

## Human Rights Charter? It's Up to Us!

The government has appointed a Human Rights Consultation Committee (HRCC) to ask Victorians our views on protecting human rights, whether we want a Human Rights Charter, and what sort if so. The HRCC, whose members are George Williams (chair), Rhonda Galbally, Andrew Gaze and Haddon Storey, has released a discussion paper and called for submissions, which can be made by phone, email, on the web or in the old-fashioned way: see <http://www.justice.vic.gov.au/humanrights> or phone 1300 368 918. The deadline is almost impossibly tight: they want submissions by early August (or as soon as possible after).

This is an exciting opportunity: Liberty has been calling for a Human Rights Charter for many years, including supporting Gareth Evans' national proposal in 1984/85, and the Victorian parliamentary inquiry into a State Charter in the late 1980s. Most recently Liberty has worked with the Law Institute, the Equal Opportunity Commission and others over the last four years in successfully urging the inclusion of human rights in the Attorney-General's Justice Statement last year, and the translation of that commitment into the present inquiry. It's been a marathon; the next few weeks will be critical if we are to cross the line. We need your help.

The problem now is not the detail of how a charter might work and what it might contain, vital though that is, but the need to persuade the cabinet doubters that the effort is worth making. For that task there is no substitute for numbers: more submissions in favour implies more voters who think it matters, and who will be angry if the Government squibs the challenge: it's as simple as that.

Liberty therefore urges all members (and friends and family and colleagues, at work and in clubs and sport and wherever) to make at least a quick submission, it isn't too late!

We have more detailed suggestions on our website, and The Justice Project has information and sample submissions at [www.thejusticeproject.com.au](http://www.thejusticeproject.com.au).

The last word: this is the best chance we have ever had. No-one who values human rights can leave it to someone else. Even if you do a big submission later, do the basic one NOW. However you do it, and however brief, your submission is vital!

**Jamie Gardiner**

## ASIO Laws & Media Manipulation

As highlighted in the February 2005 edition of "Liberty" the potential for the misuse of the new Commonwealth & Victorian powers to force suspects and non-suspects to answer questions under threat of substantial imprisonment are very real and a threat to our democracy (see "The Creeping Gag" page 2, Feb 2005).

Recent events have highlighted how serious those concerns are. On the eve of the Commonwealth Parliament's debate on extending the sunset clause for ASIO's unprecedented powers to detain non-suspects for forced interrogation, ASIO conducted a series of raids on members of Australia's Muslim community. Information about these raids was made public by the Minister claiming that the raids were associated with possible terrorist attacks on significant public infrastructure in NSW & Victoria.

The character of those subject to the raids was publicly attacked by nothing more than innuendo and inference. The victims of these apparently politically motivated raids are powerless. No arrests were made as a result of the searches and seizure of various items. It is clear these raids revealed nothing capable of substantiating even a reasonable suspicion of any criminal or terrorist activity. It is also clear that sections of the media were given favourable treatment by the government so that they could be on hand to

Liberty Victoria presents

## GET UP STAND UP!

Stand up for a Charter of Rights

Symposium – Saturday 13<sup>th</sup> August 2005  
10 am – 5 pm

University of Melbourne Law School University Square, 185 Pelham Street, Carlton

Speakers Include:

- Professor George Williams (Human Rights Consultative Committee, Victoria)
- Barry Jones AO
- Dr Simon Evans (Head of the Centre for Comparative Constitutional Studies, University of Melbourne)
- Kate Eastman (Human Rights Barrister)

Also with: Terry Lane, Rod Quantock, Brian Walters SC, Jamie Gardner & Spencer Zifcak

Cost: Symposium: Full - \$44.00; Concession - \$22.00 (inc. GST)  
(Covers lunch & morning & afternoon tea)

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Annual Alan Missen Oration & Dinner

The Symposium is to be followed by the Liberty Victoria annual **Missen Dinner** at University House, University of Melbourne, Parkville at 7pm for 7:30pm, with guest speaker

Fred Chaney speaking on: 'Where have all the liberals gone?'

Cost:  
Dinner: Full - \$88.00; Concession - \$77.00 (inc. GST)

To attend **both** the Symposium and Dinner, Full - \$125.00 Concession - \$90.00 (inc. GST)

RSVP:  
Liberty Victoria would prefer that you register your attendance and lodge a credit card payment for these events online at: <http://symposium05.mollyguard.com>

report ASIO's valiant efforts to protect the community from these non-suspect citizens. The mainstream media consider it is more important to curry favour with the executive government than protect citizens from persecution on the basis of innuendo, rumour and crass political manipulation.

The greatest acts of terrorism and abuse of human rights in the last 100 years have been perpetrated by governments. Governments prefer to carry out such abuses away from the public spotlight and often intimidate and threaten the media to prevent their activities being exposed.

The Australian media is increasingly, and apparently unwittingly, being used by the government to promote the need for extreme and unnecessary coercive powers. It is time journalists and media companies separated themselves from the Australian government and fulfilled their role as objective, independent and resolute watchdogs. The increasingly lapdog response of the Australian mainstream media to government manipulation negates any claim to be an essential element in the protection of democracy, civil liberties and human rights. In the absence of a strong and un-wilting commitment to the highest standards of independence and robust journalism these media companies are merely commercial advertising enterprises on sale to the highest and least scrupulous bidder.

**Greg Connellan**

## Tortured Arguments

Around the world, people wait in cells for their next session of torture at the hands of clandestine security authorities. Here in Australia, there are many survivors of torture who are trying to put their lives back together after sustaining psychiatric injuries from their torments.

Two academics have recently argued that torture should be legalized. The Head of Deakin Law School, Professor Mirko Bagaric, and his colleague Julie Clarke, have published a paper calling for the legalization of torture: Not Enough (Official) Torture in the World?

Bagaric and Clarke want readers to "move on" from the question of whether torture is ever defensible. They argue that: The benefits of officially sanctioning torture are two-fold. First, it will provide authorities with a useful interrogation device. Secondly, it will enable authorities to properly regulate the use of torture.

Some time ago US writer Alan Dershowitz argued (unconvincingly) that torture should be legalized to minimize the harm it causes. Bagaric and Clarke go a good deal further: "In this paper we suggest that the pejorative connotation associated with torture should be abolished." How must this affect those who are survivors of torture?

"The main benefit of torture" the writers argue brightly "is that it is an excellent information gathering device." No evidence is offered to support this assertion. The evidence to the contrary is either unknown to, or ignored by, the writers.

After the failure of the July plot to kill Hitler in 1944, surviving conspirators were tortured by the Gestapo for days, and in some cases, months. A few survived to describe the process, and the devices used, in great detail. We also have the comprehensive reports of the Gestapo derived from this investigation. Whilst under torture, the conspirators were prepared to implicate those they knew were already dead, or themselves, but they protected others in the plot. All the sophisticated methods of the Gestapo were unable to crack open the conspiracy.

Committed, idealistic people can withstand torture, and it is a facile denial of historical experience to assert that torture is "an excellent information-gathering device". In fact, so describing it is dangerous. If torture is an "excellent" information-gathering "device" then authorities will be justified in using it before they try other techniques - like analyzing the available data, asking witnesses, or obtaining documents. It will be a convenient short cut, and the unscrupulous will prefer it to proper detective work. No amount of supervision can prevent this kind of short cut being taken once the door is open to torture.

Bagaric and Clarke point out that torture is now widespread - which is undeniable - and go on to assert that it would be better to regulate this, and make torture accountable. This is almost laughable. The same argument would justify regulating crime. Let's make criminals apply for a licence to commit their preferred felony. That way we can clean up crime, and make it more accountable. Those who wish to stab people would first have to sterilize their knives.

It is naïve to assume that torture around the world is used merely to gather information. Torture can be inflicted to demoralize and dominate particular ethnic groups, as a form of punishment, or simply to indulge sadism. Legalizing torture would not regulate such criminal conduct.

Some of the arguments used by Bagaric and Clarke are downright goofy. For example: The investigation and trial process is simply one means of distinguishing wrongdoers from the innocent. To that end, it does not seem to be a particularly effective process.

There are other ways of forming such conclusions. One is by way of lie-detector tests. Despite some problems, these are probably no less accurate than the trial process. Really? Apart from an article in "USA Today" no other evidence is quoted in support of this sweeping assertion about the reliability of lie detectors.

The authors even resort to a mathematical formula, set out in apparent seriousness, to show how one can determine whether torture is justified. The harm to the victim of torture nowhere figures in this formula. To justify their call for torture, the authors rely on a series of harebrained scenarios which they admit have never occurred - with the exception of one case where the torture was plainly not justified (even under the authors' criteria). Not one real example of a situation justifying torture is provided. Far-fetched hypotheticals will not do for this. We have to ground the debate in reality.

Bagaric and Clarke are not afraid to push their argument a long way: People who are simply aware of the threatened harm, that is, "innocent people", may in some circumstances also be subjected to torture. It is not merely torture of suspects, but torture of witnesses, that they advocate.

The effects of torture can last a lifetime - even where no ongoing physical harm is caused. Medical studies repeatedly emphasize that torture causes post traumatic stress disorder and other psychiatric injuries.

The struggle against the power of governments to impose torture has continued for centuries. The arguments against that power are numerous. Torture violates the dignity of the human person. It brutalizes not merely the person subjected to it, but the torturer as well. Since the purpose of having governments is to impose the rule of law rather than chaos, and to defend the dignity of the human person, torture subverts the very reason we have governments - corrupting our whole body politic. When governments resort to cruelty, the people resort to rebellion.

Bagaric and Clarke argue that it is time for a rational discourse on torture. It sure is.

**Brian Walters SC**

## HRLC Update

Readers will be aware from the last issue of Liberty that VCCL and the Public Interest Law Clearing House (PILCH) are joint auspices of the Human Rights Law Centre (HRLC). The HRLC's application to the Department of Justice for funding from the 2005-06 budget was unsuccessful. The Department feedback on the submission was constructive and positive. HRLC has been encouraged to seek funding in the 2006-07 budgetary process.

On 4 July 05 HLRC was advised by the Victoria Law Foundation that it will be provide a grant of \$10,000 to enable further development with a view to obtaining more substantial recurrent funding.

As is often the case with developments of this kind it takes quite a sustained effort over many years before they blossom. This was always likely to be the case with the HRLC. I will keep Liberty members informed of future developments with the HRLC as they occur.

**Greg Connellan**



VICTORIAN COUNCIL FOR CIVIL LIBERTIES INC

## National Meeting of CCLs

On the weekend of 25 & 26 June 2005 representatives of the NSW (Cameron Murphy, David Bernie, Pauline Wright, Stephen Blanks, Michael Okoye), SA (George Mancini), Qld (Michael Cope), ACT (Dr. Kris Klugman, Bill Rowlings, Anthony Williamson) and Victorian (Adam Pickvance, Lucie O'Brien and Greg Connellan) Councils for Civil Liberties met in Sydney. Current president of the Australian Council for Civil Liberties, Terry O'Gorman, was overseas and unable to attend. Guest speakers at the meeting included Professor George Williams, Howard Glenn (Rights Australia) and Anna Johnston (Australian Privacy Foundation)

This was the first get together of state CCLs in quite a few years. High on the agenda was national cooperation, communication and coordination between states and territory CCLs. The growing significance of Commonwealth legislation and national developments on civil liberties and human rights was recognised by those present. The meeting resolved to formally incorporate an Australian Council for Civil Liberties (ACCL). Membership of the ACCL will be state and territory CCLs accepted as members of the ACCL from time to time and who abide by the purposes and objectives of the ACCL. Greg Connellan undertook to do an initial draft of the ACCL Rules and Objectives for consideration by those CCLs present at the meeting.

A national email group for the ACCL executive will be established. Stephen Blanks undertook to establish the email group initially comprised of presidents, vice-presidents and secretaries in each state & territory represented at the meeting and those attending the Sydney meeting. A national ACCL website will be established and a link to each state & territory website will be a central part of the ACCL site. Stephen Blanks & Cameron Murphy undertook to look at this development.

The fostering of credible CCLs in those states and territories not represented at the Sydney meeting was also discussed as a priority. Various individuals and state CCLs undertook to see what can be done to foster CCLs in the other states & territories.

The possibility of a national civil liberties foundation to fund state, territory and national CCLs and their activities was discussed. The meeting resolved that this was an important matter for future examination and development.

A national CL & HR conference and action day was discussed. The meeting resolved that such an event is an important development for the ACCL and for state & territory CCLs. Adam Pickvance undertook to explore the possibility of building on the VCCL's annual symposium to coincide with a first national CCL conference in 2007. Adam explained to the meeting that this was quite a big undertaking and would need to be approved by the VCCL before any commitment could be made.

Discussion of links to international CCL organisations was also discussed. Whilst this was considered a highly desirable development it will be looked at over time as the ACCL and state & territory CCLs gain strength.

A number of national CL & HR issues were discussed including the ASIO legislation, a Bill of Rights for Australia, privacy issues, identity issues, issues related to the Australian Census 2006, vilification legislation, stun guns and refugees.

The meeting was worthwhile and pointed to the benefit and need to have face to face meetings between state & territory CCLs on a much more regular basis. The reality of an effective ACCL depends on strong and connected state & territory CCLs. The Sydney meeting was an important step to that end.



**Greg Connellan**

## From the Liberty Office

As always, we have been enjoying a busy time here at the office. As well as responding to emails, faxes and phone calls, we have been keeping a watchful eye over the many events Liberty has recently hosted (and those that are upcoming). As always, it is good to see the huge support from Liberty members and the general public.

On June 29 we held the advance screening of the film 'The Yes Men'. Thank you to all who attended, I'm sure you'll agree that it was an enjoyable night, and it is always refreshing to sit down, relax, grab some popcorn and enjoy a film, whilst doing your part for Liberty. Thanks is due in no small part to Cinema Nova and Natalie Miller for providing the cinema for the night.

Further, on July 11 Liberty is hosted a forum to discuss the upcoming public consultation for a Victorian Charter of Human Rights. A Charter of Rights is a primary focus for Liberty, and is much needed. We urge and encourage your support to the consultation process, and look forward to receiving your input.

If you have any comments, questions, thoughts or otherwise, we invite you to contact us here at the office. We are busy, but always look forward to hearing from our members. While at times there may be a delay in our response, we endeavour to answer all inquiries as promptly as possible. We have recently had many queries regarding the Anti-Terrorism Legislation and ASIO powers, in conjunction with the wide media comment made by Brian Walters SC, our President. It is clear that the work of Liberty, in its goal of promoting the protection of civil liberties, is being heard and appreciated.

Our annual Symposium is fast approaching, to be held on the 13th August - slightly earlier than in previous years, followed by the annual Missen Oration Dinner. We hope to see you there.

**Sean Huggins & Laura Thompson**

## Thank you to Mark Moshinsky

After 6 years as Liberty's Secretary Mark Moshinsky stepped down from that role at our November 2004 AGM. Mark took on the role of secretary in 1998 at a time of serious financial crises for Liberty. Mark, as secretary, did a lot of the hard work necessary to sort out Liberty's financial problems. He was also one of those who physically moved Liberty from its old offices in Bourke St to our present cubby-hole in Little Bourke St. The work of presidents Felicity Hampel SC, Chris Maxwell QC and Greg Connellan owes much to the work of Liberty's committee and without Mark's dedication as Secretary Liberty's presidents and committee would not have functioned as well as we have.

Mark also recruited many of Liberty's volunteers and casual staff members during his 6 year stint as Secretary. Included among these recruits was Sidra, Mark's wife, who played a pivotal role in the re-building of Liberty's administrative base.

Pressure of a busy practice and a young family has meant that Mark has had to pull back from the onerous commitment that being voluntary secretary for Liberty involves. Mark remains a member of Liberty's committee and continues to make a valuable contribution. Liberty thanks Mark for his hard work over six years and looks forward to his further contribution in a different role.

## Former Liberty Presidents Benched

Since Liberty's last newsletter the Victorian government has appointed two former presidents of Liberty as Judges.

**Chris Maxwell QC**, president of Liberty from November 2000 to November 2002, has been appointed as President of the Victorian Court of Appeal. Chris led Liberty during the time of the Tampa case and appeared for Liberty with Julian Burnside QC and John Manetta (both have been members of Liberty's committee) before the Federal Court in the initial application and the Commonwealth's appeal to the Full Bench of the Federal Court. Whilst the Tampa case was a very public reflection of Chris's commitment to Liberty Victoria, civil liberties and human rights, it is by no means a full reflection of his outstanding work on behalf of Liberty.



When Chris became President, Liberty was still very much in a re-building phase from its financial problems of the late 1990s. Chris built on the work of his predecessor, Felicity Hampel SC, working hard not only to ensure Liberty was financially stable but also enabling Liberty to once again become a proactive voice for civil liberties and human rights. We thank Chris for his dedication and hard work for Liberty and wish him well in his new role, one which will enable him to continue to play an important part in the protection and enhancement of civil liberties and human rights in Victoria.

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**Felicity Hampel SC**, was appointed a Judge of County Court in March 2005. She was President of Liberty from mid 1998 until November 2000. It was a difficult period in Liberty's history, particularly on the financial front. Those of us at Liberty lucky enough to work with Felicity in the lead up to and during her 2½ years as President know how much work she put into ensuring Liberty's revival into a dynamic and proactive organisation. In the early 1990s Liberty had reached a peak in its effectiveness as a public agitator for civil liberties and human rights. That period was always going to be a difficult one to follow even without the financial problems that beset Liberty immediately before Felicity took on the role of President. To Felicity's credit and Liberty's benefit, her hard work not only turned Liberty's finances around but gradually re-invigorated Liberty's members and its effectiveness as the peak civil liberties and human rights NGO and agitator in Victoria. Liberty thanks Felicity for those years of dedication and wishes her well in her new role as a judge.



### TAX INVOICE    **MEMBERSHIP FORM (FOR FINANCIAL YEAR 2005-2006)**    LIBERTY VICTORIA

(Please photocopy and pass on to your friends and colleagues)    ABN 23 236 210 735

**Renewal**     **New Member**

If Renewal, please go to next box.

If New Member, please complete:

I, \_\_\_\_\_, \_\_\_\_\_ (occupation)

desire to become a member of The Victorian Council for Civil Liberties Incorporated.

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: \_\_\_\_\_

I would be happy to assist the work of Liberty. I can offer the following skills: \_\_\_\_\_

**Membership fees:**

I enclose my membership fee of (inclusive of GST):

\$55 Individual Membership

\$90 Joint Membership for two adults at the same address

\$90 Voluntary Organisations

\$25 Student/Pensioner/Unemployed

\$150 Organisations

Liberty needs your help! I also enclose a donation of:

\$25

\$80

\$200

Other: \$ \_\_\_\_\_

**Method of payment:**

I enclose a cheque for \$ \_\_\_\_\_ (payable to • Liberty Victoria); OR

Please debit my credit card in the amount of \$ \_\_\_\_\_

Card Type:     Visa     Mastercard     Bankcard

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