

Annual Report: Civil Liberties Australia 2005

This is the second annual report of Civil Liberties Australia (ACT) Inc, ACT Registered Association No. A04043, known as Civil Liberties Australia, or CLA.

It covers the period from 1 January 2005 to 31 December 2005.

Registered office and register of members:

The registered office of CLA is 51 Ardlethan Street Fisher ACT 2611, where the register of members is kept. The public officer of CLA is Bill Rowlings, of that address.

Office-bearers:

The office-bearers of CLA for the period of this report were:

| | |
|-------------------------|-------------------------------------|
| Dr Kristine Klugman OAM | president |
| William Rowlings | vice-president, secretary-treasurer |
| James Staples | director |
| Anthony Williamson | director |

No office bearer received any remuneration from CLA, or had any interest in any financial activities of CLA, other than in the proper, normal course of reimbursement of expenditure outlaid for the good governance, administration and promotion of CLA.

Membership:

Membership at 31 December 2005 was 62, an increase of 45 over the 12 months.

The community's fear for its rights in the face of proposed terrorism legislation was the major motivator driving the increase in membership. President Kris Klugman took a strong lead in writing to prospective members when a relevant letter appeared in the Canberra Times. About two-thirds of the membership increase came this way.

The new CLA members represent a wonderfully diverse and educated/experienced resource to help keep a close eye on the civil liberties (CL) and human rights (HR) of people and the excesses and omissions of both the ACT and Australian Governments, and their agencies and contractors.

This expertise was harnessed in the task many members undertook to analyse the annual reports of various government departments and agencies. These evaluations led to follow up correspondence, press releases, and questions on notice in the Federal and ACT parliaments. The analyses also armed CLA with information for further critical inquiry, and provided a benchmark against which to judge future annual reports.

The main aim in planning CLA activities is predicting significant CL issues which may arise in future, and so trying to set the agenda for public discussion well ahead of time. Too often we are caught in reactive mode, when change to policy is well nigh impossible. This was clearly demonstrated in the imposition during the year of even more draconian terror laws in the form of the Anti-Terrorism Bill (No. 2) 2005.

As part of trying to anticipate future issues, we have arranged for the inclusion of CL in ADFA lectures, and are working towards similar situation with AFP and Defences Forces.

As a further counter-balance to being reactive, we arranged the first successful internship for a CLA nominated person through ANU. Student member Brooke Horne wanted to focus his

internship research of refugee issues, so it was suggested he produce a well-researched paper on the effects of climate change, particularly on our Pacific Island neighbours, and the potential legal/refugee impacts arising from similar climate and environment issues. Brooke's starting of the research pre-dated any major public discussion of the topic, so his analysis was timely when the issue became a point of public debate in late 2005.

We are similarly considering a public forum on the death penalty, to urge the Australian Government to introduce Australian legislation to entrench the Second Protocol of the European convention on Social and Political Rights, which the government has already ratified. If entrenched into federal law, States and Territories would not be able to reintroduce the death penalty: currently, they could reintroduce the death penalty.

CLA (ACT) main meetings:

2005:

- 20 + 23 March: Board meeting (held at Fisher unless otherwise noted)
- 2 April: Inaugural annual general meeting
- 26 April: Board meeting
- 5 May: email special general meeting to pass amended accounts for 2003 and 2004.
- 6 July: Board meeting
- 24 September: Board meeting, Bywong
- 26 September: meeting with ANU law students re internships, membership
- 25 October: Board meeting
- 27 October: Public forum on Terror Bill, National Library of Australia
- 22 November Board meeting

Meetings with interstate CL people and groups:

- 4 March: Terry O'Gorman, Cameron Murphy, John Dowd, John Marsden (Sydney)
- 25-26 June: meeting in Sydney with interstate groups – NSW, Victoria, Queensland, SA
- 15 September: Cameron Murphy, Michael Walton (NSWCCL)
- 2 December: Greg Connellan (Liberty Victoria)

Activities:

Highlights of activities during 2005 period were:

January: Planning began for the first major public meeting of CLA, originally to feature Geoffrey Robertson, former television *Hypotheticals* host, noted Australian and international barrister and Recorder in the UK legal system. However, he was unable to fit in a free CLA appearance with an Australian tour promoting a new book.

Eventually substance overtook personality when the Australian Government announced it would introduce a new Terror Bill. Noted Australian barrister Lex Lasry was booked to headline a public meeting, but was then contracted by the ACT Government for formal advising on the proposed legislation, and became unavailable.

Ultimately, CLA members Christopher Michaelson and secretary Bill Rowlings were speakers, along with Asmi Wood, an ANU Law lecturer, Muslim and Torres Strait islander, representing the Canberra Islamic Centre in Canberra.

This first CLA public event, held at the National Library of Australia on Thursday 27 October 2005, was an outstanding success. It attracted about 200 members of the public, and about 10 new members came directly from it.

February: Planning began for the 2006 'Market Day' at ANU, to be run by director Anthony Williamson. A poster campaign in 2005 in the Law faculty resulted in several new student members over the next two months. Donations of \$75 and \$100 from existing CLA members allowed 'free' membership to students, nominally at a cost of \$15 each.

Also, the president contacted Canberra Times cartoonists Geoff Pryor and Ian Sharpe, who each agreed to provide cartoons on civil liberties and human rights topics to help raise funds for CLA. We thank them for their ongoing generosity.

March: President Kris Klugman and secretary Bill Rowlings attended the 4 March function in Sydney's Chinatown to honour former NSW Council for Civil Liberties president John Marsden with life membership. As well as feting Marsden, one of the Australia's most courageous civil libertarians, the event was significant as the occasion where the seed of the idea for a properly-functioning Australian Council of Civil Liberties was sown. Klugman and Rowlings held discussions with the nominal Australian CCL 'president', Terry O'Gorman of Queensland, and with NSW CCL president Cameron Murphy, and suggested a formal meeting be held.

This CLA initiative culminated in a two-day meeting of the ACT, Queensland, NSW, Victorian and South Australian CL bodies four months later, in late June (see report, below).

April: On 2 April, the CLA's 2nd annual general meeting was held at 51 Ardlethan Street, Fisher ACT. For technical reasons, to satisfy the formal reporting requirements of the ACT Registrar-General, an 'email special general meeting' was held on 5 May to ratify the splitting of the financial reports into separate 2003 and 2004 components.

April also saw the Canberra Times starting to seek out CLA for comments: apart from president Kristine Klugman being the main public face of CLA, Anthony Williamson was nominated as media spokesperson, with secretary Bill Rowlings also able to speak for the organisation if needed.

May: Even in advance of the round-Australia CL groups meeting in Sydney, consultation started to occur on national bills as ACCL president Terry O'Gorman chose to involve ACT, Victoria and NSW presidents in commenting on major issues. The aim is to have a consistent message to media on CL issues nationwide.

June: On 25 and 26 June, a CLA-initiated meeting for two days in Sydney resolved to form a formal ACCL by drafting a constitution for agreement by all State bodies and incorporation/registration, probably in the ACT. The target date for incorporation was set as March 2006. Barrister and former Liberty Victoria president Greg Connellan subsequently completed the first draft of the Constitution by mid-August, and CLA responded with its comments in early September. Unfortunately other States have been slower to respond, and finalisation of the constitution was still outstanding at 31 December.

In late June/early July, the president and secretary attended both Human Rights Office and ANU Law School conferences analysing the ACT Human Rights Act after its first year of operation.

July: An attempt for a meeting with Paul O'Sullivan, head of ASIO, was unsuccessful. The meeting was to propose a review group for the activities of ASIO, comprising three representatives from the Parliamentary Standing Committee, plus representatives from Civil Liberties, Amnesty, and selected representatives from the Privacy Commission, HR Commissioner, the Law Society, Legal Aid, Lawyers Alliance, the Bar Association, Migrants, and Refugee Groups, etc.

Following the enacting of even more 'anti-terror' legislation, the issue of greater public review and accountability for Australia's security and police agencies is expected to be a continuing theme. Secrecy is the enemy of a just and fair society.

A symposium on whistleblowers was notable for the unfortunate attitude of the Public Service Commissioner towards this important issue.

Also counter-productive was a phone conference with proponents of a new human rights bill from the *New Matilda* website/e-magazine: the hook-up resulted in CLA providing all relevant material immediately to the *New Matilda* people, but there was no sharing of materials or consultation on their part. CLA believes any drive for a national Bill of Rights would preferably come without commercial overtones.

August: CLA posted 22 letters to ACT law firms, asking for financial and other support. While the response was minimal, Jason Parkinson of Porters Lawyers demonstrated how supportive the legal profession could be by becoming CLA first's corporate member.

CLA wrote to Minister Hocking re the proposed Medicare smartcard, and the 14 Government departments and agencies that had been meeting for two years to discuss it. This issue is ongoing, and unresolved, but the Australian Government has since made several announcements which indicate a 'smartcard' and a 'national identity (ID) card' are almost inevitable, possibly combined. CLA has adopted the attitude of trying to secure the best rules and regulations around the use of new technology, while pushing for positive benefits to individuals in terms of health records and safety.

CLA also wrote to Air Vice Marshal Houston, chief of the Australian Defence Force, proposing that a branch of CLA be formed at the Australian Defence Force Academy as a way of combating bullying and bastardisation. AVM Houston declined, but subsequently we were able to be included in lecturing to first-year cadets at ADFA during 2006.

September: In September, Director Anthony Williamson concentrated on CLA's media appearances/mentions: on Thursday 29 September, there was mention in a Canberra Times article on terrorism, as well as an interview on talkback radio with Mike Walsh. On Friday 30 September CLA featured on the front page of the Canberra Times in relation to stun guns (Tasers); there was talkback radio with Mike Jefferies and interviews with WIN and ABC TV news re tasers. On Saturday 1 October, there was a follow-up article in the Canberra Times on Tasers.

October: Further interviews occurred on the topic of closed-circuit television (that is, CCTV, or security cameras) with the ACT Government promising a register of all CCTV in the Territory.

CLA applied in partnership with Dr Helen Watchirs, the ACT Human Rights Commissioner, for grant funds to boost community education in human rights under the ACT Human Rights legislation, and to raise awareness amongst disadvantaged people of their rights. The application was subsequently unsuccessful.

A meeting with Prof Carl Thayer at ADFA resulted in the scheduling of a lecture to students in May 2006.

In line with building bridges of understanding, CLA (president and secretary) were interviewed at length by Diana Abdul Rahman on Radio Ramadan, the ACT radio station which operates during the month of Ramadan only. CLA also attended the Islamic Centre at Tuggeranong three times, and the open day of the mosque at Yarralumla.

CLA's very successful forum on the terror laws, held at the National Library theatre, on 27 October, rounded out an intense month.

November: November and December were occupied mobilising reaction to the federal terror laws: letters to the editor, submissions and interviews. CLA also attended a seminar on human rights at Department of Justice and Community Services.

There was a very successful barbecue on Saturday 21 November, with about 20 members attending, and as many apologies. Secretary Bill Rowlings gave farewell acknowledgement to Christopher Michaelsen, leaving Canberra to take up a significant position in Warsaw on terrorism investigation in Europe. Cartoonist Ian Sharpe, who came to the barbecue, donated two further cartoons for fund raising.

The secretary completed a detailed analysis of ACT Policing's annual report, which was subsequently shared with the Greens and the Liberals, following ACT Police Minister John Hargreaves statement in the Assembly that he would not listen to any criticism of the police. Member Vic Adams analysed the AFP's annual report.

President Kris Klugman ordered numerous annual reports for analysis by members, according to expertise and interest. Significant contributions were made by Herschel Hurst (Foreign Affairs and Trade), Vic Adams (Defence), Keith McEwan (ACT Justice and Community Services), Graham Macafee (Agriculture, Forests and Fisheries) and Robert Briggs (Veterans Affairs), with other members also providing insights into aspects of other reports.

With the Commonwealth's Terror Bill being considered by a Liberal backbench committee, CLA took part in extensive lobbying of the Liberal MPs who could have some sway: Petro Giorgiou, Malcolm Turnbull and Gary Humphries. Our efforts were rewarded in a small way when this group was able to rein in the very worst excesses of the proposed legislation, subsequently enacted by the Australian Parliament in December.

December: The president and secretary attended the ACT launch of *New Matilda's* HR bill ACT, and also the ACT Multicultural Summit.

CLA member Father John Parsons, of Gunning, of his own initiative produced a bumper sticker: *Be seditious at least once a day!* This sticker can now be seen on vehicles in Victoria and northern NSW as well as in southern NSW and the ACT.

CLA received some positive responses to a promotional item sent out on 15 December in ACT Multicultural Community's e-newsletter, calling for someone from each community to join CLA. Several people have since joined.

Publication:

The monthly, electronic newsletter publication – entitled *CLArion* – continues to be very influential in gaining status for CLA (ACT). CLA members have expressed their appreciation of *CLArion*, and of how it keeps them informed of major CLA issues and initiatives, as well as the main national and international CL/HR matters.

Key ACT, Commonwealth and other State politicians, departments and agencies receive copies, as do a range of other community bodies. Interstate councils for Civil Liberties are also sent copies, and they generally further distribute it to their 'board' members.

The publication incorporates news of ACT, Australian and international civil liberties and human rights issues. It has received considerable praise from a number of quarters

Submissions:

During 2005, CLA made numerous submissions to inquiries into legislation and similar hearings. As well, CLA representatives (President Kris Klugman, secretary Bill Rowlings, Director Anthony Williamson) appeared before oral hearings related to submissions on several occasions.

ACT:

Sentencing (Strict Liability)
Review of the ACT Human Rights Act
Police Powers ('Move On' provisions)
Criminal Code Harmonisation Bill
Same Sex Marriages (Civil Unions)
Anti-Terror Bill (ACT)

CLA member Dr Helen B. Wiles also made a submission to the Anti-Terror Bill (ACT) inquiry, and appeared at the oral hearing.

Commonwealth:

Anti-Terror Bill (Commonwealth)
Telecommunications Bill (via Terry O'Gorman)

Victoria:

Human Rights Community Consultation on HR Charter (2 submissions)

Agency:

Australian Law Reform Commission (Uniform Evidence Act inquiry)

All States/Territories:

A letter in relation to the agreement to enact uniform anti-terror legislation was sent to all State and Territory Premiers and Chief Ministers, with copies of a tightly-argued paper prepared by Christopher Michaelsen and secretary Bill Rowlings.

Formal meetings:

CLA in 2005 continued the policy of rolling meetings with key civil liberties, human rights and associated individuals and entities.

Meetings were held with:

- ACT Chief Justice Terry Higgins, Mr John McMillan (Ombudsman);
- Senator Kate Lundy, Senator Gary Humphries;
- Mr Phillip Ruddock (Attorney-General) Ms Nicola Roxon (Shadow Attorney-General);
- Mr Petro Georgiou MHR, Senator John Faulkner;
- ACT Standing Legislative Affairs Committee (SLAC);
- ACT Human Rights Commissioner Dr Helen Watchirs;
- ACT Chief Minister Jon Stanhope (and Geoff Gosling, Elizabeth Kelly);
- ACT Legislative Assembly Members John Hargreaves, Wayne Berry, Brendan Smyth, Dr Deb Foskey,;
- ACT Human Rights Consultative Committee chair, Prof Hilary Charlesworth and Human Rights Act researcher/reviewer Gabrielle McKinnon;
- Teleconference with former Senator Susan Ryan and Nic Carney of New Matilda re their proposed HR Bill.
- Samson Wong, member of national multicultural committee on CL/HR education;
- Andrew McIntosh, Australia Institute;

- ANU Tom Sherman (re interns program), Clive Williams (Strategic and Defence Studies Centre);
- Lawyers from leading ACT law firms, such as Blumers, Porters, Slater and Gordon plus Bill Redpath (Pamela Coward & Associates), and representing legal divisions (Richard Faulks, Lawyers Alliance).

Media:

CLA strongly consolidated its place as the main organisation able to comment on CL/HR issues in the ACT. We were also sought out on some national issues by national media.

During the year the CLA board decided director Anthony Williamson would be the main media spokesperson: this was an important initiative in presenting a younger (mid 20s) face of CLA. Anthony managed the media role excellently, adding it to his considerable contributions in terms of submissions and appearances at Legislative Assembly hearings.

CLA is now well known to the ACT media, and is frequently sought for interviews either reacting to events generated elsewhere by others, or to media releases we have distributed.

In 2005, CLA issued media releases on:

- Fire, and people's right to have the choice to stay to fight to save their house;
- Proposed Terror Bills (several releases);
- Pedophile legislation;
- Closed Circuit TV (CCTV); and
- Stun guns, and their danger to New Year's Eve revellers.

As well, CLA was helped enormously during 2005 by the expertise and competence of member and terrorism expert Christopher Michaelsen. He wrote thoughtful, well argued articles for the Canberra Times and other capital city and national print media, and appeared on radio programs such as the Law Report as an expert commentator on CL/HR issues as well as being invited for comments on Radio Australia, Radio National and commercial networks.

Late in 2005 he suspended his PhD studies in law, majoring in terrorism-related issues, at the Australian National University to take up an important role in Europe as a dedicated human rights watchdog. He is now the anti-terrorism adviser in the Human Rights Department of the OSCE's [Organisation for Security and Co-operation in Europe] Office for Democratic Institutions and Human Rights.

We hope he will return to join us again in 2008. In the meantime, he continues contact by providing commentary and articles of interest on CL/HR issues from Europe and the former Soviet republics.

Issues:

Stun guns (Tasers):

As reported in the first annual report, CLA wrote to the Minister for Police for the ACT, Mr John Hargreaves, on 16 February 2005 asking a range of questions in relation to the trial of stun guns in the ACT.

Despite meeting with the Minister, no cognisance of the potentially lethal effects of stun guns has been recognised. On the part of the AFP/ACT Policing, the trial of stun guns has been characterised by obfuscation, particularly under Freedom of Information requests.

No results have been announced publicly of the 'trial', which at year-end had been ongoing for about 14 months. In addition, the AFP does not appear to have announced whether or not the ACT 'trial' is for the introduction of stun guns throughout Australia, or only in the ACT. This is another case of the AFP/ACT Policing wearing whichever 'hat' suits whichever entity at the time, and changing hats almost in mid-sentence or mid-justification.

Death Penalty:

CLA is against the death penalty, and the issue continues to be a vexed question. Australia has ratified the 2nd Protocol*, which effectively means the Australian Government won't impose the death penalty on anyone 'under its jurisdiction'. However, the Australian Government has not legislated to ban the death penalty in Australia, which means that whether or not States and Territories could re-introduce the death penalty 'under their jurisdictions' is at best unclear.

CLA will continue to campaign for formally-enacted banning of the death penalty throughout Australia. We will also continue to try to influence neighbouring Asia-Pacific countries to ban the death penalty. We will continue to campaign for the Australian Federal Police to be barred from exchanging information, contacts or intelligence with other countries if the exchange could lead to the imposition of the death penalty on an Australian citizen or resident.

**Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Adopted and proclaimed by UN General Assembly resolution 44/128 of 15 December 1989. Australia ratified the protocol on 11 July 1991.*

ID card:

CLA's position is basically that a national health card, which would be a de facto 'national ID card', is inevitable as technology gradually makes greater inroads into daily life. There is already widespread access in the public and private sectors to personal data now with little or no privacy or security constraints: CLA believes in campaigning for the strongest possible protocols and safeguards around data storage and access, and for the establishing of bodies, on which organizations like CLA would be represented, to monitor adherence to the rules,

During 2005 we tried to establish a dialogue on the issue with Human Services Minister Joe Hockey, but he and his department have been totally unresponsive to letters. We plan follow-up correspondence.

Police

The situation with regard to policing in the ACT continues to be out of the proper control of the ACT Government. Policing in the ACT is provided by an entity called 'ACT Policing' which the Australian Federal Police (AFP) describe as a 'business division' of the AFP.

The Minister, Mr Hargreaves, demonstrated publicly during Legislative Assembly hearings in 2005 that he was an outright apologist for ACT Policing and said publicly that he would not countenance any criticism of police. CLA does not believe this is a responsible attitude for a Minister supposedly 'managing' the police portfolio, and managing a business contract for policing in the case of the ACT.

We note that the Standing Legal Affairs Committee (SLAC), in its report on hearings into the Anti-Terrorism legislation in early 2006, has urged the ACT Government to clarify the formal, legal and contractual relationship between the ACT Government, the Australian

Federal Police and its 'business division', ACT Policing. CLA believes this clarification is a very long time overdue.

During 2005 CLA analysed in detail* the annual report for 2004-5 of ACT Policing. The report is a document of dubious honesty, of questionable accuracy, of failure to explain important statistics, and of such a self-serving nature that it is almost worthless as a measure of the performance of police and the police contract in the ACT for the 12 months of the reporting period.

** A copy of the CLA report is available for any member who would like it.*

Among other things, it is quite clear that the ACT Government contract with the AFP must provide for:

- The primary focus of police contracted to the ACT to be providing a policing service to the community of the ACT, which is paying for the service**;
- A discount on the contract price if the AFP is deriving benefit from using the ACT and its people as a training ground for overseas operations;
- A discount if ACT Policing is subsidising aspects of AFP operations (water police, dog squads, video taping, etc);
- Police in the ACT to be bound by the ACT Human Rights Act, which ACT Policing says it is not; and
- Police in the ACT to be bound by the Public Disclosure Act, which ACT Policing says it is not.

(** not "*managing the ACT Policing establishment to be able to support AFP national operations without having an impact on the capability to effectively manage community policing operations*" (ACT Policing Annual Report, People Strategies, p79, col. 3). CLA believes this ACT Policing attitude is entirely the wrong way around – if the ACT is paying, its needs should come first.

Strict Liability Legislation

CLA is concerned at the increasing use of strict liability legislation. Our submissions on two drafts of legislation (environment/pregnant women) were successful in having strict liability clauses ameliorated by the ACT Chief Minister and Attorney-General, Mr Stanhope.

In the case of the environment legislation, strict liability now applies only to people working in their professional capacity (who should know the possible results of their actions). In the case of assault of pregnant women under the Crimes Act, whether or not the assailant knew (or should have known) of the woman's pregnant state is now to be taken into consideration.

Financial:

CLA's financial statement for the relevant period forms part of this report. At 31 December 2005, CLA had \$1819.22 with which to begin its new operating period. These funds are adequate for the time being, though there will be considerable expenditure committed in the new year to creating a professional web site.

Grants:

CLA applied for two ACT Community Grants in 2005: we were not successful with either.

One grant was for a project which would have developed targeted CL/HR information for two groups, the under 20s and the over 55s. In particular, this project would have helped aged and

infirm people in nursing homes understand their rights, so as to be better able to speak up for themselves. This issue subsequently became important in the ACT, and nationally.

The other grant was for a program involving public meetings on CL/HR issues with a wide range of community groups in Belconnen, Tuggeranong, Woden and Civic.

Looking ahead, the priority is development of a web site for CLA (ACT). We will continue to spread word of CLA activities, and expand our network of contacts by personal meetings and seeking members who can contribute special talents.

We need some members to help manage some of the administrative duties, such as the treasurer's role, membership records and fund-raising activities.

(signed)

Bill Rowlings
Secretary

History:

An organisation concerned with civil liberties (Council for Civil Liberties of the ACT Inc, CCL ACT) existed in the ACT in the 1970s, 80s and 90s. Mostly, it was organised and managed by Mr Laurie O'Sullivan, a barrister at the Sydney and Canberra bars who also had extensive involvement with the Australian Public Service Board over many years.

In the late 1990s, the organisation's management changed and Mr Jon Stanhope became prominent as president. He went on to have a political career, and to be Chief Minister of the ACT at the time of this report. After Mr Stanhope went into politics, the organisation lapsed and then was formally de-registered by the ACT Registrar-General.

A new organisation, CLA, was created when a properly constituted meeting of the interim board of CLA resolved to apply for registration under the Associations Incorporation Act 1991 of the ACT.

The Certificate of Incorporation was stamped by the ACT Registrar-General on 10 December 2003. CLA began operating slowly during 2004, switching to a higher gear in 2005, particularly because the Australian Government escalated the level of fear in the community in relation to a possible threat of terror.