



New South Wales  
Council for  
Civil Liberties

### NSW COUNCIL FOR CIVIL LIBERTIES

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## Welcome to the February 2017 issue of the NSWCCL Newsletter

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## National Issues

### Defending s18C and the Human Rights Commission – again!

Both s18C of the Racial Discrimination Act and the Australian Human Rights Commission are again under serious attack from the Federal Government.

George Brandis' attempt to weaken s18C in 2014 was soundly repudiated by the Australian people; the then PM (Abbott) wisely retreated and abandoned the amendment. NSWCCL strongly opposed the Brandis Bill and thought the Government unlikely to try again given the depth of community anger aroused by the proposal.

**KILLSWITCH  
DOC  
SCREENING- Get  
your tickets now!**

*NSWCCL* and *Electronic Frontiers Australia* are hosting an exclusive screening of the documentary 'Killswitch', along with a

We were misguided. Emboldened by the recent rise of the far right here and overseas – and within the Liberal Party - the Government is now targeting, not just the legal protections against racist abuse provided under s18C, but also the processes of the AHRC which have served Australia well for 20 plus years.

This new push poses a serious threat to the protections currently provided by the RDA and to the AHRC. We have therefore again joined many others in arguing the case against weakening s18C and in supporting the overwhelmingly positive record of the AHRC in resolving the vast majority of complaints effectively through conciliation, while dismissing those that are trivial or vexatious. We are not aware of any cases under the RDA which have unreasonably constrained freedom of speech in Australia.

### **CCL actions**

In December 2016 CCL made a [formal submission](#) to the Parliamentary Committee reviewing s18C and the processes of the Commission. We

- opposed any weakening of s18C but supported a clarifying amendment that would bring it into line with case law interpretation (repeal ‘to offend’ and possibly ‘to insult’ and replace with ‘to vilify’)
- strongly supported the Commissions complaint handling processes
- noted there were many other recent laws which do unreasonably undermine freedom of speech and would welcome their repeal or amendment
- called on the Committee to recognize the importance of independent public sector agencies like the AHRC in a robust democracy

We are currently supporting the [GetUp ‘#HandsOff 18C’](#) campaign and recommend members to do so.

### **Next Steps**

The Committee has recently held public hearings on the inquiry and will report to Parliament in late February. We expect the Government will try to bring draft legislation to the Parliament this session.

We urge supporters of s18C and the Human Rights Commission to make their views known to their local member, the AG and the Prime Minister on this matter.

[NSWCCL 2016 submission](#)

[NSWCCL 2014 submission](#)

panel discussion on the evolving civil liberty concerns of the internet age.

For more info and tickets, [click here!](#)

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### **Past Events**

The John Marsden Memorial Lecture held on 1 December, with the Hon Michael Kirby AC CMG as our guest speaker was a great success! See more details on our website.

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### **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 is a selection:

## Asylum Seekers

We welcomed the deal whereby a number of asylum seekers on Nauru and Manus Island would be considered for resettlement in the United States, despite the uncertainty as to how many asylum seekers the deal applies to and the fact that there is little transparency regarding the arrangements. However, given more recent events in the US and the well-publicized conversation between Malcolm Turnbull and Donald Trump, the prospect of anyone being resettled in the US on a timely basis looks remote. We maintain our opposition to offshore processing and the offshore detention centres. They should be closed immediately and all people brought to Australia.

In the past few months there was a Senate inquiry into a proposed lifetime ban for Australian visas for those who have been detained offshore. We oppose this ban and lodged a submission to this effect.

We congratulate the [Refugee Council](#) on the positive outcome in their High Court case concerning the processing of asylum seeker applications and hope that these inordinate delays may soon be over.

Together with dozens of other organisations, we signed the [open statement](#) organised by the Refugee Council, which calls for immediate action on offshore detention. The offshore detention centres should be closed immediately and all people brought to Australia.

The Senate called an inquiry into the Migration Amendment (Visa Revalidation and Other Measures) Bill. We view this as yet another attempt by the Minister for Immigration to amass extraordinary unwarranted powers. We support the [submission of the Law Council](#).

## Ratification of OPCAT

We congratulate the Federal Government on agreeing to ratify the Optional Protocol to the Convention Against Torture (OPCAT). We have been arguing for ratification of OPCAT for some years. Ratification of OPCAT allows inspection of places of detention by independent monitoring bodies. This is an extremely welcome development given the deficiencies in the juvenile justice system. We would argue that the oversight regime should extend to offshore detention centres, but expect the Government would resist such an application.

## A Civil Liberties position on a national integrity body?

In February 2016 a Senate Select Committee was set up to *'inquire into whether a national integrity commission should be established to address institutional, organisational, political and electoral, and individual*

[Stephen Blanks talks firearm search orders](#)  
(8/012/2016- Radio 2UE)

[Stephen talks anti-protest laws with Colin Hesse](#)  
(17/11/2016- SMH)

[Steep rise in police requests for Opal data](#)  
(5/12/2016- The Guardian)

[Shocking video shows police officer knee man in ribcage during violent western Sydney arrest](#)  
(11/01/2017-Channel 7 News)

[Anti-lockout rally shut down: do you have the right to protest?](#)(21/01/2017- ABC-Triple J-Hack)

[NSW MP Jonathan O'Dea says 'reasonable people' would support burka ban](#)  
(8/02/2017 - ABC News Online)

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*corruption and misconduct.* NSWCCCL gave some time to considering what position, if any, it would take on this contentious matter, however the Turnbull generated double dissolution led to the lapsing of this Inquiry. The Committee produced an [interim report](#) of no great consequence in May.

[The Senate accepted an ALP motion](#) on Wednesday 8th of February to establish a Select Committee to inquire into whether a National Integrity Commission is needed, and if so its scope and power. It is to report by the 15th of August. This decision pre-empted a [later resolution](#) by the leader of the Greens, Senator Di Natale, calling on the Senate to bypass an inquiry and "support the establishment of an independent federal anti-corruption commission to oversee federal members of parliament and the public service". This was defeated.

In the past NSWCCCL held a clear position of opposition to all such bodies. In recent years the extent of serious and systemic corruption in NSW and the collateral damage to our parliamentary democracy and the public good has led us to defend the NSW ICAC, as the NSW Bar Association and the Law Society have done, because ICAC has uncovered multiple instances of serious corruption that would otherwise not have been detected.

Last year CCL decided it was appropriate it take a position on the question of a national integrity body. We were cautiously supportive at a conceptual level, but had not worked through any of the particular issues that apply at the federal level when the inquiry lapsed.

Over the next few months we will develop a formal CCL position. There are many civil liberties dangers with such bodies and CCL is very conscious of the imperative for strong safeguards around their powers and strong independent oversight of their operations.

The work will be guided by our Criminal Justice and Police Action group. We would welcome input from members/supporters with interest and expertise.

Want to be involved in this project? Register interest through the [CCL website](#) or email [Lesley.lynch@nswccl.org.au](mailto:Lesley.lynch@nswccl.org.au)

Dr Lesley Lynch

## **Access to Telecommunications data in civil proceedings**

We lodged [a submission](#) with the Attorney General's Department and the Department of Communications and Arts in January 2017. We reiterated our view that the current metadata scheme is an affront to civil liberties and oppose its extension into civil proceedings. Extension of the uses to which metadata may be put is one of the reasons that we opposed the introduction of laws requiring collection and retention of metadata in the first place.

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# NSW Issues

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## **New police oversight body**

A new body of vital importance to the NSW justice sector, the Law Enforcement Conduct Commission (LECC), was set up in January following the passage of The Law Enforcement Conduct Commission Act last year. It brings together the oversight and investigative roles of the Police Integrity Commission, the Police Division of the Office of the Ombudsman and the Inspector of the Crime Commission into a single civilian body to oversee police operations. It has royal commission type powers in some contexts. Its oversight powers relate to the NSW Police Force and the NSW Crimes Commission.

### **Police critical incidents**

The major flaw from CCL's perspective is that the investigation of police critical incidents (e.g. death or serious harm to a person during a police operation) will still be conducted by the police themselves and not the Commission. This has long been a central concern for CCL. Police investigating police critical incidents is inherently flawed and has too often resulted in unwarranted findings of no police misconduct or negligence. Public confidence in the credibility of these investigations is low.

The Commission does have a stronger oversight capacity than the Ombudsman had. It will have real-time access to information about critical incidents and improved monitoring capacity in relation to the police investigation. But the oversight capacity is seriously weakened by a totally unnecessary restriction that the Commission can only observe critical incident interviews with "the consent of the person being interviewed and the senior critical incident investigator". This extraordinary restriction on access to the key interviews in an investigation originated from the Government – it was not recommended by Tink. Both the ALP and Greens tried unsuccessfully to have it removed.

### **Other restrictions**

On other fronts it is a pity that the Government, despite its public commitment to implement all of Tink's recommendations, failed to do so in some important areas.

The Ombudsman has pointed out that the new arrangements will 'diminish rather than strengthen' oversight of the complaints function previously available to him under Part A of the Police Act in that the Commission's investigative power is restricted to 'serious' misconduct or maladministration.

These and other restrictions on the Commission's oversight and investigative functions will undermine its capacity to be a driver for

significant reform of day to day police culture in the investigation of complaints and critical incidents.

### **Fighting police corruption in NSW**

CCL was cautious about the inclusion of serious police corruption issues within the ambit of the new Commission. We shared the concerns of Commissioner Woods that the weight of the complaints function could swamp and possibly compromise the anti-corruption function. We indicated a preference for investigation of serious police corruption to be the responsibility of a strengthened PIC or reintegrated into a reinvigorated ICAC. Tink and the Government however, opted for its integration into the new Commission, with some safeguards to address Wood's earlier concerns.

It is clearly an imperative that the capacity for effective and independent investigation of police corruption be strengthened rather than diminished in NSW. Developments on this front will be closely monitored by CCL.

### **Next steps**

The Commission is not yet fully operational. There have been press reports that a Supreme Court Judge (Justice Michael Adams) has been nominated for the Chief Commissioner's role. This has not yet been confirmed but Justice Adam's wide-ranging legal background, including a stint as chair of the NSW Law Reform Commission, would indicate he would be a well-qualified appointment.

Hopefully the new Government will actively support the Law Enforcement Conduct Commission and, if problems are identified with its powers and resources, be willing to amend the legislation or the budget appropriately.

NSWCCL will closely monitor the operation of the Commission in 2017 to see if it can deliver significant reform and effective independent oversight of the Police Force and the Crimes Commission.

Dr Lesley Lynch

[NSWCCL submission to Tink Inquiry](#)

[Tink Report](#)

[Acting-Ombudsman letter](#)

## **Defending the right to protest**

NSWCCL is deeply concerned with the restrictions extraordinary new laws - and police use of them - place around the fundamental right to peaceful protest in NSW.

Last year we vehemently opposed the passage of the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act; The Organised Crime and Public Safety Act and The Serious Crime Prevention Orders Act. Collectively, they have given NSW police extraordinary new powers – including new controls on the right to protest, restrictions on freedom of movement and association and a wide range of other constraints.

These laws are already being used to break up, or refuse permission for legitimate protests relating to environmental issues (notably opposition to CSG mining), the highly controversial WestConnex project and the Keep-Sydney-Open movement.

*"At the protest, we asked the AECOM engineer to provide written authority that he was acting on behalf of the NSW government's Roads and Maritime Services. He refused to do this. Instead he and others erected a fence around us... along with two others, I was arrested and charged with 'remaining on enclosed land'. A total of 13 people have now been arrested in protests against WestConnex." - Wendy Bacon was arrested and says she will plead not guilty.*

**Source:** [The New Matilda](#) (03/11/2016)

*"There have been occasions where protests have been planned around important international events and the court has been reluctant to allow protesters that would potentially interfere with those kinds of events. On this occasion the court has succumbed to police pressure and the public safety line. We've seen that a few times in the last couple of years." - NSWCCCL President Stephen Blanks on the court's decision to halt the Keep Sydney Open rally.*

**Source:** [ABC- Triple J](#) (21/01/2017)

Given the level of community dissent from many discriminatory and repressive state and federal policies, it is likely that public protests will be increasingly frequent in NSW. These new laws make it abundantly clear that NSW citizens will have to fight to protect their core democratic right to peaceful protest against the seeming determination of both NSW and Federal governments to suppress public dissent.

This issue will be a major focus for NSWCCCL throughout 2017 and as a first step we are beginning discussion with other concerned groups to build an effective coalition of resistance to these anti-democratic laws.

Interested in participating in this project with CCL? Ideas and suggestions welcome. Email Dr. Lesley Lynch at [lesley.lynch@nswccl.org.au](mailto:lesley.lynch@nswccl.org.au) or join the [Criminal Justice and Police Action Group](#).

***Know Your Rights Booklet***

We are almost finished our *Know Your Rights* booklet which outlines your rights if you are arrested while protesting. The booklet comes as a reaction to the Anti-protest suite of legislation passed in NSW. We are planning a launch event. More details soon.

## **Reorganisation of Justice Portfolio**

We welcome the reorganisation of the Justice portfolio announced by Premier Berejiklian. The situation whereby the Attorney General was subordinate to the Police Minister within the justice cluster was grossly inappropriate. The reinstatement of the role of the Attorney General as the senior Minister within the justice portfolio properly recognises the importance of the AG as the first law officer in NSW.

Hopefully the underpinning administrative arrangements in the Justice Cluster will allow the AG and the Police Minister independent staff for critical areas relating to policy and legal review. Such an arrangement, which was previously the norm, will generate more robust assessment of policy and legislation and broader advice to Cabinet.

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## **News from CCL**

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### **10th Anniversary John Marsden Memorial Lecture**

Thank you to all who attended the 2016 John Marsden Memorial Lecture held at the Masonic Centre in Sydney on 1 December 2016. John Marsden was a former President of the NSWCCCL, former President of the NSW Law Society and activist for LGBTIQ rights and civil liberties. The 10 year Memorial Lecture was delivered by the Hon Michael Kirby AC CMG and was a huge success, attended by over 120 people.

Jim Marsden gave a moving personal speech about John's life. Pauline Wright, NSWCCCL Vice President and President of the Law Society, who worked with John in the 1980's, introduced our eminent speaker. The Hon Michael Kirby AC CMG (a life member of the NSW Council for Civil Liberties) delivered a strong and informative speech about the state of LGBTIQ rights, both from a local and international perspective. Louise Marsden gave a heartfelt vote of thanks. More details are contained on our website.

John Marsden was a passionate supporter of civil liberties and a major figure in the NSWCCCL for many years. In the decades since John was President, the need for vigilance in defending civil liberties remains and is perhaps even more critical. We are still taking action on many fronts, which were thought to be resolved during the years of John's involvement with

NSWCCL. Michael Kirby's speech concluded with a list of issues that were important to John. Sadly, these issues are still not protected and require greater efforts than ever to protect.

Read the [full report](#) and speeches by Jim Marsden and Michael Kirby [here](#).

## Submissions

We have lodged submissions on:

- Legal and Constitutional Affairs Legislation Committee Inquiry into Migration Legislation Amendment (Regional Processing Cohort) Bill 2016
- Parliamentary Joint committee on Intelligence and Security inquiry into Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016
- Attorney General's Department and Department of Communications and Arts inquiry on access to telecommunications data in civil proceedings
- Joint Parliamentary Committee on Human Rights inquiry into Section 18C and D of the Racial Discrimination Act and complaints handling procedures of AHRC

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

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## 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](#).

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**Thank you for your support – 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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