

Founded in righteous anger to ‘redress imbalance’

In 1963, Ken Buckley led a group to form the NSW Council for Civil Liberties. The telling and re-telling of the story of the incident which spawned the formation of the NSWCCCL is etched into our family history, co-author Dr Kristine Klugman writes. “Knowing Buckley as I did, it is entirely in character that he took umbrage at police behaviour, and was so incensed by their brutal disregard for people’s rights that he persisted for the next 40 years in redressing the power imbalance,” she said.

Buckley: “..the time was ripe for the formation of an organisation committed to extending and defending civil liberties and for me, social justice before the law was part of my socialist objective for a better society. The fit was perfect.”¹

Three thugs from NSW Police’s infamous Kings Cross vice squad raided a party in February 1963. Their behaviour, even for those days, was excessively intimidating and aggressive, but they had picked the wrong group to stand over. Buckley got some mates together – initially the then-medical doctor Dick Klugman and then-industrial relations barrister Jack Sweeney – to form the NSWCCCL.

Buckley was the lynchpin. That righteous anger sustained him for over four decades, in which he dedicated his life to making a real difference and improving justice and freedom for all’.²

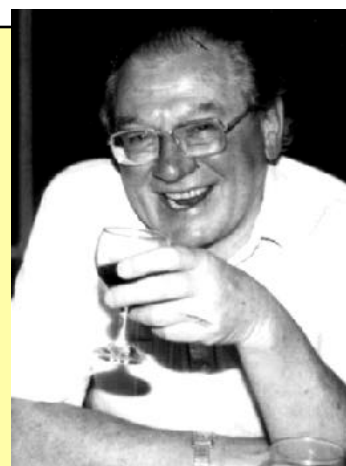
Buckley was a streetfighter, agitator, historian and academic.³

Kenneth Donald Buckley was born in Hackney, London. He went to school in Kent, and was studying economics when co-opted into British intelligence in WW2. Sent to Greece, he met Thoula, later his first wife and mother of their two children. He liaised with Greek resistance groups and wrote an account of British support for right-wing terrorism that was published in England.

After the war he graduated with first-class honours in economics from Queen Mary College, University of London, and joined the Communist Party. He lectured at Aberdeen Uni before arriving at Sydney Uni in 1953, despite Australian intelligence trying to stop his appointment.

Former diplomat James Dunn named Ken and Berenice Buckley in 1998 among ‘The 50 Great Australians’. On receiving an OAM in 2000 for services to civil liberties, Buckley said: “I was flattered although it should not be taken to imply that I had joined the establishment.” – Stephens, footnote 3.

Photo: Ken Buckley, in typical pose: smiling broadly and enjoying a red wine.



¹ BUCKLEY’S! Ken Buckley: Historian, Author and Civil Libertarian A & A Book Pub. 2008. p.203 (hereafter, ‘Buckley’)

² ‘Civil Liberty’ NSW, issue 206 Sept 2006: Ken Buckley obituary

³ <https://www.smh.com.au/national/radical-economist-and-thinker-championed-civil-liberties-20060721-gdo088.html>

Beside him from the start was Berenice Granger, who later became his wife. She attended the inaugural meeting of the NSWCCCL as secretary of the Good Neighbour Council. It was the start of a lifetime partnership and a lifetime of service to a cause.

Berenice, or Berry as she was known early in their relationship, married Ken on 28 August 1965.

Photo taken on the day – from Buckley's!, Ken's autobiography.



Dorothy and Scott Campbell (right) wrote the definitive history⁴ of the NSWCCCL, produced in 2007 on the 44th anniversary of its founding. Readers should refer to the book for a full and fair account of the first 40-plus years. It covers the period to 2005 and, in hindsight, it is remarkable how the political and civil liberties environment has changed considerably in just the past 15 years. A continuing feature in the current period is the need for transparency and accountability of public power, and thus the need for watchdog bodies.



Thirty-five people attended the meeting at Sydney University which set up NSWCCCL, including eminent lawyers and politicians. That inaugural meeting was packed with later luminaries: a future premier Neville Wran; future Governor-General John Kerr; later federal Attorney-General and High Court of Australia judge Lionel Murphy; later federal minister and chief judge of the Land and Environment Court James McLelland; and in 1992 to become Humanist of the Year, John Hirshman, were just some of them.

A subsequent meeting adopted a draft constitution, and two big public meetings in October 1963 formally established the council with an elected committee. The aims were to protect the rights and liberties of people in Australia – freedom of speech, press and assembly, and resistance to abuse of power by public authorities. An important stipulation was that it be non-party-political and non-sectarian.

Membership was open to anyone who subscribed to the aims of the organisation, but not to institutions. The fee was one pound a year or five shillings for students, probably about \$60 and \$15 in 2020 dollars.

⁴ Dorothy Campbell and Scott Campbell, *The Liberation of Lady Chatterley and Other True Stories, A History of the NSW Council for Civil Liberties 1963 - 2005*, NSW Council for Civil Liberties, 2007 (hereafter, 'NSWCCL history')

From the outset, many of the the people who joined the NSWCCCL – and backed it, with their personal time and expertise – were outstanding citizens and lawyers. Among them were:

Founding member Jack Sweeney became an Industrial Court judge, then Federal Court judge. 'Bob' Hope, second president, went on to the NSW Supreme Court and later the Court of Appeal, then ran a Royal Commission into security and intelligence matters from 1974 to 1977. Bob St John, the third president, went onto the Federal Court. Carolyn Simpson, the fourth president, was one of the first women appointed to the NSW Supreme Court.

Malcolm Ramage served on the National Court of Papua New Guinea. Ian Dodd went on the District Court. Kep Enderby to the State Supreme Court (and served as a member of the House of Representatives, and world president of the Esperanto language movement). Trevor Martin joined the District Court.

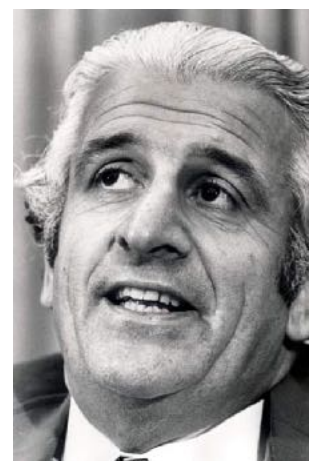
Jim Staples was appointed to the Australian Conciliation and Arbitration Commission (and later “un-appointed” in unique circumstances). Paul Stein went to the Land and



Environment Court and ultimately to the Court of Appeal. David Kirby became a judge of the NSW Supreme Court. Marcel Pile joined the District Court. Gordon Samuels served on the Court of Appeal, and became Governor of NSW. Salvatore Sudano was on the District Court. Jim ('Diamond Jim') McClelland (left) went to the Land and Environment Court. Jeffrey Miles became Chief Justice of the ACT, and Maurice Byers Solicitor-General of the Commonwealth. John Marsden served on the NSW Police Board, and, most famously, Michael Kirby became a judge of the High Court of Australia where he was noted for being the judge whose

civil liberties and human rights beliefs and credentials shone through his judgments.⁵

However, some of early activists were not lawyers. Founding member Dick Klugman (right: pic Tony Lewis *SMH*) was a medico as was John Hirshman, a humanist and health services consultant, who made a special study of public health and tropical medicine. First president Alan Stout was a Professor of Moral Philosophy at the University of Sydney, and Ted Wheelwright and his close mate, the man who started it all, Ken Buckley, were economic historians at the same uni.



The NSWCCCL also suckled budding parliamentarians: Klugman became a Labor MHR, as did Lionel Murphy; Peter Baume

⁵ Introduction to NSWCCCL history, p.vii

became a Liberal Senator). And the organisation contributed many of its former members to high office in the NSW Parliament, not least of whom was Premier Neville Wran. There were also strong women involved, both from the start and in later years: Berenice Buckley, mentioned above, Daphne Weeks, Mary McNish, Carolyn Simpson and Beverley Schurr (photo), with Pauline Wright later holding the position of vice-president for many years.



Police featured prominently in early NSWCCCL activities, because of the circumstance of its origins. The police as guardians of the law are almost inevitably in conflict with civil libertarians as protectors of rights. Complaints about the actions of police in trampling on people's ability to go about their business unhindered occupied much of the council's workload.

Buckley explained the dichotomy very clearly in 1995 to the Wood Royal Commission:

*"Police culture [in NSW] has sinister undertones. At one extreme it relates to the symbiosis between some policemen and criminals...More generally...there are incidents of assault by police, lying in courts and fabrication of evidence to secure convictions. When questions are raised about such matters, the standard police response is to close ranks (and mouths) to defend one of their own number. Group or tribal loyalty is asserted; nobody in the Service wants to rock the boat or to dob in another policeman, no matter what injustice might result."*⁶

A vitally important early publication of the council was the booklet, *If You Are Arrested*, which set out citizens' rights in clear language. Well received, its contents were reproduced in several commercial publications. In both 1985 and 1993 the council revised and updated it. Such a ready-to-hand guide to peoples rights in relation to the police was vitally needed in that period. In the early 1960s, there were none of the special interest groups which now defend the rights of minority groups: Aborigines, migrants, gays and lesbians, refugees, prisoners, the aged, children, mentally ill and the disabled. There were no apps on mobile phones to instantly bring you the latest advice, and even the most recent case law.

The Aboriginal Legal Service was the first of those now-common legal assistance bodies to arrive, being established in 1970. Before that, there was virtually no free legal aid available in NSW, except through the NSWCCCL. The NSW Public Solicitor sometimes provided services for people charged with serious offences such as murder, but help in cash or person was rarely extended to the magistrates courts. In the lower courts, people without representation were much more likely to be convicted.

⁶ NSWCCCL history, p.73

“What the CCL provided was free legal representation for relatively poor people, so long as the case involved one or more issues engaging the principles of civil liberties.”⁷

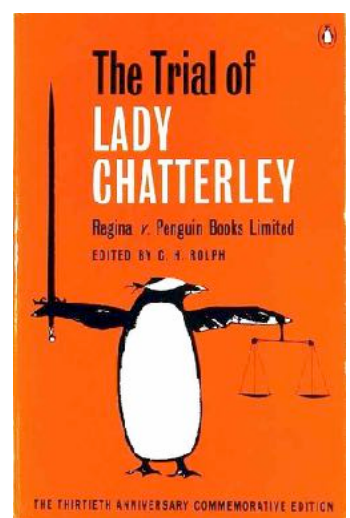
By 1974, legal aid had become available from the Law Society’s duty solicitor scheme in the Children’s Court. But, before that, individual CCL lawyers would often represent children in need of representation in court pro bono. The council was also concerned for rights of people coming before the Court of Petty Sessions who were not eligible for legal aid from the duty solicitor.

In part because of the council’s representations, the Commonwealth Attorney-General, Lionel Murphy, introduced the Australian Legal Aid Office in all states in 1974, but conservative lawyers fiercely opposed the move. However, the ALAOs were threatened by the incoming Liberal government in 1975, which introduced a bill to give government direct control of ALAO. An Act in 1977 introduced the Legal Aid Council.

Now many more organisations deal with complaints, run by salaried people: the NSW and Commonwealth Ombudsman’s Office, the Privacy Commissions, state and federal, the Australian Human Rights Commission and anti-discrimination bodies and systems, and the like. Legal aid continues to be chronically under-funded and its solicitors over-stretched. It remains the case that money can buy justice in Australia.

The first civil liberties group in Australia, in Victoria in the mid-1930s, began its life very much focused on censorship. And censorship was also an important aspect of the early work of NSWCCCL, which fought against the authoritarian dictates of governments. This action arose from the basic belief that adults should be free to choose what they see and read. Censorship has always been preoccupied with sexual matters and various Christian lobby groups have ensured politicians are nervous about liberalising censorship laws.

The newly-formed NSWCCCL thwarted Australian Customs by organising the printing of a banned book, *The Trial of Lady Chatterley*⁸, in Australia. Friend of the council, Leon Fink, paid a nominal amount for the rights to “*The Trial*” to Penguin Britain so it could be published here. Despite a threat in Victoria, there was no challenge – a significant victory for the council which signalled a relaxation of book censorship in Australia.



⁷ Buckley p.206

⁸ The original D.H. Lawrence book, *Lady Chatterley’s Lover*, was banned in Australia from 1929 to 1965. The ban was lifted in 1965. Subsequently, a report on the British trial of the book on obscenity charges was published, *The Trial of Lady Chatterley*. This second book was also banned in Australia...until the NSWCCCL organised its printing here.

“...these (court) challenges represented a major breakthrough in the fight against the Customs Departments’s arbitrary exercise of power concerning allegedly obscene publications. Narrow minded bureaucrats and politicians found themselves up against organised and determined opposition and were obliged to be more cautious in future.”⁹

By 1970, the federal government had formed the Australian Classification Board, which tidied up the area of censorship, with various tweaks due to changing technologies like compact disks and video games.

The newly-formed organisation was growing rapidly, and by mid-1964 there were about 300 paid-up members, mostly drawn from city barristers and inner-city and suburban solicitors. Individuals were generating a steady stream of appeals for help to the council. A small group of members evaluated the requests for whether they involved issues of civil liberties. Valid complaints, involving a point of principle, were sent to the committee to decide what action to take. Lawyers were actively needed to make the assessments: some cases were individual, like questionable police actions; others involved points of principle, eg the right of free assembly.

From early days, jails and prison administration drew the attention of key council lawyers, because people in prison are totally controlled by the state and “justice for all” included those denied their freedom and locked away. Most people in the community don’t know about conditions in prisons, and probably most don’t care. Prisoners attract little public sympathy: many people consider they have put themselves beyond the law.

The NSWCCCL acted on the principle that jails should be places of punishment, not places for punishment. Jails should provide an environment for rehabilitation, education and training. Too often the focus was on punishment, arbitrary rules and deprivation of privileges, and assaults on human dignity.

Periodically, conditions in jails become so dire that riots occur. This happened in NSW in 1970 at Bathurst Jail, when 140 prisoners held a sit-in. Their demands included:

- better food;
- better medical treatment;
- money for work and a better buy-up list;
- radio till 11pm;
- lights until 10pm; and
- 3 oz (85gm) of tobacco per week.¹⁰

⁹ Buckley p.199

¹⁰ NSWCCCL history p.97

After authorities assured them their complaints would be considered, the protesters broke up their demonstration. But, in the next few days, prison officers systematically flogged most prisoners in the jail. NSWCCCL lawyers took up the case, publishing a document called *'The Bathurst Batterings'*, October 1970.

The council formed a subcommittee to raise public awareness of conditions in prisons. It questioned the controls exerted over prisoners in their contact with the outside world. The council endorsed the principle that prisoners have rights, and sought evidence from prisoners of maltreatment by prison wardens. They demanded a Royal Commission, and formed the Penal Reform Council of NSW to include other people interested in prison reform.

The government refused to establish a Royal Commission but set up a Corrective Services Advisory Council. The NSWCCCL sought direct representation, but the strong request was refused. However, two NSWCCCL members – judge Bob Hope as chair and Prof Sol Encel – helped to identify inadequacies like extreme temperatures, prisoners locked in cells for hours, inadequate exercise and lack of education facilities.

The prisons department and the government ignored the criticisms. The result was major riots in Bathurst in 1974. Tear gas was used, prisoners injured and much of the prison destroyed by fire. The government decided to deal with the problem by building a new maximum security prison – the infamous “electronic zoo”, Katingal, opened at Long Bay (near Botany Bay) in 1975. The Corrective Services Advisory Council was not consulted. The council’s AGM condemned the jail: barely two years later it was closed because the conditions of sensory deprivation for its 40 inmates were considered an abuse of human rights.¹¹



“Specialised buildings for crushing intractable people have a history without honour in every country and in every age.”¹²

Referred to as an electronic zoo, Katingal became a symbol of everything that was wrong with the NSW prison system – inhumane, punitive and regardless of rights. The council took direct action, parking a caravan outside Long Bay Jail to interview prisoners as they were released. NSWCCCL lawyers took prisoners’ cases pro bono in

¹¹ <https://www.smh.com.au/national/final-release-for-katingal-misguided-experiment-in-extreme-jails-20040519-gdiyct.html>

¹² NSWCCCL history p.101

the trials related to the riots, with considerable success.

Right: Maximum security at Katingal.¹³



After the Bathurst riots, demands for a Royal Commission increased. Finally, in 1976, the newly elected government of Neville Wran, who had been a strong supporter of the NSWCCCL, set up the Nagle Royal Commission into the administration of prisons in the state, to which the council's lawyers presented vital evidence. The RC was a watershed in NSW prison history, publicly revealing the brutality which had been commonplace for decades, sanctioned by prison authorities, overlooked by ministers and politicians. Justice Nagle found that the riots were the result of overcrowding, physical mistreatment and callous disregard for prisoners' rights. He recommended immediate closure of Katingal.

Premier Wran informed the NSWCCCL that he intended to implement the Nagle recommendations: wages should be reviewed, rules related to prisoner's letters should be relaxed, legal correspondence should be privileged, and work release programs should be available. These reforms met with bitter opposition from militant prison officers and jeering reporting by some tabloid newspapers. Ultimately, only some limited reforms were made.

The Corrective Services Commission was created and achieved some success. Nagle had recommended setting up an independent Prisons Ombudsman: however, an assistant in the existing Ombudsman's office was appointed to deal with prisoners' complaints.

Prison reform is always the victim in a 'law and order' political campaign. So it was in 1988 when the Liberals won power in the state and proceeded to wind back previous reforms and return prisons to places of punishment, permitting even more punitive regimes to develop. With the abolition of the Corrective Services Commission and the Corrective Services Advisory Council, accountability reduced substantially.

In 1990, four Members of the NSW Parliament visited three prisons and found that conditions were a cause for serious concern. At Bathurst, authorities had cut prison industry and removed training officers. There was open hostility between prisoners and wardens: brutal treatment persisted. Thus, 12 years after Nagle recommended reforms, treatment of prisoners had deteriorated.

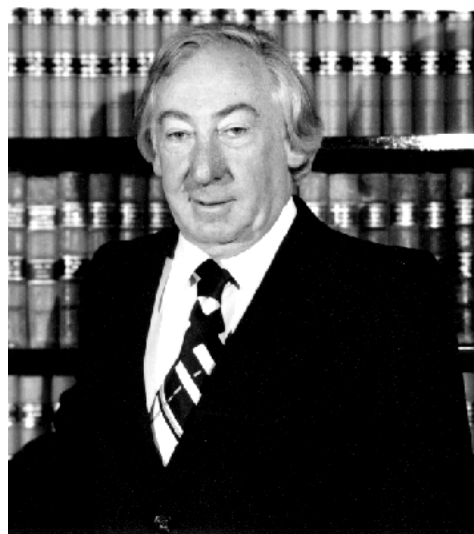
¹³ <http://ihc2015.info/skin/katingal-prison.akp>

In 2000, as part of the continuing campaign, in cooperation with the Redfern Legal Centre and with a grant from the Law Foundation, the NSWCCCL published the Prisoners' Rights Handbook. It listed prison rules, health and welfare issues and outlined rights, discipline and legitimate punishment.

By 1972, the NSW CCL had grown to about 1600 members, probably its peak.

A major part of the work of the NSWCCCL has been striving to influence legislation, as it is created, and how new laws are implemented. The council has been involved in consultation and served on advisory bodies, always trying to safeguard the civil liberties aspects of laws, trying to ensure laws safeguard freedoms, not diminish them.

Central to this watchdog role was the council's belief in the need for a constitutional Australian Bill of Rights, which was seen as a way to protect rights and freedoms. Australia is the only common law country without a bill of rights. As early as 1967, the NSWCCCL was involved in introducing a draft bill. In 1973, then federal Attorney-General Lionel Murphy (right), a former NSWCCCL member himself (and father of a future long-serving president), introduced a Human Rights and Racial Discrimination Bill (HRRDB). Its main principles were:



- the greatest level of freedom, consistent with order and justice, should be the objective of society;
- the onus of proving that a freedom needs to be diminished rests entirely on those seeking to diminish it;
- major freedoms should not be restricted unless they cause excessive harm to others; and
- major public opinion, traditions, customs and dogma shall not be accepted as justification for restricting freedoms.¹⁴

The council gave strong support by organising a public meeting in Sydney, to which big numbers turned up. However, the 1974 election cut short debate on the Bill. Though Labor was re-elected, the Australian Parliament was in virtual constant turmoil as to who controlled the numbers from '74 to '75 and the 11 November 'Dismissal'¹⁵. The HRRDB did not come to a vote before the Governor-General John Kerr terminated the Whitlam government. Subsequently, the Fraser government brought in a watered-down Human Rights Act, creating a commissioner with limited powers.

¹⁴ NSWCCCL history, p.160

¹⁵ https://en.wikipedia.org/wiki/1975_Australian_constitutional_crisis

A decade later, the NSWCCCL again called for a bill of rights, because it considered common law does not adequately protect freedoms. In 1984, an Australian bill was again proposed, this time by the Hawke government. The NSWCCCL re-formed its specialist human rights subcommittee, which set out 31 articles for the bill. These included:

- every person is entitled to equity before the law and to human rights and fundamental freedoms
- the right to equal protection of the law, without discrimination
- members of ethnic, religious and linguistic minorities have the right to practice their own religion and speak their own languages
- the right of freedom of expression
- the right to public assembly
- the right to be informed of reasons for arrest and of charges
- the right to a presumption of innocence.¹⁶



Critics said that the Bill of Rights would give the judiciary and not the legislature power over freedom of speech and freedom of the press, privacy and education. (This furphy was repeated in attacks on the subsequent 2008 bid to bring in a federal Bill of Rights). Foremost in this attack was the former Labor Premier of NSW, Bob Carr (left). Populist conservative state governments denounced the Bill as open slather for street marches, homosexual marriage and breakdown of society's values. The bill was unsuccessful in 1985 (and again in 2008).

The NSWCCCL kept pushing for the adoption of a bill of rights. In 1993, the council's AGM passed a motion in support. In 1995, then President John Marsden wrote:

*"Our courts cannot always protect and enforce our basic human rights. They do not have the authority... Common law is not properly able to protect our rights. It is easily overridden by statute law. A Bill of Rights is not a no confidence motion in our legislature; it is a guarantee that basic rights are protected."*¹⁷

The NSWCCCL ran education campaigns through schools and produced a booklet entitled *'Talking Rights – a Bill of Rights for Australia'* with support from the Legal Aid Commission and Liberty Victoria. Though some leading judicial and parliamentary figures supported a bill of rights, the NSW government claimed that it would create a litigious society and transfer power from the legislature to the judiciary.

¹⁶ NSWCCCL history p.170

¹⁷ NSWCCCL history p.163

Subsequently, the ACT introduced Australia's first Human Rights Act in 2004, and Victoria brought in a Charter of Human Rights and Responsibilities from 2006.

In 1976, the NSWCCCL ran into organisational problems when a bloc elected to the committee tried to turn the organisation radical. This group comprised about a third to half the committee, whose meetings became a running battle for control. The founding members believed such measures would be anathema to the main body of members of the NSWCCCL, especially practising lawyers.

Direct democracy versus representative democracy was put to the test when it was moved by a member of the radical bloc that all NSWCCCL members should be entitled to attend and to vote at committee meetings. This would make election of officers to the executive committee meaningless, the incumbents claimed, and put at risk discussion of sensitive legal cases. This particular issue was lost but acrimony continued over other issues, such as the controversy of squatters in Sydney buildings during green bans. As Buckley wrote:

*"It became apparent that the radical group wanted to extend the activities of the CCL beyond the boundaries generally accepted in the definition of civil liberties."*¹⁸

Committee meetings became long and alcohol-assisted, which increased tensions. By August 1976 Buckley was fed up, and wrote directly to the general membership. He described the radical group as "nihilist, since it advocates no prisons, no mental hospitals and no representative democracy". Buckley was not opposed to radical action by political parties, but regarded attempts to radicalise the CCL as "portents to the death of the organisation".¹⁹ Further,

*"The CCL is basically a conservative organisation, functioning in a society which is even more conservative. Our membership is mainly middle class and professional in composition. Radicals and conservatives on the committee over the years have built up mutual trust and confidence on the basis that neither would use the CCL for ulterior or ideological purposes...Differences of opinion are to be expected and tolerated, of course. What is objectionable is the attempt by a handful of committee members to bring about radical changes without consultation with the CCL members via a general meeting."*²⁰

The traditionalists organised for the next AGM in October 1976, and replaced the radicals, thus ensuring the original intent of the NSWCCCL was preserved.

¹⁸ Buckley, p.287

¹⁹ Buckley p.290

²⁰ Civil Liberty newsletter no 68, August/September 1976 pp.2-4

At Easter 1976, a contingent from the NSWCCCL went to Adelaide for a national convention, organised by the SACCL (see Ch 7). The convention decided to establish a National Council for Civil Liberties, with two representatives from each state.

However, in Buckley's strong view, most civil liberties issues arose at state level, except censorship. He was quite other than a wholehearted supporter of a national CL organisation. He pointed to the difficulties of securing agreement to a proposal in a timely manner, and the lack of finance for a federal structure. He reluctantly conceded, with a major proviso:

*"Civil Liberties should have a national voice...Giving proper effect to that aim without offending individual CCLs is a matter to which a lot of thought and effort must be given. Perhaps we are being too ambitious in this project, but it is worth trying."*²¹

Buckley described 1976 as a disappointing year for the CCL:

*"The general atmosphere has been one of doubt, frustration and unfinished business. Interestingly the evidence of this within our own ranks is paralleled by a similar situation in the world outside which we try to influence".*²²

(In passing: Kris Klugman, one of the authors of this history, was elected to the NSWCCCL committee at this time. She went on to be co-founder of Civil Liberties Australia – see chapter 3).

By the time of the 1977 annual report, president Carolyn Simpson was able to state:

*"This year in the CCL has been marked by a revival of the spirit of cooperation and achievement that had previously characterised the Council, enabling the Council to pursue its primary aim in the cause of civil liberties in NSW".*²³

There had been an unprecedented turnover in members of the executive, with Berenice Buckley resigning as secretary, due to work pressures. Members of the CCL gave evidence before Justice Nagle's Royal Commission into NSW Prisons²⁴ which had begun after six years of pressure following the 'Bathurst Batterings'.

²¹ *ibid*, p.9

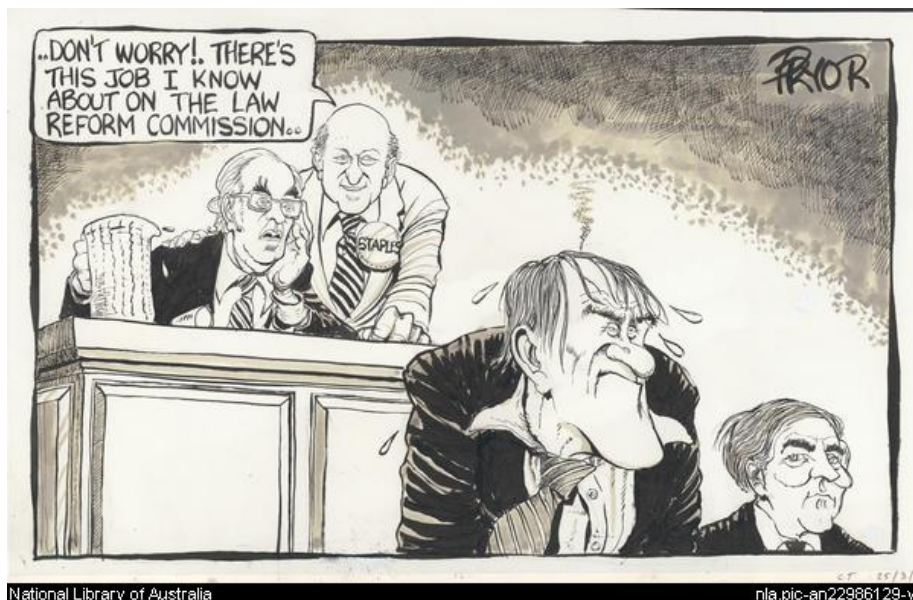
²² Civil Liberty newsletter no 69 November/December 1976 p.1

²³ Civil Liberty No 75, November/December 1977

²⁴ https://en.wikipedia.org/wiki/Royal_Commission_into_New_South_Wales_Prisons
Digital version of the Nagle report: <http://tinyurl.com/y8dq8hvg>

Justice Jim Staples, a former committee member (and also later a founding member of CLA), was appointed by the Attorney-General to investigate the practice and laws in Europe relating to the protection of human rights. The move was a ploy to remove him from the Australian Conciliation and Arbitration Commission where he had been creating problems for the government (for “telling it as it was”, and shattering the

unwritten rules of the “industrial relations club”, a cosy relationship between the judges, the unions and the government, basically to ensure the status quo was never much disturbed). A federal Human Rights Commission, to be established in July 1977, did not in fact intend to wait for Staples’ report.²⁵



Above: How Geoff Pryor saw Staples’ (at rear, right) dilemma.

A testimonial dinner for the Buckleys in 1983 marked NSWCCCL’s first 20 years. President Carolyn Simpson announced their departure from the committee. She praised their contribution, which was in fact premature as they returned when the organisation needed them not long afterwards. President Simpson named the CCL members who had become judges at that stage: Justices Sweeney, St John, Staples, Hope, Miles, Kirby, Ramage, Wooten, Pile, Martin, and Shadbolt. (A few years later, and she could have announced her own name).

She suggested some changes in approach for the CCL: that unequivocal opposition to all forms of censorship may not be appropriate, and that avoidance of issues flowing from uneven distribution of wealth (such as homelessness) could not be avoided.

From 1983 the CCL went into slow decline, coinciding with Ken and Berenice Buckley being off the committee. It is quite apparent in retrospect that these two people remained lynchpins of the NSWCCCL, from its birth to their deaths.

Some of the acrimony came to light in a dinner function in 1984 to celebrate the 25th anniversary of the council’s foundation. Premier Wran as guest speaker launched a vicious attack on the NSWCCCL as being irrelevant to the community and concerned with little more than wining, dining and talking.

²⁵ Civil Liberty No 73 July August 1977, p.3-4

“It was a highly emotional speech, loaded with inaccuracies, insults and false allegations as to what the NSWCCCL was failing to do, according to council members.”²⁶

The reason for the Premier’s venom seemed to be the NSWCCCL’s criticisms of federal AG Murphy, and also of Wran’s (photo) role as Police Minister for the phone tapping the government permitted. However, relations between the Premier and the council had deteriorated over issues like police behaviour at protests and the Summary Offences Act. Founding member Dr Dick Klugman, by then a federal Member of Parliament, also was incensed at the criticisms of Murphy, and left the NSWCCCL for good.



Buckley attributed the relative decline of the organisation to the emergence of single interest groups designed to promote women, Aboriginals, homosexuals, etc. These sectional interests were not conducive to consideration of wider civil liberties issues.

The CCL neglected the possibility of acting as a broad umbrella group covering new bodies, at least with reference to civil liberties. We missed the opportunity and paid the price. Over a couple of years there was a perceptible fall in the activity and public recognition of the CCL. Production of our newsletter...became irregular, and mention of the CCL in the media fell appreciably.”²⁷

In 1984, the council got back on the front foot with publication of a Civil Liberties Agenda for the NSW Parliament: this was an ambitious, concentrated schedule of proposals for law reform. Drafted by president John Marsden and secretary Beverley Schurr, it covered:

- tape recording at police stations (to defeat police “verbals”²⁸),
- investigation of complaints against police,
- police powers to question and detain without arrest,
- police prosecution branch abolition,
- abolition of special branch,

²⁶ Buckley p.300

²⁷ Buckley p.346

²⁸ “Verbals”: shorthand for the police practice of making up statements that they claimed charged people had given.

- children in court,
- imprisonment as last resort,
- police interrogation of prisoners,
- expunging criminal records,
- parliamentary committees and listings,
- privacy,
- complaints against police and a commission of inquiry,
- drugs and decriminalisation,
- offences in public places, and
- homosexual law reform.

Each proposal identified the problem, the solution and the proposal.

Liberal Premier Nick Greiner was the main speaker at a council fundraising function in 1988, and was frank in his assessment of some NSWCCCL shortcomings:

*“... the CCL has been less than forthcoming on things that are clearly positive from its point of view...we await the Council’s submission on the freedom of information bill”.*²⁹

However, the secretary Tim Robertson outlined an impressive list of topics on which he had made formal public speeches: the death penalty, the ICAC (corruption body) bill, emergency laws and the right to organise, the ombudsman and the police, corruption in NSW, essential services, and freedom of information.³⁰



Barrister Ken Horler³¹ (photo) was president in 1989, when the main issues were public health and drugs, comment on the NSW Attorney General’s discussion paper on the criminal justice system, prison reform and privacy. Neither Ken or Berenice Buckley were listed on the committee.³²

For the 1990 election, analysis of the policy statements on issues relating to civil liberties

²⁹ Civil Liberty No 133, spring 1988 p.5

³⁰ Civil Liberty No 135 December 1988- January 1989

³¹ Horler was more than a “barrister”. He was a thespian of note, founder of the influential Sydney theatre, Nimrod, and a playwright. Ron Blair tells a story in Horler’s obituary, Bar News (NSW), Summer 2018-19: “One Saturday afternoon he went out to Long Bay jail in his weekend clothes (shorts and sandals) to visit a client. While he was inside, there was a change of shift and he had a hard job convincing the new warder on duty that he was a visiting barrister. The theatrical complication of the switch delighted him.”

³² Civil Liberty No 137 1989

showed the parties gave them low priority. The council welcomed an article by Bob Carr on legalising heroin, which first appeared in the SMH on 30 December 1989.

In 1993, Buckley organised a change in executive leadership and worked to improve the NSWCCCL's previously unfavourable financial position. There was some activity in new areas, such as environmental issues and drug reform legislation. As an educational project, the CCL instituted a prize essay competition for high schools, on the topic of freedom of speech.

The year 1994 saw a 30-year commemorative dinner, at which NSW Premier John Fahey formally conferred life membership of the NSWCCCL on Ken Buckley. The council's almost-permanent keynote speaker, then president of the NSW Court of Appeal, Michael Kirby, had kind words for Berenice and Ken Buckley, and ongoing instruction for the members, that resonates still, going on another 30 years later:

"The lesson of this century is that democracy is not an absolute. Unbridled majoritarianism can be a most oppressive tyranny. The essence of democracy, as we now understand it, lies in the way it treats vulnerable minorities. Indeed, that is the abiding lesson of civil liberties. There is no human right of democracy to denigrate or abuse women or children. There is no right to democracy that stigmatises people on the grounds of race or skin colour. Democracy meets its limits when it discriminates on the grounds of religion, handicap, age or sexual orientation."³³

The council's president John Marsden was the victim of scurrilous, and cowardly, attacks of being a pederast: Labor right wing operative, MLC Deirdre Grusovin (photo), made her claims under parliamentary privilege. Ken Buckley's article in the *Sydney Morning Herald* of 17 March 1995 expressed full confidence in Marsden as a generous and energetic supporter of good causes.



However, the NSWCCCL again suffered from personality conflicts, and was without a president after Marsden stood down for an extended period.

It is worth at this point reflecting on the whirlwind that was John Marsden. In the 'John Marsden Memorial Lecture 2016', his brother, Jim, gave an insight³⁴ into the difficult early years John had, and then the successful period:

"At the height of his business career in his early 40s, John eventually came out (as a homosexual). Unsurprisingly, in hindsight, his business thrived even more. John's personal popularity thrived. He extended his horizons beyond

³³ http://www.nswcccl.org.au/nswcccl_speeches

³⁴ <http://tinyurl.com/yb49jc9y>

Campbelltown to become the President of the Council for Civil Liberties, the Law Society of New South Wales and the Law Council of Australia. He had political connections on both sides of politics. He had both sides of politics at his 50th birthday. A lavish and happy celebration of his 50 years of life – but only 10 years of happiness. He had two Premiers speak at that party, Nick Greiner, the then Premier and Nick Greiner's successor, John Fahey. From the time that he came out and through this period, it is a period that John enjoyed true happiness.

“Then in the early to mid 90s, under cover of the ludicrous protection of Parliamentary privilege, John was accused of paedophilia. The actual accusations related to John in his late 20s and early 30s picking up at the Wall in Darlinghurst and some of those that he picked up may have been under 18. Consider whether or not had John been heterosexual, would society have been interested in such an allegation emanating from a politician. No way.

“John's worst 5 years of his life ensued, he publicly fought the allegations. He went through a Royal Commission. He was then accused on national television by Channel 7. He then took Channel 7 on and fought that battle and won.

“But it took its toll. John was a beaten man, emotionally and mentally. From the high levels that he had achieved, he couldn't walk into a room of more than a dozen people without breaking into a cold sweat. Then, just as he was getting his life back together, he discovered he had cancer. My unqualified view is that that battle took its toll and manifested itself in the cancer.”



The above is a shorthand version of what a dynamo John Marsden (photo) was, and how much he contributed to the success of the NSWCCCL over more than a decade. He drove people, he cajoled, he encouraged, he crossed boundaries, he befriended, he gathered, he fought, he proclaimed, he asked a lot... Ken Buckley said he was:

“the most active and demanding president the CCL has ever had.”

John Robert Marsden, born the son of publicans Guy and Tibby Marsden, was the eldest of six siblings. He graduated from the University of Sydney in 1968 with a Bachelor of Laws degree and (was) awarded a

Master of Laws Degree in 1974. He started as a lawyer in 1968. In 38 years at the helm, John steered the practice from a one-man operation to a leading firm of 140,

Marsdens Law Group, with offices in Sydney, Liverpool, Camden and the head office in Campbelltown where it all began.

Apart from his NSWCCCL commitments, he was a member of the NSW Police Board 1992-1995, chairman of the Campbelltown Art Gallery, and deputy chair of the Faculty of Law at the University of Western Sydney 1994-1996...among other positions. He received an AM in 1994.

Co-author Dr Kristine Klugman remembers:

“John needed very little sleep. You would frequently wake up to a message on your phone answering system that he had called at 4am. Then the same day, you might hear a message come in near midnight, and instinctively know who it was. He was one of the hardest-working – certainly, the longest-working – people I have known. It’s a characteristic Michael Kirby shares.”

By 1997, with the Buckleys and Marsden again in executive positions, the council regained momentum. It took up the issues of Aboriginal land rights, disbandment of the Special Branch of the NSW Police Service, policies on gun control, drugs, prisons, drug law reform and prisons. Major changes were occurring in society with emergence of gay rights groups. Abortion law reform was another significant topic raised (but still not resolved in NSW in 2019!).

Buckley’s comment on the Wood Royal Commission into police corruption were scathing:

“Damp squid and mountain out of a molehill. These are the main responses of CCL executive members who have studied the main report ...The document is bland, devoid of spirit and reads like a business paper rather than a historic report on grave social and civil liberties problems.”³⁵

In the CCL’s analysis, the Wood report failed to deal adequately with police-Aboriginal relations, policing in a multi-cultural society, corrupt relations between police and politicians, dishonesty of some lawyers in criminal trials and civilian victims of police corruption.

The special millennium issue of the NSWCCCL journal, *Civil Liberty*, nominated issues for the new century: towards a bill of rights, towards a republic, controlling people smugglers, controlling the internet, tracking global poverty and defending democracy.³⁶ Kevin O’Rourke became president with Ken Buckley and Pauline Wright the vice-presidents.

³⁵ Civil Liberty Issue 169 June 1997 p.2

³⁶ Civil Liberty No 182 January 2000

The journal *Civil Liberty* had a scheduled quarterly publication date, and usually consisted of articles and book reviews. It reported NSWCCCL committee activities. An example is Issue 189 June 2002, with an article by President Cameron Murphy on ASIO Legislation Amendment (Terrorism) Bill 2002, and news of Bill of Rights conference in June, organised by the Gilbert Tobin Centre UNSW. The issue carried sub-committee reports on refugees/asylum seekers, deploring the detention of children, on fundraising functions, and on submissions made on children in detention, the Migration Act, Criminal Code, Security, and ASIO.

Subsequent issues of *Civil Liberty* carried articles on ASIO, the Crimes Act, terror laws, the right to protest, democracy, double jeopardy laws, indigenous self-determination, copyright, the death penalty, transsexual marriage, prisons and drugs, and reviewed the Nagle Royal Commission 25 years on.

In September 2004 there was an obituary of John Shaw, who – with wife, Liz – was a long-standing editor of the journal, and an internationally recognised journalist. (Like Staples, the two Shaws were foundation member of Civil Liberties Australia). The issue ran an article on Australia's first bill of rights (ACT).

However, there was no mention of the first interstate meeting of CL groups for decades, which occurred in Sydney at the NSWCCCL offices, initiated by Civil Liberties Australia. The oversight is indicative of the NSWCCCL's attitude to national cooperation at the time. CLA convened a meeting of interstate CL groups on 25-26 June 2005, with the aim of improving communications between the groups and, possibly, to form a national body. It was an abject failure (see chapter 12 for discussion of the NSWCCCL's role, over the decades, in the inability to bring Australian CL groups



together). At the time of writing (2019), there is little national coordination of the activities of the CL groups in Australia (apart from the “joint” submissions generated by the NSWCCCL), to the detriment of the groups and the nation.

Above:: Meeting of NSW, Qld, Vic, SA and ACT civil liberties bodies at the NSWCCCL in 2005.

By April 2005, John Marsden, who had been possibly the NSWCCCL's most driving force as president across its existence, was very ill and was the subject of a tribute article. He died in May 2006, by which time he had become personally disillusioned as

to the direction the council was heading³⁷. In March 2006, Buckley was still on the committee, literally serving till the time he died, that July. Thus in a few months, the NSWCCCL lost two of its most important driving forces. Marsden – who had lifted a moribund organisation off the floor and secured a significant boost in memberships and donations – and Buckley, who had been there for the NSWCCCL virtually constantly from the very first, for a period of 42 years. He had served as president, but it was mostly his “secretarial/organisational” work behind the scenes, aided considerably by Berenice, which kept the NSWCCCL functioning for most of half a century, frequently picked up under the arms by Buckley when it had slipped into bad habits.

At the same time as death struck, the NSWCCCL’s traditional method of operating cushioned the losses of individuals. There were nine sub-committees, who handled the disparate lines of “business” of the group, and reported to a central council. The executive secretary, responsible for day-to-day running of the organisation, was Susan Smith.

By September 2006, *Civil Liberty* newsletter had changed policy, and carried a photo of a meeting in Victoria of interstate CL groups. At the Melbourne meeting, the NSWCCCL’s refusal to share information about membership numbers effectively ended the chance of forming a properly-functioning national body (see chapter 12 for details). For some reason, the organisation has traditionally been secretive about numbers.



Photo (top) interstate representatives, who were to meet the following morning, at the Brian Fitzpatrick 100th anniversary dinner, Melbourne on 8 July 2006. NSWCCCL president Cameron Murphy is 2nd from the left, with secretary Stephen Blanks 3rd from left. CLA’s president Dr Kristine Klugman is centre, with CLA secretary Bill Rowlings at right. Photo (below) : Liberty Victoria president Brian Waters and Queensland’s Terry O’Gorman also attended the meeting.

³⁷ Personal comment, to the authors, when he accepted the role of Patron of CLA. He did not explain in detail what his concerns were.

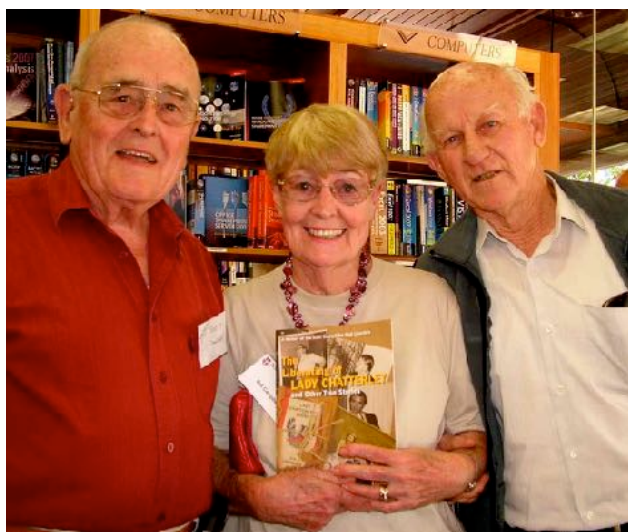
In October 2006, the newsletter carried for the first time a complete rundown on an AGM³⁸. It is noteworthy that the organisation moved to sell the premises it owned immediately following Ken Buckley's death. He had vigorously opposed the proposal to sell the council's free standing terrace in Glebe, and to take office space instead. The financials show Ken's bequest put the NSWCCCL back in the black by \$7670. Key achievements noted for the year were:

- over 50 oral and written submissions to parliamentary and other inquiries,
- membership doubled to over 450,
- commencement of litigation against the classification review board on freedom of speech,
- draft bill on death penalty to the Standing Committee of AGs (SCAG),
- holding AFO accountable for role in arrests of Australians overseas, and
- the marketing committee had reshaped the NSWCCCL image.

Comment in that edition included:

*"We have twice met with other civil liberties bodies from across Australia in the past year in order to ensure that we work more effectively together in the future. We are working towards amending the Australian Council for Civil Liberties Constitution and structure so that it is more inclusive of the smaller bodies in other states. There are problems with this process, where the ACT in particular, appears to be representing itself as the national organisation (SIC) but they are problems we are confident we will be able to resolve by early next year."*³⁹

(However, the ACCL remains a body in name only. It holds no AGMs or formal meetings, is not registered and has no constitutional membership structure: editors)



In 2007, the council held the inaugural Ken Buckley/John Marsden memorial fundraising dinner: Berenice Buckley helped organise the event.⁴⁰ A new executive secretary was employed. The same year saw the history of the NSWCCCL published: *'The Liberating of Lady Chatterley and Other True Stories: A history of the NSW Council for Civil Liberties'* by Dorothy Campbell and Scott Campbell.

Left: Scott and Dorothy Campbell (with the book) and Jim Staples, at the official launch of the book in Canberra ACT, the national capital.

³⁸ Issue 207 December 2006: report of AGM in October

³⁹ Issue 207 December 2006 AGM in October

⁴⁰ Issue 211 December 2007 AGM

Council president Cameron Murphy (son of Lionel, of inaugural meeting, federal AG and High Court judge fame) said that 2007 was a very good year for NSWCCCL. The main issues were fighting censorship, and right to protest, prisoner art, Goulburn super max prison, and opposing the Commonwealth health card (seen as the thin edge of the wedge for a national ID card). Secretary Stephen Blanks reported increasing cooperation and communication with Liberty Victoria and Queensland CCL.

There were some activities with the federal parliament in the following year, for example on whistleblowers to the House of Representatives Legal and Constitutional Committee, endorsing the ICCPR report, privacy and the death penalty. There was reference to the perennial problem of members' attendance at the AGM. However, secretary Stephen Banks said:

“During the last year, the Council has consolidated its reputation as the pre-eminent organisation in the public eye concerned with civil liberties.”⁴¹

A standout issue at the time was the attempt by the NSW government to give police sweeping extra powers during World Youth Day in Sydney. The NSWCCCL supported a court challenge to these laws. Council representatives met with federal AG Robert McClelland (right) over the UN Declaration Human Rights, provided material for the federal cross-party working group against the death penalty, and made submissions to various parliamentary inquiries.



In 2009, there were monthly committee meetings, collating and prioritising the work of 12 sub:committees:

- Against death penalty,
- Australian prisoners abroad,
- Bill of rights,
- Anti-terrorism laws,
- Censorship,
- Children and young persons,
- Civil and indigenous rights,
- Fundraising,
- Legal panel,
- Membership/marketing,
- Publications, and
- Website development.⁴²

⁴¹ Issue 211 December 2007 AGM

⁴² Issue 219 19 December 2009, AGM at Sydney Town Hall

During the year, the NSWCCCL continued to campaign for a charter of human rights, presented their shadow report on Australia's compliance with ICCPR to the UN in New York, responded to some of 40 invitations to make submissions, made legal representations in court, worked on a review of CCTV, ran overseas internships, worked for Australians incarcerated overseas, and responded to media inquiries.

In 2010 Berenice Buckley (photo) died. She had been stalwart foundation member of NSWCCCL, serving in her own right for 47 years, and was partner of the organisation's lynchpin for 40-plus years, Ken.



The council's business premises moved to a suite on the second floor at 105 Pitt Street, in Haymarket. A long running campaign concluded successfully: implementing the second optional protocol of ICCPR into domestic law, which ended the ability of states to bring back the death penalty. Also, the NSWCCCL set up a bail reform alliance with like-minded organisations, and the NSW government agreed to a review.

The 48th AGM gathered in Sydney Town Hall. Thirty-three members* and nine visitors attended. New offices were fitted out by a bequest from Berenice Buckley. The budget showed a loss of \$4102.

Policy decisions included supporting David Hicks and campaigning for the secular nature of public schools. Michael Kirby was awarded honorary life membership of the NSWCCCL.⁴³ There were 35 members at the inaugural meeting in 1963: getting members to attend AGMs is a blight on all such bodies...see later.

In 2013-14, the council changed to put greater emphasis on online publications rather than the old hard-copy newsletter.

Dramatic change occurred at the October 2013 AGM: long-serving secretary Stephen Blanks (right) replaced long-serving president Cameron Murphy. The council elected three vice-presidents, with 19 elected to the general committee. Lesley Lynch became secretary.



The NSWCCCL held its 50th anniversary dinner on 25 October 2013. It was very well attended by current and former members, and featured a long speech by council president 1976-79, but by then NSW Court of Appeal

⁴³ Issue 227 December 2011

judge, Carolyn Simpson, in which she outlined the principal activities of the organisation over the previous 50 years.

High Court judge Virginia Bell, NSW Court of Appeal judge Carolyn Simpson, and CLA president Dr Kristine Klugman at the NSWCCCL's 50th dinner. As a former council president, Simpson gave the main address.



An indication of how much times had changed was that a video of the event was posted on YouTube.

Policy subcommittees in 2014 covered asylum seekers and refugees, censorship and freedom of speech, civil rights, criminal justice and mental health, freedom of information and privacy. Organisational sub-committees were on



Cameron Murphy is NSWCCCL's longest serving President, from 2000 to 2013. He was honoured for work for civil liberties at the 2013 AGM, where he received life membership.

"During (his) presidency there have been unprecedented pressures on civil rights in Australia inspired by the fear of terrorism.

Under his leadership the CCL has prepared extensive submissions to and supplied evidence at a range of parliamentary inquiries many of which have contributed to significant modifications of draconian anti-terrorist laws.

Notably he has attacked the increased powers given to the police, the use of sniffer dogs and the expansion of the role of ASIO.

Murphy, representing the CCL with media commentary and submissions, can claim some credit for subsequent modification of ASIO powers in particular and the unprecedented general attack on basic rights and liberties currently occurring." (NSWCCL history, p.171-172)

Resolution from 2013 AGM:

The NSWCCCL confers on Cameron Murphy honorary life membership in recognition of:

- Many years of advocacy for civil liberties, human rights and anti-discrimination in a range of contexts;
- 13 years of effective strategic leadership of NSWCCCL in the face of considerable challenges to civil liberties post 9/11; and
- his personal contribution in sustaining the strong public profile and reputation of NSWCCCL as an independent defender of civil liberties

the issues of communications, fundraising and events, and membership. Campaign committees covered a national ASIO campaign, and NSW police reform. Newsletters⁴⁴ in a revamped online format appeared sporadically, as had the earlier hard-copy version over the years. There were five in 2013, one in 2014, three in 2015 and one in March 2016, for example.

The council's newsletters between 2015 and 2018 covered a number of topics. Interestingly, "national" issues are differentiated in reporting from "state" issues, in apparent recognition that many civil liberties matters are now a function of centralised decision making through the federal parliament, the Council Of Australian Governments (COAG) and the various portfolio Ministerial Councils. Reporting this way is a radical departure from the traditional thinking of the NSWCCCL.

Recurring themes at the national level were counter terrorism legislation, asylum seekers rights, the desirability or not of the establishment of a National Integrity Commission and amendments to the ASIO Act.

On the terror bills, the NSWCCCL has always taken a strongly critical position, pointing out that national security and counter-terrorism has gone too far, and contains extraordinary provisions, as the council reported in 2016.

A year later, as a new tranche of anti-terror laws emerged from COAG which entailed new offences and powers, in particular adding millions of people to the facial recognition data base. In media statements, President Stephen Blanks said:

"It is quite alarming when information you have given to government for one purpose...is then used for entirely different purposes."

The "joint councils for civil liberties" issued a statement on this matter, reported in the November 2016 newsletter. The joint councils consisted of:

- NSW Council for Civil Liberties
- Liberty Victoria
- Queensland Council for Civil Liberties
- South Australian Council for Civil Liberties
- Australian Council for Civil Liberties

The first three mentioned are functioning CL state bodies. SA is virtually inoperative, while the "Australian Council for Civil Liberties" exists in name only, with no board entity or operation. In fact, given the authorship of submissions that are nominally by the "joint councils" (see later), the strategy appears to be to make the NSWCCCL look

⁴⁴ Much of the information for latter period comes from NSWCCCL newsletters from the web site: <http://www.nswcccl.org.au> Newsletters were produced irregularly: May 2015, December 2015 March 2016 May 2016 August 2016 November 2016 February 2017 May 2017 October 2017 March 2018

as if it represents half the nation, which is not even accurate numerically in terms of membership. However, taking a positive note, the active operation of CLA nationally seems to have resulted in some limited cooperation between some state bodies not seen since a very brief period in the 1960s.

There is a basic problem of voluntary organisations responding to requests for submissions on draft legislation. A range of complex bills are presented for community comment by the CL organisations, frequently with extremely short time frames (6.5 working days, for example⁴⁵). The limited time can result in poor drafting, and virtually eliminates the opportunity for critical debate within an organisation by any but a few members. The wide reach of some of these drafted bills can be extraordinary: this was apparent in five major bills on national security legislation. The NSWCCCL newsletter stated:

‘The Bills reach beyond foreign intervention and national security. They encompass an extraordinary multi-faceted attack on civil society’s right to participate in public political discourse and public access to information about government activity.

“This attack includes a massive expansion of general secrecy laws capturing not just public officials (as is now the case) but also any person who makes an unauthorised disclosure of information covered by these laws. Journalists rightly protested that these new secrecy laws effectively criminalised every phase of journalists’ work...

“Many of these offences carry very serious penalties – in the case of general secrecy offences, more than doubling current penalties.”

The reaction from civil society (including of course the councils for civil liberties), the media and the Law Council of Australia was ferocious. So much so, the NSWCCCL reported that Attorney-General Christian Porter (photo) “has wisely responded” with a package of amendments to lessen the impact of the secrecy offences on journalists. But these amendments to one part of one of the bills, while positive, do not come close to solving the many major problems across the entirety of the bills.



In the comment above is the clue to the latter-day approach of Australian governments, which is driven by the gaming of the process of legislating by police/

⁴⁵ Dept of Home Affairs/Minister Peter Dutton request for consultation on proposed sex register, January 2019
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security/bureaucracy interests. These bodies represent a hidden, ruling clique and cannot claim to be representative of the people, as a civil liberties organisation can. They combine their behind-closed-doors efforts to produce draft laws with provisions that are extremely draconian: the proponents calculate a percentage will have to be dropped before finalising the law for the sake of winning public approval. What percentage? 5% 10% 15%.

If the public, as represented by civil liberties and like groups, remains silent or even responds in a muted fashion, the vast majority of the over-drafted laws pass parliament intact in a devilish win for the forces of secrecy, manipulation and emerging technocrat domination.

Like most CL bodies, the NSWCCCL has suffered from rear-view vision to some extent, brought on by having to be reactive to governments. Looking forward to solve current and emerging future problems – to set the public agenda, rather than reacting to its setting by others – is the hard-to-achieve objective.

Retired High Court judge Michael Kirby (photo) touched on the problem⁴⁶:

“An important lesson of the last six decades in civil liberties in Australia should always be remembered. We are often blind to the departures from civil liberties of our own time. Initially we were blind and silent for those wrongs affecting Australian Aboriginals; for women; for non-white Australians; and for gays. We must ask ourselves what are the issues we do not see today that will seem so obvious thirty, forty, fifty and sixty years from now?”



Amongst today's issues will probably be the treatment of refugees; the Australian response to climate change; the approach to global poverty and sustaining foreign aid; the reaction to animal slaughter and cruelty; and the existential dangers of the proliferation of nuclear weapons. We need to be braver and stronger in Australia than we have been of late.”

He went on to say: “The work of the CCL is not a popularity contest. It is a never ending challenge to engage our better angels.”

Hallelujah, say all civil liberties advocates.

⁴⁶ NSWCCCL dinner, 24 Nov 2017, Westfield Plaza Sydney: ‘Return to the CCL: Advocacy and Unthinkable Challenges’, the Hon. Michael Kirby AC CMG

In recent years, the refugees action group appeared to be by far the most active of the NSWCCCL Action Groups. For example it had, over the past two years:

- signed on to a letter calling for an end to offshore processing
- signed on to calling for improved educational access for asylum seekers
- prepared a submission on the Migration Amendment (Character Cancellation Consequential Provisions) Bill and
- written to cross-bench Senators regarding proposed changes to the complementary protection regime.

In one poll, most NSWCCCL members nominated refugees as a priority concerns for an upcoming federal election, especially the continuing shameful detention of asylum seekers on Manus Island and Nauru. The council urged members to write to their local MP demanding the closure of offshore detention centres and a more humane treatment of asylum seekers. The NSWCCCL supported the actions of others who were leading the way on refugees, such as Doctors For Refugees and the Refugee Council.

Because of the State of NSW's chequered track record with the Independent Commission Against Corruption (ICAC), there was internal debate over the desirability or not of a national integrity commission, but the council decided to make a submission to the relevant parliamentary select committee.

“On the basis of our experience with ICAC we have put forward an argument that we urgently need such a body for the protection of the public good against both known and undetected forms of corruption in and relating to public administration. As such a body will of necessity have extraordinary powers, we have argued the need for strong protections and constraints to minimise unwarranted intrusion into the liberties and rights of individuals and to ensure the tension between the public good and individual rights is carefully managed.”

Other federal issues the council addressed in this period were new crime and “safety” provisions. Although strenuously opposed by the Labor Opposition and the Greens and CL bodies, the bills passed. These new laws further control the right to protest, as well as freedom of movement and association. They contain a further ramping up of other measures to increase police powers.

“These controls are justified as ‘preventative’ of serious and organised crime or terrorism. It is a moot point as to whether they are effective in preventing offences, but they certainly impose punitive conditions. They greatly increase the powers of police and, more generally, the power of the State to encroach on rights and liberties. They are a growing threat to our justice system and to long held principles underpinning the rule of law in Australia. This trend must be resisted,” the council said.

For the umpteenth time, the council began an ongoing fight in 2017 to ameliorate the worst aspects of interest groups, ranging from the ultra-religious far right to the nutty extreme left, over discrimination laws, including freedom of religion. This battle, which began in the 1960s, appears likely to continue into the 2020s.

State issues addressed by the council in recent years have included the Inclosed Lands, Crimes and Law Enforcement Legislation (Interference) Bill 2016, which was a bill to expand police powers in relation to protest and increased search and seizure powers. The NSWCCCL and many other groups and citizens actively opposed the bill. The legislation was passed with minority party support.

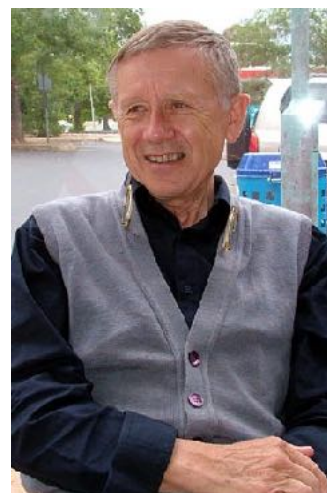
A new NSW police oversight body set up in January 2017 brought together the monitoring and investigative roles of the Police Integrity Commission, the Police Division of the Office of the Ombudsman and the Inspector of the Crime Commission into a single civilian body to oversight police operations. A major defect from NSWCCCL's perspective was that police would be continuing to investigate themselves. In recent times, the NSWCCCL has returned to its roots, with publishing of information on *Know Your Rights*, an echo of the *If you are arrested* booklet in the 1960s.

In 2016, after his death, the NSWCCCL honoured Jim Staples, a founding member.

As a barrister, he often acted on a pro bono basis in cases related to conscientious objection to conscription for the Vietnam War, abortion law reform and prison reform... He was appointed to the Conciliation and Arbitration Commission in 1975, was sent overseas to investigate human rights, and returned only to be dismissed by the Hawke government, due to what many later referred to as an attack on judicial independence.

'Staples was well regarded as a civil libertarian in NSW; he described his work on abortion reform as his most proud contribution. During the early 1970s jail riots in NSW, Staples was chair of the NSWCCCL's committee on prison reform, organising statutory declarations from prisoners detailing brutality by warders and making them public. After sustained public pressure, the NSW Coalition government announced a royal commission headed by Justice John Nagle, whose recommendations led to a much more humane prison system.

'Personally, I think that was Staples' biggest achievement,' said barrister Jeffrey Miles (a former Chief Justice of the ACT, photo). His contributions to civil liberties will not be forgotten, and NSWCCCL is proud to have had him as a member and leader in the community for so many years.



Note: Jim Staples was also a foundation member of Civil Liberties Australia and served on the CLA board for several years.

In appealing for more members, the council's newsletter has paid tribute to the hard work done in the NSWCCCL action groups.

"There will be something you can contribute no matter your skills, knowledge or time commitment".

The "action groups", down numerically from previous decades, included:

- Asylum seekers and refugees
- Freedom of speech, privacy and data retention
- Criminal justice, police powers, and mental health
- Civil and human rights.

In 2018, the NSWCCCL realised that it had to move with the times, and voted at its AGM to enable e-attendance and e-voting at general meetings, as well as e-ballots on issues. The meeting also voted on limiting time in executive positions to four years. The NSWCCCL continues to make submissions on a broad range of issues. For example, in 2018, the topics included:

- PJCIS Review of the Identity-Matching Services Bill 2018 and Australian Passports Amendment (Identity-Matching Services) Bill 2018 (Joint CCLs) 21 March 2018. Main author: Michelle Falstein (convenor NSWCCCL privacy action group)
 - PJCIS Inquiry: submission to Espionage and Foreign Intervention Bill 2018 12 March 2018. Main author: Dr Lesley Lynch (photo) NSWCCCL vice-president
 - PJCIS Inquiry into National Security Legislation Amendment (Espionage and Foreign Interference Bill) (Joint CCLs) 14 February 2018. Main author: Dr Lesley Lynch NSWCCCL VP
 - JSCEM Inquiry into Electoral Funding and Disclosure Reform Bill (Joint CCLs) 25 January 2018. Main authors: Dr Lesley Lynch (NSWCCCL VP) and Michael Cope (president Qld CCL)
 - JSCEM inquiry into matters relating to s44 of Constitution 9 March 2018. Main author: Dr Eugene Schofield-Georgeson, convenor human rights action group
 - Submission to Religious Freedom Review 14 February 2018. Main author: Dr Martin Bibby, NSWCCCL committee member
 - NSW Law Reform Commission draft proposals for review of Guardianship Act 9 February 2018. Main author: Dr Eugene Schofield-Georgeson, convenor human rights action group
- Note:** PJCIS: Parliamentary Joint Committee on Intelligence and Security; JSCEM: Joint Standing Committee on Electoral Matters.



In summary, in the beginning the NSWCCCL focused almost exclusively on the laws, regulations, practices and malpractices of NSW, particularly the sins of the state's police. Its prime organiser for the first 80% of its existence, Buckley, was focused on NSW and antipathetic to a national civil liberties entity, believing the voice of the large membership numbers in the NSWCCCL would be dissipated if the council cooperated with smaller bodies from smaller states.

In that respect, the NSWCCCL was a taut handbrake on national progress while being an outstanding beacon in and from NSW for highlighting civil liberties and rights problems in society. There are many examples of NSW intentionally not encouraging national dialogue and national gatherings which illustrate how NSW operated.⁴⁷

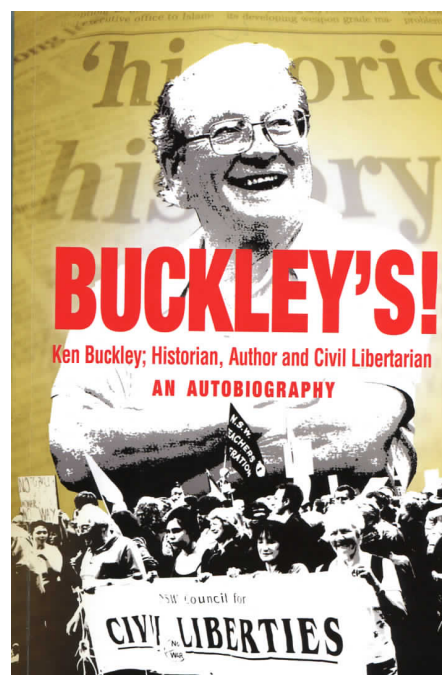
However, as Buckley and the NSWCCCL committees concentrated on their own patch, the political landscape changed around them. Power and legislation centralised in Canberra as the result of a number of High Court of Australia decisions and technology changing at warp speed, shrinking distance, as the import and the impact of the states lessened. In recent times, the NSWCCCL has demonstrated a wider vision, concentrating more on federal/national matters. But it is still to adjust fully to wanting to be an equal – not dominant – partner in a federation of CL bodies.

Perhaps it needs the next generation of leaders to emerge, ignorant of the organisation's isolationist history. They need to focus instead on its potential as a key cog in a larger mechanism which helps to restore principles to Australian democracy based on liberties and rights over political pragmatism, the cult of the personality, and the rise of the techno-bureaucracy. But also, as Buckley said:

“Hopefully, the NSWCCCL will never lose it's raison d'être to defend people, especially the underprivileged and minority groups, who are growing in number, against the encroachments of bureaucracy and lawmakers/enforcers exceeding their roles, breaching civil liberties along the way.”⁴⁸

A final word on the NSWCCCL belongs to Ken Buckley, its mainstay for 40 years. He wrote that the CCL is:

“...a necessary guardian of the rights of the underdog.”



⁴⁷ See SA chapter and Ch 12 National Attempts.

⁴⁸ NSWCCCL history: Comment by authors Dorothy and Scott Campbell p.183

And the final words on Buckley go to the only person still alive in 2019 who was there at, or even before, the beginning of the NSWCCCL and who worked closely with Buckley, the co-author of this history, Dr Kristine Klugman⁴⁹:

“I came to know Buck well. He was a close friend of my then-husband Dick Klugman⁵⁰, so I was actively involved from before the first days of the NSWCCCL. Later, I worked side-by-side with him on writing economic history books.

“I found him to be actually quite a private and reserved person, in contrast to the public image of an aggressive fighter. He was certainly a bulldog in redressing injustices, and had an innate belief in a fair go, which he stubbornly pursued.

‘However, he was a very polite and extremely thoughtful man. He was gregarious and cheerful when he’d had a few drinks.

“His sense of fair go was practical: unlike most academics, he gave full credence to my research contribution to the three economic histories we worked on together by insisting I have co-authorship. Another characteristic was his dedicated work ethic and rigorous insistence on historical accuracy, traits that underpinned everything he did in life, in economic histories and in NSWCCCL work.”

⁴⁹ Co-founder and president of Civil Liberties Australia from 2003

⁵⁰ Co-founder, with Jack Sweeney and Ken Buckley, of the NSWCCCL