

PRESIDENT'S REPORT NSWCCCL AGM – 15 October 2014

Acknowledgement of traditional owners.

This is my first report to a CCL AGM as President, and at the outset let me acknowledge the contribution of Lesley Lynch to the CCL, and to the way in which her activism has allowed me to perform this role. Lesley has firmly (but politely) explained to me that the role of the secretary is to do all the CCL work, and the role of the President is to swan around and be the figurehead.

Part of that role, I am told, is to be brief in my report.

I will attempt to follow that advice, as I have followed all of Lesley's advice.

Lesley has included in her report a lot of detail about what CCL has been doing, including referring to more than 20 submissions to government inquiries on a great variety of topics. While that work is a substantial body of work, and demonstrates the breadth of issues with which the Council is engaged, it does not demonstrate fully our engagement with one very significant areas – asylum seekers and refugees. What is happening now in Australia and in foreign countries under Australian control remains a central concern of civil liberties. Indeed, the absence from this meeting tonight of one of our vice-presidents, Liam Burgess, is due to him being closely involved in the hearing in the High Court of Australia which has taken place over the last 2 days concerning the 159 Tamils intercepted by Australia in international waters, held incommunicado for a month and then transferred to what is effectively imprisonment on Nauru. It should not be forgotten that this group includes around 50 children.

A great deal of my efforts as President is to ensure that the Australian community is aware that Australia's treatment of asylum seekers and refugees involves an enormous assault on civil liberties. As we approach the 800th anniversary of the Magna Carta, which is to be celebrated across the common law world next year, we should be startled by how extensive a carve out from one of the most important promises contained in that document we now experience. Article 39, as all of you should know, promises that no free man shall be deprived of his liberty except by due process of law and judgment by his peers. It is the ancient common law embodiment of the modern human right freedom from arbitrary detention.

Yet, in Australia, according to the United Nations Human Rights Committee, we are arbitrarily detaining over 40 refugees because they are considered to be a threat to national security. It is true that about 6 people in this group have been quietly released over the last 12 months, including one I heard about yesterday who received a positive outcome on the eve of an independent review by Margaret Stone, but detention on national security grounds remains a national disgrace. The government has failed to respond to the UN Committee's views, and effectively is shirtfronting the UN on the issue.

What is worse is that the next round of anti-terrorism legislation, known as the *Foreign Fighters Bill*, will almost certainly lead to a significant number of detentions on national security grounds, without reasons and without opportunity to launch a meaningful legal challenge.

The NSW Council for Civil Liberties is a leading group on this issue. I have participated in expert groups convened to discuss the issue¹, spoken at public forums and fundraisers about the issue², provided commentary to journalists³ and liaised with other community groups⁴.

This is, of course, not the only civil liberties issue arising out of Australia's policies on asylum seekers and refugees. Children in detention is another obvious issue. Yesterday, I had the pleasure of joining a group of prominent non-political Australians at the filming of a video for a campaign aimed at getting more than 800 children out of immigration detention. This campaign is the culmination of an idea of Ngareta Rossell and months of clever networking by her. The campaign is called "We're better than this", and the cast yesterday included Brian Brown and over 30 of his friends – from Ian Chappel to Janet Holmes á Court. CCL committee member Nick Cowdrey AM was also in the cast! Watch out for it and when you see it, promote it to your networks.

Another issue that the asylum seeker and refugee issue gives rise to of concern to CCL is the position of whistleblowers. Over the past 12 months, I have spoken with several whistleblowers who have been concerned at the inadequacy of protections for disclosure of material which is plainly in the public interest. We can see where this is heading. Last month, Federal Parliament passed anti-terrorism laws which criminalise journalists who publish certain material concerning ASIO, without there being any overriding public interest defence. How long will it be before this model is widened to areas beyond national security?

My role as President this year has led to some new things – my first opinion piece published in the Sydney Morning Herald, for example. The subject was law enforcement access to travel data collected by the Opal card in Sydney. The privacy policy provides for access on request, without the need for any warrant. This approach to metadata is common, and unsatisfactory. A proper warrant regime should apply to all access to personal information, including metadata. The final round of the debate in relation to telecommunications metadata retention is likely to get underway soon, just as soon as the government can reach agreement with the telecommunications providers as to how the significant cost of retaining and reliably retrieving data will be met.

I have had a fulfilling year as President of the NSWCCCL, and hopefully it has been good for the Council as well. We have mixed with a wide variety of other community organisations and groups, including the Jewish Board of Deputies, the Australian Press Council, Politics in the Pub, the Retired Teachers Federation, the Asylum Seekers Interest Group (a group convened by Dr Louise Newman comprising a variety of doctors and activists), the St James Ethics Centre, Amnesty International and the Law Society of NSW.

¹ Organised by Professor Jane McAdam at the Andrew and Renate Kaldor Centre for Refugee Law at UNSW

² *Human rights, Sri Lanka and Tamil refugees* organised by the Andrew and Renate Kaldor Centre for Refugee Law at UNSW; Fundraising dinner for the families of the Tamil refugees in Villawood with an adverse security assessment organised by the Blue Mountains Refugee Support Group

³ For example, ABC Lateline 22 August 2014; *Refugees' mental anguish in Australia's 'Guantanamo'* Fairfax media 25 August 2014 (August was the 12 month anniversary of the UN Committee communication)

⁴ For example, Remedy Australia, which supports authors of communications to the UN Human Rights Committee

I thank the office bearers and committee members for their work over the past year, and I look forward to working with next year's committee. We will have much to do, and I will try and make it rewarding for you.

SECRETARY'S REPORT NSWCCCL AGM OCTOBER 2014

The last 12 months have been extraordinarily tough. I have been around NSWCCCL for almost a decade and, from my perspective, none has been as intense, and probably none as depressing on the political front for civil liberties, as this year.

It has also been an interesting, rewarding and productive year.

The political and legal issues

More so than usual, our year was very much driven and shaped by the legislative and policy agendas of governments. With a new federal government and a newish NSW government there has been a great deal of legislative activity that directly impinged on civil liberties – and little of it was what we would call welcome reform. We did not - and indeed could not – respond to all relevant matters, but nonetheless, our intellectual resources were heavily skewed towards responding to Government legislative activity and – at the Federal level - associated Parliamentary inquiry processes.

There has been a wide range of issues – some new for CCL - including a few dominant and recurring ones that we have had to respond to. Often we did so with little expectation of significantly influencing the short term outcomes given determined government agendas and populist media campaigns. In some instances, we have mounted a strong arguments because our dissenting civil libertarian views – indeed democratic - views had to be put on the record in the face of bad policy and bad legislation – and, more optimistically, with a view for the longer term opportunity for reform.

Some of the issues we have engaged with over the year include:

- Defending core democratic principles relating to electoral/voting processes. This is new territory for NSWCCCL, but we considered the 2013 Senate electoral processes to have so significantly breached democratic principles that we deeply engaged with the Parliamentary review of the 2013 Senate election process. VP Dr Sacha Blumen took the lead in producing several submissions and three of us fronted a public hearing before the Parliamentary Committee in February. The review produced an intelligent and reasonable report with recommendations consistent with CCL's position in May. To date, sadly, there is no sign that either major party wants to act on this. This is unfinished business.
- Recently, CCL intervened to oppose the 'Borsak Bill' in the NSW parliament - the truly dreadful City of Sydney gerrymander which is now law and able to be extended to other councils without return to parliament. This was unsuccessful in that the bill passed and strengthened a property based franchise in the City of Sydney.
- We tried to influence the hasty, unwarranted and ill-conceived changes to the NSW Bail Act which went a long way to unwinding years of negotiated and considered reform of the very broken Bail Act in NSW. Again – despite widespread and close to unanimous informed and professional hostility to the changes - unsuccessfully.
- Our interventions against NSW mandatory minimum sentencing laws (the 'one punch' furore) had some success because the ALP, Greens and other cross benchers were able to block and amend these in the Legislative Council. The Government has to date refused to accept the amendments – so this remains unfinished business.

- We continued our campaign for independent review of police critical incidents – no progress and an unhelpful review by Robert McLelland
- We joined the ground swell of anger and opposition to the Brandis proposed changes to the Racial Discrimination Act - with grand and rare success!
- We expressed our deepest opposition to Australia's shameful asylum seeker policies and practices - and intervened wherever we could.

We have expended immense effort around the veritable avalanche of new counter-terrorism laws. We have been scrambling for much of this year to try and temper the Federal Government's agenda around national security.

- 'Tranche 1' National Security Legislation Amendment Bill 2014(1). Despite near unanimous opposition to controversial provisions in this bill from organisations and legal experts who responded - only minor amendments were conceded by the Government. We now have laws which provide for:
 - ASIO officers authorised to act unlawfully with immunity from civil or criminal prosecution when involved in a covert Special Intelligence Operation - which is expansively defined and lacks any robust external oversight.
 - A new offence for the unauthorised disclosure of **any** information relating to these special operations – applying to **any** person – and carrying a maximum penalty of 5 years gaol. There is no exemption for media and no provision public interest disclosure as a defence in the Act.
 - ASIO with extraordinary expansive access –on the basis of a single warrant to computers of suspects and non-suspects alike. The definition of computer in the bill included 'a computer network', which in common parlance means anything from a local network, a university/company network, or indeed the global internet. Be assured - the decision to not define this any less expansively, was considered and deliberate.

These are alarming new laws. They are unwarranted. They will have a chilling effect on journalism and whistleblowing. It is not clear they will make our community any safer- but they will certainly make it less open. And they chip away, yet again, at our freedoms.

'Tranche 2' The 'Foreign Fighters' Bill landed in parliament in mid-September. It is the largest of any of the counter-terrorism bills and amends 20 existing laws. We were given 8 days to respond to a parliamentary committee review which will report this Friday. The Bill has some reasonable proposals and a larger number of very disturbing proposals.

It is a scandalous timeframe, deeply disrespectful of the Australian public and the Australian Parliament. Not surprisingly, there is plenty of visible evidence that few members of Parliament understand this Bill and its very significant implications. Nonetheless the Government is insisting that it pass through Parliament before the end of October.

It is also a reckless approach to law making.

The dominant trend across state and federal legislative action has been progressive, incremental encroachments on longstanding liberties and democratic values; extension of powers of police and

intelligence agencies and a weakening of safeguards in the exercise of these powers; undermining of separation of powers and hostility to the judicial discretion.

The State of the Organisation

Despite - or perhaps because of – the depressing political environment, NSWCCCL as an organisation has travelled well this year.

Most significantly, we have been considerably invigorated by an influx of **younger members and supporters** and this is progressively reflected in our executive and management committee. On this front the strong response we had to our offer of subsidised places for students for the recent CCL dinner was extremely positive. Reluctantly we had to close the offer early this year because the 30 subsidised places were quickly filled. In a similar trend, applications to our intern program continue to increase and exceed capacity to accept all.

This increased interest is linked to growing awareness about current civil liberties issues in the universities – mainly generated by the asylum seeker and counter-terrorism and anti-jihadist agendas of government.

We will continue to give priority to the building of a younger CCL profile over the next year particularly within the universities. This will include ongoing work to strengthen the program we are able to offer interns.

Overall our **membership** remains stable but lower than we would like and need. We do have a larger and expanding number of people signing up as supporters. It may be that in the future we seek more of our financial support from this source rather than relying so heavily on membership fees. This does seem to be a contemporary trend across community organisations.

The CCL Committee has an **impressive range of expertise**. Our ever strong in-house legal expertise was particularly evident this year following the recruitment onto the committee last year on Nicholas Cowdery SC and Carolyn Barkell. I have throughout the year found it increasingly easy to draw together – usually in ridiculously short time frames – expert analyses of legal matters, including multiple bills, across criminal, counter-terrorism, terrorism and human rights areas.

A particular strength of the NSWCCCL Committee is its breadth of expertise – beyond the lawyers, we have an impressive range of highly experienced players across the social sciences, politics, history, philosophy and we even have a few experienced administrators. It makes for some excellent debates as well as an agile and competent organisation.

Beyond our considerable in-house expertise, we can also call on a very strong network of other organisations (often through valuable cross membership of our Executive/Committee members) and sympathetic academics and practitioners.

The **public statements** we issue regularly on legal and other matters are regarded highly and utilised publicly in the media and in parliament. NSWCCCL's advice is regularly and increasingly sought from these sources.

We have a strong media profile and excellent connections and a media database which gives us much better capacity than previously to distribute media comments. Generally speaking, we also

have very strong connections with the NSW and Australian Parliaments, both through the public processes and in private discussions. I have put a high priority this year on deliberately building parliamentary connections across the major and minor parties and the cross benches – with some success.

We do have, inevitably I think, tensions with governments and oppositions because of the positions we take publicly, but that is part of the defining importance of CCL. We are not blind to the realpolitik of the parliamentary political process, but we are neither bound nor captured by it. Negotiating it can be difficult and complex.

As well as good collaborative relationships with other human rights, legal and community organisations, we have for some time been working to build strong and effective **collaboration with the other CCLs** across Australia. That has been a particularly positive experience this year and has resulted in numbers of joint submissions, statements and letters on important national issues. It would have been impossible to get in the recent credible CCL's submission on the important, large and complex 'Foreign Fighters' Bill in the allocated 8 days without strong input from Queensland CCL and Liberty Victoria as well as NSWCCCL.

The most significant advance we have had in organisational capacity has been the new **NSWCCCL website** - built on the powerful Nation Builder software – it is transforming our administrative process and at long last providing us with a stronger and growing web presence. It is a work in progress and we are in need of more in house expertise. As hard as it is for some of us older members, it is **the** critical dimension to our future and our effectiveness.

If you have not visited it in recent times you should.

Most of our current activity and media presence is posted to the website. This is changing our **process of communications to members and supporters**. We have not managed the transition as well as we should have. Our formal newsletter to members and supporters – 'The Civil Source' - has not been as regular as we planned. Nor have we settled on the most useful balance between communication via the web and web social media such as twitter, Facebook and newer tools and the newsletter. This is an ongoing issue for next year - and hopefully we will find a dedicated content editor/manager to work with the Secretary and the Committee for both the web and the newsletter.

In January this year the Committee spent part of a weekend engaging in some **in-house strategic planning** - not an exercise we usually have time for. It allowed us to have a focussed assessment of how we were travelling and to think about changes in focus and process. Much of the thinking related to the influence of the web and changing patterns around membership and supporters – and also to rejig our meeting processes.

This year we are planning a gathering in late November of members/supporters who want to be actively involved in our work to explore effective ways of utilising their skills and interests. At the moment there are about 30 non-committee members or supporters who have registered their interest in being active on the web. We are hopeful that we can find a way for effective engagement of a larger number of people in our work next year.

Last but certainly not least, a brief report on our people.

Having regretfully farewelled Caitlin Dixon to TimorLeste in January, we moved to a different mix of **staff support** to incorporate the impact of the new website. We have been extraordinarily fortunate to have the highly skilled support of two part-time staffers. Elena Popova who did volunteer work on finances for us last year has this year taken on the part-time role of office manager and coordinator. Her support is superb and we hope she is able to stay with us for a while longer before finding a full time accountancy position.

Our transition to the website was made possible by Nik Cooper who has been with us since February as our Communications and Outreach Coordinator. Nik's contribution on both the technical and ideas fronts has been invaluable. As Nik is coming to the end of his university studies we are sadly conscious we may have to farewell him in the New Year.

I thank both of you for your contributions to CCLs work this year – and for both being such great people to work with.

I have already flagged the collective strength of the CCL Committee. I would like to add my huge appreciation for the generosity of committee members who consistently respond quickly with advice and commentary on issues as requested. It also needs to be noted that the Committee is a constructive and positive group. Debates can be very heated and policy and strategy disagreements can be deep – but generate no ongoing discomfort or conflict.

The Executive team has a strong role in the NSWCCCL. A large proportion of the day to day work is sorted and managed by the Executive. Stephen Blanks and I consult on CCL matters on an almost daily basis. The complementary work relationship we built up over 5 years in our previous roles has transferred well into our new roles as President and Secretary - which is just as well given the intensity of the year we have just been through. We have strong support from the expanded team.

Our three VPs Pauline Wright, Liam Burgess and Dr Sacha Blumen brought an impressive range of legal and strategic expertise and connections to the Executive. Sacha is not standing for the Executive this year because of his transfer to Canberra – but thankfully has nominated for the Committee. Rebecca Yu continued to keep an eye on CCL finances as Treasurer – but over recent years she has put the processes into such good order that this leaves her time to think about broader resourcing opportunities. Jackson Rogers as Assistant Secretary has taken on the always difficult area of complaints management and is working with the interns to rebuild our FAQ page on the website. Dr Martin Bibby continues to play a major role in the writing of NSWCCCL submissions- particularly in the privacy and surveillance area this year. Hans Heilpern uses his rich experience as magistrate, bureaucrat and political adviser to prod us all into action across a wide range of areas at every meeting.

The interns and volunteers who have spent time with us this year have made some tremendous contributions to our work developing information briefs doing background research around current issues. For example, Josh Pallas from Wollongong University did a most job updating the CCL web page on the Death Penalty in Australia and a current intern Josh Krook has been working on updating the page on sniffer dogs.

In summary – we have done better than just survive this awful year. We have acquitted ourselves reasonably well and our reputation as a defender of civil rights in Australia remains strong. I have

had a terrifically interesting and rewarding year – notwithstanding the depressing march of reactionary politics. We certainly remain relevant!

Dr Lesley Lynch

MAJOR SUBMISSIONS AND INTERVENTIONS IN PARLIAMENTARY PROCESSES

Nov 2013-Oct 2014

NATIONAL

1. Submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013 (Xenophon Bill). Dec 2013.
2. Evidence to public hearing of Joint Standing Committee on Electoral Matters Feb 2014
3. Submission to the Joint Standing Committee on Electoral Matters Inquiry into all aspects of the conduct of the 2013 Federal Election. April 2014
4. Submission on Comprehensive Revision Of The Telecommunications (Interception And Access) Act 2014 Senate Legal and Constitutional References Committee. April 2014
5. Submission to the National Inquiry into Children in Immigration Detention 2014 Australian Human Rights Commission May 2014
6. Letter from Joint CCLs to Attorney-General Brandis on Racial Discrimination Act 1975 - Proposed Repeal of S.18C . Nov 2013
7. Submission to Department of Attorney-General on Exposure Draft Racial Discrimination Act 1975 (Freedom of Speech Repeal of S.18C) Bill 2014). May 2014
8. Submission to Inquiry into The Independent National Security Legislation Monitor Repeal Bill 2014. The Senate Legal And Constitutional Affairs Committee. May 2014
9. Submission to Inquiry on Classification (Publications, Films, and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014. Senate Legal And Constitutional Affairs Committee. August 2014
10. Submission by joint CCLs on National Security Legislation Amendment Bill (No.1) 2014. Parliamentary Joint Committee on Intelligence and Security. August 2014
11. Evidence to public hearing Joint Committee on Intelligence and Security. August 2014
12. Supplementary Submission joint CCLs on National Security Legislation Amendment Bill (No.1) 2014. Parliamentary Joint Committee on Intelligence and Security. August 2014
13. Joint CCLs submission to Inquiry into The Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill Foreign Fighters Bill 2014. Parliamentary Joint Committee on Intelligence and Security. October 2014
14. Evidence to public hearing of the Joint Committee on Intelligence and Security. Oct 2014
15. ALRC meeting re Inquiry into Privacy in the Digital Age and Privacy Tort

STATE

16. Submission to NSW Parliamentary Inquiry into Management and Disposal of Waste on Public Lands. Evidence given before Public Hearing October 2013
17. Public Statement and letters to Premier and MPS: Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Bill 2013 Nov 13
18. Submission to NSW Ombudsman's review of State Consorting Laws. Feb 2014
19. Submission to review into police oversight of critical incidents – and meeting with Robert McLelland – Oct 2013
20. Public statement and letters to Premier and MPS on Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Bill 2013 Nov 2013
21. Public Statement /media release and letters to Premier and MPs on Alcohol and drug affected violence initiatives: mandatory minimum sentence proposals. ("One Punch" bill) Jan 2014
22. Public Statement/media release and letters to Premier and MPs on NSWCCCL Opposition to Crimes Amendment (Intoxication) Bill 2014. March 2014
23. Public Statement and Letters to Premier and MPS May 27 May 2014 and Supplementary Statement 28 May 2014 re Law Enforcement (Powers and Responsibilities) Amendment Bill 2014.
24. Public Statement, media release and letters to MPs on NSW Bail Amendment Bill 2014. September 2014
25. Public Statement and letters to MPS on City of Sydney Amendment (Elections) Bill 2014 (the 'Borsak Bill') Sept 2014