacking asylum seekers.

Instead of focusing on disrupting people smuggling, the Australian Government should commit increased resources and efforts to settlement services, housing, education and healthcare.

COMPASSION

Liberty Victoria urges all Australians to reflect on the reality of life as a refugee. Liberty Victoria recognises the trauma and loss so often associated with the refugee story, and urges compassion in all of Australia's dealings with asylum seekers.

Liberty Victoria calls for the depoliticisation of the refugee issue. The use of asylum seekers as pawns in political games has only lead to unnecessary and cruel treatment and detention of asylum seekers, further traumatising of already vulnerable people, breaches of Australia's international obligations and condemnation of Australia in the international arena.

Liberty Victoria urges Australians to remember that Australia is a nation built on immigration, enriched and enhanced by diversity and difference. When so many of our forbears arrived here by boat, many fleeing persecution, Liberty Victoria wishes to extend acceptance and hospitality toward the newest Australians to arrive by boat.

RESPONSIBILITY

Australia is faced with resettling around 0.01% of the world's refugee population. By contrast our population is about 0.03% of the world population, our GDP is 1.6% of the world's and our land mass about 5.0%. On any proper measure our refugee intake is miserly.

Liberty Victoria would like to see Australia embrace this small imposition and take responsibility for its share of the international refugee "burden". Liberty Victoria laments the loud, unedifying protest of some members of the population, media and leaders against Australia taking its responsibilities seriously.

Liberty Victoria exhorts Australia's leaders to exercise proper fiscal responsibility in dealing with asylum seekers. Interception, offshore processing and detention all cost many hundreds of millions of dollars each year (alongside the mental health costs). Liberty Victoria believes that this money could be better used in resettlement and integration services, ensuring not only protection but also quality of life for refugees.

Liberty Victoria is wary of any "offshore processing" mechanism that is not accompanied by a guaranteed annual resettlement figure. We are aware that, while some asylum seekers in South-East Asia hold UNHCR refugee certificates, those certificates are meaningless without viable resettlement plans. Liberty Victoria welcomes recent reports that Australia has arranged to resettle 500 asylum seekers who are currently being warehoused in Indonesia, and encourages the continuation of such resettlement campaigns.

Fade to black

THE PROPOSED INTERNET FILTER UNDERCUTS EXHORTATIONS OF TRANSPARENCY

LARRY STILLMAN

Dr Larry Stillman is a Senior Research Fellow at the Centre for Community Networking Research, Faculty of Information Technology, Monash University, and a Committee member of Liberty.

**“Of course children need protection, and always will. But Australia is not a nation of children”
Geoffrey Dutton and Max Harris, Australia’s
Censorship Crisis (1970)**

I used this quote when I first wrote about mandatory internet filtering for Liberty and it still rings true today.

The absurd situation of the Government continuing with its attempts to impose a technically-impossible to achieve mandatory filtering regime for internet service providers continues, even though the proposed bill was put on hold due to the current election. The proposed regime is to be subject to a “review”. At least the Coalition in their wisdom (or political expediency) have said they would not support a mandated internet filter.

However, the Government has taken into account criticisms of the proposed regime, and there has been a certain amount of tinkering at the edges, with the proposed classification job moving from the Australian Communications & Media Authority to where it really belongs, with the Classification Review Board, which has more expertise in matters pornographic.

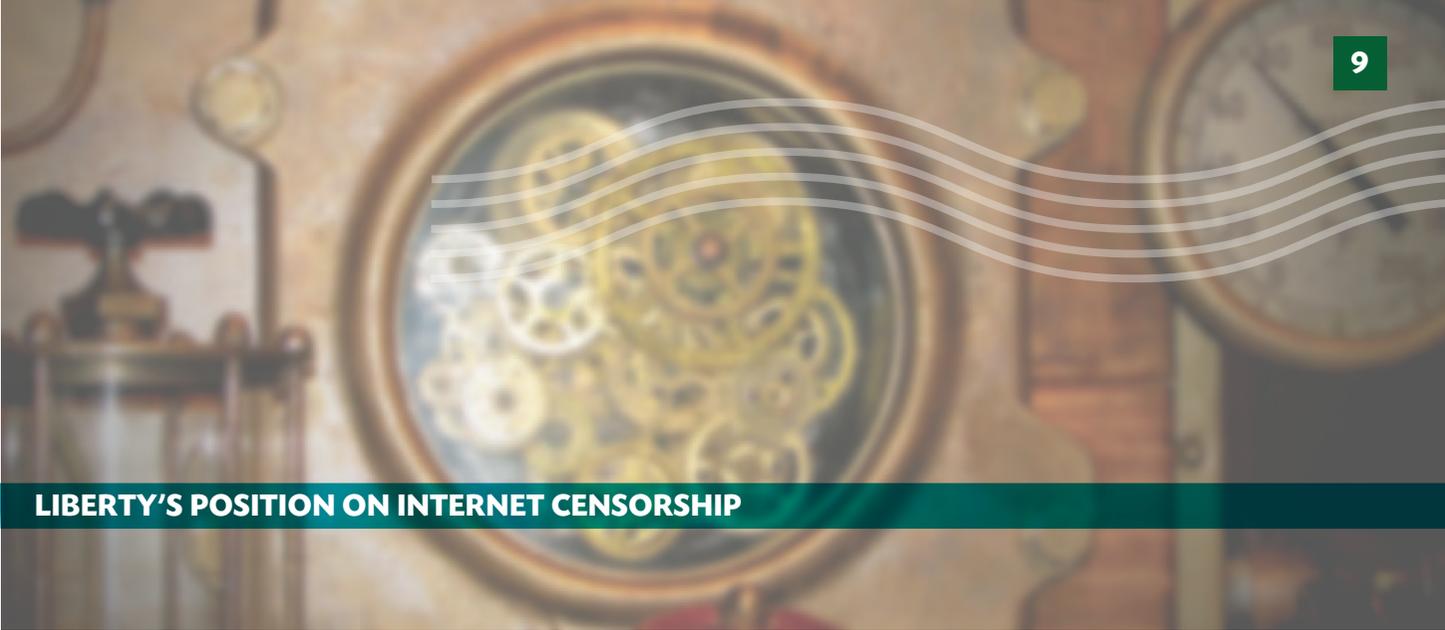
However, as the Electronic Frontiers Foundation points out, the Government is operating in something of an electronic vacuum tube, by treating the huge range of electronic media formats (and billions of pages on line) in the same way as books and celluloid: traditional ways of comprehending and dealing with the problem just don't work with such media. To quote the EFF submission to the Government, “the Refused Classification category, unique to Australia, is a mixed bag of illegal-to-possess material that police should be appropriately resourced to deal with (as in all crime), and perfectly legal material that an open government has no business stopping adults from accessing.” Back to the starting board to sort out the wheat from the chaff instead of scare campaigns to get the votes the “mums and dads” in marginal seats. Furthermore, surveys consistently show that adults don't want government making choices for them about what is appropriate to see and play with.

It is much better to focus on community strategies to be on the alert against those who sell, access or produce child pornography online or under the counter, whether in Australia or as part of criminal gangs in other countries. As with the fight against terrorism, personally-gained information is often the best way to stop what is almost impossible to police through any technical means. Likewise, while many online or purchasable games are of highly questionable taste and fall into the unclassified category, because they can be so easily copied and passed along. Community and family education are the best guardians.

Additionally, what makes the context of government policy alternatively amusing or terrifying is the release, just before the election, of the Government's trendy-sounding Engage: Getting on with Government 2.0 Report (all on a funky website) which, while focussed on electronic bureaucratic processes, contains such statements as “Information collected by or for the public sector – is a national resource which should be managed for public purposes. That means that we should reverse the current presumption that it is secret unless there are good reasons for release and presume instead that it should be freely available for anyone to use and transform unless there are compelling privacy, confidentiality or security considerations.”

This ambition has been completely contradicted by the documents made available through FOI requests of the Sydney Morning Herald. There are pages and pages of blacked out text concerning a proposed data retention regime of all citizens' internet use as part of anti-terrorism surveillance (and who knows what else), in the context of other international protocols such as that which exist in the EU. Even the discussion of the positive use of personal data such as accessing phone records for exculpatory evidence is censored. This document was provided to internet service providers in March, but they are sworn to secrecy. It is impossible to know what issues have been canvassed by government in terms of the surveillance and storage of personal internet use. The key reason provided for the use of black ink on so many pages in the document is that it could cause 'premature unnecessary debate'. Electronic Frontiers Australia offers excellent resources on the Internet Filter and related issues (<http://www.efa.org.au/>).

Given that it is inevitable that data banks of all sorts are going to grow as government attempts to become more streamlined, it is critically important that there be transparency. We are not children.



LIBERTY'S POSITION ON INTERNET CENSORSHIP

The Federal Government has announced its intention to implement a system of internet filtering which would enable it to censor child pornography. This includes the task of classification moving from the Australian Communications & Media Authority to the Classification Review Board. While the system of filtering and its governance has been put on hold until after the 2010 election, with a review to follow, the following policy represents Liberty's general position, and further responses to developments will be considered.

POLICY

1. Liberty supports free speech and, in principle, opposes censorship for infringing this important human right. Freedom of expression is protected by art 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a signatory.

- 2. Refused Classification is a highly sensitive issue because it includes many different sorts of materials which are not illegal to possess. However, Liberty accepts that the classification of electronic child pornography as Refused Classification and its censorship is justifiable. While adults should be free to read and watch adult pornography, child pornography is different. The production of child pornography involves the commission of serious criminal offences and ought to be discouraged by all means possible. One way to discourage it is to criminalise the watching of child pornography. Liberty supports this.
- 3. In principle therefore, internet filtering which effectively blocks child pornography and has no other consequences for the operation of the internet, would merit Liberty's support. The crucial question is whether such a system of filtering is possible. Expert advice to Liberty says that it is not.



4. According to that advice, there are broadly three approaches to filtering internet web traffic: searching and blocking specific websites, blocking specific URLs within websites, and blocking specific content through a combination of machine and human intervention. None of those approaches offers an effective way of blocking child pornography. All three approaches suffer from "false positives", ie blocking innocuous sites and content, especially the entire website and content filtering approaches. There is always a margin for error. All three approaches also suffer from "false negatives", ie they fail to block targeted sites and content, especially the specific URL and content filtering approaches.
5. All of the above approaches focus on web traffic only, which does not account for all of internet traffic today, which includes ftp, virtual private intranets (VPN), encrypted networks such as those used in e-commerce or e-government and so on. The documented evidence about other illicit uses of the internet, such as copyright piracy, suggests that HTTP traffic accounts for only a small proportion of child pornography usage. Therefore, filtering only HTTP traffic is unlikely to be effective in preventing the use of the internet for child pornography. Attempts to block other modes of traffic (e.g ftp) are just as susceptible to false positives and false negatives, and some traffic, such as those on encrypted networks cannot be checked without compromising their security.
6. Parents have every right to utilize 'opt-in' filters offered by ISPs if they so wish, but at the same time, need to be aware that no technical filter will be 100% effective.
7. There are many ways, most of which are easy to implement, by which an internet filter can be circumvented. Content providers can regularly change URLs to stay ahead of the register, can use encryption and can use unfiltered protocols. Content consumers can establish encrypted Virtual Private Networks (VPNs) to unfiltered jurisdictions. Placing any restrictions on the use of encryption would seriously inhibit the lawful use of the internet. Furthermore, camera-fitted mobile fall completely outside of any technical net, and content spreads at an amazing fast rate.
8. Despite government claims, expert technical opinion is that mandatory ISP-level internet filtering technology would add noticeable latency to every internet connection in Australia, thereby degrading internet performance for all users within Australia. Other consequences could include blocking of entire sites or services, a lack of appeals process, tardy review of the list, and low barriers for future Parliaments to expand the list.
9. Image and file sharing of instantly created videos through mobile phones is another area for which technical means are almost impossible to censor or police.
10. From a civil liberties point of view, the most serious shortcoming of internet filtering is that it is based on the maintenance of a secret register of blocked sites including not only child pornography listings, but other material as well such as Refused Classification Material. The child pornography register must be kept secret or else it would be open to abuse by the people whose access it is designed to block; yet the lack of any oversight of the register leaves it open to abuse by Government. Even without abuse by the Government, such filtering would greatly diminish access to information and opinion on the internet without effectively limiting access to child pornography.
11. In the light of these shortcomings to known filtering systems, and the development of new mobile technologies, Liberty considers the Government's proposal to censor the internet to block child pornography should not proceed. Instead more resources should be dedicated to catching the producers and consumers of child pornography by traditional methods, as well as a campaign for parental and family, schools and youth education and increased resourcing to police to counter online and 'mobile' child-pornography activity.

The fight for the franchise

REVIEWING THE OUTCOME OF *ROWE v ELECTORAL COMMISSIONER*

OLAF CIOLEK

Olaf Ciolek is a Law Graduate at Mallesons Stephen Jaques

In time, the jurisprudential consequences of *Rowe v Electoral Commissioner* will become clearer, but the speed with which it unfolded may be overlooked. Prime Minister Gillard called the election on 17 July. The initiating process in *Rowe* was filed on 26 July. Within a fortnight, and less than 24 hours after adjourning, a majority of the High Court of Australia delivered judgment in favour of the plaintiffs, striking down the Howard Government's 2006 amendments to the *Commonwealth Electoral Act*.

To its great credit, the Court has again confirmed that, whether or not the Commonwealth judicature is the "weakest of the three departments of power", it is certainly not the slowest. This was shown last year in the *Pape* challenge to the validity of the Rudd Government's economic stimulus payments. After *Rowe* it can be said that the same applies when a question regarding the exercise of a fundamental civil right comes before the Court for determination.

The right in question was the exercise of the franchise. Between Federation and 1984, the electoral rolls closed the day the Governor-General issued writs for a general election. During this time, and particularly during the post-war period, it was overwhelmingly the case that the government of the day announced the election at least several days, and sometimes several weeks, before issuing writs. However, in 1983, to widespread surprise and dismay, Prime Minister Fraser announced the election and had writs issued on the same day.

This prompted the incoming Hawke government to legislate for a seven day "grace period" following the issue of the writs. The 2006 amendment reversed these changes. It reinstated the pre-1984 status quo for new enrolments, and for transferees reduced the grace period to three days. Given that modifications and additions to the roll during this period generally numbered in the hundreds of thousands, the government justified the amendments as guaranteeing the integrity of the electoral roll: they were to be a prophylactic measure against electoral fraud.

The Australian Electoral Commission has consistently rejected this argument in its submissions to Parliament. In its view, no widespread electoral fraud had ever been detected, and indeed, the early close of the rolls would result in a far less accurate roll. Although the Court's reasons are reserved, it is almost certain that the Commonwealth's inability to provide a cogent justification for the early closure amendments will be a central plank in the majority's thinking.

The reasoning will likely build on the 2007 case of *Roach v Electoral Commissioner*. A majority of the Court in *Roach* held that a law will be invalid if it excludes a person from the franchise without a "substantial" reason. Such a law must be "reasonably appropriate and adapted to serve and end which is consistent or compatible with the maintenance of the constitutionally prescribed system of representative government".

But *Roach* dealt with the disqualification of voters serving a custodial sentence. In *Rowe*, the plaintiffs were not disqualified. Indeed, the first plaintiff, by not enrolling upon turning 18, and the second plaintiff, by not transferring electorates promptly upon moving house, were in fact in breach of the *Commonwealth Electoral Act* when the writs were issued.

As such, *Rowe* will probably mark a significant broadening in the Court's thinking about how the franchise is constitutionally protected. It well may be that the Court draws further on the implied freedom of political communication jurisprudence, framing the constitutional test in terms of an impermissible "burden" on the franchise. This opens up the possibility of the Court rationalising the extent and nature of the limits imposed on legislative power by those provisions in the Constitution establishing representative and responsible government.

Interestingly, and as an aside, a majority of the Court was evidently unmoved by evidence before it suggesting that extensive advertising by the Electoral Commission before an election, and voter education, can be successful in remedying – at least in part – the failure of qualified voters either to enrol or to update their details. While speculative again, I would not be surprised if the Court recognised human nature as a "constitutional fact": that is, regardless of the amount of prompting before an election is called, it is an irremediable fact that many voters will put off contacting the Electoral Commission until an election is actually called, and the close of the rolls deadline is firm. This, together with the fact that parliamentary terms in Australia are not fixed, means that there will always be a number of people who will be caught out by the rolls snapping shut when the election is called.

Counsel for the plaintiffs were Ron Merkel QC, Kristen Walker, Fiona Forsyth and Neil McAteer. Mallesons Stephen Jaques acted as their solicitors, with a team drawn from the firm's Human Rights Law Group, led by Partner Rob Cooper. Melbourne's Human Rights Law Resource Centre provided further assistance.



Voltaire Award Dinner 2010

ALEXANDRA KRUMMEL

Alexandra Krummel is the Assistant Secretary of Liberty Victoria

Liberty Victoria hosted the annual Voltaire Award Dinner on 17 July at the Melbourne Sports & Aquatic Centre.

Although the venue could not measure up to the grandeur of the Hotel Windsor, many of us were able to make a grand entrance via the swimming pools of MSAC, much to the amusement of pool patrons.

The recipient of the 2010 Voltaire Award was the Melbourne International Film Festival. The Voltaire Award is made each year to a person who, or organisation that, has made a significant contribution to free speech. The award was started by Free Speech Victoria and adopted by Liberty Victoria when the two organisations merged in 2008. The Liberty Committee decided to honour MIFF with the award in recognition of its dedication to free speech. MIFF supported and screened the film *10 Conditions of Love*, the documentary about Uighur activist Reibya Kadeer, in the face of determined resistance from the Chinese Government.

Former Liberty Victoria President, Julian Burnside AO QC, presented the Voltaire award to MIFF on behalf of the committee. As Richard Moore, Festival Director, was unable to attend, MIFF Chairwoman Claire Dobbin stepped in to accept the award. Claire provided the audience with a personal account of why and how the festival upheld the right to free speech.

In the spirit of free speech, the MC for the evening was Julian Morrow from the Chaser, a group known for pushing the boundaries. With the announcement of the Federal election earlier that day, it was no surprise that the dominant theme for discussion was federal politics. Even the auction had a Federal election theme. Included in the fantastic items donated for auction were two Kevin07 t-shirts kindly donated by the Liberty President, Michael Pearce SC.

As reported on the back-page of *The Age* a couple of days after the event, the auction of the t-shirts by Julian Morrow was a hit. Bids began at \$1.50 and steadily increased to \$1500 if Julia Gillard autographed it. If Kevin Rudd and Julia Gillard signed it \$2000 was Liberty's. Morrow worked the crowd and ideas for further signatories emerged, next was Senator John Faulkner, one of the few other attendees at the leadership coup. Nearby I heard murmurings that if Faulkner was to sign then Lindsay Tanner should sign too. But it wasn't until John Howard's name was added that another bidding war commenced. Julian Burnside was the lucky bidder, promising \$10 000 to Liberty if Howard, Rudd and Gillard signed a t-shirt. Needless to say Liberty is still in negotiations to try and organise all signatories.

Thank you to everyone who attended. It was Liberty's most successful Voltaire Award dinner yet! Also, of course a big thanks to Trish Cameron (Liberty Office Manager), the volunteer for the night (Hilda Green), and the donors of the auction items.

Membership FORM

This application is for

A NEW MEMBER

MEMBERSHIP RENEWAL

If you are renewing please skip to green sections, otherwise if you are a new member please complete the following:

I (NAME),

wish to become a member of the Victorian Council For Civil Liberties Incorporated (LIBERTY VICTORIA).

MY OCCUPATION

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:

Contact Details

NAME

ADDRESS

POSTCODE

TELEPHONE

(BH)

(AH)

EMAIL ADDRESS

Send me correspondence by

EMAIL

POST

EMAIL & POST

MEMBERSHIP/RENEWAL FEES
2009-2010

\$75 INDIVIDUAL

\$25 CONCESSION*

\$150 BUSINESS

\$100 VOLUNTEER ORGANISATION

\$120 JOINT MEMBERS (2 ADULTS AT SAME ADDRESS)

FIVE YEAR RENEWAL OPTION
2009-2014

\$300 INDIVIDUAL

\$100 CONCESSION*

\$600 BUSINESS

\$400 VOLUNTEER ORGANISATION

\$480 JOINT MEMBERS (2 ADULTS AT SAME ADDRESS)

LIBERTY NEEDS DONATIONS

\$25

\$50

\$100

\$200

OTHER: \$

METHOD OF PAYMENT

TOTAL AMOUNT

\$

I enclose a CHEQUE (payable to Liberty Victoria) OR please charge my

VISA CARD

MASTERCARD

EXPIRY

NAME ON CARD

SIGNATURE

WHO WE ARE

Liberty is one of Australia's leading human rights and civil liberties organizations which can trace its history back to 1936.

Liberty is committed to the defence and extension of human rights and civil liberties. It promotes Australia's compliance with the rights and freedoms recognised by international law.

OUR WORK

Education - Much of our work is directed towards educating the public about the importance of human rights.

Campaigning - Liberty's work involves liaison with police, government, and regulatory authorities to protect existing civil liberties and ensure those liberties are not further eroded. This includes making submissions, meeting members of Parliament and conducting law reform campaigns.

YOUR CONTRIBUTION

Liberty is an independent organization which does not receive any government funding. It relies solely on membership fees, donations and grants from philanthropic trusts.

Becoming 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.

CONTACT US/RETURN

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* Concession membership fees available to full-time students, senior card holders or unwaged members.

