

NOTICE OF ANNUAL GENERAL MEETING

OF THE NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INC.

To be held at 6.00pm on Wednesday 24 October 2007 at the Lady
Mayoress' Room, Sydney Town Hall, George Street, Sydney

A nomination form is attached for all those CCL members wishing
to nominate for a position on the CCL Committee for 2007/2008.

***All motions on notice for consideration at the AGM must be
received by the CCL office no later than 3 October 2007.***

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Journal deadline dates:

Material Deadline: 9 November 2007
We may not be able to accept documents
that are not sent on disk or by email
attachments. Digital images will be
accepted.
Articles: 1000-2000 words, reviews:
500 words and letters: 200-300 words

Civil Liberty

Journal of the NSW Council for Civil Liberties Inc.

postal address: PO Box 201 GLEBE NSW 2037
telephone: 02 9660 7582
fax: 02 9566 4162
email: office@nswccl.org.au
website: www.nswccl.org.au



New South Wales
Council for
Civil Liberties

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COMMITTEE MEETINGS

Meetings are usually held at 6.30pm on the fourth Wednesday of the month, at the Sydney Town Hall. Members are welcome to attend as observers.

SUBCOMMITTEE MEETINGS

Subcommittees usually meet monthly. For further information, please contact the Executive Secretary who can put you in contact with the relevant convenor.

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NSWCCL Speakers 2007

Representatives of NSWCCL regularly speak at public events on civil liberty issues. The following is a roundup of events in which NSWCCL played a part:

DATE/TIME	SPEAKER	GROUP	VENUE	TOPIC
13 Mar 2007, 12.30-2pm	Cameron Murphy	NSW Young Lawyers Law & Order Forum	Martin Place Amphitheatre	debate about political parties' law and order policies
17 Mar 2007 noon	David Bernie	organiser Pip Hinman	Sydney Town Hall	rally to bring David Hicks home
17 Mar 2007	Pauline Wright	Newcastle NoWAR Collective	Gregson Park, Newcastle	rally to bring David Hicks home
8 May 2007 1pm	Michael Bozic	CFMEU	NSW Parliament House	protest: civil liberties implications of major corporations trying to silence dissent by suing
7 June 2007 3.50pm	Cameron Murphy	Biometrics Institute Annual Australia Conference	Sydney	panel member
7pm	Dale Mills	Socialist Worker Forum	Newtown Neighbourhood Centre	police, civil liberties and attacks on our rights
25 June 2007	Cameron Murphy	Customer Analytics Summit	Amora Jamison, Sydney	customer privacy: civil liberties and radical profiling
20 June 2007	David Bernie	Community Action Against Homophobia	ACON, Sydney CBD	repeal the ban on same-sex marriage
28 June 2007	David Bernie	Don Chipp Foundation	Sydney CBD	public forum: silencing dissent
16 July 2007 7pm	Michael Bozic	Stop Bush Coalition	University of Technology, Sydney	defend the right to protest Bush
4 Aug 2007	David Bernie	Community Action Against Homophobia	rally at Taylor Square, Oxford St, Darlinghurst	same sex marriage national day of action
20 Aug 2007 6-9pm	Cameron Murphy	University of Western Sydney Law School	University of Western Sydney, Penrith campus	Human Rights: The Haneef case
21 Aug 2007	David Bernie	Malek Fahd Islamic High School	Malek Fahd Islamic High School	democratic rights and responsibilities of Australian citizens
22 Aug 2007 7pm	Michael Walton	Amnesty International		death penalty

Letters to the Editor

Dear Editor,

"*Packer Protesters Plead Guilty To Things They Didn't Do.*"

I have serious doubts about the results of the Packer protest trial (GLW, 707, 21 April, p.6: "*Charges against Packer protesters dismissed*"). And did our trial have any media coverage other than GLW? While I appreciate the support of the NSWCCCL, and the lawyers who represented us, to advise four of the seven defendants to "pleading guilty to something we didn't do" (Diane F), suggests that the government/courts/police are succeeding in intimidating not only people from protesting, but also civil-liberties lawyers from challenging the new anti-terror laws.

While the "misapplication of police resources and effort" (lawyers' report on the results on the trial), and "the injustice of suffering further expense and inconvenience in court" (Diane F), are pertinent concerns, both the charges, and the prosecution's pursuing of them, still remain a serious attack on civil liberties, free speech and the right to protest (Stephen L, Alex B). What a contrast with the Pine Gap 4, on trial soon for their 'Citizen's Inspection' of that US military spy-base, who, in representing themselves in pleading 'Not Guilty', say: "Our goal is not to stay out of prison. Our goal is to stay human..."

The NSWCCCL had initially seen the Packer trial as significant for the right to protest, "believ(ing)" such arrests "were unjustified, and a breach of the protester's implied constitutional right of freedom of political communication" (Civil Liberty, Issue 205, June 2006, p. 7). One can only hope that NSWCCCL's recently formed Right to Protest subcommittee will address such issues as soon as possible. For us, and the CCL, to accept the Packer results allows the cops to just continue with their (Sydney) Dick Cheney police-state style of intimidation. Surely unless the CCL challenges both the results of the trial and the arrests, there will be even less logic and more injustice, suffering, inconvenience, etc, in the Bush/APEC - and other - protests.

Yours in some despair,

Peter McGregor

Dear Editor,

Peter Macgregor's letter raises many interesting issues, and reveals sometimes conflicting aspirations inherent in court proceedings. In criminal matters, such as those involving prosecution of protesters, the interests of the defenders in obtaining the most favourable result for themselves do not always coincide with the interests of observers and those with political agendas. Lawyers acting for defendants in such matters must have regard only to the interests of their clients.

In the Packer protester cases, the "right to protest" issues only arose in relation to the charges for operating a microphone without permission in the Sydney Opera House premises and failing to comply with a direction to leave the Opera House premises. All of those charges were dismissed. The remaining charges had to do with resisting arrest and hindering police. Such charges do not inherently raise issues of free speech and the right to protest, although they do raise civil liberty issues where it is argued that the police are simply concocting the case.

NSWCCL was correct in identifying these cases as ones which raised issues of public importance and significance for the right to protest. NSWCCCL's grounds for believing this were never tested because the charges were dismissed without the need to run legal arguments based on the right to free speech. No doubt, there will be other cases which will provide an opportunity for testing these issues.

The end result should be regarded as a success, with 6 of the 7 people charged not being convicted of anything. The fact that no-one is in prison feeling wronged by an unjust legal system should not be regarded as unsatisfactory aspect of the outcome.

NSWCCL will continue to support the right to protest in ways which do not compromise the rights of defendants to get the best possible results for themselves. Ultimately, the results that this approach gets is a useful tool in discussing policing policy with the relevant authorities.

Stephen Blanks

Feature Articles

The Northern Territory Emergency Response Bill... The NSWCCCL response

by Pauline Wright

*The following is NSWCCCL's submission in full to the Federal Senate Inquiry into the **Northern Territory National Emergency Response Bill 2007 & Related Bills**. It is addressed to Ms Jackie Morris, Committee Secretary, Senate Legal and Constitutional Committee, and dated 10 August 2007*

The NSW Council for Civil Liberties (CCL) understands that on 9 August 2007, the Senate referred to the Standing Committee on Legal and Constitutional Affairs five bills comprising the legislative package for the Australian Government's response to concerns relating to the welfare of Indigenous children in the Northern Territory. CCL notes that the committee will be holding a public hearing in Canberra on Friday, 10 August 2007 and is required to report on Monday, 13 August 2007.

The lack of time given for proper consideration of this important legislation suggests that there will be many aspects of it which will turn out to have detrimental consequences, but will escape criticism at this stage. CCL asks the Committee, at the very least, to recommend to government that a proper time be allowed for due consultation and consideration of the legislation.

The legislative package

Due to the very short period of time allowed, we have not had sufficient time to consider this lengthy and complex legislative package, but upon the necessarily brief perusal that we have been able to give it, CCL has concerns, at least, in relation to the following aspects of the legislation:

- the suspension of the *Racial Discrimination Act* (RDA)
- the suspension of the permit system,
- compulsory medical examination of children,
- the creation of a number of new criminal offences with the potential to dramatically increase the rate of imprisonment of Indigenous Australians, and
- the suspension of Native Title without compensation on just terms in a manner which may lead to the permanent extinguishment of the rights of Indigenous Australians.

Suspension of the Racial Discrimination Act (RDA)

There would appear to be no justification for suspension of the provisions of the RDA. To the extent that the proposed laws are contrary to the RDA, they are abhorrent and ought not be enacted.

In 1980 the Fraser government ratified the *International Covenant on Civil and Political Rights* (ICCPR), and in 1990 Australia acceded to the *First Optional Protocol* to the ICCPR. These provisions of the legislation would be contrary to Article 2.1 of the ICCPR, which provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Suspension of the permit system

The permit system has enabled Indigenous communities to have a degree of self-determination and its removal would be counter-productive in that it will result in the taking away of responsibility from affected communities instead of empowering them. Self-determination has been identified as one of a number of key factors in providing social equity for Indigenous people. This aspect of the legislative package is contrary to Article 1.1 of the ICCPR, which provides that:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

By way of example, the Mutijulu community was reported yesterday (Hazel Illin - 9 August 2007) as having expressed its concern that removing the permit system will remove a valuable tool for protecting their communities, saying:

We have thrown suspected paedophiles out of our community using the permit system which our government now seeks to take away from us.

and asking:

How will the government keep the grog runners out of our community without a permit system?

Compulsory medical examination

They also expressed their concern about the proposal that people be medically examined without the necessity for consent, saying:

Our women and children are scared about being forcibly examined; surely there is a need to build trust. Even the doctors say they are reluctant to examine a young child without a parent's permission. Of course any child that is vulnerable or at risk should be immediately protected but a wholesale intrusion into our women and children's privacy is a violation of our human and sacred rights.

CCL shares that concern. The rights of Indigenous women and children with regard to medical examination and treatment should not simply be overruled and ignored in the interest of protecting other rights. Rather, a solution should be sought which respects all of these rights to the greatest extent possible.

Creation of new offences

The proportion of Indigenous people in incarceration is already alarmingly high. The creation of new offences will ensure that more Indigenous Australians than ever will be held in prison. It is contrary to the spirit and recommendations of the Aboriginal Deaths in Custody report.

Suspension of Native Title without compensation on just terms

CCL has had the opportunity to consider the opinion of Mr Brian Walters SC released by Australian Greens Leader Bob Brown with respect to the latter. We note that he is of the opinion that the proposed suspension of Native Title under the legislative package is not on 'just terms' as required by the Constitution. We note his conclusion that "all of the provisions in the legislation providing for acquisition of property other than on 'just terms' would be struck down as void *ab initio* if they were enacted into law in their present form."

Mr Walters SC is of the opinion that the constitutional guarantee set out in s 51(xxxi) of the Constitution of 'just terms' is not upheld by the legislation. The words 'reasonable compensation' are substituted for 'just terms' in some clauses including subsection 60(2) in relation to the acquisition of leases.

In *Newcrest Mining v Commonwealth* (1997) 190 CLR 513 the majority of the High Court held that s 51 (xxxii) of the Constitution provided a "constitutional guarantee" of just terms in relation to the acquisition of property, and that this applied in the Territories as well as the States. In that regard, Toohey J said:

Indeed, it seems almost inevitable that any acquisition of property by the Commonwealth will now attract the operation of s 51(xxxii) because it will be in pursuit of a purpose in respect of which the Parliament has power to make laws, even if that acquisition takes place within a Territory.

The legislation fails to provide just terms and is therefore not in accordance with s 51 (xxxii).

CCL has also had the opportunity to view the submission to the Committee made by the Gilbert+Tobin Centre of Public Law. CCL endorses their concerns in relation to a number of aspects of the legislative package. CCL agrees that it is difficult to imagine non-Aboriginal people's property rights being diminished in a similar, blanket way by the Commonwealth in pursuit of a child welfare policy objective. In particular:

1. Traditional owners will have to satisfy a number of legal obstacles to obtain compensation, by proving that a *constitutional* 'acquisition of property' has occurred. This will be discriminatory, since other property holders in Australia enjoy a statutory right to compensation by virtue of the *Just Terms Compensation Act*. Further, the Minister has the discretion to determine rent for a s.31 lease without the requirement for a valuation from the Valuer-General (see s 62). These two aspects of the compensation regime appear to be inconsistent with the Government's stated objective that Aboriginal people should derive greater economic benefit from their land rights than has been the case to date.

2. Are improvements on Land Rights Act (ALRA) land that are funded by the Commonwealth, such as buildings or infrastructure, assets owned by the traditional landowners? If not, what is the rationale for s 61(c) of the Bill?

3. Section 57 of the Bill can read as an indication that there is a close relationship between the forced 5 year lease provision (s 31) and the creation of a headlease-sublease arrangement in townships.

4. The Commonwealth will be able to sublease ALRA land to someone else without the consent of traditional owners (s 52(7)) when the *Land Rights Act* provides that such consent is necessary and appropriate (ALRA s 19A(8)).

5. The Bill prohibits Parliament from examining Commonwealth public works on affected Aboriginal land through the Parliamentary Standing Committee on Public Works during the 5 year window. This provision does not apply to land belonging to other Australians and is for that reason discriminatory.

Alternative solutions

On 26 June 2007, CCL joined with 50 other community organisations and individuals in a carefully considered open letter to the Minister for Families, Community Services and Indigenous Affairs. CCL reaffirms the matters set out in that letter, which can be read at:

www.acoss.org.au/News.aspx?displayID=99&articleID=2683

The proposed legislative package fails to address concerns and proposals for long term solutions that were put to the Minister in the letter. The legislation

ought be reconsidered and amended to take into account the following.

The safety and well-being of Indigenous children is paramount and concerns at the severity and widespread nature of the problems of child sexual abuse and community breakdown in Indigenous communities in the NT, as detailed in the *Little Children are Sacred* report, are warranted.

There would appear to be general agreement among the communities affected, Governments and service providers and in the wider Australian community that urgent action is required to address the abuse and neglect of children and to assist those affected by it.

Greater investment in the services that support Indigenous families and communities, the active involvement of these communities in finding solutions to these problems and greater Federal Government engagement in delivering basic health, housing and education services to remote communities would, in our submission, be a better approach to dealing with this problem than that which is reflected in the legislative package. CCL suggests that Government ought to work collaboratively with the communities affected, the NT Government, and the community service, health and education providers to ensure that children are protected.

CCL notes that the services which most Australians take for granted are often not available to remote Indigenous communities, including adequately resourced schools, health services, child protection and family support services, as well as police who are trained to deal with domestic violence in the communities affected. The proposed legislative package would appear to do little to address the recommendations in the *Little Children are Sacred* Report for the Australian and Territory Governments to work together urgently to fill these gaps in services.

A longer term plan is required to address the underlying causes of the problem, including community breakdown, joblessness, overcrowding and low levels of education. Successfully tackling these problems requires sustainable solutions, which must be worked out with the communities, rather than being prescribed from Canberra. Government ought to work with the affected communities and service providers to ensure that in developing and implementing a sustainable solution, support is provided to Indigenous communities' efforts to resolve these problems.

CCL has concerns that the proposed legislative 'emergency response' will have profound and negative effects upon Indigenous people's incomes, land ownership, and ability to decide the kind of medical treatment they receive. Some of the proposed measures will weaken communities and families by taking from them the ability to make basic decisions about their lives, thus removing responsibility instead of providing empowerment.

Because they are to be imposed rather than developed and implemented through consultation with the affected communities and service providers, CCL has concerns that the legislative proposals are unlikely to be effective. There appears to be an over-reliance on punitive measures, and insufficient additional resources to be allocated to improving housing, child protection and domestic violence supports, schools, health services and alcohol and drug rehabilitation programs.

Summary and recommendations

CCL recognises that there are complex issues involved in the proposed federal government direct intervention in Indigenous communities. However, there are rights involved in the issues, which should be respected.

These include the rights of children to protection from those who seek to exploit them, their rights to care and education, the rights of children and their parents to informed consent to medical examination, the rights of Aboriginal nations over their land, and the right of all persons to be consulted concerning decisions which affect their interests.

Rights should not simply be overruled and ignored in the interest of protecting other rights; but a solution sought which respects all of them to the greatest extent possible.

It may be that after a more thorough consideration of the legislative package, CCL will have additional concerns, however, at this stage, our recommendations can be summarised as follows:

- that adequate time be allowed for proper consultation and due consideration of the legislation, which appears in some respects to be contrary to the Constitution;
- that the legislative package in its current form be rejected;
- that the legislative package be rethought and amended to direct itself towards developing programs that will strengthen families and communities to empower them to confront the problems they face;
- that the legislative package be amended to ensure adequate consultation with the communities and NT Government, and community service, health and education providers;
- that the legislative package be amended to ensure the development of a long term plan to address and resolve the causes of child abuse including joblessness, poor housing, education and the commitment of the necessary resources to this.

APEC and all that...

by Dale Mills

Sydney in September is usually a sunny laid-back sort of place, as spring kicks in and the bravest start to attend beaches where the surf still has a distinct chill. Not so during this September, when heightened security and public order rhetoric has seen the introduction of the *APEC Meeting (Police Powers) Act 2007*, which will be in force from 30 August to 12 September. The main APEC event is the Leaders' Week, where the heads of state of some 21 countries will be attending, with September 7 (the Friday) a public holiday. The wives of the heads of state will be visiting Bondi Beach.

Complicating the logistics of Sydney hosting the event will be the early attendance (and early departure) of George W. Bush. Coinciding with his arrival will be a smaller protest by the largest protest groups, *Stop Bush 2007* and *Stop the War*, the membership of both groups largely overlapping. The largest protest will coincide with the middle of a 3-day climax of meetings, on Saturday September 8.

Restricted areas and declared areas

The legislation introduced for the meeting speaks of two types of security zones: "restricted areas" and "declared areas". To make them easier to visualise, this article will refer to them as red areas and green areas (respectively).

The red areas are the highest security areas: think of them as red hot fires of security. They will be specific buildings or small areas. They have not been publicly declared, but from press reports they are thought to be the Opera House, Government House, hotels, and the Sydney Convention and Exhibition Centre.

As areas of maximum security, police may search all non-residential premises without a warrant. It is likely that they will be surrounded by fences and armed police or even armed soldiers. There is a legal obligation to provide ID to a police officer on request. It is an offence punishable by 6 months imprisonment (in some circumstances, 2 years where a prohibited item is carried) to try to enter a red area without special justification. Special justification means that a person lives or works in the area. They are clearly meant to be what the press calls "no-go" areas.

Green areas: geography

The areas that members of the public - and those wishing to protest against APEC - are most likely to come across are the "declared" areas (the green areas). The green areas are currently parts of the Darling Harbour Area, the Hickson Road area and the central CBD north of King Street. It is an area which includes Martin Place, parts of the Rocks, Circular Quay and some of the waters surrounding the Opera

House. These "core" areas can be extended by the Minister, and once a green area is so extended, the Police Commissioner can decide that part or all of that area is a red area, where the higher level of security prevails.

Green areas: check points, cordons and road blocks

Visualise the area north of King Street in a soft green haze. Once approaching that area, there may be police check points, cordons or road blocks in order to stop and search people or vehicles. Within a green area, the police can close roads.

Green areas: searches and prohibited items

Once having stepped on to the King Street curb, there may be a pat-down search as a condition of entering the green area. A person's entry may also be made conditional upon giving the police a prohibited item. A police officer who is given or seizes a prohibited item doesn't have to give it back.

Green areas: reasonable directions

Once in the green area, police officers have the power to give reasonable directions to any person or group providing that it substantially assists security, safety or "in preventing or controlling a public disorder."

Green areas: is being told to prove your ID a reasonable direction?

Having walked passed a checkpoint, having surrendered any prohibited items, and then having raised your arms for a pat-down search, police may want to determine whether a person is on an excluded persons' list (more below). But is there a legal obligation to provide ID? One would have hoped for a bit of precise drafting on such an important issue but at least in this law student's opinion, the legislation is far from clear.

There is an obligation to prove ID to a police officer upon request in a *red* area. With green areas, there is no similarly worded obligation, but I think it could be argued that the furnishing of ID to a police officer could be a "reasonable request" which is necessary to pursue one of the purposes of the Act, such as enforcing the excluded persons list. This seems to be the police attitude. A police negotiator advised a representative of Stop Bush 2007 on 17 August that people will be have to show their IDs to police officers as a condition of entering a green area.

Refusing to comply with a "reasonable direction" is not an offence in itself, but allows the police to escort that person from the green area or to refuse their entry.

Green areas: keeping people out

Apart from a person being excluded from a green area by refusing to agree to a pat-down search, people can also be excluded for failing to agree to a vehicle being searched on entering; unlawfully resisting, hindering or

obstructing a police search; failing to give up a prohibited item as a condition of entry or are on a road closed for APEC purposes.

Green area: excluded persons' list

One of the powers that has attracted the most media attention is the creation of an excluded persons' list. No criminal convictions are necessary to be on the list. It is only necessary that the Police Commissioner satisfy himself that a person would pose serious threats to the safety of persons or property in a green or red area. Police have said they will write to people beforehand saying that they are on the list, but they don't have to legally keep this promise.

Although setting a chilling precedent, it may be that the existence of an excluded persons' list is a bit hyped up. It is easy enough for the police to stop a person from entering a green zone, regardless of whether or not they are on the list. Under the Act, police can exclude any person who "without lawful excuse, fails to comply with a reasonable direction given to the person," which appears to me to come close to saying that the police can exclude anyone they don't like. The list may or may not be made public, or there may be a secret police list, with another for public consumption.

Bail

Bail laws have been changed in relation to three specific offences.

These are assaulting a police officer, throwing a missile at a police officer and maliciously damaging property. There is a presumption against bail for people charged with these offences. This is a real concern, as anyone charged (only charged, not convicted) of assaulting a police officer has the presumption of bail refused, till the end of APEC. Nearly two weeks incarceration, therefore, for what could end up a technical assault charge. Nearly two weeks incarceration, indeed, for an offence which later gets dropped, as the "assault police officer" charge is often added on by the police as part of a general pattern of over-charging when they wish to deal with protesters.

The refusal of bail prompts a pattern of treatment which may be seen by a protester as a punishment in itself: being kept in cells for a one or two-week period, being subject to strip-searches, losing a job. And in the end, the charge may be dropped or dismissed. That the last half a dozen charges in relation to protest offences in Sydney have been dismissed or dealt with by the s10 (no recorded conviction) procedure indicates that the police are now in a particular pattern of over-charging, or are bringing charges when they are likely to fail. And with their successful convictions, at least one person is on record as saying that she pleaded guilty simply to avoid wasting the time off work necessary to attend numerous hearings. After all, the police get paid for their attendance at court.

The Act also allows for special audiovisual links in relation to bail applications for these offences, which some lawyers have told me leads to logistical nightmares, especially as the police have also said that they are prepared to "process" 500 people during the APEC period.

Permanent laws?

The Attorney General and the Police Minister are to report on whether the special powers are "appropriate for future meetings or events comparable to an APEC meeting." As with previous temporary laws, they may be introduced again - and again - and then be made permanent.

'...which appears to me to come close to saying that the police can exclude anyone they don't like.'

With reports that electronic stun-gun devices called Tasers will be in use, that a \$600,000 water cannon will be deployed, and that the police force will be so over-stretched that even the Police Association has gone public about their concerns, the CBD is sure to be an interesting time during the first weeks of September.

Welcome to Sydney.

Dale is a member of the NSW Council for Civil Liberties and coordinator of Human Rights Monitors, which will be providing legal observers at the APEC protests in order to collect evidence of any illegal activity or misbehaviour by the police. Dale can be contacted at dalemills@cantab.net or 0422 644 363

Australia and Torture

By Michael Walton

In May 2005, Australia sent to the United Nations its official report on how it is complying with its international obligations under the Convention against Torture. The UN Committee against Torture is due to consider Australia's report in November 2007 in Geneva.

The official report has some glaring omissions. It fails to mention Australia's involvement in the abuse in coalition-run Iraqi prisons (like Abu Ghraib). The official report fails to mention the allegations of torture made by David Hicks and Mamdouh Habib. The official report fails to mention the extent of human rights abuses and mental health issues in immigration detention centres.

In August 2007, CCL sent its "Shadow Report" to the UN Committee. The Shadow Report is designed to give the UN Committee an alternative view to that of the government's report. It acts as a report card – and Australia's grades are not good.

The Shadow Report argues that Australia is failing to meet its international obligations with respect to the absolute ban on torture.

Since September 11, Australia has shown an increased willingness to acquiesce in the use of torture by other nations. Australia has also demonstrated a willingness to ignore its Convention obligations to investigate, prosecute and punish torture and mistreatment.

Australia should not torture people or be complicit in their torture. Australia should investigate and prosecute torturers and their accomplices.

Of course, it is important to protect Australia and Australians from terrorism. However, somewhere along the way, we have lost sight of the importance of the absolute ban on torture.

The Shadow Report quotes former UN Secretary-General Kofi Annan: "Let us be clear: torture can never be an instrument to fight terror, for torture is an instrument of terror".

Australia ratified the Convention against Torture in 1989. The Convention bans torture and other cruel, inhuman and degrading treatment or punishment. Complicity and conspiracy to torture are criminalised by the Convention. Superior orders are no defence under the Convention.

The Shadow Report calls for a full Royal Commission into what Australian officials knew about the rendition and torture of Mr Mamdouh Habib.

Mr Habib claims that Australian officials were complicit in his torture by providing information to his Egyptian torturers, possibly via the CIA. Mr Habib also alleges

that Australian officials were present in Pakistan when he was put on a secret CIA plane and rendered to Egypt.

A recent Canadian Royal Commission was highly critical of Canadian police for their role in the rendition by the US of a Canadian citizen to Syria for torture. After the Royal Commission, the victim was awarded \$10 million compensation.

CCL believes that Australia should follow the democratic example of Canada and investigate Mr Habib's allegations thoroughly. Any Australian officials who assisted Mr Habib's torturers should be investigated, prosecuted and punished to the full extent of the law.

CCL's Shadow Report is critical of Australian officials who have been less than forthcoming with the truth about what they knew about abuses in prisons run by Allied forces in Iraq and Afghanistan.

'Since September 11, Australia has shown an increased willingness to acquiesce in the use of torture by other nations.'

The Shadow Report calls for an independent inquiry into what Australia knew about torture in Abu Ghraib and other Iraqi prisons. The evidence shows that Australian officials knew about this abuse well before those graphic photographs were published. The inquiry should investigate why Australia did not intercede to help the victims.

The report also notes that government ministers and officials have displayed a willingness to claim that some acts of torture are not torture. The report expresses CCL's concern about the increased willingness in Australia to redefine torture in such a way that ASIO and other agencies can use torture techniques such as sleep deprivation.

The Shadow Report also points out the need to enshrine in our Constitution the absolute prohibition against torture.

You can read the whole Shadow Report on CCL's website at:

http://www.nswccl.org.au/publications/cat_shadow.php

Reports

RIGHT TO PROTEST SUBCOMMITTEE

At the time of writing this report there are still two weeks to go before the APEC circus comes to town. In the lead up to this gathering of the great and the good, the right of citizens in New South Wales to engage in peaceful protest is being severely tested by the *APEC Meeting (Police Powers) Act 2007* and the continuing actions of the New South Wales Police. New South Wales Police and various State politicians have been quick to talk up the prospects of violence during the APEC Meeting and then to make media appearances reassuring the public that they are ready to deal with such violence. Coupled with an eagerness to denigrate demonstrators (Premier Iemma described protestors as “ferals”) has been a reluctance by the relevant authorities to engage in any sort of meaningful dialogue with protest organisers. While the Stop Bush Coalition notified police of the proposed route for the protest march well before the APEC meeting the protest organisers heard virtually nothing from police. Out of desperation a press conference was organised by The Greens at Parliament House to publicise the proposed route and to ask for police to respond to the plans. I spoke at the press conference on behalf of CCL.

When the police did meet with protest organisers the police proposed a route from Town Hall to Hyde Park and then on to the Domain. As at the time of writing the protest organisers are sticking to the original route proposed from Town Hall down George Street to Martin Place, then up Martin Place past the US Consulate in the MLC Centre, on to Macquarie Street and then to Hyde Park. The attitude of the protest organisers is that if the police have a problem with the route proposed then they should seek an order from the Supreme Court under s.25 of the Summary Offences Act. The Sydney Morning Herald headlined its story “APEC marchers vote to defy police”.

There has been significant media interest in the APEC legislation and the impact that it will have on the right to protest and the right to move around the CBD. The Channel 9 program “Sunday” is doing a feature story on APEC and security. I was interviewed for the program and spoke about the concerns that CCL has about legislation such as the APEC (Police Powers) Act. There was also a story on *Lateline* about the impact of the APEC laws and the likelihood that they will be re-enacted again in the future. The unveiling of the water cannon, another masterpiece of police public relations, was commented upon by CCL secretary Stephen Blanks in an interview with Channel 7.

Any member interested in the sub-committee can contact me on **9232 3645** or at mbozic@selbornechambers.com.au

*Michael Bozic SC
Convenor*

A nation's culture resides in the hearts and in the soul of its people.
Mohandas Gandhi

AUSTRALIAN PRISONERS ABROAD SUBCOMMITTEE

There is slow progress indeed in the matters in which we are currently involved.

The plight of Gordon Vuong remains high on our agenda. Gordon was arrested in Cambodia when 16 years old for serious drug offences. Following a trial in which he received inadequate legal representation, he was convicted and sentenced to 13 years imprisonment - an extraordinary sentence for a juvenile in relatively harsh conditions. To the credit of the Australian Government, a Prisoner Transfer Treaty between Australia and Cambodia was entered into late last year but the administrative machinery necessary to give effect to the treaty is taking a long time to implement.

It is unlikely that Gordon will make it back to Australia before Christmas next year and Gordon would then be expected to serve the remainder of his sentence in an Australian jail. In the meantime, he awaits a date for his appeal against sentence to be heard, with no knowledge of when a date might be set. One would hope this occurs soon, especially given Gordon's juvenile status at the time of his arrest. And the very fact of an outstanding appeal renders Gordon ineligible for transfer – a most unsatisfactory state of affairs.

Gordon ‘celebrated’ his 19th birthday this month and Consular officials took him some pizza, a hamburger and a small cake. We would like to see him celebrate his 20th birthday on Australian soil.

Slow progress also for the Bali Nine, though we are not advocating haste for those on death row. This month it has been reported that the three Denpasar District Court judges hearing the appeals by Matthew Norman, Si Yi Chen and Tan Duc Thanh have rejected all of their arguments. However, Indonesia's Supreme Court is yet to hand down the final verdict. NSW CCL will continue to actively lobby the Federal Government to make the strongest representations to the Indonesian

Government to grant clemency against the death penalty in the event all appeals fail.

Given the international nature of the work of this subcommittee we are currently exploring links with our overseas counterparts. We have recently been contacted by the Senior Policy Officer at a UK-based charity, Fair Trials Abroad (soon to be re-launched as Fair Trials International), and are in the process of arranging a meeting early in 2008. It is obviously to our advantage to have close links with bodies operating in jurisdictions in which Australians might be imprisoned.

Kevin O'Rourke

'In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.'

Albert Einstein

CENSORSHIP SUBCOMMITTEE

1. Books by Sheikh Abdullah Azzam, Defence of the Muslim Lands and Join the Caravan (refused classification by the Classification Review Board, 10 July 2006)

NSWCCL's application to the Federal Court for review of the decisions to ban these books was dismissed on 14 June 2007 – see *NSW Council for Civil Liberties Inc v Classification Review Board (No. 2)* [2007] FCA 896.

An appeal has been filed, and it is expected to be heard in late November.

2. Film Viva Erotica (classified X18+ by the Classification Review Board, 7 December 2006)

The matter has been set down for hearing on 6 September 2007. NSWCCL's submissions are to be filed by 24 August 2007. NSWCCL will be submitting that the Board erred in assuming that the classification guidelines requiring non-violent erotica to be classified "X18+" represented community standards, and wrongly ignored a substantial body of evidence to the effect that most reasonable Australian adults believe that non-violent erotica should be available under the "R18+" classification.

3. Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007

The Senate Legal and Constitutional Affairs Committee issued its report on the Bill on 30 July 2007. Unfortunately, the NSWCCL submission was not adopted by the major parties. However, it was strongly endorsed by the Australian Democrats committee member, Senator Stott-Despoja. The Committee made one recommendation for amendment, which is to

remove the requirement that classification decisions specifically disregard the age or mental impairment of persons who may see, read or hear published material.

Some of the States (but not NSW) continued their opposition to the introduction of new classification guidelines. Accordingly, the Commonwealth Attorney General indicated the government would proceed with the legislation.

The Bill was passed by the House of Representatives on 15 August 2007, and introduced into the Senate on the same day. Consideration by the Senate will resume in the next session, which commences on 10 September 2007.

Stephen Blanks
Convenor

'I have no color prejudices nor caste prejudices nor creed prejudices. All I care to know is that a man is a human being, and that is enough for me; he can't be any worse.'

Mark Twain

SUBCOMMITTEE AGAINST THE DEATH PENALTY

It appears that the Australian government has authorised the use of Australian resources in at least three *post-charge* death penalty cases.

CCL recently received a letter from the new federal Justice Minister, Senator David Johnston. The letter relates to the AFP and the death penalty.

The first part of the letter demonstrates that either the Minister doesn't understand criminal investigatory procedure or the AFP officer who recently gave evidence before a Senate inquiry doesn't. Either way, the response shows that there is a desperate need for an independent inquiry into how the AFP deals with death penalty cases.

The second half of the letter is even more interesting! It relates to how Australia deals with requests from foreign governments that ask for assistance in death penalty cases. If the assistance or evidence-gathering requires the exercise of 'coercive' powers (e.g. the execution of a search warrant), then the federal Attorney-General must authorise the cooperation after obtaining a guarantee that no one will be executed.

However, if the assistance does not require the exercise of coercive powers (e.g. the provision of criminal intelligence or forensic support), then the Attorney-General can authorise cooperation without obtaining a guarantee that no one will be executed.

It appears that the federal government has authorised the AFP to assist in death penalty cases (*after* people have been charged) in Indonesia, Malaysia and Tonga.

It is not clear whether anyone has been executed in these cases.

Unfortunately, this means that the need for our subcommittee continues. We look forward to the day when CCL can, once again, disband its subcommittee against the death penalty.

You can read more in CCL's media release "Government authorises more death penalty cooperation" at: <http://www.nswccl.org.au/news>

On 26 May 2007, the subcommittee also organised another roundtable meeting of NGOs interested in the issue of the death penalty. Thanks to the generosity of law firm Mallesons Stephen Jaques, which donated the use of its audiovisual link facilities, NGOs in Melbourne, Sydney and Brisbane participated.

The Roundtable decided to prepare an open letter calling for clemency for members of the Bali Nine facing the death penalty. The Roundtable also decided to prepare for any future media campaign calling for clemency. On advice from some of the counsel for the Bali Nine, the Roundtable has agreed

not to commence a public campaign until all avenues of appeal have been exhausted in Indonesia. Watch this space!

FUNDRAISING AND MARKETING SUB-COMMITTEE

The subcommittee is currently working on the organisation of the Inaugural Ken Buckley/John Marsden Memorial Dinner which is to be held on 9 November 2007. David Marr, journalist, is the key note speaker and the evening will be chaired by Charles Firth of *The Chaser*. We encourage all members to come along and support the NSWCCCL by attending this worthwhile event.

In addition, subcommittee members are working with authors, Dorothy and Scott Campbell, who are finalising a history of the CCL. The book will be launched shortly and details will be provided to members about the launch and how copies can be purchased.

Rita Mallia

Convenor, Fundraising and Marketing Sub-Committee

History Articles

Extract from

The Liberating of Lady Chatterley and Other True Stories

A History of the NSWCCCL

by Scott & Dorothy Campbell

'You could hear the doors being opened one by one and the screaming and sounds of blows and yelling would start anew. That I found was the most horrifying part. All you could do was to wish they would hurry up and get to you so you could get it over and done with.'

A prisoner in Bathurst Gaol, 1970. (from: *Bathurst Battering* – October, 1970.)

The story behind this statement relates to the NSW prisons in 1970.

It is like taking a step back into the world of Dickens – a world of drama and cruelty, authority and resistance, inhumanity and hopelessness.

It is about governments apparently unable or unwilling to solve a seemingly intractable problem other than through control, physical violence and indifference to human welfare.

It is a tale of dark stone walls, of suffering and of political exploitation of human victims, a story involving rights and liberties so easily denied.

It is about Jim Staples, a Sydney barrister and member of the Council for Civil Liberties, admired for his ready defence of the underdog and the right to protest, who conducted a passionate and courageous campaign against the tyranny of government with a strong sense of basic justice and little regard for his own status in the legal profession.

Staples was ably supported by an enlightened judge, Justice Nagle, and a nucleus of committed lawyers seeking a more humane approach to government thinking on the treatment of the convicted. They lifted penal policies out from the ancient practices that had existed since the 18th century colonial gaols.

The Liberating of Lady Chatterley and Other True Stories, A History of the NSWCCCL, proudly published by the NSWCCCL with generous assistance from the Law Society of NSW, is expected to be launched in October 2007. Further Information about the book will be available shortly on the NSWCCCL website at www.nswccl.org.au

'Nous ne choisissons pas d'être libres: nous sommes condamnés à la liberté.'

Jean-Paul Sartre

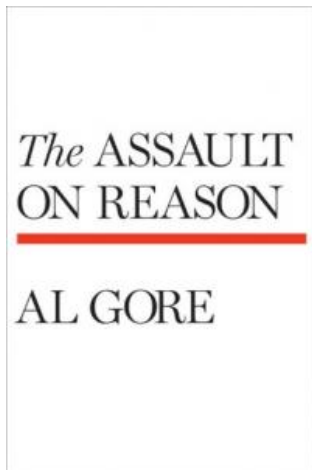
Book Reviews

The Assault on Reason

By Al Gore

Review by Ian Edwards

Australians will remember Al Gore as the Democratic Party candidate at the presidential election in 2000 who won the popular vote but lost the election to George Bush by five votes to four in the Supreme Court. It is, then, hardly surprising that this book is highly critical of the policies of Bush and the plutocratic oligarchy which now governs the USA. He quotes Plutarch's warning that the "imbalance between rich and poor is the oldest and most fatal ailment of all Republics".



Gore is very intelligent, well educated and literate and above indulging in merely personal abuse. He backs up every criticism of the shameful record of the Bush administration with evidence that is publicly available. Bush had decided that he would order the invasion of Iraq even before the terrorist attacks of September 11 gave him the excuse he was looking for. Even then he deliberately ignored the advice from the CIA that there was no connection between Sadaam Hussein and Al Qaeda and that there was no evidence that Iraq had weapons of mass destruction or any means of acquiring them.

He is familiar with the writings of the framers of the constitution such as Jefferson and Madison. He quotes the second president, John Adams, as referring to the government of the USA as "a government of laws, not of men". He refers to the connection between the invention of the printing press and the Enlightenment, which allowed a two-way exchange of ideas and political debate between all literate people, and contrasts it with the one way flow of propaganda, which has been made possible by radio and television.

He is especially scathing in his criticism of the abuse of human rights which has emerged from the war on terror, the denial of the protection of the Geneva convention to the prisoners of this war, their abuse at Abu Ghraib, and the outsourcing of some of these prisoners to countries where torture is practised, thus

allowing the CIA to deny responsibility. Mamdouh Habib has told us that he was taken to Egypt where he was tortured. Our government denies any complicity in it but who believes that?

Gore is an American, writing for Americans, but the relevance of his book for Australia is obvious. Our government was content to let David Hicks rot in Guantanamo Bay until opinion polls indicated that their policy was losing them votes. Their incarceration of Mohamed Haneef after he had been released on bail, and the collapse of the case against him, raises civil liberties issues in spite of the revelations which have been made since Haneef's return to India.

Judicial independence is an issue in both countries. I urge all civil libertarians to read this book.

The Assault on Reason

By Al Gore

Bloomsbury

Released June 2007

ISBN 9780747590972 rrp \$59.95 (hardback)

ISBN 97807477591597 rrp \$ 32.95 (paperback)

My Life: While Busy Making Other Plans

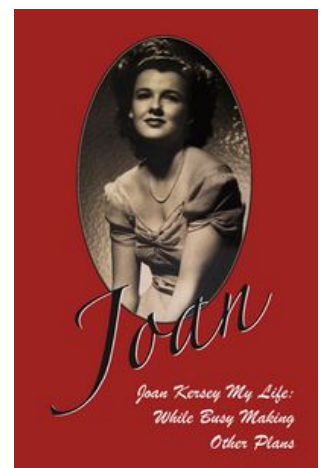
By Joan Kersey

Review by Rita Mallia

I met Joan Kersey through my involvement with the NSWCCCL. Joan always struck me as a passionate, intelligent and caring person. Her memoirs certainly reinforce my opinion of her. The book is written in a conversation style: I could almost hear Joan recounting her many stories as I read.

Joan has honestly laid out the story of not only her own life, but that of her family since early times in Australia. It would be easy in publishing one's memoirs to do so wearing "rose coloured glasses" and to skim over the challenging times. Joan has avoided this and has candidly related the good and the bad.

In telling her story, Joan also adeptly describes the major events of the time to place the personal experiences in their context. It's like getting an eye witness account of major events in Australia during the



20th Century, especially as Australia developed its own sense of identity separate to that of Britain.

There are a range of very interesting family members. I particularly enjoyed reading about her Grandmother Sophie Cameron Smith from whom Joan has no doubt inherited her tenacious character. Sophie, twice widowed, takes on the family saddlery business and a boarding house and then eventually moves, in 1906, to Queensland with her third husband and her two youngest children to live on a remote property only to have her husband go off to fight in WW1, leaving her to care for the property. Joan tells us that Sophie worked the land and mustered cattle until she was 80 years old. The book is filled with many similarly interesting characters.

The memoirs also provide an insight into how a person's life experiences, and that of their loved ones, shape them. Joan writes lovingly of a happy childhood growing up in Point Piper, but she also details some of the challenges her family faced. I was moved when she describes the death of both her father and her brother and some of her regrets. Joan describes herself as fiercely loyal to her family and very proud of her three children and her own achievements.

Joan is an inspiration. She attended University in the 1940's - not a common thing for a woman at that time. She writes openly of the difficulties in her marriage as well as the good times, cherishing the experience of living in places like Malta, Scotland and New Zealand but also detailing some of the hardship that went with the life. Joan also writes about her eventual decision to separate from her husband and the concerns for her

children. Very independent, Joan provided for herself and her family by having tenants in her home and going back and working as a social worker in the 1970's. Joan also took care of her mother.

Joan is a prolific writer having contributed considerably to the field of social work, gaining post graduate qualifications and writing about issues ranging from aging to drug related issues. Her social work allowed her to see many places in the world, and as well as providing her with stimulating work, her travels provide for some very funny anecdotes.

What is evident is that Joan is obviously passionate about social justice and the environment. This inspired her to have a go in politics, standing for the Australia Party and the Democrats, and it sounds like she learnt a lot from that experience!

Joan developed into a very progressive person ever concerned about our diminishing civil liberties. Joan just does not just talk about it, but does something about it. She has tirelessly volunteered to make the NSWCCCL a successful organisation. It is obvious that the NSWCCCL is dear to her.

I enjoyed this book. It is not often we get the opportunity to see into the lives and histories of the people around us. These memoirs are also refreshing in that, nearing 80, Joan clearly continues to have a zest for life and a view to the future. She writes "*I have decided to make every day, every hour, every minute count*", and I believe her!

My Life: While Busy Making Other Plans
By Joan Kersey, 475pp.
Watsons Bay: Books & Writers, 2006

Message from the Editor

And so another year passes in the life of NSWCCCL. To everyone that has actively contributed to the organisation's efforts to prevent human rights abuse I offer my heartfelt gratitude, congratulations and awe. NSWCCCL boasts not only some seriously committed rights campaigners but some seriously bright and credentialled ones. It is an honour serving with them and I heartily recommend the experience to anyone who knows we can never afford to take citizens' rights for granted.

Speaking of contributing, if you would like to participate in the organisation's activities the AGM is the ideal opportunity to put your hand up. You can run for a seat on the Committee and Executive Committee, or join any of the numerous sub-committees. Otherwise even turning up and voting for representatives to serve on the Committee is a valuable contribution. Please do come along.

There are also two other NSWCCCL events worth noting in this edition of the journal.

The first is the publication of Scott and Dorothy's Campbell's book *The Liberating of Lady Chatterley's*

Lover and Other True Stories, A History of the NSWCCCL. Many of you will know Scott and Dorothy as long-term members of the NSWCCCL and their book has been eagerly anticipated since extracts from it started appearing in the pages of this journal.

A launch event for the book has been planned for 26 September this year at the Law Society of NSW. Members interested in attending the launch or purchasing the book are asked to look for information on the NSWCCCL website: www.nswccl.org.au. Alternatively please phone the NSWCCCL office.

Finally, the marketing and fundraising committee is pleased to confirm that outspoken civil liberties journalist David Marr is confirmed for the inaugural Ken Buckley/John Marsden Memorial Fundraising Dinner on Friday 9 November. You'll find more details and a booking form in the attached flyer. David Marr is a highly entertaining and engaging speaker and well worth the entry price.

Matcham Caine

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