

**Talk for Adelaide PEN – Thursday 15th November 2007**  
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**Australian Greens**

I would like to begin by acknowledging and paying my respects to the Kaurna people, the traditional owners of the land on which we stand today.

I would also like to thank Adelaide PEN for inviting me to speak on this very important occasion.

It was with some trepidation that I suggested to Lindy Warrell that I speak about the state of free speech in South Australia, rather than talking about the situation in other countries. I was nervous because we can be in no doubt that the situation in relation to free speech is far far worse in many parts of the World than it is in South Australia. You have all heard and read stories of terrible suffering and atrocities committed against people who speak out or write in ways that offend powerful forces in government, in the military, in business or in religious institutions.

However bad the situation is in Australia in relation to free speech, it is worse in many other places. In Australia, offending powerful forces can result in legal action against you, sometimes it can result in jail, but it doesn't result in State-sponsored torture or execution – well not on our shores at least - because the same can't be said for Australians caught overseas.

And that leads me into the first of three South Australian issues I wish to talk to you about today.

**David Hicks**

The case of David Hicks dominated public debate around human rights for a considerable period earlier this year. Now, David Hicks wasn't detained in Guantanamo Bay because of his literary works. In fact, for 5 years, we didn't know why he was detained because he hadn't been charged with any crimes. Ultimately he pleaded guilty to assisting the enemy, primarily it seems by guarding a tank somewhere in Afghanistan.

Regardless of what you think about David Hicks and the path he chose to follow, one thing that most legal or human rights commentators agree upon was that his treatment at the hands of the US and his abandonment by the Australian Govt was an appalling abrogation of our responsibility to our own citizens.

The South Australian connection between David Hicks and free speech is that David Hicks is not free to tell his story about his experience and treatment. The reason he is not free is because the State Parliament passed a new law recently to make sure he could not profit in any way from any future literary works he might produce. This new SA law was an amendment to existing laws designed to prevent criminals from profiting by telling their stories. The well-known case of notorious criminal "Chopper Reid" is often given as an example of why we need laws to prevent people from profiting from their crimes. You may well think that this is not a bad thing.

However, the SA Government went even further in relation to David Hicks in two important ways. The first is that the criminal law system under which he was charged and eventually pleaded guilty, was not a system that would normally be recognised or accepted in Australia. The US Military Commissions were roundly criticised around the World because they accepted evidence obtained by torture and denied defendants the right to normal defence procedures.

As the Law Council of Australia's observer at the Guantanamo Bay trials, Lex Lasry QC said:

"Australia's international standing and moral authority has been diminished by its support of a process so obviously at odds with the rule of law."

So, by the SA Parliament accepting US Military Commission outcomes as genuine criminal trials, the SA Parliament has effectively prevented the telling of the story of this injustice by one of only two Australians who experienced it.

The second problem with the David Hicks laws is that they prohibit him from not just telling the story of Afghanistan or Guantanamo Bay, but from profiting from ANY Story whatsoever. The new laws do this by insisting that he is not allowed to profit from any writings that might achieve popularity by virtue of his notoriety. So, for example, David Hicks could be prevented from publishing his childhood memoirs, or a book of poetry or children's stories.

The question we need to ask ourselves is whether this is a reasonable restriction on free speech? I don't think it is and I voted against the Bill.

### **A Protection of Public Participation Bill for SA**

Before entering Parliament, I was a lawyer with the Environmental Defenders Office, a community legal centre specialising in public interest environmental law. In that capacity I came across many examples of bullying corporate behaviour – mostly aimed at groups and individuals who were speaking out against inappropriate developments or corporate behaviour.

In fact, a number of my clients found themselves being sued or threatened with legal action for speaking out. Usually, there was no real legal basis for the legal claims and what was really intended was to stifle dissent by frightening people into submission. There is nothing quite like receiving a legal writ on Christmas eve to scare even the most experienced campaigners. There is even now a name for this type of behaviour. It is called a SLAPP suit – which stands for Strategic Litigation Against Public Participation. Unfortunately, it often works – especially the chilling effect it has on public debate. Those who haven't yet been sued clam up and the media outlets become nervous of reporting the issues.

Last year, I introduced a Bill into State Parliament to try to put a stop to this practice. My Bill is called the Protection of Public Participation Bill and what it does is create a right of all citizens to participate responsibly in public debate and gives people the opportunity to obtain Court protection from bullying or threatening behaviour from lawyers and their clients.

Many of you will be aware of the flurry of legal actions against critics of the woodchip industry in Tasmania – the so-called "Gunns 20" cases. I want to make it harder for such actions to be brought in South Australia. We should have the right to

Speak out against environmental destruction or human rights abuses. We should be able to call for boycotts of companies as a response to their activities, in much the same way that many of us boycotted French goods when that country was exploding nuclear weapons in the Pacific. We should not have to run the gauntlet of legal threats to speak out on these public interest issues.

### **Religious vilification**

The final thing I want to say is to reflect on something said here last year by Tom Calma, National Race Discrimination Commissioner and Aboriginal and Torres Strait Islander Social Justice Commissioner. Tom said that

“Balancing the right to freedom of speech against the right to be free from racial abuse and hatred is a difficult and complex task. Likewise, finding a legal balance between censorship and the right to freedom of expression and human rights is equally complex, and we often find ourselves walking the thin wire dividing both.”

There is one Bill that has been languishing on the SA Parliamentary Notice Paper for over a year. It is the Equal Opportunity (Miscellaneous) Amendment Bill. This Bill has some very good features that remove discrimination and improve equality, however it also contains new provisions in relation to religious (as opposed to racial) vilification.

I have had many people writing to me urging me to oppose these provisions. Many of these letters come from religious people who do not want to be constrained in being able to preach the truth of their own beliefs and to contrast their truth with the evil and lies of other religions. This is particularly evident in the desire by some fundamentalist Christians to publicly criticise Muslims.

So, I agree with Tom Calma – it is a thin wire that we walk. I strongly support free speech, and I also support laws that prevent racial or religious vilification. Politics wasn't meant to be easy!

But, whilst many issues are complex, others are very clear-cut. The cases taken up by groups such as PEN and by Amnesty International are usually very clear-cut. People have a right not to be jailed, tortured or killed for expressing themselves in words. That position is absolute and I congratulate Adelaide PEN for reminding us that the price of freedom is indeed eternal vigilance.

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