



New South Wales
Council for
Civil Liberties

NSW COUNCIL FOR CIVIL LIBERTIES

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Welcome to the November 2016 issue of the NSWCCL Newsletter

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National Issues

Asylum Seekers

The situation regarding Australia's treatment of asylum seekers in offshore detention centres becomes worse and worse. A few days ago the Government announced that laws would be introduced to ensure that anyone who came to Australia by boat seeking asylum after 19 July 2013 would never be able to receive a visa to enter Australia. This has dreadful implications for families who may have been separated, with members arriving in Australia at different times. At this early stage it is difficult to know if this bill will gain sufficient support to pass.

During the past few months, the Nauru Files released by the Guardian shone a light on the human suffering being endured as a result of Australia's border protection policies. More and more contractors are flagging their intention to stop providing services in these centres. The Manus Island centre will be closed after a recent court ruling, but the fate of the men held there is uncertain.

Upcoming Events

The John Marsden Memorial Lecture will be held on 1 December, with the Hon Michael Kirby AC CMG as our guest speaker – [follow this link to RSVP!](#)

To add insult to injury, at the Leaders summit on the Global Refugee Crisis in September, Malcolm Turnbull and Peter Dutton described these harsh policies as something to be emulated by other countries.

The AHRC released an excellent [report](#) on alternatives to offshore processing. Civil society continues in the fight against these policies. Doctors4Refugees secured [an important change](#) to the Border Force Act, with the change in regulation now exempting health professionals from the prospect of criminal sanction for reporting abuse. However, the draconian provisions of the Border Force Act remain in force with respect to teachers and social workers. The change in policy regarding health professionals shows how court challenges and a concerted campaign can be effective.

Many NGO's are preparing petitions, organizing walks and other campaigns. We must continue to keep the pressure on the Government to close the offshore detention centres.

Counter-Terrorism

After a rare lull in terror-related legislative activity, the Federal Government has two very significant counter-terrorism bills before it: the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 and the Counter-Terrorism Legislation Amendment Bill (No. 1) 2016.

The latter is an updated version of the 'fifth tranche' of C-T laws which was first introduced into Parliament last year. The joint CCLs supported several aspects of that Bill, but strongly opposed its key provisions ([See CCLs statement here](#)) - most notably lowering the age at which a Control Order can be imposed on a person to include 14 year old children, and a raft of provisions expanding intelligence agency powers of surveillance including over persons not suspected of any terrorist activity. We are preparing a response to the updated Bill.

Our immediate priority has been to register our vehement, principled opposition to *the High Risk Terrorist Offenders Bill* which proposes to keep 'high risk' terrorist offenders in prison when they have completed their custodial sentence. This will be without any further charge or conviction and the length of such imprisonment is not limited and could be indefinite.

We have consistently opposed similar 'continuing detention' laws relating to serious sex and serious violence offenders. This extension of the regime to terrorist offenders is not surprising. Once a precedent is set for 'exceptional' cases - the door is open. Justice Michael Kirby warned of this in a dissenting opinion in 2003 when the High Court upheld the first of these laws in Australia:

As framed, the Act is invalid. It sets a very bad example, which, unless stopped in its tracks, will expand to endanger freedoms protected by the Constitution.

This Bill does just that and we have no grounds to be confident that the regime will not in future be extended to other categories of serious offenders.

Past Events

Our Annual Dinner was a huge success! See more below.

NSWCCL in the Media

Our president Stephen Blanks has had a busy time as usual in the media discussing civil liberties issues.

You can see a listing of these stories and our other media appearances on our [facebook page](#), or on our [website](#).

Here are some selections:

[Stephen Blanks talks about the 2016 Census](#)
(9/08/2016- Radio 2UE)

[Anti-Muslim Hate Speech fuels extremism, experts say](#)
(15/08/2016- SMH)

Because of its importance, NSWCCCL joined with other CCLs to put a submission opposing the Bill to the Intelligence and Security Committee of Parliament and to give evidence to the Committee's public hearing. We argued that the Bill unwarrantedly and disproportionality breaches the fundamental right to be protected against arbitrary detention. We also argued that, given the extraordinary suite of C-T laws in Australia and the extensive powers of surveillance, control and detention already available to police and intelligence agencies, it was not necessary for the protection of the community.

We also noted that the implementation of the Bill relied on the availability of an accurate risk assessment tool or procedure to provide the Court with persuasive and reliable evidence that the offender was highly likely to commit a future serious terrorist offence if released at the end of his/her sentence. It is generally agreed no such tool/procedure exists and there is no likelihood one can be developed.

Realistically however, this Bill is pretty well assured of passage through Parliament. COAG has agreed to the broad framework and there is bi-partisan support. The best we can hope for is that its passage is delayed and the safeguard provisions are greatly strengthened.

[Read joint CCLs Submission](#)

NSW Issues

Revenge Porn Inquiry

We have been engaging with the Privacy Commissioner and the NSW Government on the creation of a new criminal offence of distributing "revenge porn". NSW Justice is undertaking an inquiry and submissions have been taken from individuals and organisations. We await draft legislation with interest, but note that our position is that a civil remedy is required, as well as a criminal offence.

Civilian Oversight of NSW Police

In our [December 2015 newsletter](#) we reported on progress in the long saga of advocacy for effective, independent oversight of police in NSW, especially with regard to the investigation of police critical incidents. The NSW Government had released a comprehensive report by Andrew Tink in his *Review of Police Oversight* and indicated its intention to accept his recommendations - including the creation of an integrated civilian oversight body with royal commission powers to replace the Police Integrity

[Jedi Knights don't need protection from free speech](#)

(17/08/2016- Sydney Morning Herald)

[Opal Week; Location Tracking with Stephen Blanks](#)

(5/09/2016- Radio 2UE)

[HSU called before NSW Industrial Relations Committee to defend use of chalk](#)

(21/09/2016- The Courier)

[Should we sacrifice our civil liberties to stay safe?](#)

(16/10/2016- Channel 7: Sunrise)

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Commission, the Police Division of the Office of the Ombudsman and the Inspector of the Crime Commission.

While the Tink report was in many ways very positive – and clearly acknowledged the very real problems with the current system of handing complaints and investigation of critical incidents - NSWCCCL was disappointed that it recommended the Police Force should continue to investigate police critical incidents. It did make numbers of recommendations to strengthen accountability and transparency in the process, but argued independent investigation of such incidents was neither logistically practical nor likely to be a positive influence on police culture. ([See NSWCCCL Submission](#))

The Government last month introduced the [Law Enforcement Conduct Commission Bill 2016](#) to fulfill its commitment to implement the Tink Report recommendations.

The Bill has generated [criticism from the Ombudsman](#) and the Labor Opposition. The Ombudsman argues that the Bill fails to deliver on important Tink recommendations and as a result new integrated structure and process will actually diminish, rather than strengthen, the effectiveness of the oversight functions of existing agencies. Labor has tabled a number of [proposed amendments](#) to the Bill addressing some of these issues.

NSWCCCL has yet to complete a detailed analysis of the Bill, but this is now a priority as it is expected to be further debated and possibly amended in November.

We would welcome any input from members/supporters on the Government's proposals. It is our intention to provide members of Parliament with our views on the Bill in early November.

News from CCL

Annual Dinner

The 2016 NSW CCL Annual Dinner on 26 August was a huge success! We had an excellent number of supporters attending.

Uncle Chicka Madden gave a fascinating Welcome to Country, speaking about his times growing up in Redfern. Stephen Blanks, President of NSW CCL, gave an interesting, but somewhat disconcerting, summary of the erosion of civil liberties we have seen over the past year. Pauline Wright, Vice President NSW CCL, was our warm and lively MC.

Bernard Collaery gave the keynote address: *Is the right to truth central to the rule of law in a democracy?* Bernard has a long and distinguished career in the human rights field. Over decades, he has been part of many of the human

rights issues which have arisen in our region. He highlighted the work he has done representing Witness K, an ex ASIS officer who became a whistleblower regarding the alleged bugging of the Timor-Leste Cabinet in negotiations in 2004 concerning the Oil and Gas Treaty between Australia and Timor-Leste. He made the point that not all of Australia's actions in dealing with our neighbour have actually been in Australia's national interest.



Bernard Collaery delivers speech at the 2016 Annual Dinner

As well as mentioning the derogations from the rule of law that are becoming more and more common, Bernard emphasized the importance to a democratic society of the role of whistleblowers. He finished with a call to action – that we should support whistleblowers and give them the assistance they require to face up to the excesses of unrestrained Executive power.

The dinner was an opportunity for CCL friends and supporters to catch up, and also a fundraiser for NSW CCL. We are grateful for the generosity of our auction and raffle donors, as well as those who contributed to the raffle and auction. We made a healthy amount of profit to support us in our activities over the next year.

Thank you to all who helped with organization, made donations and all who attended.

See the [full report](#), including photos, and videos of the speeches, on our website.

Annual General Meeting

On 26 October we held our 53rd Annual General Meeting. The meeting was well attended. We elected a new Committee and Executive for the next year and passed some [new policy resolutions](#).



NSWCCL members discuss policies at the 2016 AGM

Submissions

Due to the Federal election, there have been fewer inquiries requiring submissions than usual. However, there has been some activity regarding counter-terrorism. We were part of combined CCL's submissions to:

- the Independent National Security Legislation Monitor's Inquiry into questioning and detention powers; and
- the Parliamentary Joint committee on Intelligence and Security inquiry into Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016.

See more details on [our website](#).

Make a difference: join an Action Group

NSWCCL is busier than ever with continued attacks on basic rights and liberties at federal and state level. You can help the push back by [joining one of our Action Groups](#).

The hard work of CCL is done in the Action Groups, and we need members and supporters to participate for our organisation to make an impact. There will be something you can contribute no matter your skills, knowledge or time commitment.

The Action Groups include [Asylum Seekers and Refugees](#), [Freedom of Speech, Privacy and Data Retention](#), [Criminal Justice, Police Powers, and](#)

[Mental Health, Civil and Human Rights](#), and other organisational groups including Communications, Events and Membership. [Sign up now to get involved.](#)

Not sure? [Email our office to discuss.](#)

Thank you to our members and supporters- we could not continue with our important work without you!

You can keep up to date on [NSWCCL in the media on our website.](#)

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