



New South Wales  
Council for  
Civil Liberties

**NSW COUNCIL FOR CIVIL LIBERTIES**

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

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## National Issues

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### Vote YES! Marriage Equality Postal Survey



While we opposed the Government’s decision to hold this non-compulsory, non-binding and divisive postal survey, NSWCCL urges readers to VOTE YES and return their survey asap and before the closing date of 7th November.....

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## Coming Events

### NSWCCL Annual Dinner

Come and join us for our annual get-together. Our keynote speaker is Bret Walker SC, distinguished senior counsel and an active participant in the Australian legal and wider community. He will be introduced by Michael Kirby AC CMG

Friday 24 November 2017

**Book Now**

### AGM

Members: come along and discuss policy priorities

And encourage others to do the same...

**Vote YES! Vote YES! Vote YES! Vote YES! Vote YES!**

## Counter-terrorism laws back on the agenda

The avalanche of counter-terrorism and national security legislation had abated this year – possibly because of the difficulty of identifying new laws given our uniquely extensive body of existing C-T law.

However, the lull has ended and a new flurry is upon us.

The October COAG meeting will endorse a nationally consistent C-T framework. It will include controversial new offences and powers – largely modelled on either the Commonwealth or the NSW high risk terrorist laws passed in 2016. NSWCCCL strongly opposed these laws at the time – particularly the extension of preventative detention orders to cover persons as young as 14 and extending the period of this detention to 14 days in the NSW Act; and the introduction of post-sentence, continuing detention of up to 5 years for prisoners convicted of a serious terrorist offence and judged to be at risk of re-offending if released, in the Commonwealth Act.

There will also be new and extended laws in the COAG package.

The Prime Minister has called for states to hand over all drivers' licence photos for a national facial recognition database for use in counter-terrorism surveillance, thus dramatically expanding the surveillance capacity of ASIO and the AFP over most Australian residents.

The PM also announced his intention of creating a new C-T offence of possessing instructional terrorist material and engaging in terrorism hoaxes...which one would have thought are adequately covered in existing law.

Simultaneously Premier Berejiklian announced that NSW will enact '*the toughest terror laws in Australia*'. <http://www.smh.com.au/nsw/highrisk-terror-prisoners-and-radicalised-inmates-face-sentence-extensions-20171004-gyty49.html>. These laws will allow for prisoners who have been convicted of terrorist offences or suspected of having been 'radicalised' in prison' (regardless of their original offence) to be detained post completion of their sentence for a further 5 years - if they are judged to be a threat to the community. Currently such post-sentencing detention laws in NSW only apply to those convicted of serious violence or sex offences.

The proposed NSW laws are indeed tougher than those in the controversial *High Risk Terrorist Offenders Act 2016*. The Commonwealth Act only applies to high risk prisoners convicted of a serious terrorist offence.

NSWCCCL President Stephen Blanks has given multiple public statements to the media in response to this pre-COAG flurry of announcements re-iterating our concerns and opposition to these proposals: <http://www.9news.com.au/national/2017/10/04/13/22/beware-perils-of-expanding-facial-recognition-powers-in-australia-watchdog-warns>

See our [Media page](#) for more.

for 2018, elect new Executive and Committee, attend post-meeting social

(Note: you must be a financial member to vote)

Details: 6pm, Town Hall Council Chambers  
Wednesday 25 October 2017

NSWCCCL is active on a range of issues, but lacking resources to grapple with many more. We are a volunteer organisation in need of more active supporters: volunteer your advocacy, organisational and communication skills; donate; join.

Consider nominating for Committee – we need active participants. We also need an assistant Secretary able to attend meetings and assist with administration.

Fill out a nomination form [here](#) and submit to our Secretary, [Therese Cochrane](#).

### Terry O’Gorman Speaking Event

2017 Paul Byrne SC Memorial Lecture: 15 Years After - Terrorist Laws and Civil Liberties: Is the Balance Right or Wrong?

Speaker Terry O’Gorman, President Australian Council for Civil Liberties

1 November 2017

Find more information [here](#).

### Law Society Thought Leadership Program

Human Rights in Uncharted Territory

Sadly, there is little support for such civil liberties concerns among our political leaders.

We can, however, be confident that post the current COAG meeting disproportionate and deeply disturbing C-T laws at both state and federal level will again be a central concern for civil liberties bodies across Australia.

### [COAG C-T package](#)

### [Joint CCLS opposition to C-T Act 2016](#)

## **A National Integrity Commission - Senate Committee equivocates**

There is widespread support for a national body to expose and deter serious and systemic corruption in public administration including the electoral process, parliament and politicians and their staff.

As reported in the last newsletter, NSWCCCL joined others in arguing strongly for the immediate establishment of such a body to a Senate Select Committee specially established to consider (yet again) this increasingly urgent issue.

At the time, there was some optimism that decisive action by the Parliament might be possible. Unfortunately, the recently released Committee's recommendations are equivocal and - from NSWCCCL's point of view - disappointing.

Noting the number of previous inquiries into the issue, NSWCCCL argued that the time for a decisive recommendation for immediate action on a national body had come; otherwise the most likely outcome would again be a loss of impetus.

Sadly, this argument did not prevail. The majority report (Government and ALP members) recommended a transitional approach with priority being given to "*strengthening the national integrity framework in order to make it more coherent, comprehensible and accessible.*" (Recommendation 1)

The three cross benchers on the committee (Senators Rhiannon Greens, Kakoschke-Moore NXP and Hinch) did however support the immediate action on a national body.

Thankfully all is not lost. The Committee did not actually reject the strong arguments supporting an overarching anti-corruption body. In fact, it found the evidence pretty persuasive:

*'On the basis of the evidence before it, the committee also believes that the Commonwealth government should carefully weigh whether a Commonwealth agency with broad scope to address integrity and corruption matters—not just law enforcement or high risk integrity and corruption—is necessary. It is certainly an area of great interest to the public and irrespective of whether it is achieved by way of a new federal agency or by some other mechanism(s), current arrangements must be strengthened'* (par 4.141, p218).

*Accordingly, it also recommended: "the Commonwealth government gives careful consideration to establishing a Commonwealth agency with broad scope and jurisdiction to address integrity and corruption matters."* (Recommendation 2)

The Committee made 5 other process related recommendations which are all positive and reasonable - but in our view cannot be an effective alternative to a single overarching national integrity commission.

17 October 2017

Find more information [here](#).

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## **NSWCCL in the Media**

Our president Stephen Blanks has had an increasing number of media mentions.

You can see these stories and other media appearances on our [Facebook page](#), [Twitter](#), or on our [website](#).

[NSWCCL supportive of NSW renewed push for abortion criminalisation](#)  
(08/05/2017 - The Guardian)

[NSW police complaints in limbo as new watchdog falls behind schedule](#)

(12/05/2017 - The Guardian)

[Keenan rejects Abbott call: 'Police already have shoot-to-kill power'](#)  
(25/05/2017 - The Australian)

[It's Time for an Australian Bill of Rights](#)  
(26/05/2017 - Sydney Criminal Lawyers)

## Where to next?

We do not yet have Government or Labor Party responses to the Committee report. However, it is unlikely that the Government will decide to go beyond the Committee's recommendations and quite possible that it will ignore recommendation 2 and focus only on recommendation 1.

NSWCCL will continue to argue the urgent need for a national body.

But we will also join efforts with those seeking to keep alive and progress the other recommendations and try to keep the Government explicitly working on a staged agenda with the eventual establishment of a broad based national integrity commission as a likely outcome.

## [Read more.](#)

[NSWCCL National Integrity Commission submission April 2017](#)

[Select Committee Report on a National Integrity Commission Sept 2017](#)

## An Australian Human Rights Charter - worth trying again?

There has not been much stomach for active campaigning in support of a national bill of rights in Australia since the bitter and crushing disappointment of the Rudd Government's failure in 2010 to act on the recommendation of the National Human Rights Consultation Committee (the Brennan Report) for a Federal Human Rights Act. This surprising and weak betrayal of community expectations, following a year of extensive consultation and clear public support for a Human Rights Act - and the subsequent loss of the 2013 election to the Abbott Government - put a long-term dampener on the enthusiasm of all but the most determined of campaigners.

Australia remains alone among western democratic states in not having a human rights act or charter. This has been a significant factor in allowing the proliferation of national laws which seriously breach human rights and liberties – especially in counter-terrorism and refugee/border security laws.

But there are stirrings of renewed interest and tentative hope that the ALP in its quest for victory at the next federal election might be moved to champion an Australian human rights charter.

There was an interesting moment in the Parliament in August when independents Andrew Wilkie and Cathy McGowan were allowed to introduce *The Australian Bill of Rights Bill 2017* into the Federal Parliament. It is a strong bill and at the time NSWCCL speculated on the possibility that the unusual vulnerability of the Government in the House of Representatives might give these two members more influence than would normally be the case. That remains to be seen.

There is some activity at the state level. So far only the ACT and Victoria have human rights charters, but Queensland appears to be well on the way with a formal commitment by the Premier in late 2016 to introduce a Human Rights Act. Given the federal stalemate, NSWCCL has joined with other bodies to try and get a NSW Charter of Rights Act back on the State's political agenda. There is some hope that NSW Labor can be persuaded to follow Queensland and go to the next state election with a commitment to introduce a bill.

[Schapelle's home, but 170 Australians are in jail or facing charges overseas for drug crimes](#)  
(28/05/2017 - Sydney Morning Herald)

[Border Advice for Muslims Alarms Australian Official - but It Came From His Department](#)  
(30/05/2017 - The New York Times)

[Warning Over Politicising Parole System](#)  
(07/06/2017 - The Australian)

[Expanding Police Powers to Use Lethal Force](#)  
(01/07/2017 - FBi Radio)

[NSW Police say it is public fear, not police agenda behind new terrorism powers](#)  
(25/08/2017 - ABC News)

Drive with Richard Glover in response to ['World's number 1 anti-vaxxer' Kent Heckenlively denied entry to Australia](#)  
(31/08/2017)

[Councils 'spying' on residents with tracking devices on bins](#)  
(12/09/2017 - Channel 7 News)

[Why a BlackBerry will no longer be a criminal's best friend](#)  
(01/10/2017 - The Sunday Telegraph)

[Turnbull defends proposed anti-terrorism laws as constitutional](#)  
(04/10/2017 - The Guardian)

[Expanding facial recognition database in Australia not justified, watchdog warns](#)  
(04/10/2017 - 9News)

[Civil liberties groups 'Alarmed' over National facial recognition database](#)

The need is great and given the context seems less hostile at a national level, NSWCCCL will be elevating the campaign for an Australian Human Rights Charter. We will be discussing this at the October AGM and seeking a formal agreement that this will be one of CCL's highest active priorities.

In a timely contribution to a renewed campaign, George Williams and Daniel Reynolds launched the 4<sup>th</sup> edition of *A Charter of Human Rights for Australia* at Gleebooks in September. This is an invaluable analysis of the history, the law, and the arguments in support of a national charter. Those of us at the packed event were treated to an intensely stimulating and entertaining Q&A between George Williams and Michael Kirby - two deeply informed experts and long-time campaigners for a national charter. It was also a very positive discussion providing grounds for an optimistic approach to a renewed campaign.

After all - how long can even our hostile politicians leave Australia so isolated on this fundamental issue?

## Reform to Federal Custody Notification Service

The Custody Notification Service (CNS) is a legislative scheme requiring police to contact an Aboriginal legal service every time an Aboriginal person enters police custody. The scheme was designed and recommended by the Royal Commission into Aboriginal Deaths in Custody in 1991. Since its implementation in NSW around 17 years ago, the CNS has seen the rate of Aboriginal deaths in NSW Police custody plummet from around 18 per year, in the late 1980s, to zero for an unbroken period of over ten years.

The CCL has advised a Senate Legal and Constitutional Affairs Committee of Inquiry and liaised with a range of Aboriginal legal services around the country, in respect to the consequences of a new Bill designed to reform the Federal Custody Notification Service which fails to provide Aboriginal people in custody with key procedural rights. While the CCL's submission to the Senate Committee was supported by ALP and Greens Senators, it failed to convince the Coalition Government to substantively change the legislation. Rather, in acknowledgement of the submission by the CCL, the Senate Committee has recommended amending the explanatory memorandum of the Bill to assist interpretation of the legislation in such a way that is more closely aligned with the NSW CNS. The CCL fears that such change is not enough to counter injustice against Aboriginal people within the federal criminal justice system.

## Australian Citizenship Changes

Hundreds of submissions were made to the Senate Legal and Constitutional Affairs Legislation Committee on the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017.

You can read our submission [here](#).

CCL views the Bill as dangerous, undemocratic and unfair. In brief we argued that the Bill:

- creates a class of permanent residents who are denied recognition as citizens
- requires new citizens to accept arbitrarily defined "Australian values"

(04/10/2017 - ABC News Radio)

[NSW Premier Gladys Berejiklian unveils plan to introduce 'nation's toughest terror laws'](#)

(04/10/2017 - Brisbane Times)

[NSW Premier Gladys Berejiklian unveils plan to introduce 'nation's toughest terror laws'](#)

(04/10/2017 - Sydney Morning Herald)

['Nation's toughest terror laws': Berejiklian unveils 'drastic' plan](#)

(04/10/2017 - Daily Advertiser)

[Turnbull government's new anti-terror laws labelled 'draconian'](#)

(04/10/2017 - The New Daily)

[Civil liberties 'a luxury' as premiers back Turnbull's new anti-terror laws](#)

(05/10/2017 - The New Daily)

[Should You Be Worried About The Government's Huge New Facial Recognition Database?](#)

(05/10/2017 - The New Daily)

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## Submissions

NSW CCL has been busy making submissions on a variety of subjects. Here is a list of submissions from the last few months:

[NSW Committee on ICAC inquiry into protections for people who make voluntary disclosures to ICAC](#)

[Senate inquiry into Crimes Legislation Amendment](#)

- confers unwarranted extraordinary powers on the Minister for Immigration
- requires that applicants for citizenship have a knowledge of English which is set at an unfairly high level.

It now appears that the Government will need to go back to the drawing board with this legislation, due to strong community opposition and the opposition of Nick Xenophon. Given the Parliamentary timetable, it is unlikely that this issue will be settled this year.

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## NSW Issues

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### Martin Place - cruel and unnecessary response

NSW CCL strongly opposed the Government's gratuitous action against the homeless people in Martin Place in August. Premier Berejiklian and Minister Goward seemed more motivated by hostility to the Lord Mayor of Sydney than protecting the public safety of Sydney siders, let alone caring for the well-being of the homeless persons to be evicted.

The Sydney Public Reserves (Public Safety) Act 2017, which was forced through Parliament without public consultation or time to properly consider the Bill, was a harsh response when what was called for were more responsible, compassionate and sustainable remedies to the serious policy failures of governments which have resulted in so many people homeless in Sydney.

These new powers to move people on were not needed. The existing powers that NSW Police had under LEPPA (Part 14) and the Crown Lands Act (Sections 156, 157) were more than adequate to remove persons who present any danger or threat to the public or are engaged in any unlawful activity in Martin Place.

Homeless people sleeping in Martin Place - or other public place - are not acting unlawfully. This Bill effectively criminalises homelessness. It is a retrograde step, contrary to the move to abolish the crime of vagrancy and other victimless crimes more than 30 years ago.

We added our voice to the many that attempted to block this legislation and distributed a public statement to key politicians. The Bill was opposed by the ALP opposition, the Greens and key independents including Alex Greenwich.

[NSWCCL Public Statement on Public Safety Bill](#)

### Euthanasia - NSW VAD bill returns to Parliament

Advocates for the legalisation of voluntary euthanasia will maintain a focussed campaign over the next two months to persuade the NSW Parliament to respect clear community support and pass the *Voluntary Assisted Dying Bill 2017* when it returns to Parliament later this year- probably in November.

The Bill was introduced by Trevor Khan (MLC - Nationals) on behalf of a strong Parliamentary Working Party with membership from the Liberal, National, ALP and Greens parties and the independent MP Alex Greenwich.

[\(Powers, Offences and Other Measures\) Bill](#)

[Federal Dept of Communications and Arts consultation on civil penalty regime for non-consensual sharing of intimate images](#)

[NSW Parliamentary Working Group on Assisted Dying consultation on Draft Voluntary Assisted Dying Bill](#)

[Senate Inquiry into Australian Citizenship Legislation Amendment Bill \(Strengthening the Requirements for Australian Citizenship and Other Measures\) Bill 2017](#)

[Senate Community Affairs Legislation Committee inquiry into Social Services Legislation Amendment \(Welfare Reform\) Bill 2017](#)

[Legal and Constitutional Affairs Legislation Committee inquiry into Australian Border Force Amendment \(Protected Information\) Bill](#)

If you have an interest in these areas or any areas covered by our Action Groups, and would like to contribute to our submissions, please contact us.

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NSWCCL supported the Bill - albeit with some reservations about its very conservative positions on age limit and proximity of death.

The NSW Bill will permit a person to self-administer a lethal substance to end their lives with or without assistance of a medical practitioner or other person on condition that the person is:

- 25 years of age and a NSW resident
- suffering from a terminal illness which in reasonable medical judgement will result in the death of the patient within 12 months
- experiencing severe pain, suffering or physical incapacity to an extent deemed unacceptable to the patient

In addition, eligible patients must be assessed by a primary medical practitioner, a medical specialist and a qualified psychiatrist or psychologist.

Hopefully the Parliamentary Working Party will be able to persuade enough of their colleagues to pass the Bill when it returns for debate, which is expected to be in November.

By then - hopefully - the Victorian Parliament may have legalised VAD. Their VAD Bill, which has been through intensive consultation and review, returns to their Parliament on 17 October [Details: <https://www.dwdv.org.au/resources/current-status-in-victoria>]. If approved, this should provide encouragement for those NSW MPS who are wavering in their support.

In both states the position taken by ALP members of Parliament will be of pivotal significance. In NSW the Leader of the Opposition has declared his intention to vote against the Bill - whereas the Victorian Premier has changed his mind and is supporting the Victorian Bill.

NSWCCL will of course be actively campaigning for the NSW Bill over the next two months. This will be flagged at our AGM later this month where we will be formally reaffirming our support and considering effective interventions.

More information: <https://dwdnsw.org.au/>

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## News from CCL

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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](#), [National security and counter-terrorism laws](#), [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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