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MANUFACTURING FEAR: WHO'S AFRAID IN THE 'WAR ON TERROR'

This public forum was held at the University of Technology, Sydney (UTS) on 13 November 2004. It was organised by the Social Inquiry Program at UTS, the Civil Rights Network <<http://www.civilrightsnetwork.org/>> and the Research Initiative on International Activism <<http://www.international.activism.uts.edu.au/>>.

Two NSWCCCL Committee members attended: David Bernie (Vice President) who spoke on behalf of NSWCCCL, and Natasha Posner (Editor). The presentations in the morning sessions of the forum, focused on 'What makes you a terrorist?' and 'What makes terrorism?'. Together they were a comprehensive examination of the nature and consequences of the responses to the 'war on terror'.

David Bernie explained, from a legal point of view, how the State and Federal anti-terrorism legislation could affect people involved in otherwise innocent activities, with particular reference to offences regarding financing and the new offence of 'possessing things in connection with terrorist acts'. Agnes Chong from the Australian Muslim Civil Rights Advocacy Network, argued that the definition of a 'terrorist' is both legally and socially flawed, and that the media associations made between terrorism and Muslims, hints at a deep-seated racism. What is needed, she suggested is a legal definition that is not open to abuse, and a social understanding that does not associate terrorism with a particular group. Joo Cheung Tham from the Civil Rights Network Victoria, argued that there was a danger of politically motivated and selective use of the powers of the terrorism legislation, which wrongfully imposes criminal liability and disproportionate penalties on anyone associating with the 528 persons and organisations proscribed by the UN. The breadth of this power is likely to interfere with the right of free association—with limited possibilities for challenges.

Dr Michael Head from the University of Western Sydney examined several myths he saw as associated

JOURNAL DEADLINE DATES

Material Deadline: 2nd February 2005

We may not be able to accept documents that are not sent on disk or by email attachment. Digital images will be accepted.

Articles 1000–2000 words, reviews 500 words and letters 200–300 words.

(continued on p. 15)

CIVIL LIBERTY

Journal of the New South Wales Council for Civil Liberties Inc.

PO Box 201 GLEBE 2037
telephone: (02) 9660 7582
fax: (02) 9566 4162
email: nswccl@mail2me.com.au
web site: www.nswccl.org.au

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COMMITTEE MEETINGS

Meetings are usually held at 6.30pm on the fourth Wednesday of the month, at the Council's office, 149 St Johns Rd, Glebe. Members are welcome to attend as observers.

SUBCOMMITTEE MEETINGS

Subcommittees usually meet monthly. For further information please contact the Executive Secretary who can tell you when your subcommittee meets or put you in contact with the relevant Convenor.

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REPORTS

PRESIDENT'S REPORT FOR 2003–2004

During the last year, NSWCCCL has played an active role in challenging the many new anti-terrorism measures proposed by both State and Federal governments.

The Council gave evidence to the Australian Law Reform Commission's inquiry into *Keeping Secrets: The Protection of Classified and Security Sensitive Information* <<http://www.austlii.edu.au/au/other/alrc/publications/reports/98/>> and made a record number of submissions to government on legislative changes such as the:

- *Inquiry into Provisions of the National Security Information (Criminal Proceedings) Bill 2004* <[http://www.nswccl.org.au/docs/pdf/national_security_bills_\(NSWCCL_submission\).pdf](http://www.nswccl.org.au/docs/pdf/national_security_bills_(NSWCCL_submission).pdf)>;
- *Inquiry into Provisions of the Surveillance Devices Bill 2004* <http://www.nswccl.org.au/docs/pdf/inquiry_into_provisions_surveillance_devices_bill_2004.pdf>;
- *Inquiry into Provisions of the Anti-Terrorism Bill 2004* <http://www.nswccl.org.au/docs/pdf/inquiry_into_provisions_of_anti-terrorism_bill_2004.pdf>.

Copies of the above submissions and others, such as removal of double jeopardy, are available on the NSWCCCL web site <<http://www.nswccl.org.au/>>.

At the 2004 AGM, members vigorously debated the deteriorating financial position of the organisation and a motion authorising the Committee to mortgage the NSWCCCL office in Glebe. The AGM resolved to defer consideration of the motion until the 2005 AGM, so that members could work on fundraising ideas to improve the financial position.

In light of recent worrying comments by our political leaders on the death penalty, the AGM unanimously reaffirmed its opposition to the use of the death penalty in all circumstances. The following resolution was passed:

The NSWCCCL expresses grave concern at recent comments by the Prime Minister, Opposition Leader and other Federal politicians in support of the death penalty. We reiterate our longstanding total opposition to capital punishment. We call on all members of the Federal Parliament to reaffirm their opposition to the death penalty under all circumstances.

NSWCCL faces important challenges in the next year, in both its policy and organisation. The re-election of the Howard Government with, for the first time, a majority in the Senate, will probably result in attempts to re-introduce and pass legislation that was previously amended or rejected. Attorney General Ruddock has already said that he will seek to implement the original detention and questioning powers proposed for ASIO to include children as young as twelve.

NSWCCL has already, and will continue to play a vital role in preserving rights in this difficult anti-terrorism environment. If NSWCCCL is to continue to operate as effectively as an organisation, it must increase its membership and it must raise funds. I encourage every member to assist in this effort by attending fundraising events, donating money to NSWCCCL, but more importantly by approaching friends and colleagues and encouraging them to join NSWCCCL.

Cameron Murphy
President

SECRETARY'S REPORT FOR 2003–2004

Following the resignation of Jeremy Styles in May this year, I took over as Secretary. I do thank Jeremy for all of his efforts over a number of years.

There are some matters of organisational interest which should be recorded.

First, we have been strengthening our ties with the University of Sydney. The Law School has approved NSWCCCL as a participating organisation in its external placement program, which is an elective subject for senior law students. The first student placed with NSWCCCL under this program is presently completing a resource paper on workplace surveillance. An abstract of her paper is on page 13 of this journal. We expect to be able to publish the paper on our web site in due course.

We are also involved in some amicus curiae litigation with the University of Sydney Law School. We already have good ties with UNSW, and it is encouraging to see a new enthusiasm in the student bodies for the values we represent.

Second, the continued development of the NSWCCCL web site should be noted. The web site has become a vital and invaluable resource and the primary gateway for many to contact us. The statistics are impressive: around 5,000 visitors per month, averaging 200 per day. The most popular sections appear to be the news and media releases, and sections dealing with the death penalty, the bill of rights and double jeopardy. About 30% of visits are from overseas. I know myself that much of the information I need about the organisation is available from its web site. If you have not visited the web site for a while, I suggest you do. Make sure it is in your favourites folder.

Third, we have been pursuing the formation of a civil liberties trust to facilitate significant donations where the donor wishes the funds to be available for more of the civil liberty

organisations around the country, and not expended all in one year. Corrs Chambers Westgarths have agreed to act on a pro-bono basis in relation to setting up this trust.

As Secretary, one gets to see the enormous number of interesting and important issues that are raised with NSWCCCL. My only regret is that we do not seem to have sufficient numbers of people to make a meaningful impact on as many issues as we might. In practice, the role of secretary has become intertwined with the role of complaints officer, as there has not been anyone in recent months prepared to perform that onerous, but important, role. This needs to be resolved. I have also maintained my position as Convenor of the Legal Panel, and will report on that separately.

On behalf of NSWCCCL, I would like to thank Lord Mayor Clover Moore for allowing us to use the Town Hall again for our AGM, and thanks to the many people who have given generously of their time and skill to assist us during the year. Paul Geros and May Kenny each volunteer their time 1 day a week to assist in the office—Paul with organising and cataloguing the NSWCCCL library, and May with office administration.

We should thank the members of the subcommittees which do much of the real work of NSWCCCL, and the Convenors of those subcommittees:

Criminal Justice Issues

Shaughn Morgan (Convenor), Cameron Murphy, Pauline Wright, Jeremy Styles, Michael Walton, William Summers, Frances McGowan

Fundraising/Finance

Susan Cleary (Convenor), Joan Kersey, Judith Henstock-Muru

ASIO/National Security and Intelligence

David Bernie (Convenor), Ken Buckley, Judith Henstock-Muru, Martin Bibby

Publications

Natasha Posner (Journal Editor), David Leung (Journal Designer), Michael Walton (Webmaster)

Civil Rights

Doug Nicholson (Convenor), Judith Henstock-Muru (former convenor—retired due to ill health), David Bernie, Michael Walton

Complaints

Tony Hay

While some of these subcommittees have undoubtedly worked better than others, each of them have had significant achievements through the year, and only because of the work that individuals have done voluntarily.

We should also thank the Committee itself, and the Executive, for the work they have done over the past year. I will single out a few individuals for special mention. Joan Kersey has organised an outstanding series of lunches in the last year with 'A' list speakers. Natasha Posner has done a superb job with the journal, assisted by David Leung. Susan Cleary has kept us fully informed of our precarious financial position. Ken Buckley has remained a voice of principle and reason. Cameron Murphy has spoken tirelessly in public on civil liberties issues and has been an outstanding media performer. David Bernie has also undertaken many speaking engagements and given media interviews, as well as writing submissions on many subjects to government enquiries. Pauline Wright has also written solicited and unsolicited submissions to a myriad of government bodies. Michael Walton has single-handedly been an engine-room of material, including being primarily responsible for the web site.

Scott and Dorothy Campbell are engaged in writing the definitive history of NSWCCCL to date, and their important work on this deserves acknowledgement.

Susan Smith runs the most efficient office on virtually no resources. NSWCCCL is unimaginable without her.

There are others who should be named, but we do not have time. To them, I offer a generalised thank you.

Stephen Blanks
Secretary

TREASURER'S REPORT FOR 2003–2004

The audited accounts for the 2004 financial year were presented at the AGM. Once more the Council has run at a loss, being \$9660 in the red at the close of the financial year. Currently the Council has some \$38000 in its bank accounts.

As a result of the increase in fees agreed at the last AGM, the subscription income has increased slightly. We currently have 293 financial members. This time last year we had 303 members. As usual, we approached by letter all members who failed to renew their membership, with 92 of 127 members contacted, renewing. As well, we are now telephoning all longer term lapsed members who have not renewed their membership for up to ten years, to ask for their support again. This is a recently implemented initiative in which some 500 former members will be contacted.

You will note that the donations income is down from last year. This is because last year we wrote to members asking for financial help and received some \$10000 in donations from a small number of people. We also asked members to nominate names of people to be approached regarding possible membership. Twenty-two people were proposed and were all contacted. However, only two of these people joined NSWCCCL.

As I advised members last year at the AGM, NSWCCCL requires some \$42000 to operate annually. This figure does not take into account one-off expenses, or repairs to and maintenance of the house in Glebe. For example, this year the Council had to replace the stove in the flat on the first floor of Council headquarters at a cost of \$794. This flat is rented out for \$185 per week. This might seem like a low rental, however the truth is that it is in a very poor condition, and really could do with having money spent on it. Other expenses of a one-off nature, included tree pruning at \$385, and replacing a burnt-out fuse box at \$405.

Now—to our fund raising initiatives. This financial year we increased the price of attendance at our fund raising lunches in Parliament House. The price introduced late last year was \$70 for members (plus one guest) and \$85 for non members. Previously it was a flat rate of \$65. However we did advise members that the rate for non members might vary on special occasions. I might add that we do not always fill the 30 or so places available at these lunches, and even with a draw card speaker, we might have only four or five people on the waiting list for places. We usually make between \$400–600 per lunch.

Three fund raising lunches were held in the President's dining room at Parliament House in the past twelve months. We extend our ongoing thanks to Meredith Burgmann for making available this venue for the lunches, and for her attendance and continuing support. In March 2004, Robert McClelland, Shadow Minister for Homeland Security, was our guest speaker; in May, Justice Jeff Shaw agreed to speak; and in September we had Andrew Wilkie. We have a further lunch scheduled for November 26, at which Professor Larissa Behrendt will speak.

On 26 March this year, the Council was very pleased that Justice Michael Kirby agreed to be the guest speaker at drinks hosted by the Law Society and the NSWCCCL, and held at the Law Society. Justice Kirby has always been a great supporter of the Council.

In an attempt to reduce administrative costs, members have been asked if they are happy to receive the Journal by email. It is appreciated that not all members have access to email, but 170 members have agreed to this initiative. The major saving here is on postage.

Because of the ongoing financial difficulties, the Council reviewed its options during the year. Members were notified of tonight's motion in relation to these deliberations in the September Journal. I would like to thank Malcolm Castle for his advice and assistance in this respect.

John Cheadle, of W. L. Browne and Associates, has acted as our auditor for the last four years. He and his colleagues have been both helpful and thorough, for which we thank them.

Susan Cleary
Treasurer

SECURITY AND INTELLIGENCE SUBCOMMITTEE

As envisaged in the last journal report, the Federal Parliament has passed laws making it an offence to consort with members of a proscribed terrorist organisation in what must be the most outrageous piece of legislation to have been passed by the Australian Parliament since the *Communist Party Dissolution Act*. Some exceptions are provided for in the legislation, but they do not, for instance, cover all aspects of lawyer and client relations. (Indeed, a specific exception has been made for persons associating in respect of proceedings conducted by military commissions of the United States of America under Presidential executive order, being the notorious show trials against Hicks and Habib.) The bill was passed with the support of the ALP opposition in the Senate after a very brief Legal and Constitutional Legislation Committee report made some changes to

the draft bill. The minor parties in the Senate dissented from the main report and opposed the bill.

At the state level, legislation will enable NSW Police secretly to exercise search warrants, effectively acting like thieves breaking into premises in order to obtain information. It is unclear as to how these new State police powers interact with ASIO's existing surveillance powers. An interesting aspect of State and Federal legislation being passed since 2001, has been the granting of power to ASIO to detain people—previously a power associated with the police forces; and the State police forces being given powers for the covert obtaining of intelligence—obviously an area which was previously within the realms of agencies like ASIO. The prospect of future co-operation between these agencies, which is important in the fight against terrorism, is hardly assisted by all the increased statutory powers. There is now considerable potential for 'turf wars' to occur between the various State and Federal agencies in response to terrorism.

After the ASIO detention powers were finally enacted, in early 2003 the Prime Minister said he was satisfied with the mix of legislation relating to anti-terrorism. But this year alone, we have seen three anti-terrorism bills introduced into the Federal Parliament, as well as increased State police powers in NSW. The Federal Government's new-found majority in the Senate from July next year, also means the removal of the Opposition's ability at least to force amendments recommended by various Senate committees onto the Government in these areas. While the original legislation remains fundamentally flawed in approach, the amendments that have been suggested by this committee process have almost always been an improvement on what had been originally proposed. The Opposition and minor parties will now lose even this power from late next year, unless the Government is willing to consent to any suggested amendments or referral to a committee. What further legislation the

Government intends in this area has not been made clear during the election campaign or through any policy statements of the Government. During the period of the next Parliament, a sunset provision in the ASIO detention laws will come up for review, and, as the Government originally opposed any sunset provision, these extraordinary powers will probably be made a permanent part of Australian statute laws in the next Parliamentary term. The ability to oppose or even amend any future legislation has been sadly lost.

David Bernie
Convenor

LEGAL PANEL REPORT FOR 2003–2004

Perhaps, on the face of it, this year has been less active year in the Courts than last year.

Last year, NSWCCCL was involved in supporting some high profile challenges to aspects of our national treatment of asylum seekers. A challenge to the right of the Government to deport failed asylum seekers to places where they faced torture or death, unfortunately failed. A challenge to a system where the Government can rely on flawed translations of asylum seeker applications in order to reject them, has thus far failed, although an application for special leave to appeal in the High Court is still pending.

Nonetheless, we have continued to support worthy refugee cases. This year, a small success was achieved when a detainee was released on medical grounds from the management unit at Baxter Detention Centre. The Department ultimately accepted that its detention system had resulted in the mental deterioration of the detainee to the point where he could no longer be kept in detention. This was at the time when the Abu Graib atrocities were being revealed publicly, and perhaps the Department was sensitive that there was a real parallel

situation on their doorstep. The detainee is now recovering in Perth, and waiting for his special leave application to be heard in the High Court.

The treatment of asylum seekers will continue to be a blot on this country's human rights record, and there will undoubtedly be further occasions to challenge aspects of it.

Last year, NSWCCCL also supported an organiser of a political demonstration outside Mr Ruddock's house when the police tried to get an order in the Supreme Court to prohibit it. The police application failed. This year, the police threatened the same organiser with another application in relation to a demonstration outside Kirribilli House. After discussions with the Crown solicitor, the police ultimately decided not to proceed. Our right to protest seems safer this year than last, but requires constant vigilance.

Last year, we were involved in protecting university students from disciplinary proceedings arising out of alleged music copyright infringement. The music industry was effectively seeking to make our universities their enforcers. Now the music industry's attempts to privatise the Internet are coming to a head. Together with the Australian Consumers Association and Electronic Frontiers Australia, NSWCCCL is seeking to intervene as *amicus curiae*, in the proceedings against Sharman Networks relating to the Kazaa file swapping software. On 1 November, the Federal Court adjourned NSWCCCL's applications to make submissions until after the evidence is closed. It is expected that the hearing will commence on 29 November and last through December. NSWCCCL is being legally represented by the Communications Law Centre. If you would like to assist in this case, please contact Stephen Blanks by email to <stephen@sbalaw.com.au>.

Litigation on this issue is also proceeding in the US and Canada, and public interest organisations have successfully intervened in those proceedings.

During the year, some assistance was provided to the persons who were convicted of painting 'No War' on the opera house in relation to their appeal. The issues on appeal included whether a defence of 'self defence' should have been allowed to go to the jury. The appeal was heard in July, and the outcome is still awaited.

There have also been representations on behalf of workers at State Rail affected by unnecessarily severe drug and alcohol testing regimes, and other workers caught up in the present hysteria on that subject.

Due to resource constraints, we have had to be very selective in the matters we have been involved with. There have been suggestions that the Government is permitting extradition to the US in murder cases without seeking proper assurances that the death penalty will not be applied. There is a campaign surrounding NSW Government policy about removing young children from mothers alleged to suffer from Munchausen's Syndrome by Proxy, when a similar policy in the UK has been discredited. There is continuing disquiet over the regime for maintaining a register of employment incidents in relation to people who work with children, despite changes to the legislation earlier this year. We have been unable to get involved with any of these matters.

The panel depends on the availability of lawyers willing to get involved in matters on a *pro bono* basis. I wish to thank particularly barristers John Basten QC and Shane Prince for their time and interest. I also wish to thank Pauline Wright and Michael Walton for assisting in various matters.

I would welcome the involvement of more lawyers on the Legal Panel, and invite anyone interested to contact me.

Stephen Blanks
Convenor

ARTICLES

ELIMINATION OF VIOLENCE AGAINST WOMEN

Rugmini Venkatraman¹

Imagine a world free from gender violence where homes are not shattered; where shame and silence are cast aside for new joyful melodies; where women and men develop the capacity and courage to live to their full potential. Noeleen Heyser, (Head, United Nations Fund for the Development of Women), March 1999.

United Nations Declaration

The 25th of November 2000 was first observed as the International Day for the Elimination of Violence Against Women by the United Nations, which also launched the Sixteen Days of Activism against Gender Violence on that day. The aim was to start building a new millennium free from violence against women and girls: an age in which all humanity knows that when it comes to violence against women, there are no grounds for tolerance and no tolerable excuses.

For the purpose of the UN Declaration on The Elimination of Violence against Women, the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (*Declaration on the Elimination of Violence Against Women*, Article 1, resolution issued by the General Assembly of the United Nations, December 1993). Article 4 of this Declaration says that States should:

- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.

Violence against women as a crime

Recognising and declaring violence against women as a crime punishable by law has been a significant step towards prevention. However, models of crime prevention involving primary prevention, secondary prevention and tertiary prevention, as well as early developmental prevention, situational prevention, social prevention and criminal justice system prevention measures, have been conceptualised and developed for addressing crime that falls within traditionally defined criminal acts. This leaves out crime perpetrated in private lives, within families and domestic situations, violence perpetrated against women and children, away from the public eye.

¹ Rugmini Venkatraman is the Western Sydney Regional Violence Prevention Specialist. This article is a revised and edited version of a talk given to the NSW AGM of Amnesty International Australia on 15 May this year.

It is only in recent decades that violence in the home has begun to receive attention and is being perceived as a wider social problem. Radford and Stanko (1995, p. 157) suggested that:

Although judicial authorities are now seeing more crime than previously, the problem of violence to women, largely located within their relationships with familiar and familial men, is still leading to some conceptual problems in relation to its redefinition in criminal discourse, and discourse concerning remedies and crime control strategies which still revolve around public, not private violence.

Challenging gendered and sexual violence

Feminist approaches to crime prevention, that is, prevention of violence against women and children, pose a fundamental challenge to gender inequalities that sustain male dominance in a patriarchal society. They aim to address the social conditions that influence and permit gendered violence. Thus, models of crime prevention, such as primary, secondary and tertiary can be applied to reduce violence against women, provided they are implemented in a climate which demands policy and practice that confronts men's licence to abuse.

The term 'sexual violence' may imply that rape, sexual assault, and incest are somehow connected to or located in the act of sex. However, many feminists and scholars argue that—not unlike a gun, a knife, or a fist, sex is merely the instrument used to gain and maintain power over another individual. It may be argued that rape is not only used by the rapist to subjugate and degrade his victim, it is used by the dominant culture to oppress women. Rape (and the threat of rape) systematically function to instil fear in women and to impose restrictions upon their movement within the social sphere.

The limitations that women experience due to the existence of rape extend far beyond simply not being able to walk alone at night. Women have been socialised to believe that if they are victimised by this act, *they* are the ones who will be blamed, not believed and humiliated. Therefore, women bear the undue burden of 'preventing' their own rape by monitoring their actions, screening their dates and acquaintances, and wearing 'appropriate' clothing for a given situation. However, in the prevention of violence against women, the focus needs to encompass not only the victims but also the perpetrators and the systems that support them. 'To promote women's safety, men need to take responsibility for their own and their brothers' behaviour in both private and public spheres' (Stanko 1990, p. 181).

In Australia

The 1996 Australian Bureau of Statistics survey (McClelland 1996) showed that:

- 2.6 million Australian women aged 15 years and over had experienced some form of physical or sexual violence;
- in a 12 month period prior to this survey:
 - approximately 490,000 Australian women, 18 years and over experienced violence;
 - over 400,000 women experienced physical violence and 33,000 women experienced sexual violence.

It has been recognised that in Australia 'some of the gaps in the system such as lack of uniformity of legislation, impediments to interagency communication, overlapping or inadequate definition of agency responsibilities and insufficient knowledge of emerging criminal practices' need to be addressed first to be followed by 'broad social participation, a

reorientation towards crime prevention and the integration of programs across a broad spectrum of policy responsibilities and spheres of government' (Federal Justice Office 1992).

NSW Strategy to Reduce Violence Against Women and the Violence Against Women Specialist Unit

The NSW Strategy to Reduce Violence Against Women² is a State-wide strategy adopting a whole of government approach to addressing the issue of violence against women. It seeks to:

- assist women who have experienced violence to access support services and the criminal justice system;
- to inform women about the extent of violence against women in the community, about their right to safety and possible options available to them.

The Strategy also targets the broader community aiming to:

- raise community awareness of issues surrounding violence against women;
- enlist wider community support to condemn and reject such violence;
- get non-violent men to engage in peer education with other men about the unacceptability of violence against women;
- assist in developing an appropriate criminal justice response to perpetrators of violence; and
- to improve inter-agency coordination to respond to violence.

The NSW Strategy to Reduce Violence Against Women recognises that violence against women is a complex issue requiring a cross-agency approach. No single agency can provide effective response to the complex needs of the victims, or tackle the task of preventing violence against women, without the collaboration of other agencies. The Strategy is jointly funded by the NSW Attorney General's Department, NSW Department of Community Services, NSW Department of Education and Training, NSW Department of Health, NSW Department of Housing and NSW Police, and supported by the Office for Women.

The Strategy has several key elements. One of them is the Violence Against Women (VAW) Specialist Unit currently located in the Criminal Justice Interventions Division of the Attorney General's Department (soon to be moving to the newly formed Communities Division of the NSW Department of Community Services). The key role of the Unit is to facilitate the implementation of this whole of government strategy and promote a partnership response to violence against women.

The Unit also manages eighteen Regional Violence Prevention Specialists, who are located throughout NSW in the regional offices of the Department of Community Services, NSW Health or NSW Police. The role of the specialists is to:

- identify violence against women issues in their region;
- enhance linkages within and between government and non-government; agencies as well as with the wider community, to address issues of violence against women;
- develop violence prevention plans with local/regional agencies, organisations and communities;

² For more information about the NSW Strategy to Reduce Violence Against Women, please contact the Violence Against Women Specialist Unit on 02 9228 7899 or Rugmini Venkatraman on 02 9633 0717.

- facilitate community education programs;
- facilitate training of workers and specialist staff;
- promote regionally State-wide media campaigns on violence against women;
- facilitate capacity building in communities; and
- develop, implement and evaluate prevention strategies and projects, at local, regional and State-wide levels, to reduce violence against women.

A final key element of the Strategy is the State Management Group, which consists of Government representatives who meet to formulate inter-departmental policies and to explore management issues associated with the Strategy.

A quarterly bulletin published by the VAW Unit highlights the various projects and activities implemented by the VAW Unit and the Regional Specialists across the State. Please visit their web site on <<http://www.lawlink.nsw.gov/cpd/>>.

Concluding statement

Women of all colours, shapes and sizes, must join together and unite across anti-oppression struggles, acting individually and collectively to ensure that social change takes place. Men have to take responsibility in bringing about this attitudinal change towards VAW and actively engage in prevention work. It is high time that the onus is shifted off women's shoulders and taken on by men, because it is not only the women who are affected by such violence, it is their children, families and the wider community who experience the impact.

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WORKPLACE SURVEILLANCE

Alison Cripps¹

Twenty-first century industrial relations has been marked by a new age in workplace surveillance. Driven by technology and innovation, workplace surveillance is becoming increasingly sophisticated and accessible.² In the last five years, for example, technological change has seen the emergence of new surveillance possibilities such as Global Position Monitoring to determine the exact location of employees,³ devices that monitor key strokes taken per minute or time spent away from the computer,⁴ which are used to determine worker productivity, and devices that enable a third party to watch an employees screen as he or she works.⁵ In fact, Australia spends more money per capita on workplace surveillance equipment than most other industrialised nations.⁶

These developments do not come without uncertainty. While advances in surveillance technologies are generally welcomed by employers, there is a growing sense of unease amongst academics,⁷ employees and interest groups⁸ as to the ethical-boundaries that such technologies may cross. There is a concern that new technologies will leave employees open to abuse and discrimination, and further, that workplace surveillance represents a threat to worker privacy and dignity.

In the context of balancing the interests of employers with employees, the role of law is to ensure that any workplace surveillance is conducted within an appropriate social and ethical framework. It has been argued, however, that instead of achieving a balance, the law has created a legal framework that embraces workplace surveillance whilst disregarding the interests of employees.⁹

This paper will examine the validity of this concern. It will first discuss how surveillance is used in the workplace and the potential benefits and problems created by it. The paper will then consider current and proposed laws relating to workplace surveillance in order to determine the impact they have on surveillance activities. It will examine the common law, and then current and proposed legislation. In doing so, the paper will conclude that to a large extent, criticism of workplace surveillance law is justified. While employers need to be able to supervise staff, regulation of workplace surveillance in its current and proposed form fails to protect the worker against potential abuses, including the invasion of privacy and dignity. With this in mind, the paper will advocate significant legal reform in the area of workplace surveillance.

¹ Alison Cripps is a Sydney University law student who has been on placement with NSWCCCL in the last semester. This is the abstract of a document resulting from her work during the placement. The whole document is now available on the NSWCCCL web site. It can also be obtained from the NSWCCCL office.

² Afaras, A. 2004, 'Workplace privacy—Can employers spy on their employees at work?', *Deacons Workplace Relations Update*, June, p. 1.

³ In October 2004 for example, Xerox Australia announced plans to install GPS technology in their photocopier technician's laptop computers to track and monitor productivity.

⁴ Law Reform Commission 2001, *Surveillance: An Interim Report*, Report No. 98, Part 2, p. 256.

⁵ *Ibid.*

⁶ Dixon, T. 2004, *Workplace Video Surveillance and Controls Sought*, Austral Surveillance Australia Pty Ltd.

⁷ Examples include Walker 1999, Sempill 2001, Nye 2002 and Kirby J 2004, in his address to the NSWCCCL.

⁸ Examples include the New South Wales Council for Civil Liberties, New South Wales Privacy Commission and the Australian Privacy Foundation.

⁹ Johnston, A. & Cheng, M. 2003, 'Electronic Workplace Surveillance, Part 1: Concerns for Employees and Challenges for Privacy Advocates', *Privacy Law and Policy Reporter*, 9 (9).

BOOK REVIEWS

DISCRIMINATION LAW AND PRACTICE

Chris Ronalds and Rachel Pepper (2nd edn)
The Federation Press, Sydney, 2004
RRP \$49.50 incl. GST

Reviewed by **Doug Nicholson**

This work is a revision of a book, written by one of the authors, and published in 1998, which has become a widely used reference on this topic. This version does not restrict itself to describing and explaining the legislation, but makes it clear that the writers believe the legislation to be reasonable, desirable and without serious defects. It is reviewed here with particular regard to the civil liberties matters involved.

The treatment is lucid and thorough, in a style aiming for clarity rather than elegance, and there are comparatively few syntax errors for a book of the post-proofreader age. The opening historical chapter tells us that anti-discrimination law is novel statute law, without a basis in the common law or in social history. The various forms of proscribed discrimination are then treated in detail with descriptions of the various acts and many case references. Some significant cases and judgments are summarised, but most are given as citations only, which is irksome to the lay reader, but probably necessary in a reference work to avoid charges of presenting arbitrary and possibly misleading contractions.

Civil liberties concerns are either glossed over, as in the case of vilification, or seem to have escaped the writers' attention. One such concern is where a disability or personal characteristic will impose a financial disadvantage or loss of work value on an organisation employing the person. Critics of the legislation are not necessarily against seeing employment opportunities

provided free of discrimination, but pretending the present legislation offers this cost-free is not helpful.

The concept of 'reasonableness' bulks large in the law, and much attention is given to what a 'reasonable person' may think or do. Civil liberties become an issue when the law seeks to require people to behave 'reasonably', and to punish them when they do not. In vilification cases, the defence of having proffered a genuinely held opinion has been denied in court to defendants, despite being clearly allowed in the legislation, on the fatuous ground that the opinion could not have been genuinely held because it was contradicted by the overwhelming weight of available evidence. An enormous number of people quite passionately hold opinions against an overwhelming body of evidence. This reflects a difference between 'holding an opinion' and 'knowing'. Those who value individual freedom, believe the holders of these opinions, which can sometimes be minority or very unpopular opinions, have a right to assert their views—total rubbish or even harmful though they may be.

I would have liked the writers to have shown greater awareness that the existing anti-discrimination legislation is not an unmitigated gain for our society, but rather an achievement where gains outweigh losses. Specific individual civil liberties are advanced, but, in keeping with the law-and-order preoccupation and general retreat from democracy that characterises our time, the general concept of Civil Liberty suffers.

For anyone who wants to engage with these issues, and with the general question of the extent that individual freedoms can reasonably be curtailed to advance social equity—diminishing liberty to advance equality if you like—this book is, however, recommended reading.

MANUFACTURING FEAR

(continued from p. 1)

with the 'war on terror'. One of these was that the war has anything to do with protecting ordinary people from terrorism; another was that the Opposition had provided some democratic check on the Government in relation to its introduction of 'repressive measures'. Associate Professor Michael Humphrey from UNSW, traced the history of the use of the word 'terrorism' and argued that there was potential for the widening definition to normalise a de facto state of emergency, and to criminalise political, economic and other forms of protest against the established order. Dr Jude McCulloch from the Civil Rights Network Victoria argued that the notion of security was being used to further powerful interests, and was being marketed through fear. What was emerging was a 'garrison state' in which 'subjects are left unprotected', and an 'expansion of the State's coercive capacities'. In the 'post-democratic security state which looms on the horizon', the war on terrorism was 'not bound by space or time'.

To read more of these cogent examinations of the 'war on terror', please see http://www.geocities.com/manufacturing_fear/.

Natasha Posner
Editor

NOTICES

**POTENTIAL SUBMISSIONS—
HELP REQUIRED**

Convention Against Torture

Stephen Blanks met with the Combined Community Legal Centres Group (NSW) on behalf of NSWCCCL. They are involved in making submissions on a Federal Government review of Australia's obligations under the *Convention Against Torture*. Please contact Stephen on <stephen@sbalaw.com.au> if you could help with a submission to this enquiry.

Review of the *Privacy Act*

On 22 November, David Leung representing NSWCCCL attended a stakeholders' forum conducted by the Federal Privacy Commissioner. If you are interested in helping with preparing a submission to the review, please contact David on <david_leung@fastmail.fm>.

DEFAMATION LAW REFORM

On 5 November, the State and Territory Governments announced an agreement to reform their defamation laws to increase uniformity. The agreement includes non-controversial elements such as clarifying that corporations and deceased persons cannot make defamation claims, and limiting the time for making claims to 12 months.

However, the agreement also contemplates capping damages and making truth a complete defence (without any requirement for reasonableness of publication). While the present law unreasonably inhibits the appropriate exercise of the right to free speech, these reforms could tip the balance too far in favour of powerful media interests. It is unclear whether these reforms will ever be meaningfully implemented, as the Federal Government has still to decide whether to proceed with its own legislation. NSWCCCL will continue to monitor developments in this area.

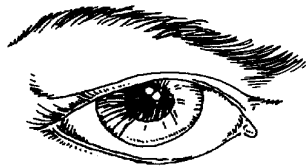
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