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Libertynews

ISSUE 3 MAY-JUNE 2009

LIBERTY VICTORIA VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

FEATURE

Equality and religious freedom

Articles by [Anne O'Rourke](#)
and [Dr Larry Stillman](#)



ISSUE 3

MAY–JUNE 2009

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THE GIST OF LIBERTY

Liberty President Michael Pearce forecasts challenging times ahead for the organisation, unless we can identify new sources of income.



Two important events for Liberty are looming and I hope all members will make an effort to attend. The first is on Friday evening 29 May and is the official launch of 'The Gist of It'. This is an innovative program sponsored by Liberty, Amnesty and the Australian Lawyers Alliance, comprising a series of interviews with leading Australians on a number of human rights topics. The interviews are all recorded and will shortly be available online at www.thegistofit.com.au. If you are unable to attend the launch please be sure to visit the website.

A little later we will hold our Annual Dinner on 18 July, this year at the gracious Windsor Hotel, and at very reasonable prices too! Full details to follow shortly but please put that in your diaries now. This year the feature of the annual dinner will be the Voltaire Award, to be received on behalf of GetUp! by Simon Sheikh. The Allen Missen Oration, which in the past has been delivered at the annual dinner, will be held separately later in the year. This change has resulted from our merger last year with Free Speech Victoria.

We are currently in the middle of preparation of our annual budget and the outlook is challenging. Unless we

can identify significant extra sources of recurrent income we will be forced to reduce our paid administrative assistance. Currently, we pay for two days' administrative work a week, although our dedicated staff usually work longer. The Committee recently considered an increase in membership fees but decided against that because of the difficult economic conditions. Members can, however, help by renewing their memberships, making donations and introducing new members.

“ Our policy focus remains the Australian Human Rights Consultation, for which we are currently preparing a major submission.

In part prompted by these budgetary concerns the Committee resolved to appoint a working group to devise a long-range strategic plan for Liberty. We have received a generous invitation to assist us in this from a diverse group of people, with experience in business, the public sector and the non-profit sector. We currently plan on an annual basis at our planning days but have identified a

need to formulate a longer range plan, through which we can explore further sources of recurrent revenues and other ways of improving our performance.

Despite these management concerns our policy work continues. We recently finalised a policy on internet censorship which has been posted to the website. We have made submissions to the Senate inquiry into access to justice, the Australian Law Reform Commission inquiry into Royal Commissions and I will be participating in a Victorian Law Reform Commission consultative committee looking at surveillance in public places.

Our policy focus remains the Australian Human Rights Consultation, for which we are currently preparing a major submission. Although Liberty itself will make a submission, individual members are encouraged to make their own submission. It appears that the opponents of a national human rights charter have been organising well and have lodged a large number of submissions, so this needs to be counteracted. Personalised submissions are preferable to standard form ones but anything is better than nothing! You can lodge a personalised submission through the Liberty website. The deadline is 15 June. Don't miss it!

LAUNCH OF 'THE GIST OF IT'

Friday 29 May, 6.00pm
Flagstaff Chambers, 557
Little Lonsdale St

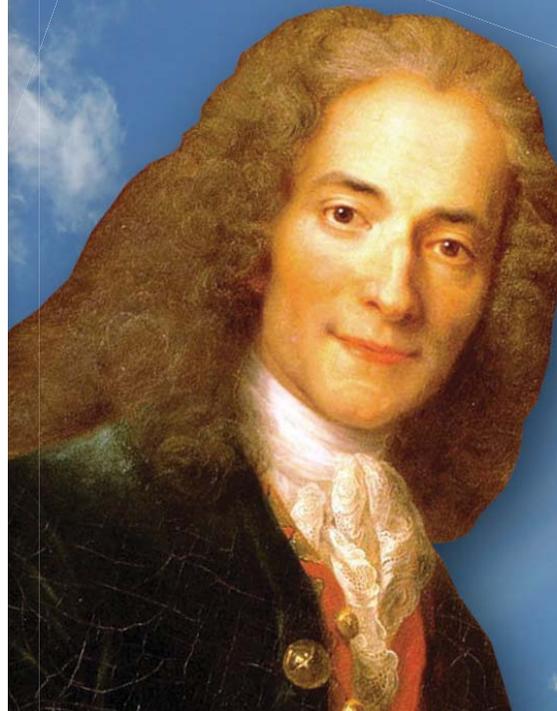
Liberty Victoria is proud to announce that on 29 May www.thegistofit.com.au goes live. The website makes available to all Australians the first season of *The Gist of It*.

The Gist of It is an online Liberty initiative designed to promote free and informed democracy in Australia by making information about the institutions and functions of government and society easy to access and understand. Each episode is hosted by Mary Kostakidis and features an interview with a leading Australian in their field of expertise. The first season of 12 episodes includes interviews with Michael Kirby, Malcolm Fraser, Dr Mukesh Haikerwal and Geoffrey Robertson.

Liberty Victoria President Michael Pearce SC said, 'Most people have a general idea of their human rights and civil liberties but few understand them in detail. This site provides that detailed understanding in an informative and accessible way. It will help all Australians understand and make the most of their democratic freedoms. The project has been a long time in the making and all concerned are thrilled to see it come to fruition.'

- Hugh Crosthwaite

VOLTAIRE AWARD ANNUAL DINNER 18 JULY 2009 MORE DETAILS SOON *To be awarded to GetUp!*



EQUALITY AND RELIGION

In a secular society, religious freedom has its limits, writes *Anne O'Rourke*.

Liberty Victoria recently completed a submission into the freedom of religion inquiry being undertaken by the Australian Human Rights Commission. While endorsing freedom of religion as recognised by a number of international instruments, our submission centred on the balancing of freedom of religion and belief and the right to equality.

There are well over a hundred identifiable religious groupings in Australia which in many ways overlap with ethnic, cultural and national identities. Religious belief and membership of religious groupings have a long history of being the focus for discrimination and conflict.

Liberty Victoria believes that individuals should not be persecuted or discriminated against because they hold, or do not hold, particular religious beliefs, or engage in or do not engage in particular religious practices. This is clear.

However, it must also be recognised that religious bodies have a long history of discriminating and persecuting others. This is not surprising, given that many religions are based on a firm, even unshakeable, belief that they alone are in possession of the Truth. It is inevitable, however, that this cannot be true, given the incompatible claims.

Unfortunately, the importance of religious freedom in the history of our politics has led to undue deference

to the claims of religious bodies and individuals to be allowed to discriminate against holders of other beliefs or those with none. As a result the freedom of religion as against the state sometimes gives way to a licence to discriminate, which the state, wary of infringing the freedom of religion or preferencing one religion over another, fails adequately to rein in.

Our submission argued that endorsing this anomaly left individuals vulnerable to unrestrained discrimination by religious bodies and that the state needed to protect such individuals human rights, and for that matter their freedom not to believe in, nor act according to, the dictates of the beliefs of a religious body to which they do not subscribe.

Liberty argued very strongly that in a democratic society, which is necessarily pluralist and secular, government policy and laws should not be based on religious belief. Government must be neutral and ensure the rights of all, limited only by the principled human rights framework itself.

Liberty Victoria considers it essential to distinguish the freedom to hold a belief from a licence to impose it on others. Religious belief and practice that is self-regarding, held or engaged in willingly by competent adults, must be respected. Religious practice that affects others, directly or indirectly, should have no special status.

For example, in 2004 the Australian parliament voted to exclude same-sex couples from marriage for no other reason than to appease certain religious beliefs. Allowing all competent, consensual couples of marriageable age, irrespective of sexual orientation, does not interfere with any group's rights and does not affect the capacity of religious people or non-believers to marry. In changing the law, the parliament was unduly influenced by a particular religious view and deliberately maltreated one group of Australian citizens who do not hold that religious view.

Liberty Victoria is not arguing that religious groups should be forced to eat pork or wear clothing of mixed fibre. We believe that within their own organisations and membership, religious groups are entitled to freedom of conscience and protection of their right to hold their beliefs — subject always to the ordinary criminal law: for example, clergy are not entitled to abuse children, nor husbands to beat their wives.

We can see, however, no justification for allowing religious groups to discriminate against others based on mere belief, however holy and ancient, or for governments to enact laws reflecting such beliefs.

Anne O'Rourke is a Vice-President of Liberty Victoria.



Freedom of expression at sporting events

Victoria's Major Sporting Events Bill consolidates and improves a messy regulatory regime, but it also unnecessarily infringes on our civil liberties, writes Liberty volunteer [Andrew Vincent](#).

With flagship events like the Melbourne Cup and the Formula 1 Grand Prix, Victoria has long been regarded as the premier state for major sporting events. In order to cement that position, the Brumby Government has introduced the Major Sporting Events Bill 2009. The Bill consolidates a number of existing enactments relating to major sporting events and introduces a range of measures for events where the Governor-in-Council has made a 'major sporting event order'.

The Bill is a welcome change in many respects. It consolidates and improves an otherwise messy regulatory regime and comprehensively sets out the law relating to major sporting events. Conversely certain measures in the Bill risk imposing unreasonable restrictions on our civil liberties.

For instance, the Bill makes it an offence for a person to possess a 'prohibited item' at an event venue, which includes a flag or banner larger than one square metre or with a handle longer than one metre. Given that many items of that description may not actually cause an unreasonable disruption to the event or spectators, this blanket prohibition operates to unreasonably infringe freedom of expression.

Further, the prohibition is completely unnecessary. In the event that a large flag or banner does cause a disruption, other powers under the Bill could be employed, such as the power to expel any person who causes an unreasonable disruption.

Curiously, the Bill also includes 'bicycles' in the definition of 'prohibited item'. In certain circumstances, this could unreasonably restrict freedom of movement. For example, where an 'event area' includes the area surrounding a sporting venue, it would

be an offence to ride a bicycle in that surrounding area. Therefore, it is possible that the Bill could outlaw someone from riding their bike in the park surrounding the MCG.

Another section of the Bill prohibits unauthorised 'advertising material' to be placed on any building or structure in an event venue. This serves the laudable purpose of preventing unauthorised and opportunistic commercial advertising. However, the Bill defines 'advertising' in excessively broad terms, and would also operate to outlaw many statements

relating to goods and services that have a political motive. For instance, the Bill would prohibit a sign protesting against the export of sheep or the cruel treatment of chicken used by KFC.

Although the Bill is commendable for its comprehensive statement of the law relating to major sporting events, the Brumby Government ought to remedy these shortcomings. Just as major sporting events form a key aspect of Victorian culture, they are also important public theatres for the exercise of civil liberties.



Ensuring independence

Royal Commissioners must be independent and demonstrably qualified for the task, argues [Georgia King-Siem](#).

In January 2009, the Attorney-General announced that the Australian Law Reform Commission (ALRC) would review the operation and provisions of the Royal Commissions Act 1902 (Cth). The ambit of the inquiry extends to all federal government ad hoc non-judicial non-executive public inquiries. In particular, the ALRC is to consider:

- Whether there should be special provisions and powers for inquiries involving national security;
- The appropriate balance between powers exercised by inquiries and those subject to those powers;
- Restrictions on the use and disclosure of information obtained by inquiries;
- Any other suggested changes to the Act.

The ALRC released its Issues Paper (IP 35) in early April 2009, which detailed the history and powers of Royal Commissions and other ad hoc non-judicial non-executive public inquiries. Liberty noted that independent and transparent (i.e. public) inquiries are critical to good government. Ideally

these types of inquiries would all fall under one piece of legislation – in a similar fashion to the Canadian and New Zealand models.

Inquiries may fall into different categories with corresponding powers and protections, although care needs to be taken to ensure inquiries have sufficient powers and protections to achieve their purposes. In light of the powers wielded by inquiries, it is important that the Commissioner(s) heading them be demonstrably independent and appropriately qualified for the task. Finally, Liberty believes it is essential that the reports of inquiries be tabled in Parliament to the greatest extent possible. A full copy of Liberty's submission will be available on the ALRC website in the coming weeks.

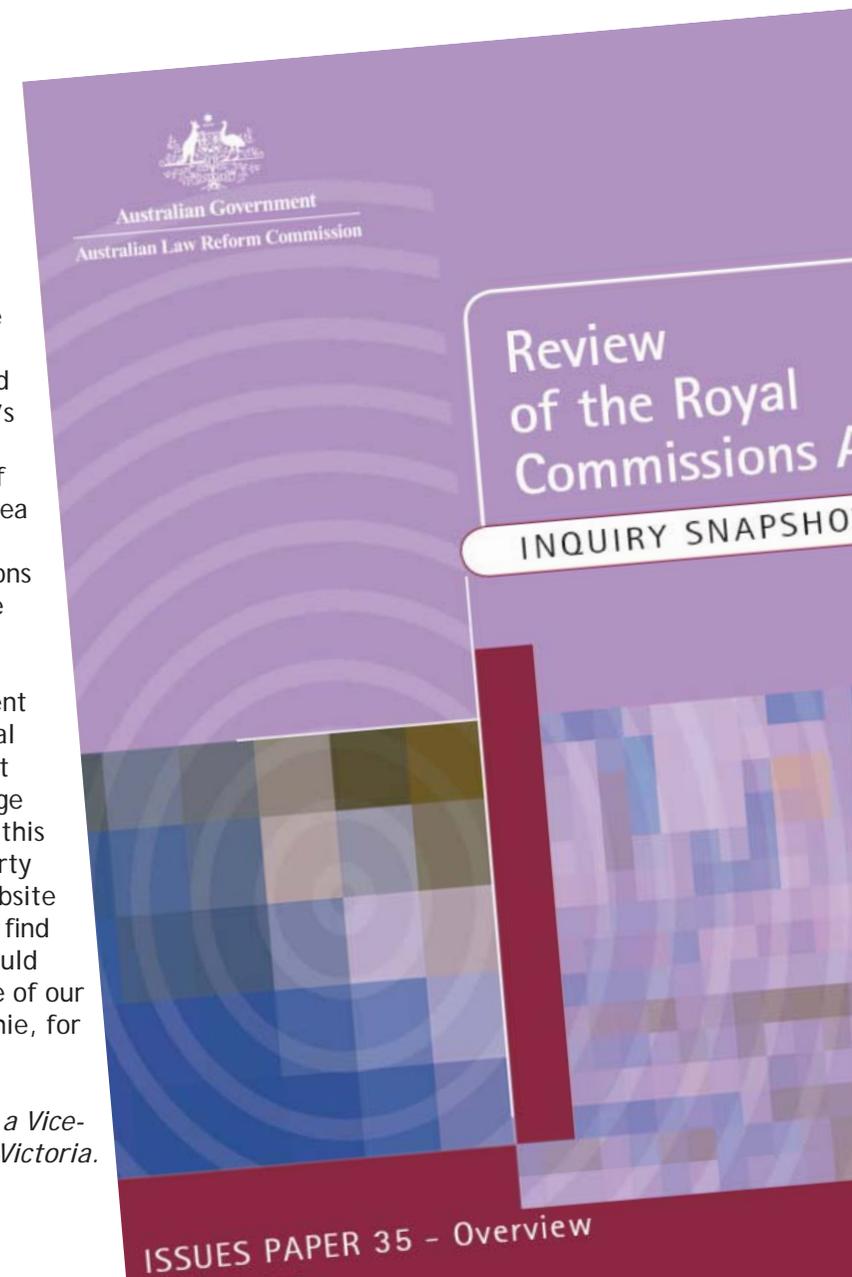
In addition to accepting written submissions, the ALRC is also consulting with relevant and interested bodies, such as Liberty Victoria. In fact, even before receiving Liberty's written submission, the ALRC advised it would be interested in meeting the Liberty to discuss our views on this inquiry.

Accordingly, Liberty provided its

written submission the week before its consultation with the ALRC on 11 May. The consultation was used to expand on Liberty's views and explore practical examples of how reform in this area could be achieved.

Although submissions closed on 19 May, the ALRC will release a Discussion Paper and invite further comment before making its final report to Government in October 2009. I urge anyone interested in this topic to contact Liberty or go to the ALRC website (www.alrc.gov.au) to find out more. Liberty would also like to thank one of our volunteers, Rhys Michie, for his assistance.

Georgia King-Siem is a Vice-President of Liberty Victoria.



UNDER SURVEILLANCE

A legislated and actionable right to privacy must be considered in the review of public surveillance in Victoria, argues [Georgia King-Siem](#).



As part of its broader inquiry into surveillance regulation in Victoria, the Victorian Law Reform Commission (VLRC) has now turned its attention to surveillance in public places. Previously, the VLRC has looked at surveillance in the workplace.

The consultation paper released in March 2009 considers current practices and regulation and goes on to consider the nature of privacy in public areas and what risks and benefits surveillance offers. The consultation paper puts forward four basic principles from which future reforms may flow. Reforms under consideration include:

- The use of an independent regulator;
- The development of voluntary best practice guidelines;
- Mandatory codes with criminal and civil penalties;
- Licensing of overly invasive surveillance practices;
- Amendments to bring the Surveillance Devices Act 1999 (Vic) up-to-date;
- A statutory obligation not to seriously invade another's privacy.

With the help of two volunteers (Rhys Michie and Craig Silva), Liberty is

preparing a written submission which addresses each of these proposed reforms. Although broadly supportive of the proposed reforms, Liberty believes a federal legislated and actionable right to privacy would provide a more flexible approach to protecting privacy (among other reforms).

“ Liberty believes a federal legislated and actionable right to privacy would provide a more flexible approach to protecting privacy.

In any given instance, there will be competing public interests: the public interest in protecting personal privacy against the public interest in protecting public safety or property or even in freedom of speech and expression.

If you would like to know more, please contact either Liberty Victoria or go directly to the VLRC website (www.vlrc.vic.gov.au) and look under 'current projects'. Submissions close 30 June 2009.

Georgia King-Siem is a Vice-President of Liberty Victoria.

FREE SPEECH AND INTER-COMMUNAL CONFLICT

Dr Larry Stillman looks at free speech and the controversial play *Seven Jewish Children*.



The past year or so has seen pressure from some lobby groups in the Jewish community against a number of public events in Melbourne and Sydney as well as Fairfax media or the ABC for what it claims is anti-Israel bias.

Most recently, there has been a very strong response to the reading of the play *Seven Jewish Children* by the pro-Palestinian playwright Caryl Churchill. A similar debate has occurred in the UK and the US over the politics of the play.

The claim of Jewish organisations is that such plays promote anti-Semitism. The claim of those supporting such activity is that the criticism is exaggerated, and that criticism of Israeli politics is not inherently anti-Semitic. They also claim that some of the Jewish community wishes to suppress Palestinian speech rights and actions.

The debate and actions that have followed have brought out the worst opinions on either side, and have done nothing to contribute to inter-communal relations or the cause of free speech. However, a broader issue is at stake for the multicultural Australian community that goes beyond the Israel/Palestine issue.

From a free speech perspective, how should Liberty Victoria respond to such controversy? As other examples, in the early 1990s, the Macedonian and Greek communities were engaged in strong argument and at times violence

with each other, and politicians were engaged in partisan support. Another example is the more recent litigation between the Catch the Fire Ministry and the Islamic Council of Victoria, where the Victorian courts were asked to rule over issues of religious defamation and vilification.

We need to recognise that we do not live in a cultural vacuum and that bald, legalistic responses to critical issues of free speech are not sufficient. It is time that those who wish to defend the principle of free speech be far more involved with different communities, and rather resort to legalistic answers, be engaged with these communities in considering the politics and complexities of living in a diverse and not always tolerant society.

I realise that this is a difficult challenge, but if Liberty's work is to contribute fully to the diverse society that Australia has become, then we need to be more active in explaining and educating people why public debate, rather than community power plays, attacks on all critics, and censorship of other opinions, is so critical. Only through more engaged activity can the cause of free speech be not just understood, but actually influential.

Dr Larry Stillman is a committee member of Liberty Victoria and the Australian Jewish Democratic Society.

THE DUTY TO PROTECT

Liberty volunteer [Nerida Mulvey](#) looks at whether the family law adequately protects women and children from violence.

In 2006, the UN General Assembly mandated an in-depth study on all forms of violence against women. The study outlines due diligence obligations of states, asserting: 'States have an obligation to protect women from violence, to hold perpetrators accountable, and to provide justice and remedies to victims.'

The legal system plays a vital role in a state's response to the plight of women and children who experience violence and abuse. Australia's *Family Law Act 1975*, via the operation of the Federal Magistrates' Court and the Family Court, purports to protect women and children from their violent ex-partners.

Indeed, provisions relating to the management of allegations of violence and abuse were introduced in the *Family Law (Reform) Act 1995* and are prominent throughout the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. Yet, prominent as they are, the amendments do not provide comprehensive protection for all women and children.

If a woman is able to attest to a

judge or registrar the violence she has experienced and the judge or the registrar considers that a reasonable person in the same circumstances as the woman and her children would fear or be apprehensive for their personal wellbeing or safety, our family law system will protect her. This woman will be exempted from the obligation to participate in compulsory dispute resolution with the person who perpetrated the violence against her.

The presumption of equal shared parental responsibility that requires her to collaborate with her ex-partner in making major long-term decisions about her children will not apply. As a consequence, the court will not be obliged to consider that it is in the best interests of her children that they spend equal time, or 'substantial and significant time' if reasonably practicable, with their violent ex-partner.

The court may even allow this woman to relocate to a new location, if this is what she wants, although it is uncertain how the provisions relevant to relocation will be interpreted. Her

application for orders in relation to her children will be dealt with quickly and her pathway through the family law system will be smooth. If her allegations of violence are contested by her ex-partner, these will be dealt with in a less adversarial way than they would be in other civil legal systems.

Unfortunately, the reality is very different for many women and children who have experienced violence and abuse who are involved in the family law system.

The *Family Law Act* recognises the importance of ensuring that a child is given the opportunity for his or her parents to have 'meaningful involvement in his or her life' as well as 'the need for a child to be protected from physical and psychological harm'. It is arguable that these are inherently in conflict. The tension would perhaps have been eliminated had the latter taken precedence over the former.

Nerida Mulvey is a family lawyer and Liberty volunteer.



Understanding human rights

Dr Diane Sisely argues that applying human rights, here and abroad, has never been more important.

December 10, 2008, marked the day 60 years ago when the world agreed on the principles and values necessary to safeguard if people are to be able to live a decent life, with dignity and respect. The document agreed, the Universal Declaration of Human Rights, has perhaps never been more important than it is today, as it provides us with the guiding principles for the work required to counter the challenges of the economic crisis and climate change so that our children's children can also lead a decent life, one with dignity and respect.

In this country we have a strong belief in the idea of 'a fair go'. When asked, we can usually explain what it involves. For example, we are likely to say that it involves equal opportunity, giving someone 'a hand' when she or he is facing hard times, concern for the 'underdog', 'one vote, one value' and generosity to strangers, albeit sometimes qualified generosity and only after we have got to know people as individuals.

However, we are not so sure about human rights and how to describe them. We perhaps understand when the rights of people in Sudan or Guantanamo Bay are being abused and when the rights of people in countries in political turmoil are at risk, such as in Sri Lanka, but when it comes to ourselves we are often unsure. We don't understand and are sometimes a little suspicious of the legal

terminology surrounding human rights. But put simply, human rights are about the basic values we share and wish to live by, the very same values that underlie a 'fair go'.

In Victoria the Charter of Human Rights and Responsibilities has been in full effect since the start of 2008. It puts human rights at the very heart of Victorian Government policy and service delivery, it protects our rights and it seeks to ensure we are able to live decent lives. Lives that are free from fear, so we are not, for example, reluctant to enter public spaces, such as public parks or pubs, for fear of harassment. Lives where we have a fair chance of achieving success, so we can take full advantage of our educational system and not be denied by subtle prejudice or ignorance.

It also means that those who provide government services must do so in a way that protects our rights. Hospitals, schools, local councils, the police, universities, even private contractors providing services to government, need to comply, meaning this is a legal obligation that will touch the lives of millions.

The Australian Centre for Human Rights Education (ACHRE) at RMIT University has developed two exciting postgraduate programs which explore what it means and what it takes to build a culture and practice of human rights. Relying on the law is not enough.

By studying the Graduate Diploma

or Graduate Certificate of Applied Human Rights, you can learn how to apply human rights in your workplace, organisation or life. 'Introduction to Applied Human Rights' lets you discover how human rights are applied in different situations and through 'Transforming Organisations and Applied Human Rights' you get to learn how you can make your workplace or organisation a better place. 'Applied Human Rights and Indigenous Peoples' is a way to start to focus on issues facing indigenous peoples, with their involvement.

In 'Education for Human Rights' you learn to teach and train for human rights and the 'Ethics and Practice of Human Rights' become apparent through this course. 'Advocacy and Action: The

Victorian Charter of Human Rights' is the cornerstone of applying human rights and, through learning the means and methods of communication, you learn about 'Human Rights as Applied Communication', and in the 'Human Rights Campaign Studio' you get to work on a real-life human rights campaign.

These courses provide students with an understanding of how the Charter plays a role in their lives and how it can play a role in their workplace or home. To find out more go to www.rmit.edu.au/achre. Applications are now open for July commencement.

Dr Diane Sisely is a Liberty Victoria committee member and director of the Australian Centre for Human Rights Education.

