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HISTORY OF THE NSW COUNCIL FOR CIVIL LIBERTIES 1963-2005

FOREWORD

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The New South Wales Council for Civil Liberties (NSWCCL) is a unique organisation. Founded in 1963 in Sydney, it followed in the tradition of other such bodies, established earlier in Britain and Australia. It has had failures and it has made mistakes. But thanks to the talent, courage and balance exhibited the most part by its participants for nearly fifty years, it has made "a real difference in the cause of justice and freedom for all". This was the assessment of Ken Buckley, one of its leading protagonists. It is an assessment with which I agree.

I used to jest that it was very dangerous for a lawyer to get involved with the NSWCCL. So many of those who did were appointed to judicial office. Just look at the list. Bob Hope QC, the second President, went to the State Supreme Court and later the Court of Appeal. Bob StJohn QC, the third President (like the earlier progenitor Jack Sweeney QC) went to the Federal Court. Caroline Simpson QC, fourth President, was one of the first women appointed to the State Supreme Court. Malcolm Ramage QC, to the

* Justice of the High Court of Australia.

National Court of Papua-Guinea. Ian Dodd to the District Court. Kep Enderby QC to the State Supreme Court. Trevor Martin QC to the District Court. Jim Staples to the Australian Conciliation and Arbitration Commission. Paul Stein QC to the Land and Environment Court and ultimately the Court of Appeal. My brother David Kirby QC to the State Supreme Court. There were many others, fresh in memory, who played a leading part in the CCL in those early days. Marcel Pile QC to the District Court. Gordon Samuels to the Court of Appeal and later State Governor. Salvatore Sudano to the District Court. Jim McClelland to the Land and Environment Court. Jeffrey Miles to Chief Justice of the Australian Capital Territory. Maurice Byers QC to Solicitor-General of the Commonwealth, where he was knighted. John Marsden to the Police Board of New South Wales. And so the list goes on. And I was appointed to just about all of the named courts, and eventually to the High Court of Australia.

Not all of the lawyers who involved themselves in the mission of the NSWCCCL got their "trotters in the trough", to use the somewhat unkind words of Sir John Mortimer's character Horace Rumpole. Not all wanted such a life. But it was no bad thing for the cause of the liberty in Australia that the judicial appointments of New South Wales lawyers came so frequently from those who had indicated their sympathy for the principle of the real accountability of public power for which the CCL repeatedly stood. Law tends to be a conservative profession. There is a constant need to leaven the

"capital C conservatives" on the Bench with those who have liberty written on their hearts.

Of course, the CCL was never just a club of budding lawyers. Few in those early days could have expected that they would end up amongst the legal establishment of which they had been so critical. Many were not lawyers at all. The first President was Alan Stout, a Professor of Moral Philosophy in the University of Sydney. Like Socrates, of whom he taught, he was constantly questioning things long established. He had a peerless reputation. Ken Buckley and Ted Wheelwright were economists. Dick Klugman and John Hirschman were medical doctors. There were accountants, social workers, academics of all kinds and ordinary citizens who became involved because of some perceived wrong which they found intolerable. Or just because they valued civil liberties for all.

One of the best things about the CCL, as I remember it, was that it boasted a good sprinkling of people from differing political philosophies. Peter Baume, a Senator for the Liberal Party, warned, in words quoted in this book, of the danger of aligning the CCL to any one political party. Correctly, he made the point that within all parties there are champions of civil liberties. Sometimes "radical Tories" can have a deep commitment to individualism and a healthy suspicion of official autocracy. Thus the CCL has generally boasted of a mixture of political alignments, proving once again that party

loyalties can sometimes be an obstacle to the achievement of progress.

As this book reveals, the NSWCCCL has always been made up of constitutional monarchists and republicans; of theorists and highly practical people; of compromisers and "sea-green incorruptibles"; of people who were, or shortly would be, members of the established professions and others who were not at all offended to be called "riff-raff" and even "ratbags". In the glorious mixture of these differing perspectives of life, an alchemy was mixed that has generally served well the interests of civil liberties since 1963.

This book is timely. It comes soon after the deaths, within weeks of each other, of two of the leading spirits of the CCL, Ken Buckley and John Marsden. Each of them played a huge part in the organisation. Each was larger than life. Ken Buckley was one of the founders in 1963 and the book describes the incident of official arrogance that propelled him, with others, to create this "organisation of trouble-makers". Truly, from the start, he evidenced, in his commitment to the CCL, the spirit that was later to find voice in the words of Lionel Murphy in the High Court in *Neal v The Queen* pointing out that every citizen "has the right to be an agitator". Lionel Murphy himself was there at the beginning of the CCL and now his son, Cameron Murphy, is its President. Neville Wran QC was also one of the founders. At the twentieth anniversary of Lionel Murphy's death, in October 2006, Neville Wran

gave an address in Canberra, of great contemporary relevance, pointing to the current challenges that liberty faces in Australia in the aftermath of the events of 11 September 2001.

Like Ken Buckley, John Marsden could sometimes be very difficult. Neither was a great respecter of persons. But the achievements made under the leadership of these two men and of Berenice Buckley, Mary McNisch, Dr Joan Childs and countless others have left their mark in numerous fields of law, policy and public administration. Many changes for the better were achieved as a result of well-targeted court cases; demands for Royal Commissions; strategic submissions to public inquiries; imaginative use of the media; patient negotiation with police and other officials; endless political lobbying; educational campaigns; publication of books on the rights of prisoners, refugees and all citizens. Letter writing strategies. Academic interventions. Involvement of sympathetic politicians from all parties.

Those who have directed the CCL these past forty-five years have learned two very important lessons. First, that civil liberties are interesting and often newsworthy. From our long history of constitutionalism, Australians are commonly sympathetic. They often feel a healthy scepticism towards authority. But secondly they have discovered that the major victories are not generally won by glamorous measures. There are countless tedious committee

meetings and the hard yards of court cases, lengthy submissions, policy documents and other interventions.

I welcome this book because the achievements of the NSWCCCL are an intrinsic part of the social history of Australia during the past half century. To the extent that progress has been made in the treatment of Australian Aboriginals, police suspects, prisoners, asylum seekers, children, women and gays in Australia, and of censorship over the past fifty years, credit must be given to the NSW CCL and the many fine actors who have played a part in its dramas.

But for one who was there, virtually at the creation, a nagging question remains to be answered. Back in 1963, no one at all in the CCL spoke of gay rights. Relatively few raised their voices for Aboriginals and women's equality. Although we have made progress on these and other issues, what are the subjects to which we have been blind? What are the topics that our successors, after a further half century, will look back and say: How could they possibly have failed to see the libertarian implications of this or that? Our treatment of drugs of addiction may be one such subject. Our indifference as a culture, even hostility, to economic, social and cultural rights. The current way we are tackling the undoubted dangers of modern terrorism, may be another. Our resignation over the perils of nuclear proliferation that could wipe us all out. The international threats presented by religious fundamentalism may join

the list. Our lack of urgency concerning the needs of people in developing countries living with HIV and AIDS. The dangers to liberty in our region. The lack of human rights mechanisms in Asia and the Pacific. All of these are subjects that will engage civil libertarians in the future.

The book of liberty is never closed. But in Australia, the NSW CCL has helped to write some very important chapters. This book records some of the achievements. I have a feeling that the best years of the NSW CCL lie ahead.

Canberra, 21 February 2007

Michael Kirby