

Castan Centre submissions to Parliament spur changes to laws



Castan Centre Associate Patrick Emerton

The Castan Centre had great success in prompting several important changes to criminal justice legislation in 2008 as a result of a number of submissions to federal parliamentary committees.

In April a submission was made to the Senate Legal and Constitutional Committee regarding its inquiry into the provisions of the *Telecommunications (Interception and Access) Amendment Bill 2008*. The principal author of the submission was Dr Patrick Emerton, a Castan Centre Associate and Lecturer in the Law Faculty. Assistance was provided by Castan Centre interns Stephanie Cheligoy, Meagan Grose, Hannah Pearson, Fiona Ransom, and Philippa Ross. Patrick also gave oral evidence to the Committee on behalf of the Castan Centre.

The Castan Centre put forward two main recommendations which were accepted by the committee and included in the legislation: that where a telecommunications interception warrant is issued for a device that a person is likely to use, that warrant should operate in respect of multiple devices only if the multiple devices are identified at the time the warrant is issued; and that there be an obligation on federal agencies to report periodically on the number of telecommunications devices intercepted pursuant to such warrants. This is a small but important victory for the protection of the right to privacy, and of the rule of law. The Committee also took note of the

Castan Centre's argument that proper regulation of the conduct of agencies is important not only to protect rights, but to ensure that those agencies not develop an unhealthy institutional culture, as was arguably displayed by the Australian Federal Police in the Haneef affair and by ASIO in its dealings with Izzat al-Badri.

In September a submission was made to the same committee regarding its inquiry into the provisions of the *Independent Reviewer of Terrorism Laws Bill 2008 [No. 2]*. The principal author was again Dr Emerton, this time assisted by Castan Centre intern Sophie Herreen, and Dr Emerton again gave oral evidence to the Committee. At the time of publication, the bill had passed the Senate and was before the House of Representatives. In the form in which it finally passed the Senate it incorporated three key recommendations put forward by the Castan Centre: an expansive definition of "terrorism laws"; a power for the independent reviewer to investigate not only the text of terrorism laws, but the application of those laws by agencies; and the removal of any obligation on the independent reviewer to consult with other government agencies before undertaking a review. Each of these will help ensure that the independent reviewer has the widest possible scope to undertake inquiries into the effect that Australia's anti-terrorism laws are having on human rights in Australia.

Two new Castan Centre books to launch in June

Former High Court Justice, the Hon. Michael Kirby AC CMG, will launch new books by Castan Centre Deputy Directors Dr Paula Gerber and Professor Susan Kneebone on June 5 at the Melbourne Immigration Museum. This joint launch will celebrate books looking at two prominent issues in human rights law: the state of human rights education in secondary schools, and the on-going struggle of asylum seekers, and state policy and legislative responses to them.

From Convention to Classroom: The Long Road to Human Rights Education by Dr Paula Gerber is the first attempt to gather empirical data on the extent of human rights education in Australian secondary schools. Dr Gerber used a case study approach to compare the extent to which schools in Melbourne and Boston, USA

are implementing the norm in the UN *Convention on the Rights of the Child* mandating that states must provide human rights education. Her interviews with teachers, government employees and NGOs gave her unique insight in to the numerous hurdles that hinder the development of human rights education. The book provides new ideas on how to increase human rights education so that states are able to comply with their international obligations. The positive reception that the book has received has led Edward Elgar publishers to commission a further book by Dr Gerber about human rights education, which is due for publication in 2010.

Refugees, Asylum Seekers and the Rule of Law, edited by Professor Susan Kneebone, provides an account of how five

industrialised common law jurisdictions – the United Kingdom, Australia, Canada, the USA and New Zealand – have dealt with the rights of asylum seekers and refugees. The book looks at how legislative agendas are determined and how legislators, the executive and general communities fit into the process. The five accounts use a human rights approach to evaluate state responses to asylum seekers and refugees and the impact of these approaches on the integrity of the rule of law. In the chapter she wrote for the book, Professor Kneebone sheds light on the policy approaches behind the Pacific Solution in Australia, noting its creation out of restrictive and deterrent policies highlighting the ability of the executive to drive a legislative agenda.