

Chapter 12 – Attempts to form a national civil liberties body

Herding cats along different rail gauges

Before Civil Liberties Australia became CLA, there was only one semi-successful experience of nation-wide civil liberties organisation, the Australian Council for Civil Liberties (ACCL) in the late 1930s. In the 1970s there were some attempts at coordination of civil liberties activities across Australia, but these were ad hoc and ultimately unsuccessful. Again, from June 2005, efforts to improve interstate cooperation failed.



In the decade prior to the outbreak of war in 1939, there were serious incursions into traditional rights. These arose in the context of a severe economic depression leading to police breaking up workers' protests, with subsequent arrests. In this environment of conflict, a group of professional people met in Melbourne to establish the Australian Council for Civil Liberties (see Chapter 4). The initiative was led by Prof Boyce Gibson (photo), Brian Fitzpatrick and Maurice Blackburn MP. The first annual general meeting took place in May 1936.

The meeting adopted a constitution, which stated the ACCL was to be a non-party, non-denominational body with the following aims:

To assist in the maintenance of the rights of citizens, especially freedom of speech, press and assembly – against infringement by executive or judicial authority contrary to the process of law; or by the tendency of governmental or other agencies to use their powers at the expense of the liberties which citizens of this country have enjoyed...

The Council shall seek these aims by vigilance, press activity, legal advice, and other appropriate means. ¹

As formed, the ACCL was fundamentally a Victorian body. Interstate extension of the Council over the next two years required a change to the constitution, adopted at the fourth AGM. The structure became a president, vice presidents in each of the states, a general secretary, an honorary treasurer, state advisory committees, state secretaries, an 11-member executive committee and a legal panel. Provision was made for affiliated societies and associate members. At the end of 1938, there were 26 affiliated societies including 13 trade unions.²

¹ Civil Liberty (SA), Vol 2, No. 4, April 1939 Flinders University Library papers

² John A. McKenzie The First WA Council for Civil Liberties, in *Early Days Journal and Proceedings of the Royal Western Australian Historical Society (Inc)* Vol 10, Part 3, 1991 p251

The ACCL was run out of Victoria, and lasted five years, from 1938 to 1943. NSW, South Australia, Queensland and Western Australia were part of an Australia-wide organisation, though in an advisory capacity only. Tasmania, the ACT and NT were never a part of it. All decisions on policy, direction and funding were made by an executive in Melbourne. Early on, there were disputes over who could issue statements on the Council's behalf.

In January 1939, the ACCL noted in its publication *Civil Liberty* "a recent worsening of the democratic position in Australia."³ The ACCL's over-riding principle through the war which followed was insisting on the citizen's right to know and so be in a position to exercise democratic rights.

The ACCL publication *Civil Liberty* was at times the only voice exposing government actions which went beyond what was necessary for national defence. In February 1940 the ACCL issued a special eight-page edition making it clear that the Council had no objection to censorship of material which might aid the enemy, but that such restrictions should not include views and opinions the government simply didn't like.

Federal legislation gave the Cabinet dictatorial powers. Threats were directed at trade unionists in the amended Arbitration Act and the Transport Workers Act, both of which sought to direct the activities of unions. In March 1939 the ACCL (in consultation with the Waterside Workers Federation), issued a leaflet, entitled *The Case Against the Transport Workers Act*, which they distributed throughout Australia.⁴ A wide variety of people representing a range of interests protested: trade unionists, church people, academics, writers and community organisations. The campaign achieved partial success.

With formal declaration of war in September 1939, the ACCL faced the challenge of stringent war time regulations. The government view was that any criticism of foreign policy was subversive. The ACCL printed a Report on the National Security Act and distributed it to all state parliaments and the State Advisory Committees. Prime Minister Menzies had declared in introducing the Bill:

*I do not seek, however long the conflict may last, to muzzle opposition. Our institutions, Parliament, all liberal thought, free speech, free criticism, must go on. It would be a tragedy if we found that we had fought for freedom and free belief, and the value of every individual soul, and won the war but lost the things we were fighting for.*⁵

³ op cit p255

⁴ McKenzie p256

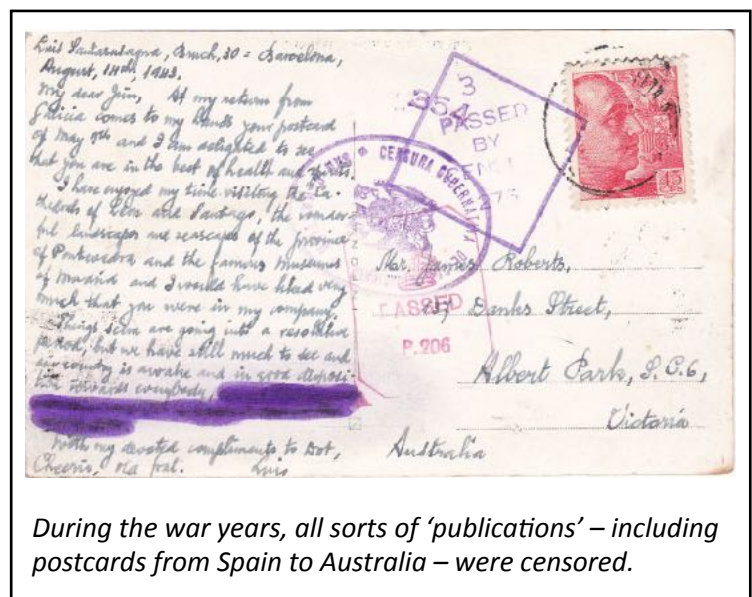
⁵ ibid p257

The rhetoric was contradicted by the reality – regulation 91 empowered a judge to impose any fine, and commit to prison for an indefinite term, a citizens found guilty of any offence against the regulations. The federal Attorney-General W.M. Hughes declared that ACCL members “...were free to roam over a wide range which was the heritage of free men in this country. But if they abuse it, and, under cover of talk about civil liberties, play the game of the Nazis or the Fascists or any other organisation which is trying to undermine or destroy the very foundation of civil liberty, then they too will come under the ban.”⁶

The ACCL took exception to this statement, since the organisation clearly supported the war effort, and made a clear distinction between speech calculated to assist the enemy and criticism made in good faith. The ACCL was in a strong position to take a stand, with a significant growth in affiliated societies from 28 to 62 in nine months.⁷ These included trade unions, trades and labour councils, religious bodies, writers groups, the Workers Educational Association, and the Rationalists.

During raids across Australia in June 1940, police removed books, papers and property from private homes. The ACCL received a number of complaints that the material seized was in no way subversive. Support for the ACCL came from the *Sydney Morning Herald*, which declared that the confiscation of books was an abuse of executive power under the National Security Act. The *SMH* called for a specific definition of ‘subversive literature’ and setting of limits of seizure powers. Police ignorance had them seizing classical works, “..books which no person of average intelligence could possibly stigmatise as subversive.”⁸ The ACCL backed this stance by publishing 30,000 leaflets titled *Raided Libraries*.

An astounding sequel to the orgy of book seizures was exposed a year later, by *Smith’s Weekly*.⁹ Auctions were held in Sydney of books seized during the raids – effectively a sale of stolen property. It was justified on the grounds that the books were of historical value and should be available to people who wanted to read them. Late in 1941 the political climate changed with the election of



During the war years, all sorts of ‘publications’ – including postcards from Spain to Australia – were censored.

⁶ ibid p261

⁷ ibid p261

⁸ ibid p262

⁹ *Smith’s Weekly* was an Australian tabloid newspaper ... from 1919 to 1950. It was an independent weekly published in Sydney, but read all over Australia. <http://tinyurl.com/y77yglvd>

the Curtin Labor government. The new Attorney-General, H.V. Evatt, exercised the National Security powers in more rationally.

In 1942 Victoria and WA disagreed over taking actions against banning of the Communist Party. ACCL prime mover Brian Fitzpatrick did not want to upset Labor AG Evatt, while Quentin Gibson (state secretary from WA) believed that a principle was at stake. In 1943, over conscription, Fitzpatrick again opposed criticism of the federal Labor government. The Victorian-based ACCL's role as an independent critic and evaluator of government policy was thus compromised. Many members resigned from the Council: the interstate committees became disenchanted, resenting the Melbourne executive's betrayal of core principles of civil liberties. In 1943, the Queensland committee went into recess, and a year later, the WA committee disintegrated.

The end of the war in 1945 removed the need for most national security regulations: wartime censorship ceased. A 10-year anniversary dinner in December 1945 celebrated the Council's successes. However the executive committee was greatly weakened. The Council had lost its interstate committees and its base contracted to Melbourne. The ACCL as a 'national' body had lasted only about five years.

Centralised control from Melbourne and non-responsive attitudes to concerns by state branches did not sit well with independently minded state CL bodies, by definition free thinkers. "Under the national Labor government, the Council was greatly weakened."¹⁰ Its strategy of avoiding taking a public position on civil liberties topics and seemingly being unable to respond to post-war issues crippled its operation. In reviewing the structure of the Melbourne-based ACCL, it is evident that attempting to centralise final decision-making in one state, in a federal system of essentially voluntary groups, could not succeed.

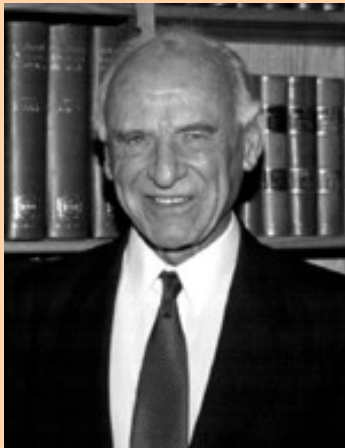
This dilemma has forever bedevilled organisations of all shapes, sizes and persuasions in Australia. The key question is: should a group organise state by state, then federate and select a national governing body by taking one or more people from each state and territory...or should a group have equal individual membership across the nation, then pick suitable board membership/directors from the national pool, probably with a view to some sort of fair representation? There is no right answer, as what works (or doesn't work, in many cases) for one group does not work for another.

Forward a quarter of a century, a gala dinner initiated in 1964 by the Victorian Council for Civil Liberties gave rise to establishing an umbrella organisation called the Australian Council for Civil Liberties which aimed to improve communication between state groups. A national council was created to provide a single voice on federal issues, although the requirement that all statements be agreed to by all state

10 James Waghorne and Stuart Macintyre *Liberty A history of civil liberties in Australia* UNSW Press 2011 p78
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bodies limited timely impact in the days before instant electronic communications. The federal body did not have authority to overrule state bodies, and state bodies could make their own policies.¹¹

At the first Australian National Convention of Councils of Civil Liberties in 1968 in Sydney, most of the speakers were from the NSW Council for Civil Liberties, with some representatives coming from the Victorian CCL. Censorship and police powers, and laws relating to abortion, prostitution, and vagrancy were on the agenda. Robert ('Bob') Hope presented a paper calling for a constitutional guarantee of basic human rights – a proposal still being debated more than half a century later.



Robert Marsden Hope is himself one of the most interesting characters in 'civil liberties' in Australia – and possibly the most influential – though having the shortest service in a prominent organisational position.

While studying law at Sydney University during World War Two, he tried to join the Communist Party (as very many young students did), but the party's administration was incompetent and he was never formally a member.

During the 1960s, after being appointed a Queen's Counsel, he joined the Liberal Party in a move he said was a "strategic decision". He became president of the NSWCCCL in 1968 but, within weeks, he was made a judge of the NSW Supreme Court.

Hope had gained a reputation as a leading advocate of civil liberties in Australia, which was undoubtedly one of the reasons behind his appointment to preside over the Royal Commission on Intelligence and Security between 21 August 1974 and 25 October 1977. Then between 17 May 1983 and 22 May 1985, he ran the Royal Commission on Australia's Security and Intelligence Agencies. By his two reports, Hope established the nation's security system for nearly the next half century.

Among a host of other important appointments, he was chairman of the Law Reform Commission between 1990 and 1993.

See Wikipedia: <http://tinyurl.com/ybf4w53q> and 'Law, Politics and Intelligence: A life of Robert Hope'. Hardback | Mar 2020 | NewSouthBooks/UNSW Press | 9781742235370 | 416pp

The VCCL organised another convention in 1969 at Melbourne University. Despite an impressive line up of speakers, it was poorly attended. No more conventions were held for several years.

In 1973 in Sydney, the Second National Convention of Councils for Civil Liberties in Australia was held, 29 September to 1 October. Papers were presented: K. Buckley, Oppressive Sections of the Summary Offences Act; R Sackville, Lawyers and the

¹¹ *ibid*, p143

Welfare State; J.R.Kerr, The Citizens Right of Appeal; J.Bennett, Open government: D.O'Connor, Penal reform; J.C.Maddison, Ombudsmen, their advantages and their problems; K.O Shatwell, Mental Health Legislation and Civil Liberties; Bridget Gilling (photo), Children's Rights; B Fisse, Demonstrations – the 1972 SA legislation. SA also raised the topic of a Bill of Rights, to try to secure a position paper to forward to the Australian Convention on the Federal constitution.



Yes, J.R. Kerr is the man who later became Sir John Robert Kerr and Governor-General of Australia, more famous/infamous for his sacking of the Whitlam Government in 1975 than for his civil liberties background. But he was originally a noted industrial lawyer and close associate of many other industrial lawyers of the period who had great influence in and on the NSWCCCL, formed in 1963 by three people, one of whom was barrister Jack Sweeney, later a NSW industrial court judge. Others included former Labor Premier of NSW, Neville Wran, and James Staples, who served as a judge of the Conciliation and Arbitration Commission (before, some would say, bringing it down, then being abandoned by all other judges and lawyers).

There appears to be no record of a third civil liberties convention. The defeat of the Labor government federally at the December election in 1975 brought renewed efforts for a national body.

A Fourth National Convention, organised by the SA CCL, was held at Easter in 1976 in Adelaide, with representatives from Victoria, NSW, South Australia and Northern Territory. It decided (again) to establish a National Council for Civil Liberties, composed of two representatives from each jurisdiction. Ken Buckley and George Zdenkowski (photo) as NSWCCCL president and secretary, were elected to head up the national body. This was ironic because in fact, in Buckley's view, most issues arose at state level, except censorship. He was certainly not a whole hearted supporter of a national CL organisation. In addition,



*The difficulties of securing rapid agreement among the independent CCLs was considered and it was resolved that immediate decisions on important national issues would be left to the national executive consisting of the president and secretary.*¹²

¹² Dorothy Campbell and Scott Campbell, The Liberation of Lady Chatterley and Other True Stories, NSW Council for Civil Liberties, 2007, p14

The effect of this was that NSWCCCL assumed control, made no genuine attempt to make the national organisation work and was non-consultative with other CL groups.

In addition to the resolution to form a national body, five other major resolutions were passed, which:

1. deplored the reduction in federal funding for legal aid schemes and asked the Federal Government to safeguard the strength and autonomy of Aboriginal legal services
2. asked the Federal Government to introduce legislation on human rights “as a matter of priority”
3. called on the Australian Bureau of Statistics to make public its national census form
4. asked that Ken Buckley be put on the newly-formed Australian Press Council
5. asked AG RJ (Bob) Elliott to immediately implement the recommendations of the Law Reform Commission regarding complaints against police.¹³

From this 1976 “4th National Convention of Councils for Civil Liberties”, a document entitled Selected Papers has survived. It was published by the SACCL. The following are extracts from that document.



The opening address was given by Mr Justice Len King (photo), Supreme Court of SA (later Chief Justice). He drew attention to the fate of peoples in totalitarian states, and said that this reality increased the importance of vigilance in Australia to ensure maximum freedom which is consistent with the common good. He stressed the importance of privacy:

*The freedom to live a private life without interference or intrusion by word or deed is an essential aspect of human liberty and an indispensable prerequisite of a good life...the failure of the law...is a glaring defect which must be remedied in the not too distant future.*¹⁴

Gareth Evans (then a barrister, before his parliamentary career and rise to be Australia’s AG just seven years later) gave a paper titled ‘Civil Liberties for the Next Decade’, pointing out that securing such freedom is extremely difficult. He argued that

¹³ Civil Liberty newsletter of the Victorian Council for Civil Liberties no 34 May 1976 p1

¹⁴ Flinders University Library Papers on the SACCL, Selected Papers p4

there were the seeds in current society for two different scenarios – one a nightmare for civil libertarians, and one less pernicious.

“The nightmare one would be an authoritarian one, in which all the present tendencies to bigness and centralised decision-making in government and industry were carried out to extremes; in which there would be almost complete interlocking of economic power, public administration and information processing; in which the highest values preached and enforced by the state would be law and order, discipline, stability and social responsibility; in which, whether or not the formal trappings of democracy are maintained, individuals and outsider groups would have no effective power in influencing the government; and in which the social and political conformity of the individual would be ensured by systematic physical surveillance and the maintenance of comprehensive personal files in national data banks.”¹⁵



Evans (photo) outlined an alternative scenario, involving effective community groups, increasing demands for participation, better means for individuals to redress injustices and gradually more equal distribution of goods and services as well as acceptance of diversity.

Evans said that the trend over the previous decade had been towards liberalisation of law and practices in areas which concern civil liberties people: the treatment of racial and sexual minorities, and in relation to censorship and abortion. He outlined the civil liberties record of the Whitlam government:

- Racial Discrimination Act and establishment of the Community Relations Commissioner
- National Committees on Discrimination in Employment
- equal pay and women’s rights programs
- Administrative Appeals Tribunal ACT
- relaxation of Customs censorship
- Australian Legal Aid offices
- Aboriginal Legal Services offices
- amendments to the Electoral Act
- freedom of speech for public servants
- Amendment of the Crimes Act
- amendments to the Health Insurance Act to protect privacy

¹⁵ op cit p6

Evans did acknowledge the “most commonly recorded debits” of the Whitlam government – the ASIO raid of March 1973, the Croatian raids of May 1973 and the proposed Australia Police legislation.

He criticised the Fraser government, describing their actions as a serious shift in emphasis and attitude towards civil liberties at a national level. He said that civil liberties problems arose in two ways: from governments doing things they shouldn't (interfering in citizens' rights) or not doing things they should (protecting citizens from interference of their rights by others). He discussed these aspects in relation to political rights, legal-process rights, egalitarian rights and the right to privacy.

Civil liberties organisations have traditionally performed three distinct functions, he said.:

- education: informing people what their rights are and how to protect them
- casework: solving individual problems, and
- reform: changing laws and practices

Though other bodies also fulfil these roles, CCLs could form a watchdog function.

“Being a successful watchdog is a grinding business.”¹⁶ Evans said.

Financially, all CCLs struggle, relying on subscriptions, donations and proceeds from sale of booklets. An Australian government grant of \$10,000 to NSWCCCL was apparently the only grant received by any of the CCLs. Case work was performed pro bono by CCL lawyers: the example of overseas civil liberties groups suggested far more could be done to form disparate state groups into a cohesive national organisation, able to support a core of professional administrative, fund-raising, legal and research staff.

Evans said the matter of an Australian bill of rights should be a top priority with civil liberties groups. The closest Australia had come (at that time) was with Senator Lionel Murphy's Human Rights Bill, which petered out shortly after its introduction into the Senate in November 1973, as Evans said: “drowned in a sea of hostility... from:

- (i) the complacent: mostly conservative lawyers, who saw no need for any bill of rights,
- (ii) the sceptics: mostly journalists and other lawyers, who saw the need for a bill of rights but doubted that this one would work,
- (iii) the 'law and order' types: who thought the bill would work alright but for the wrong kind of people,

¹⁶ ibid p24

- (vi) the state-righters, miscellaneous State Premiers, and Supreme Court judges: who hoped the bill would not work at all in their own backyard,
- (v) the old fashioned parliament men: who were against any encroachment of the judiciary on what they saw as the proper preserve of the democratically-elected representatives of the people, and
- (vi) the suspicious –mostly clerics: who saw the whole thing as a gigantic fiddle aimed really at denying them their rights.”¹⁷

Evans’ perceptive summary, still true today, regarded these criticisms as “quite misconceived”. Even the most political objection, from the States, could have been overcome by redrawing the Bill, he said, leaving the States to fight their own battles.

“A Bill of Rights would be a wonderful weapon to take with us as we move to confront the civil liberties challenges of the 1980s.”¹⁸

Other papers at this convention included one on Marijuana – Law, Liberty and Morality, given by Neal Blewett (photo), then professor of philosophy at Flinders University, later MP (and federal Minister for Health), who pointed out that the SA CCL had been instrumental in liberalisation in that state of laws on abortion, homosexual acts, and censorship. Blewett quoted John Stuart Mill:



“The only purpose for which power can be rightly exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightly be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right.”¹⁹

Justice Michael Kirby presented a paper on Privacy, SA’s Don DeBats on Toward a Civil Police and SA’s Judith Worrall on Police and Civil Liberties in SA.

An additional paper was attached to the Select Papers, by Justice Michael Kirby on the Law Reform Commission, Law Reform and Privacy. He pointed out that, under the Act which established the Commission, it was obliged to ensure that the laws it proposed:

¹⁷ ibid p29

¹⁸ ibid p30

¹⁹ ibid p37

“...do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions”.

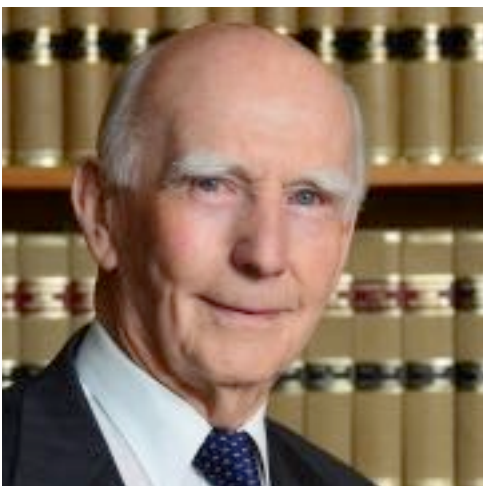
The Commission was also required to ensure that proposals were consistent with the International Convention of Civil and Political Rights. It was tasked to assist Parliament by proposing legislation for the reform, modernisation and simplification of the law.

Having defeated the Whitlam government in the 1975 election, the incoming Fraser Government continued a referral for new laws to protect privacy in Australia. After consultations, the Australian Law Reform Commission received a wide-ranging reference on privacy from the federal Attorney-General in April 1976. It called for new laws to protect privacy in bodies under federal authority, and the critical examination of laws which may not adhere to privacy principles. Kirby referred to the growing condition of the surveillance society (in 1976).

“...computers never forget. They have poor judgement. They are not self-correcting. If information that is incorrect is fed in, information that is incorrect will be fed out.”

Another Convention (the fifth) was held in 1977 in Brisbane, organised by the Queensland CCL, with 194 people attending and a similar impressive array of speakers. Topics included police powers, mental health rights, homosexual law reform, privacy and freedom of information.²⁰ Justice Michael Kirby opened this convention, and pointed out the achievements of the previous two months, which included:

- the establishment of the Administrative Appeals Tribunal, to review bureaucratic decisions which affect citizens
- the appointment of the Administrative Review Council to reform public service laws



- the passing of the Ombudsman Act
- appointment of the Family Law Council to review the operations of the Family Law Act
- introduction of a bill for a Human Rights Commission
- promise of freedom of information legislation
- introduction of the Criminal Investigation Bill

Elaborating on the Criminal Investigation Bill, Kirby quoted Attorney-General Ellicott (photo) as saying the bill was a major measure of reform,

²⁰ Waghorne and McIntyre op cit p131

representing an attempt for the law to use modern technological advances to assist in the administration of justice.

Some important provisions protected the rights of arrested people, which CCLs had been calling for some time.

Criticising John Bennett from VCCL for extreme statements in the popular press (see Chapter 4 –Victoria), Kirby stressed that the Bill should strike a balance between the rights of the citizen when accused and the rights of society, including the victim. Kirby welcomed inclusion for debate of the Bill during the Convention. A report by NSWCCCL delegate Ken Shadbolt was derogatory:

*“The real quality of national conventions on civil liberties is that they are anything but national and Queensland’s was happily no exception”.*²¹

The rest of his report was equally flippant. It probably played well to his NSWCCCL audience, who were always against a national civil liberties entity. In general, the national body was falling short of expectations.

*“The first activity initiated by the national council was a complaint to the Federal Government over a raid at Cedar Bay in Queensland. Apart from this singular event the National Council has been largely defunct, due perhaps to the problems of communication between each of the State Councils”.*²²

Progress continued to be problematic.

*“In correspondence with Councils in other states we are taking the position that, to deal with national issues, a national council is both desirable and feasible. Slow, painful fitful and frustrating efforts are being made to arrive at a constitution acceptable to all state organisations”.*²³

The attitude is reflected in NSWCCCL minutes:

*“Ken Buckley asked what the other members of the Committee felt about having a national CCL ...(he) thought it a good idea, but only to deal with federal matters...Other Committee members were not enthusiastic but were not opposed”.*²⁴

²¹ NSW CCL newsletter no 73 July August 1977, p4

²² Civil Liberty SACCL newsletter, No 33, October 1977 p8

²³ Civil Liberty SACCL newsletter No 35 June 1978 p1

²⁴ Minutes NSWCCCL meeting 31 March 1976 p2

A constitution was finally signed by representatives from NSW, Victoria and South Australia at a meeting in Sydney on 3 July 1978.²⁵

1978 national convention:

“Perhaps the most significant development to report is that at long last a national organisation, known as the Australian Council for Civil Liberties, has commenced to operate.”²⁶

The SACCL was a strong supporter of a national body, and had been urging formation of one for a long time. The constitution was adopted by representatives of NSW, Victoria and South Australia at a convention in July 1978.

After a long delay it was agreed the ACCL should commence its functions on 1 April 1981. NSWCCCL offered administrative resources. The committee consisting of two representatives of councils of NSW, Victoria, South Australia and Western Australia were elected. It was agreed that, for the first year, the president and secretary from NSW should be the president and secretary of the ACCL. Though there were communication issues, the ACCL had already been active in submissions and public statements on federal issues: freedom of information, the census and proposed tapping of phones by police.

An agenda for a gathering in November 1980 and minutes of the preceding meeting were circulated. Topics of interest then were: unsworn statements for accused; film censorship; administration of employment benefits and the Queensland Police Amendment Act and SA Government looking at procedures for making complaints against professionals.²⁷

Regrettably, from SA’s viewpoint, the proposed national convention in Sydney in October 1980 was cancelled at the last moment due to lack of registrants. This was a cause of

“Great concern... It signifies a waning of interest in civil liberties at a time when the more conservative governments in Australia are effecting pieces of legislation which cry out for public debate.”²⁸

The SACCL President, Michael E. Davis, reported optimistically in October 1981 on the ACCL activities: *“It continues to speak on our behalf on Federal issues, and I am sure that it is being listened to with increasing respect, particularly by the Federal*

²⁵ op cit No 36 October 1978 p5

²⁶ Flinders University SACCL collection Civil Liberty issue No 41 July 1981, president’s report

²⁷ ibid

²⁸ ibid

Government". Issues included random breath testing, police access to bank records, and a Royal Commission into Prisons, to which submissions were made.²⁹

Minutes for the 1985 annual meeting of the ACCL, held in Melbourne, recorded attendances as: Ron Castan (Vic), Jamie Gardiner (Vic), Daniel Brezniak (NSW), Tim Robertson (NSW), Bev Schurr (NSW), Brian Keon-Cohen (Vic), Lou Clayton (Vic), Herman Borenstein (Vic, photo), John Marsden (NSW), and Mat Foley (Queensland, by phone). Delegates from SA, WA, Tasmania and the NT sent apologies.



The constitution of the ACCL was amended to make amendments easier (by phone, letter or telegram). The national office bearers were Ron Castan (Vic) as president and Bev Schurr (NSW) as secretary. The ACCL was to be incorporated in the ACT. The ongoing problems with the John Bennett issue in relation to the Victorian CCL were discussed. It was resolved that a national newsletter **not** be produced. Motions were moved against Queensland industrial legislation.

By 1986, SACCL President DeBats made a significant and critical statement on the functioning of the national ACCL group:

“One regrettable development over the past year has been the failure of an autonomous ACCL to emerge from the shadow of the NSW state council. It is clear that as long as the ACCL remains in NSW, it will remain indistinguishable from that Council and hence ineffective as a national body. I am pleased to say that the presidency of the ACCL has moved to Melbourne and one hopes for a greater degree of autonomy and activity on the part of the ACCL in future.”³⁰

The Australian Council for Civil Liberties secretary’s half yearly report August 85–August 86 was published as a separate document, not part of *Civil Liberty* publication.

President Ron Castan QC and Secretary Beverly Schurr met with the NSWCCCL executive on 30 January 1986. Funding for ACCL was not resolved. Reports indicated:

Media coverage was somewhat meagre: four articles in the *SMH*, and one submission to Senators on a bill of rights. Four meetings with overseas visitors were held (all in Australia for other reasons). The next ACCL meeting was noted to be “Probably Friday 17 Melbourne”.

²⁹ Flinders SACCL collection Civil Liberty No 42 December 1981

³⁰ *ibid* Civil Liberty No 50 February 1986

Members of ACCL were listed down the side of the page as: NSWCCCL – Tim Robertson, Victorian CCL – Bryan Keon-Cohen, SACCL – Harold Rodda, WACCL – Brian Stafford, Queensland CCL – Fleur Kingham. NTCCL – Bob (sic) Wesley-Smith, Tasmania CCL – John White, ACTCCL – Bill Tully (photo, 20 years later).



An important perspective on the operation of the ACCL is apparent in the following correspondence. Between January 1985 and April 1986, there was an exchange of letters between SACCL president Don DeBats and NSWCCCL president John Marsden, concerning the operation of the ACCL. The topics included whether the ACCL should undertake a national campaign supporting a national bill of rights, the publication of a national agenda on civil liberties for presentation to the national parliament and the publication of a national newsletter on civil liberties.

Increasing exasperation is evident in the letters from DeBats at the NSWCCCL attitude and the lack of action in the ACCL.

“Could I also say that the SA Council regrets that one of the few concrete proposals to come from last year’s meeting, namely that there be a formal annual meeting of the ACCL at a time and place convenient to all, seems to have gone by the boards (sic). I do not believe it is sufficient to pluck out an arbitrary date, deem it an ACCL annual meeting, provide only the most vague description of the business of the meeting, circulate no agenda and believe that this discharges the obligation of an annual meeting. I really do believe the ACCL ought to do better than this, particularly in the present circumstances with a Bill of Rights once again as a major issue.”³¹

Evidence of the NSWCCCL’s apparent reluctance to make a genuine effort to support a national CL group is apparent in the publication of a supposedly national newsletter:

“Could I say how deeply distressed I was to see that what had been described as a publication of the Australian Council for Civil Liberties become nothing more than an expanded form of the state publication. The publication is yet another measure of the failure of the NSW Council to take seriously the idea of an Australian Council for Civil Liberties”. (emphasis added).

SACCL had wanted to purchase 150 copies of the ACCL newsletter, but it was numbered in the NSWCCCL series newsletters.

³¹ Australian Council for Civil Liberties secretary’s half yearly report August 85 - August 86

“I do not understand why, with the success of a separate Australian Council publication as the first number, that it was felt appropriate to retreat to the format of a state publication.”³²

From 1980 to 1986, the ACCL limped along, in the end a failure because NSWCCCL did not value a national organisation. There was in general a lack of will to make a national organisation function effectively, though VCCL was making the right noises:

“The need for an active Australian Council for Civil Liberties is clear, and the VCCL, which has provided the President of that largely-dormant body for the last two years, must bear some responsibility for its inactivity.”³³

A notice went out on 29 March 1990 from Beverley Schurr, secretary, to CCLs calling a meeting of the ACCL in Brisbane, for 22 September 1990, venue to be decided. The last meeting had been in Melbourne in 1985, while this one was timed to coincide with a law conference in Brisbane. The president June Factor hoped that the meeting would find ways to re-activate the national body. The constituent members were NSWCCCL, Victorian CCL, SACCL, WACCL, Queensland CCL and NTCCCL.

Minutes show the following attendance: June Factor (chair, Vic), Bryan Keon-Cohen (Vic), Bev Schurr (NSW), James Dupree (NSW), Terry O’Gorman (Qld), Stephen Keim (Qld), Pierre Slicer (photo, Tas) and Judy Bonner (NT). Apologies were recorded from Paul Storr (Tas), Rob Wesley-Smith (NT) and Bill Tully (ACT).



There had obviously been some misgivings from SA on the validity of the meeting as it was **Resolved**:

“that the president write to the SACCL assuring them that the Brisbane meeting had been properly constituted and expressing regret that SA was not represented”³⁴

There was an attempt to improve interstate CL cooperation:

“**Resolved** that there should be greater exchange of information between CCLs by way of:

- a) all CCLs should forward copies of their minutes to the CCL office in Sydney
- b) the CCL office should copy the state minutes and distribute them to all other CCLs”.³⁵

³² Flinders University SACCL collection, correspondence

³³ VCCL newsletter President and Secretary’s report AGM 1 December 1989 p9

³⁴ ACCL Minutes 22.9.1990 (Rob Wesley Smith collection)

³⁵ ibid

As the Constitution cited only three members: NSW, Victoria and South Australia, it was resolved to admit other state CCLs. Further discussion covered a possible future fully funded office, structure for a more active federal body, updating the constitution, possible future CCL conferences, and more regular meetings.

Resolved there should be a telephone or fax meeting of the ACCL every two months.

General business covered a call on the federal government to withdraw legislation on an expanded tax file number, and a call on the Opposition in the Senate to refer tax file legislation to a Senate Committee.

A teleconference was held in May 1992, with participants being Ron Merkel QC (president Vic), Laurie O’Sullivan (president ACT), John White (acting president Tas) and Terry O’Gorman (president Qland). The feasibility of holding a national conference was discussed, as VCCL’s staff was increasing and NSWCCCL’s was decreasing, Merkel undertook to arrange a conference in Melbourne in July.³⁶

Noting the success of the VCCL Schools program, Merkel suggested the initiative be picked up by other CCLs. Future coordination of the ACCL would be taken over from NSW by Victoria.

The ACCL national meeting was held on 17 October 1992. Participants were Ron Merkel (president), Ken Horler, John White, Laurie O’Sullivan, Terry O’Gorman, Alan Goldberg, Margaret Coady, Bernard Marin, Garrie Maloney, Lauren Mosso (photo), Judith Kingston and Victoria King.



It was agreed that another national conference would be held in 18 months. Possible tensions between state roles was discussed, and it was decided the ACCL should proceed to incorporation with safeguards against “ratbag” takeovers.³⁷

Matters raised included problems with the Extradition Act, enquiry into commonwealth fraud, reconciliation with Aboriginal peoples and concern with black deaths in custody, the need for a bill of rights, and laws on drug use and privacy. Ron Merkel announced his retirement as president...which may have been the final blow for a successful national organisation.

This appears to have been the last meeting of the ACCL until the attempt by CLA to resurrect a body with the same purpose in 2005. Commenting just before his death,

³⁶ Minutes of Teleconference ACCL, 31 May 1992, papers of Laurie O’Sullivan

³⁷ ACCL national meeting minutes, 17 October 1992 Laurie O’Sullivan’s papers

former NSW president John Marsden (photo) wrote to the authors that he was disappointed in lack of vigour in the NSWCCCL.

“It is disappointing to someone like me who put so much time into the NSWCCCL. I wish all CCLs my best in reforming as I once tried to do in the Australian CCL.”³⁸



In some semblance of a national approach, Terry O’Gorman acted as president of the ACCL, which was described in 1995 as

“a vehicle to enable comments and submissions to be made in regard to issues of national significance, and has proved to be useful in terms of placing matters on an Australia-wide agenda ... In particular, Terry O’Gorman has made submissions on and comments in respect to federal legislation which allows police to legally import heroin, the federal Model Forensic Procedures bill, and the protection of disadvantaged groups in dealing with the Australian Federal Police”.³⁹

A coordinated, consultative national body representing civil liberties has remained elusive: it is said that trying to get the groups to agree and move in a coordinated manner was like establishing a national rail gauge, or herding cats.

It is apparent that the NSWCCCL did not actively support the formation of a national civil liberties body, except for John Marsden (who had his own problems at key times: see the NSW Chapter). The dominant figure across the first 40 years of the NSWCCCL, Ken Buckley, was never in favour of a national organisation, and his attitude was influential. Buckley’s view was that most issues that mattered were state-based, and that the efforts which had been made to form a national body were unsuccessful and futile (personal conversation, circa 2006).

This was true of the 20th century, but by the 21st century there was far more reason for a national CL approach. The federal government was consolidating power – fiscal and legislative – to itself. The draconian laws that followed terrorist attacks in New York on 11 September 2001 (‘9/11’) were initiated by the federal government and mirrored in state legislatures. The increasingly centralised tendencies of federal government, empowered by High Court decisions, required a national CL response. In the absence of cohesive effort, various state CL and HR groups could be easily picked off, one by one, and were...and are. in the 2020s.

³⁸ email from John Marsden to Bill Rowlings 4 August 2005

³⁹ QCCL annual report of president Ian Deardon to AGM, 29 April 1996

The so-called Australian Council for Civil Liberties largely continued to be represented by one man (Queenslander Terry O’Gorman, photo) in the media and was never acting as an umbrella organisation. The Campbell history of the NSWCCCL records, in 2007, that:



“Currently, and for several years, the President of the ACCL has been Terry O’Gorman who is also vice president of the QCCL. The structure of the ACCL is ad hoc. The last meeting was in 1996 when O’Gorman was elected president and he has been president ever since. There are no regular meetings or elections and Terry O’Gorman has been recognised as the unofficial spokesperson on national issues, providing up-to-date information and support for a loose confederation with the states and territories.”⁴⁰

Very, very occasionally over the first 20 years of the 21st C, statements have been issued nominally by the “Australian Council for Civil Liberties”, usually written and organised by the NSWCCCL with an email request to some other civil liberties bodies to agree to their name being added, Liberty Victoria and the Queensland CCL as a rule, but sometimes including the the near-defunct SACCL as well. The purported organisation has not acted as an umbrella organisation, for decades, having no registration, no constitution, no meetings, and no annual reports or membership. The only national organisation is Civil Liberties Australia, formed in 2003 (see the CLA Chapter).

Two years after the formation in 2003 of Civil Liberties Australia (ACT) – as it then was – an attempt was made by that body to improve coordination between state groups. An email to interstate groups from the CLA read:

Dear (state president)

We write to give you information on CLA (ACT) and invite you to join, after you have considered the attached material. We think that the timing of renewed civil liberties organisation in the ACT is particularly appropriate, in an environment of increasing incursions globally on civil rights in the name of the war on terror, and locally with the advent of the ACT Bill of Rights. We are organising an interstate meeting of civil liberties groups in Sydney in June, when one agenda item will be working for a national bill of rights. We would value your input to our program of activities and look forward to hearing from you.⁴¹

The meeting happened.

⁴⁰ Campbell op cit p14

⁴¹ CLA files May 2005

The upcoming meeting was pre-promoted, with CLA (ACT) representatives full of naive optimism for cooperation and success. They did not know then the sorry background of attempts reported here. The June *CLArion* newsletter said:

‘Australian CL groups to hold a national meeting this month’

For the first time in a decade, the Queensland, Victorian, South Australian, NSW and ACT civil liberties organisations will meet this month. Among other important issues, they will discuss a possible campaign for an Australian Bill of Rights. The meeting is being hosted by the NSW Council for Civil Liberties at Glebe, in Sydney, on Saturday and Sunday 25 and 26 June (2005). The meeting stems from an initiative of ACT’s Civil Liberties Australia (ACT). CLA’s president Dr Kris Klugman will chair the meeting. CLA secretary Bill Rowlings who has been the link person for organisation, will act as secretary.

The two main issues on the agenda are better cross-border cooperation and an Australian Bill of Rights. However, at the request of Australian Council for Civil Liberties president, Terry O’Gorman, questions about the nature and status of a national body will also be addressed. He will provide a paper as the basis for discussion on the topic. O’Gorman has apologised for the meeting, as he will be overseas, but has indicated his strong support for it.

The agenda includes, on the Saturday:

Mechanical or operational issues:

*exchange of media releases / media responses and issue intelligence?
broadening contributions to CLArion monthly email newsletter?
exchange of articles for state-based printed newsletters, websites?
establishing and maintaining a national CL website?
exchange of submissions, issue papers and discussion papers?*

Philosophical or strategic issues:

*Australian CL: discussion paper by Terry O’Gorman
annual and other conference on CL topics, open to public?
establishing a CL trust for national fund raising and larger bequests?
consistency in naming of state bodies?
cooperation / links with other Australian organisations, particularly human rights groups?*

On the Sunday morning, the group will discuss national or Commonwealth issues such as:

*Terrorism legislation (sunset, June 2006)
Identity issues (ID card, data matching)
Refugee / detainee issues
Citizenship rights / laws (including passports)
Public Service issues (also applies to States) and
Stun guns*

There will also be a session where States outline their current major concerns so that intelligence and experience can be shared, to avoid reinventing the wheel in some cases. For example, NSW wants to discuss the death penalty. Victoria has major issues at the moment with a possible State Bill of Rights, and with police shootings. The ACT has listed the Territory's new Bill of Rights one year on, a pedophile register, mandatory sentencing, public service issues and intellectual property as matters for discussion.⁴²



25 June 2005: Meeting with a view to forming a national civil liberties group, Glebe, Sydney, at then-HQ of the NSWCCCL. Prominent in the photo are then-CLA (ACT) President Dr Kristine Klugman in the foreground as meeting chair, behind her NSWCCCL President Cameron Murphy and next to him then-NSWCCCL secretary Stephen Blanks. Queensland CCL president Michael Cope is the first seat on the right.

The July 2005 *CLArion*, which came out five days after the meeting, ran a report:

(This newsletter report drew the ire of then-NSW secretary, later president, Stephen Blanks, apparently because he had taken on the responsibility for writing the minutes of the meeting, and they were not completed before the ACT's newsletter gave a full rundown on what had happened).

State organisations agree to formally establish national civil liberties organisation

The *CLArion* report in July 2005 was optimistic that Australian CL bodies were finally moving closer towards formal incorporation:

⁴² *CLArion* No 56, June 1 2005, in www.cla.asn.au/clarion

Victorian barrister (later magistrate) Greg Connellan had been charged with finalising a draft constitution, possibly under the trading name of Liberty Australia. One of the primary focuses was to be a bill of rights.

State bodies were to respond with proposals for the draft constitution by June 30: a draft constitution was to be drawn up and circulated to state bodies: a Yahoo site was set up by NSWCCCL to which all could contribute: work was under way on a national web site: steps were being taken to set up CL groups in states which do not have CL groups: there were plans to establish a CL Foundation including eminent people to raise funds: and the group would work towards a national conference in 2007.

None of this happened.

It was apparent that Queensland's Terry O'Gorman was hopeful of a reformed Australian Council for Civil Liberties, having expressed his wish to stand down as the 'national spokesperson' of the body which was in fact defunct. He contacted Bill Rowlings (photo) of the then CLA (ACT) in relation to the anti-terror laws, urging a common approach by CCLs around Australia.⁴³



A follow-up meeting was held in Melbourne 15 months later on 24 September 2006, on the morning following the 70th anniversary dinner of Liberty Victoria, which was held in honour of their mainstay Brian Fitzpatrick.

The discussion became futile, then acrimonious. The NSWCCCL would not agree to the draft constitution, objecting to the method of representation, proposed to be two members from each state to any physical national council meeting (likely to be held in person about once every two years). The NSWCCCL demanded proportional representation. The chairman of the meeting, barrister Brian Walters (then president of Liberty Victoria) went around the table asking the representatives how many members they had: each gave a figure for their current membership. Last one in turn asked to state their membership was the NSWCCCL – but they refused to reveal membership numbers because it was “NSWCCL policy” to not reveal such information.

Which made it a moot point as to how proportional representation was ever to be calculated!

During an obviously pre-organised ambush by the older CCL groups, the Liberty Victoria president-in-waiting, barrister Julian Burnside, demanded that the CLA

⁴³ letter O'Gorman to Rowlings 3 August 2005, anti-terror laws

(ACT) change its name, as the entity was – he claimed – guilty of “passing off as a national organisation and could be taken to court”.

Thus petty state rivalry, from the NSWCCCL as was customary and Liberty Victoria in cahoots apparently, destroyed yet another attempt to create an effective national civil liberties body.

The vitriolic delivery style of Burnside’s unrequested legal advice, which was wrong in law (given the ‘ACT’ in the formal name, and any court would have thrown the matter out as frivolous in the extreme) did not impress the ACT delegates. However, after a strategy meeting, Civil Liberties Australia (ACT) decided it would comply. The organisation resolved formally to drop ‘ACT’ from its name and to expand membership nationally to states and regions within states and the NT not covered by existing CCL bodies. So, by failing to cooperate, the ‘old’ CCLs effectively created a national body.

The CLA president and secretary had an amicable and positive meeting with Terry O’Gorman (Queensland Council for Civil Liberties) in Brisbane in late 2013. There have been a couple of occasions in the intervening years when CLA, Liberty Victoria and NSWCCCL have cooperated in presenting submissions, on an ad hoc basis.

But in the 2020s, the “false” name of an “Australian” Council of Civil Liberties is still being trotted out at the foot of submissions and in media releases by the mostly lawyers who comprise the old, traditional CCLs movement. CLA has often wondered whether Mr Burnside has subsequently given legal advice to his former and current presidential CCL colleagues on “passing off” over “ACCL” claims.

In 2020, the situation in regard to civil liberties, human rights and freedoms in Australia is radically different than it was in the mid-1960s, when the various state bodies first tried national cooperation (and failed). Power has been centralised massively into the federal government, and then – within that government – into the “Executive” (a completely undefined but formally acknowledged group, usually comprising the Prime Minister, Treasurer and some Ministers).

It is undoubtedly the case that the need for a national civil liberties body is even more pronounced now than in any time in the past. The IT and electronic tools make across-Australia communication simpler and easy: CLA has been holding electronic board meetings involving the ACT, Tasmanian, the NT and WA for a long while, and annual general meetings electronically for nearly a decade.

Long-standing state bodies should join a cooperative effort to take on national challenges to civil liberties. Unfortunately, such cooperation continues to be as unlikely as it has been for the past half century. ENDS