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ISSUE 9 | **AUTUMN 2011**

LIBERTY VICTORIA NEWSLETTER | VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

FEATURE STORY

Secrets and lies



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PRESIDENT
SPENCER ZIFCAK
ON THE DEFENCE
OF WIKILEAKS



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Liberty's Challenges

A SURVEY
OF THE
YEAR
AHEAD

PROF. SPENCER ZIFCAK



PRESIDENT'S COLUMN

It is a pleasure and an honour to have been elected as Liberty President. Because it is an honour I think that the first thing I should do is thank my predecessor, Michael Pearce SC, for the wonderful work he has done in the position.

Michael has been a splendid advocate for Liberty's causes, a skilful Chair of Liberty committees, a forward thinker and a leader with a terrific eye for detail. In policy and administrative terms, he has left the organisation in terrific shape. I take over an organisation that is confident in its policy positions, increasing its membership and in a sound financial position.

“Clearly, the issue that has dominated my first few weeks has been the defence of Wikileaks and its Director, Julian Assange.”

Clearly, the issue that has dominated my first few weeks has been the defence of Wikileaks and its Director, Julian Assange. Liberty supports the disclosure of the Wikileaks cables as a global expression of freedom of speech. That support is conditional, of course, on ensuring that no one is harmed as a result of the documents' release. In this respect, Wikileaks has acted sensibly by collaborating with major news organizations around the world, to have the documents disclosed initially by the broadsheet media. So, the documents have been scrutinised and analysed first by the media, so as to build in the protection required. The major newspapers that have been involved have been the New York Times, The Guardian, Le Monde, Der Spiegel, El Pais and the Sydney Morning Herald. Their editors and journalists have gone through the cables carefully to ensure that confidential sources have not been exposed and that military or intelligence operations have not been compromised. I think it fair to say that the significant majority of the documents released have concerned matters of great public interest.

Even given these precautions, the reaction of some governments and politicians to the disclosures has been excessive. Regrettably, this includes the reactions of the governments of the United States and Australia. Our Prime Minister declared early on that the website and its Director had acted illegally. Liberty wrote to her to

complain that such a statement coming from the head of government was contrary to the presumption of innocence, and may prejudice any trial of the matters in issue. Quite apart from this, the Australian Government has not yet been able to identify any Australian law that may have been broken. The US Government reacted similarly threatening prosecution under the US Espionage Act. Again, as yet, no charges have been laid and serious doubt has been cast on the applicability of the Espionage legislation.

The use of threats of criminal prosecutions as a means to silence Wikileaks and Julian Assange represents a serious attack on freedom of speech and expression. To make this point clear, Liberty has participated in and helped to organise forums for informed public discussion of these issues. Julian Burnside and I spoke at a forum organised by the Law Institute of Victoria in mid-December. 250 people attended and many more were unfortunately turned away as the venue was full. Liberty played a major part in the organization of larger public forum in Federation Square on February 4th. The organisers were successful in inviting Julian Assange to pre-record a speech for the meeting. Some 1500 people came to the forum, filling BMW Edge and watching the proceedings on the big screen in Federation Square. The speech by Julian Assange can be seen on the Liberty website.

Quite apart from this, Liberty faces significant new challenges in the course of this year. As members will know, we have argued intensively for several years now that 'law and order' issues should not come to dominate federal or state election campaigns. This is particularly the case when crime statistics appear to demonstrate that the incidence of crime in Victoria is decreasing in every category except common assault. Nevertheless, the new Baillieu government is committed to undesirable initiatives such as mandatory sentencing and the abolition of suspended sentences. Such policies will increase Victoria's prison population while doing nothing to deter criminal activity. Liberty fully supports new measures to reduce assault and the associated problem of knife crime. But such policies should always be consistent with the preservation of the human rights and civil liberties of all in the Victorian community.

Another significant challenge will be to ensure the successful defence of Victoria's Charter of Rights and Responsibilities. The new government has indicated that it wishes either to repeal this legislation or at least curtail its operation significantly. This would be a profoundly retrograde step as the Charter has already proved in important cases to have strengthened the rights and interests of Victorians and in particular of members of our community who are disadvantaged or dispossessed. The Government seems committed to a review of the Charter. Liberty and its members should play an active part in that review to ensure that the best case possible is made for the Charter's retention and enhancement.

HUMAN RIGHTS

arts & film festival

MELBOURNE: MAY 12 - 22

In May this year Liberty will once again be collaborating with the Human Rights Arts and Film Festival. We have agreed to promote and take part in HRAFF in return for a range of benefits which include significant publicity for Liberty and its activities and the opportunity to take part in and jointly organise some HRAFF events.

This year, Liberty is collaborating in organising and hosting a musical event, which will, among other things, feature new pieces composed by Hugh Crosthwaite, a member of Liberty's policy committee.

In only a short time, HRAFF has established itself as one of Melbourne's most significant cultural events. Each year it obtains international and national films having an underlying human rights theme. The artistic exhibitions have the same commitment and are diverse and of very high quality.

The Festival is run on a not-for-profit basis by a team of over 70 volunteers. The Chair of its Board is Evelyn Tadros, also a member of Liberty's policy committee. As its own publicity says HRAFF is a 'vibrant and multi-faceted array of film, art, music, theatre, speakers, forums, literature and poetry'.

This year, the Festival runs from May 12-May 22. Liberty members may go to the Festival website for further information: www.hraff.org.au

I hope that Liberty members will avail themselves of the opportunity to attend events and support this terrific yearly initiative.

GALA FILM SCREENING AND COCKTAIL PARTY

The Friends of the Human Rights Arts and Film Festival invite you to attend a Gala Film Screening and Cocktail Party at the Astor Theatre, St Kilda.

Date: Thursday 31st March, 2011
Time: 6:45pm for 7:00pm showtime
Venue: The Astor Theatre
 Cnr Chapel St & Dandenong Rd, St Kilda

The event will feature a keynote speech from Australia's former Prime Minister the Rt. Hon. Malcolm Fraser and a screening of the film *Afghan Star*.

Full details at www.hraff.org.au/HRAFFGala.aspx

Liberty Victoria

REPORT ON OUR ACTIVITY IN 2010

MICHAEL PEARCE SC

Michael Pearce is the immediate Past President of Liberty Victoria



2010 was another busy year for Liberty Victoria. A summary of our activities follows.

SUBMISSIONS

In 2010 Liberty made the following submissions to Parliamentary and other inquiries:

- *Inquiry into Donor Conception in Australia*, Standing Committee on Legal and Constitutional Affairs, October 2010
- *Subordinate Legislation Bill 2010*, Victorian Department of Premier and Cabinet, August 2010
- *Human Rights Parliamentary Scrutiny Bill*, Standing Committee on Legal and Constitutional Affairs, July 2010
- *Caring for Older Australians*, Australian Government Productivity Commission, July 2010
- *Security and Government Projects Submission*, Victorian Parliament Law Reform Committee, May 2010
- *Justice Legislation Amendment Bill 2010*, Victorian Parliament, May 2010
- *Eames Review of Vilification Laws*, Victorian Department of Justice, April 2010
- *Senate Inquiry into the National Security Legislation Amendment Bill 2010 and Parliamentary Joint Committee on Law Enforcement Bill 2010*, Senate Legal and Constitutional Committee, April 2010
- *Anti People Smuggling and other Measures Bill 2010*, Senate Legal and Constitutional Affairs Legislation Committee, April 2010
- *Conflict of Interest in Local Government*, Local Government Victoria, February 2010
- *Inquiry into the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009* along with the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009*, Senate Community Affairs Legislation Committee, February 2010
- *Freedom of Information (Reform) Bill 2009 and Information Commissioner Bill 2009*, Senate Finance and Public Administration Committee, January 2010
- *Exposure Draft Healthcare Identifiers Bill 2010*, Department of Health and Ageing, January 2010

- Further Review of Part 1D of the *Crimes Act 1914*, Criminal Justice Division of the Commonwealth Attorney-General's Department, January 2010.

These submissions are all available in the Submissions section of our website.

The total number of submissions (14) was down from the number made in 2009 (29). This partly reflects the fact that both Federal and State elections interrupted legislative programs, reducing the number of completed inquiries. It also reflects a lack of resources on our part, which should be addressed by the new organisational structures we have adopted, outlined below.

PUBLIC ADVOCACY

In 2010 we also maintained a busy program of public advocacy on a wide range of issues. Liberty has commented publicly on numerous occasions on the following matters:

- Law and order issues, including search and seizure powers, sentencing generally and suspended sentencing in particular, abolition of the rule against double jeopardy, police discrimination against ethnic groups and anti-corruption bodies.

PUBLIC ADVOCACY (CONT'D)

- Asylum seekers, including the Prime Minister's statement in July 2010 and the suspension of processing of asylum applications from Sri Lanka and Afghanistan.
- *National Human Rights Consultation* and the Federal Government's failure to propose a national Human Rights Act.
- Privacy issues, including regulation of surveillance devices, Memoranda of Understanding between police and private bodies, surveillance of lawful protesters, body scanning at airports, the need for a legislated right to sue for serious invasion of privacy and health identifiers.
- Internet censorship.

DISCUSSION PAPERS

We published discussion papers on the following subjects:

- *Local council planning powers and licensed venues*, by volunteer Emily Long, 2010
- Liberty's response to the proposed *Victorian Integrity and Anti-Corruption Commission*, September 2010
- *Anti-Corruption Watchdogs and Victoria*, by volunteer Emily Giblin, 2010
- Liberty's response to the *Prime Minister's July 2010 speech on Asylum Seekers*
- *Arson Recidivism*, by intern Kate Mallinson, 2010
- *Allegations of Police Discrimination against Particular Ethnic Groups*, by volunteer Emilia Michael, 2010
- Internet Censorship.

These papers are available in the Publications section of our website.

EVENTS

We maintained a busy calendar of events throughout 2010. They were:

- Film night for a screening of the French film *Welcome* at the Nova Cinema in March.
- Talk on human rights in South Africa by human rights lawyer and anti-apartheid campaigner George Bizos SC in March (in conjunction with the Castan Centre).
- Talk by *Wikileaks* founder Julian Assange in May (in conjunction with the Castan Centre).
- Annual Dinner in July at which the *2010 Voltaire Award* was presented to the *Melbourne International Film Festival*.
- Annual *Alan Missen Oration* by Frank Moorhouse in September (in conjunction with the Melbourne Writers Festival).

COLLABORATIONS

Liberty Victoria continued to work in collaboration with a number of other like-minded organisations throughout 2010, including:

- The Human Rights Law Resource Centre
- The Castan Centre
- The Alan Missen Foundation
- The Federation of Community Legal Centres
- Wikileaks
- The Criminal Bar Association
- The Law Institute of Victoria
- The Australian Human Rights Group
- Amnesty International
- The Australian Human Rights Commission
- The Melbourne Writers Festival

ORGANISATIONAL

An important theme of 2010 was building organisational capacity. A big step forward in that direction was taken at the 2010 AGM with the introduction of a new organisational structure, by the creation of a *Management Committee*, charged with management of the organisation, and a *Policy Committee*, charged with policy development and formulation.

The re-organisation stems from a strategic review undertaken over 2009-2010, details of which can be seen in the reports in the *About Us* section of our website.

The outgoing Committee deserves credit for big improvements across the course of 2010. Financial performance has been very good, with income increasing across all sources from \$48,496 in 2008/2009 to \$76,962 in 2009/2010 and the surplus increasing from \$11,557 to \$21,380, and membership is at record levels.

This provides a very sound base for the new committees to work on and so there is good reason to be optimistic about the future of the organisation.

FAREWELL AND THANKS

I would like to thank the committee members for their hard work and support over 2010, especially Marian Steele, Larry Stillman and Judy Magassy, who did not stand for re-election.

Special thanks to Office Manager Trish Cameron for all her hard (and grossly underpaid) work and also to Assistant Secretary Alex Krummel for pitching in whenever needed.

Thanks also to the many volunteers and interns, especially Ania Nowakoska of *Red Wagon Design* for her work on the new logo, Simon Kosmer of *River to My People* for design work on the newsletter, committee member Mike Griffith for editing the newsletter, Margarete Lehmann and Dr Bill Haebich for assistance with the accounts, Hilda Green for assistance with the annual dinner and Andika Widjaja for help with the membership database.

Thank you to our generous donors.

Most of all thanks to our members, without whom none of this would be possible.

Offshore Processing of Asylum Claims

PROCEDURAL FAIRNESS AND THE RULE OF LAW

ALISON KING

Alison King lectures in law at the Australian Catholic University and La Trobe University

In Plaintiff M61/2010E v The Commonwealth and Plaintiff M69/2010 v The Commonwealth [2010] HCA 41 the High Court, in a unanimous single judgment, held that the Government was wrong to deny asylum seekers, who tried to come to Australia by boat, access to the protection of our legal system.

The plaintiffs, two Sri Lankan citizens, arrived at Christmas Island by boat and were detained under the Migration Act. Pursuant to section 46A of the Act, each became an “unlawful non citizen” by entering Australian territory at an “excised off shore place”, and could not make a valid application for a protection visa. However, the Minister had the power to waive s 46A of the Act, and allow an application to be made, if it was in the public interest to do so.

While the plaintiffs were detained the officers of the Department of Immigration and Citizenship made a “Refugee Status Assessment” (RSA) and concluded that neither plaintiff fell within the definition of a Refugee as set out in Art 1 of the Refugee Convention (as amended by the Refugee Protocol).

The plaintiffs asked for the decision to be reviewed. An “Independent Merits Review” (IMR), undertaken by independent contractors engaged by the Commonwealth to conduct such reviews, reached the same conclusion. Having reached this decision, the process for the removal of the plaintiffs from Australia was inevitable.

THE PLAINTIFFS’ SUBMISSION

Both plaintiffs submitted that they were not afforded procedural fairness during the assessment and review process. They also argued that the persons conducting the assessment and review erred in law by not treating themselves as bound by the provisions of the Migration Act and the relevant decisions of the Australian courts.

THE COMMONWEALTH’S SUBMISSION

The Commonwealth argued that the assessment and review process were an exercise of non-statutory executive power under section 61 of the Constitution. As a consequence, there was no obligation on the assessors and reviewers to afford procedural fairness or to make decisions according to law.

THE COURT’S DECISION

The High Court held that in conducting a review, the reviewer was bound to afford procedural fairness to the person whose claim was being reviewed. Further, the reviewer was also bound to act according to law by applying the relevant provisions of the Migration Act and the decided cases.

In reaching its decision the High Court found:

- as the Minister has to consider exercising power under s 46A of the Migration Act in every case where an offshore entry person claims to be a person to whom protection is owed, the processes under the RSA and IMR, were steps taken for the purposes of the Migration Act;
- as these inquiries prolonged the plaintiffs’ detention, the rights of the plaintiffs to freedom from detention at the hands of the Executive Government were directly affected. Therefore, those who made the inquiries, were bound to act according to law and to afford procedural fairness to the plaintiffs whose liberty was affected; and
- the inquiries were not made according to law and were not procedurally fair.

Offshore processing of Asylum Claims (cont'd)

CONCLUSION

The decision is an important one and is to be welcomed. This is because:

- asylum seekers are entitled to procedural fairness;
- the Executive should be accountable for its actions/decisions and more importantly, those decisions should not be beyond the reach of the courts; and
- asylum seekers arriving by boat should not be subject to any lesser legal standard than those arriving any other way.

HARMONY DAY

Sunday 20th March, 11am – 3pm

This Sunday



Celebrating East St Kilda's diversity at your community house

HARMONY DAY EVENT



Liberty Expresses Concern about Campaign Against Muslim Prayer

PRESS RELEASE | WEDNESDAY 2 MARCH 2011

Liberty Victoria expressed its concern today about a campaign being waged against the inclusion of a session for Muslim Prayer at the Alma Road Neighbourhood House in East St. Kilda.

A petition has been issued by a little known organization called the Q. Society of Australia, against an application to the City of Port Phillip for an amendment to the Neighbourhood House's planning permit. The amendment would facilitate a single session of Muslim Prayer to take place at the House each Friday.

The President of Liberty Victoria, Professor Spencer Zifcak, said today: 'This campaign bears all the hallmarks of a deliberate attempt to deny to one religion the freedom of religious belief accorded to every other religion'. He noted that Jewish groups had welcomed the planning application.

The Q. Society objects to the proposed amendment principally on the ground that to allow an expansion in the number of people of Muslim faith to pray during the prayer

session would be contrary to social cohesion in the area where people of the Christian and Jewish faiths are in a majority.

'The Islamic prayer group has been meeting without incident or concern at the Neighbourhood House for some years', Professor Zifcak said.

'This new attack on its capacity to do so can only injure the religious feelings of people of the Islamic faith and damage the social cohesion that the objectors profess to support'.

'Liberty condemns any and every expression of religious intolerance and discrimination. This is yet another regrettable example of exactly the kind of intolerance that should in no way be encouraged in a pluralistic and democratic society'.

Celebrate diversity at the Alma Road Neighbourhood House HARMONY DAY Sunday 20th March, 11am – 3pm

Te-Arai Reserve between 200 Alma Rd & Te-Arai Crt Groove to Sunday sounds • Savour Global Flavours • Experience World Dance • Art Exhibition and more

PH 0431 110 898 • EMAIL arch@ppcg.org.au

WEB www.harmony.gov.au

The Key of Sea

A SONG
WITH A
POWERFUL
STORY

HUGH CROSTHWAITE

Hugh Crosthwaite is a member of Liberty Victoria's Policy Committee

Alexander Gow is the lead singer and songwriter for the rock group Oh Mercy. Nadia Omar is a Pakistani borne Australian who sings in a classical North Indian style. Nadia came to Australia with her family a few years ago following a horrendous crime that deeply effected her family.

In 2010 Alexander wrote a song with Nadia as one of eleven collaborations for an album entitled *The Key of Sea*.

Artistic collaborations are by no means uncommon, however the collaborations on the Key of Sea were unique. These partnerships existed between prominent Australian rock musicians and musicians who had brought their talents to Australia from the far reaches of the globe. Many of these musicians owe their life in Australia to recognition of refugee status.

The Key of Sea was born in the lead up to the 2010 Federal election in which migration and refugee politics were an embarrassing focal point. It was felt that in amongst all the rhetoric and political point scoring, the humanity of Australia as a nation was being eroded. A blanket of the

darkest negativity and ignorance had subsumed the political discourse related to refugees and no good would come of it.

In this context musicians from all over Australia donated their time to be a part of a project that hoped to be a small light in a dark place. Nadia and Alex were two of those musicians. This particular collaboration is particularly noteworthy because it embodies so much of what the Key of Sea stands for, and what Australian mainstream politics on the issue lacks.

Alex and Nadia did not know each other before the project began. Things started smoothly, both Nadia and Alex are wonderful people for whom kindness and generosity come easily. In many respects the collaboration should have been a walk in the park. However, both Nadia and Alex come from strong cultural heritages. Heritages that share little in common. For this reason making music together proved difficult. Alex had worked really hard to write a track. He and Nadia had workshopped, discussed and shared music, however the challenge of embracing another's culture was a daunting task. Alex and Nadia considered giving up, pulling the plug and retreating into the safety of what they knew, what they could easily understand. Thankfully they did not. In Alex's own words,

"I quickly snapped out of it, asking my self what kind of miserable creature would I be to avoid a musical challenge full stop, let alone one that was requested in such noble circumstances."

Alex and Nadia's contribution to the Key of Sea became one of the lead tracks heard around Australia on Triple J, the ABC's national youth network. However, more importantly than radio coverage alone, Alex and Nadia's work shows how easy it is for people from different cultures to work together to create a better world. All they had to do was put aside their concerns and focus on working together. Both the Federal Government and the Federal Opposition would do well to learn from Alex and Nadia, maybe then they too could also start working towards a better tomorrow.

The Key of Sea is available at JB HiFi and independent record stores as well as online at www.keyofsea.com.au.

All profits from the sale of the record will be donated to the Human Rights Arts and Film Festival, the Asylum Seekers Resource Centre and RISE Refugee and Ex-detainee.

'Moving Forward'

ON MOVING CHILDREN OUT OF DETENTION?

MEG O'BRIEN

Meg O'Brien is a lawyer currently on secondment at the Human Rights Law Resource Centre

It is the Australian Government's policy that children will not be held in immigration detention centres. However, the Government still detains children in what it calls 'transit accommodation', 'immigration residential housing' or, most impressively, 'alternative places of detention'.

On the most recently published statistics, 1017 of the 1045 children in immigration detention are held in these secure, locked detention facilities. Through the skilful deployment of bureaucratise, the Government can distinguish between what are essentially different types of immigration detention.

We are told that we can rest assured that the Government is 'moving forward' on moving children out of detention. Last year, the Government announced that the 'majority' of unaccompanied children and families would be released from detention into the community by June 2011, with priority given to those who were 'at risk'¹. Never mind that all children in immigration detention are at risk given the effects that detention has been shown to have on a child's health and development. The Government's policy of mandatory detention of children and families otherwise remains unchanged.

The Government could, of course, show real commitment to the cause by introducing legislation prohibiting the detention of children and their families. This would certainly make things less awkward for the High Court, which in January heard evidence that the mental health of four young Afghan asylum seekers was deteriorating but ruled that there was no prima facie case that their detention was unlawful². But it appears that simply announcing another amorphous 'government policy' is so much easier. It also means no-one has to sit down and talk to Andrew Wilkie about the pokies. Again.

Last year, as Julia Gillard robotically intoned that it wasn't the 'Australian way' to keep children behind razor wire, the United Kingdom's Deputy PM, Nick Clegg, went a little further and called the immigration detention of children 'shameful' and a 'moral outrage'³. Although the United Kingdom government has yet to fully put its money where Nick Clegg's effusive mouth is, the treatment of child asylum seekers by the United Kingdom (and asylum seekers more generally) demonstrates the shortcomings of Australia's immigration detention regime.

During the recent Universal Periodic Review of Australia by the United Nations Human Rights Council, the international community made several comments on how Australia's immigration regime could be improved. It ultimately made 13 recommendations on Australia's policy of mandatory immigration detention and two of these recommendations specially referred to children in immigration detention. Sadly, the political conversation in Australia suggests it is likely comprehensive reform in this area would be more easily achieved by repealing the Australia Act than by amending migration legislation or by introducing legislation that protects human rights.

The issue of children in immigration detention in the UK is more squarely situated around a conversation about rights and international obligations. Although this is perhaps inevitable considering that the United Kingdom is bound by the European Convention on Human Rights (ECHR), there is no question that Australia's approach to human rights law is remarkably unsophisticated in comparison. In Australia it seems that mentioning human rights and international obligations towards asylum seekers is about as useful as a chocolate teapot, based on the impact these concepts have had on the immigration regime to date.

A recent decision by the High Court of England and Wales demonstrates the differences between how the two jurisdictions approach the issue of children in immigration detention. In the case of *Suppiah & Ors, R (on the application of) v Secretary of State for the Home Department (Suppiah)*⁴, Mr Justice Wyn Williams decided that two families who had sought asylum in the United Kingdom were detained unlawfully by the Secretary of State for the Home Department because she failed to have regard to her duties to safeguard and promote the welfare of children, to consider all reasonable alternatives to detention and finally, to ensure that detention only be used as a measure of last resort. Although the detention of the children and their families was deemed unlawful under UK domestic law, the Court also conducted a thorough analysis of applicable human rights law. Indeed, the Court's decision was firmly based around the principles enshrined in the ECHR and the UNCRC. Based on previous cases and the current state of Australian migration law, if the same case was brought in an Australian court, the result most likely would have been very different.

So, our government has a policy on children in immigration detention, albeit one that is playing us for fools. Unfortunately, without any legislative protection of human rights in Australia, the Government's policy is all we've got. If the government was serious about removing children from immigration detention, and keeping them out, it would introduce legislation to this effect.

1. See G Robinson, 'Children to be released under changes to immigration detention', *The Age (Melbourne)*, 18 October 2010, www.theage.com.au/national/children-to-be-released-under-changes-to-immigration-detention-20101018-16q1p.html at 13 February 2011.
2. See M Gordon, 'Court refuses to free young Afghan detainees', *The Age (Melbourne)*, 20 January 2011, www.theage.com.au/victoria/court-refuses-to-free-young-afghan-detainees-20110119-19woh.html, at 13 February 2011.
3. See W Johnson, 'Detention of immigrant children to end, says Clegg', *The Independent (London)*, 16 December 2010, www.independent.co.uk/news/uk/politics/detention-of-immigrant-children-to-end-says-clegg-2161928.html at 13 February 2011.
4. [2011] EWHC 2 (Admin) (11 January 2011).



Internet Censorship

LIBERTY VICTORIA POLICY

Updated 19 August 2010

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 Classification Review Board. The following policy represents Liberty's general position, and further responses to developments will be considered.

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", i.e. 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", i.e. 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.



Smuggled to Safety:

A NEW LOOK AT
REFUGEES' STORIES IN
'PEOPLE SMUGGLERS:
FRIEND OR FOE?'

GLYN AYRES & HUGH CROSTHWAITE

Glyn Ayres is a JD student at Melbourne Law School. Hugh Crosthwaite is a member of Liberty Victoria's Policy Committee.

"My first ever memory was walking to my mother's village, which was destroyed by bombs falling from the sky. There were tanks abandoned by the road side, bullet shells scattered on the ground and all around me everything was broken, damaged, or in ruins."

This is the world that Tri Nguyen was born into. As a young boy, Tri and his father escaped Vietnam on a boat to Malaysia, after which they fled to Australia to start a new life. It seems like a simple and entirely understandable act: to flee from danger on a boat. But add the words piloted by people smugglers and Tri's story suddenly becomes controversial, and Tri's father's actions quite possibly illegal. But is this really rational? Why should the way in which asylum seekers come to Australia affect our perception of whether they deserve our hospitality and compassion?

On 10 April 2011, Liberty Victoria and the Jewish Museum of Australia will launch an exhibition looking at the issue of people smugglers through the eyes of former refugees. *People Smugglers: Friend or Foe?* will present interviews with people from all over the world on what it is like to come to Australia as a refugee and the role smugglers played in their journey.

Increasingly, politicians and others are using the need to combat people smugglers as a justification for harsh refugee policies. But this is surely missing the forest for the trees. Refugees of all backgrounds have contributed immeasurably to the richness and diversity of Australian life. Whatever their motivations, people smugglers play a vital role in allowing those who are in danger to escape and to find safety and prosperity in a new country.

People smugglers are often portrayed as heartless exploiters who prey on the misery of others. And there is undoubtedly some truth to this. But is this how the people who use their services see it? So far, the responses from those we have interviewed have been thoughtful and measured, if often ambivalent. Some say they would thank their smugglers if they could, even though their interests were purely mercenary. Others say that it's just business for smugglers and that they deserve neither thanks nor condemnation. Still others object to calling them smugglers at all: "We are not goods or products to be smuggled across borders and sold. We are human beings looking for safety."

***People Smugglers: Friend or Foe?
showing at the Jewish Museum of
Australia from 10 April 2011.***

***Liberty Victoria and the Jewish Museum of
Australia acknowledge the generous support of
Michael Drapac, Dinos Toumazos and Amnesty
International for this project.***



Membership FORM

This application is for A NEW MEMBER MEMBERSHIP RENEWAL

NAME

ORGANISATION

By signing this form I confirm that I wish to become a member of the Victorian Council for Civil Liberties Incorporated (Liberty Victoria). 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

ADDRESS

POSTCODE

TELEPHONE

(BH)

(MOBILE)

EMAIL ADDRESS

Send me correspondence by

EMAIL

POST

MEMBERSHIP/RENEWAL FEES

2011-2012

\$75 INDIVIDUAL

\$25 CONCESSION*

\$150 BUSINESS

\$100 VOLUNTEER ORGANISATION

\$100 JOINT MEMBERS (2 ADULTS AT SAME ADDRESS)

FIVE YEAR RENEWAL OPTION

2011-2016

\$220 INDIVIDUAL

\$100 CONCESSION*

\$600 BUSINESS

\$360 VOLUNTEER ORGANISATION

\$400 JOINT MEMBERS (2 ADULTS AT SAME ADDRESS)

LIBERTY NEEDS DONATIONS

\$20

\$50

\$200

\$500

OTHER: \$

METHOD OF PAYMENT

TOTAL AMOUNT (Membership + Donation) \$

\$

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

EXPIRY

NAME ON CARD

SIGNATURE

DATE

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.



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