

Report on activities by CLA President Dr Kristine Klugman and CEO Bill Rowlings, 31 March to 15 April 2013

The visit was to encourage a more active CLA presence in Tasmania. The foundations were achieved, to be carried forward by CLA's newly-appointed Director – Tasmania, the current media spokesperson Richard Griggs. A 30-year-old lawyer and University of Tasmania graduate, he now works on campus as a corporate lawyer. Mr Griggs recently re-located back to Hobart with partner, Kate Taylor, after they spent some years as political advisers in Canberra, working to different office-holders.

Dr Klugman and Mr Rowlings met with most of the current CLA members, and signed up several more. We were able to help strengthen the small network of members as they met and grew to know each other.

Having made detailed appointments ahead of time, with briefing papers and an agenda, we met with leaders of the Legislative Assembly for discussion of:

- Voluntary Assisted Dying
- Same-sex marriage
- Bill of rights
- Right to Appeal ('model' South Australian legislation, passed in March 2013)
- Drug law reform
- Citizen Initiated Referendums
- Privacy in IT world, relative to the NBN
- Protection of whistleblowers
- Roll-back of terror laws

Legislation is under way on the first two issues as initiatives of the Labor/Green coalition government (as also with abortion law). The Tasmanian bill of rights has stalled. Other issues on the list are also in the 'not now' basket, such as roll-back of terror laws, whistleblowers and drug law reform. However, just raising them as issues which need legislative attention is useful, and signals that Civil Liberties Australia is a public presence in Tasmania closely and actively monitoring the progressiveness of parliament, which has been excellent in this term. There may be the need for more push from CLA in the next Parliament, from 2014.

Our significant achievement was to secure a positive undertaking in person from the Premier (Lara Giddings, Labor) and Greens leader Nick McKim towards introducing the Right to Appeal laws recently passed in South Australia. The Liberal Opposition Police spokesperson, Elise Archer, undertook to seriously consider the same legislation. Tasmanian Director, Mr Griggs, and CLA member, Barbara Etter, also attended one or more of these meetings with Dr Klugman and Mr Rowlings.

There was a breakthrough following discussions with concerned Hobart Community Legal Service people (Jane Hutchison, Jason White and Henry Pill) and the Anti-Discrimination Commissioner, Robin Banks, where our round of meetings brokered a potential compromise to new anti-discrimination legislation. The CLA idea is to introduce to the Bill a defence based on artistic, academic or journalistic merit. Legislation is before the Upper House (Legislative Council), and CLA will write to all 15 Councillors and ask them to add the defence clause to the new section 17 of the Bill, mirroring a clause already in another section.

We also floated the idea widely that the Tasmanian Parliament should introduce a standing Scrutiny of Bill Committee, possibly jointly between the Houses, to allow more public consultation and transparency. Such a project by the local CLA group could deliver a state-wide benefit in terms of increased consultation.

CLA also met with senior people in NGOs and agencies, including CLA member Carol Hughes, as well as leading judicial figures and political activists. The meetings went well, and CLA appears to be well-regarded for professionalism, brevity and relevance. This is a good starting point for a more active local group, which will benefit from the guidance of Mr Griggs, Ms Etter and former-Senator, national local government expert and Tasmanian disabilities adviser, Margaret Reynolds.

After a discussion with ABC radio journalist Leon Compton over lunch, Dr Klugman and Mr Rowlings were guests on his morning ABC program which goes Tasmania-wide, where we covered what it means to be a libertarian and civil liberties supporter, current legislation and proposed activities. We had an informative meeting with Lindsay Tuffin, editor of the online news-journal *Tasmanian Times*, with whom we will swap news items. And, with CLA's Tasmanian Director/media spokesperson, Mr Griggs, we met with noted media performer, barrister Greg Barns. As well as being a CLA member, he is a former president of the Australian Lawyers Alliance, and is currently campaign director for Julian Assange's 2013 Senate election bid.

In a separate stream during the visit, Dr Klugman and Mr Rowlings conducted research on earlier local civil liberties groups. Brief records are held at the State Library of Tasmania (where we were helped by Tessa Storr, daughter of a former Tasmanian Council for Civil Liberties leader). The ultimate product will be a history of civil liberties in Australia. We also met a range of people who told us how earlier local liberties and lawyer groups operated, such as former local Supreme Court judge (and now judge in Samoa) Pierre Slicer, and John Charles White, a civil liberties stalwart still providing pro bono help, who served in both the Upper and Lower Houses in Tasmania. Former Senator (now Father) Michael Tate and former MHR (now Federal Court judge) Duncan Kerr also delved into their memories, as did former Tasmanian Solicitor-General and now head of the Legal Profession Board of Tasmania, Bill Bale.

We met with Jim and Linda Collier in Launceston, Geraldine Allan in nearby Perth, and Launceston local, Clr Andrew Connor in Hobart. We also met with activist Isla MacGregor and Quaker Jennie Herera in Hobart.

We gained valuable insight into the local political scene by attending a Politics in the Pub gathering, where three candidates for the upcoming election for the Tasmanian Upper House seat of Nelson gave short speeches and answered questions from an audience of about 80 people. The forestry issue dominated audience/speaker interchanges. We attended a gathering to meet keynote speaker Adam Bandt, Greens MHR for Melbourne, who was appearing in support of Anna Reynolds, Greens candidate for the Tasmanian federal lower house seat of Denison. This seat will be one of the most closely-watched contests in Australia on 14 September, as people and parties battle to unseat Independent Andrew Wilkie. We were unable to gain an appointment with Mr Wilkie while in Hobart, but plan to meet him again in Canberra.



On the last morning, a group of CLA members met for a pleasant yum cha lunch in Hobart, and decided to meet occasionally face-to-face this way in future, while regular communication will be done electronically.

Photo l to r: Griggs, Taylor, Bowles, Klugman, Etter, Reynolds (Margaret and Henry)

Yacht No-Body case:

We also undertook research into a case where CLA believes there has been a serious miscarriage of justice. On circumstantial evidence, over protestations of innocence, Sue Neill-Fraser was convicted in October 2010 of murdering her husband of 18 years, Bob Chappell, on Australia Day 2009. He disappeared from their newly-bought 16m (53ft) yacht, moored near the Sydney-Hobart race finish line, while staying on board alone overnight to work on electrics. His body has not been found. She has been in jail since August 2009 when refused bail on arrest, and is serving 23 years in Risdon Prison, having exhausted appeals.

In many ways, the Yacht No-Body case exemplifies difficulties of the compact Tasmanian justice system. For example, the judge (since promoted to Chief Justice), Director of Public Prosecutions and defence barrister in the case know each other very well, from both legal and social circles over many years. In a small

community¹, 'everyone knows everyone' and 'outsiders' from 'the Mainland' (meaning the rest of Australia) are frequently regarded with suspicion, and often do not last long in high-profile roles for which they are 'imported', as it is described. In Tasmania, if there were to be a conflict of interest, it may not be readily apparent to people involved, who always work closely together, as there is not option.

Justice, though, is best served by dispassion. And dispassion is best delivered from a 'distance'.

CLA member Ms Etter is a former senior police officer and Integrity Commission CEO who is now a lawyer acting pro bono on the case. With here, we met for more than two hours at the prison with Neill-Fraser. To many people, there is much conflicting evidence, many unexplained circumstances, controversial courtroom witnesses and behaviours and a general air of doubt and uncertainty permeating the trial and conviction by a jury of seven women and five men. The suggestion of a major miscarriage of justice is widespread among those who sat through the entire trial (including by a personal friend of the dead man, by a former parole/probation worker, and by a former magistrate) and among legal and lay observers, both local and from outside the State.

We also visited the yacht *Four Winds* which is being renovated by a new owner, after being half-sunk on the night of the disappearance because, mysteriously, a plastic pipe had been cut and a seacock opened. "The impossibility of events taking place as portrayed by the prosecution during the trial appears obvious to even a non-yachting person going on board," Dr Klugman said.

A 60-Minutes TV program recently pointed to discrepancies in the case. A feature documentary by Eve Ash is in production, entitled *Shadow of Doubt*, which will screen on TV about August 2013 and later in cinemas. Neill-Fraser is writing a book "though a wet keyboard makes it hard to type," she told our group in explaining how recalling life with her husband, and their unfulfilled plans to sail their yacht, brought on tears as she tried to write the book behind bars. Ms Etter and others also have books under way.

As Neill-Fraser has exhausted all present avenues of appeal, perhaps the only hope for her lies in the introduction of new legislation giving the 'Right to Appeal', in a hearing before a Supreme Court judge, if new and compelling evidence can be produced. That is precisely the legislation CLA appears to have been successful in promoting to Tasmanian political leaders, for enactment in 2013 or 2014, we hope.

Before the visit to Risdon prison, we met with Neill-Fraser's son-in-law and daughter (CLA members Mark and Sarah Bowles) to get a better understanding of this most complex of cases. We subsequently met with Lynn and Rick Giddings, who have taken a keen interest in the case and are supporters of Neill-Fraser. Mrs Giddings sat through every day of the trial and has written excellent summaries of sections of the evidence which appear to throw up serious anomalies, if not errors.

CLA will be supportive of efforts led by people locally in the Yacht No-Body case, without taking a prime position, but will provide help from our ACT base with activities in and to federal MPs in Canberra. If there is a miscarriage in one state, it tarnishes Australian justice nationally.

Among other matters for possible follow-up by the Tasmanian CLA group:

Bail: In Tasmania (as in some other Australian jurisdictions, but not apparently in South Africa²), it seems there's a presumption against bail in murder cases. Bail law is not written, nor intended, to work that way. Bail laws are meant to deal fairly with people and their situation. The presumption of innocence should apply, unless there is good reason otherwise: that is the black-letter law. However, it has become unexceptional and the norm that a person charged with murder will not receive bail in Tasmania: no-one has for 30 years in the memory of senior legal figures.

¹ Greater Hobart's population is about 216,000. Launceston about 108,000: for comparison, Canberra's is about 368,00.

² ...as the case of Oscar Pistorius demonstrates: he is charged with murder and has admitted shooting his girlfriend, but is free on bail at time of writing.

In the Yacht No-Body case, one leading former judicial officer told CLA: “I can see no legitimate reason for her (Sue Neill Fraser) not to have received bail...but I stress, I haven’t seen the submissions. I would say that, going on the past 20-30 years, almost without exception, people have not been granted bail if charged with murder. That shouldn’t be the norm. Bail is part of the right that attaches to the presumption of innocence.”

Overturing convictions: Alone of the states and territories in Australia, Tasmania has not had any major conviction overturned. A leading judicial figure said: “None that come to mind, maybe three applications for pardons, none succeeded, over the past 20 years. I can’t recall such a case in the past 20 years.” (like the interstate examples we gave: Chamberlain NT, Stafford Qld, Wood NSW, Jama Vic, Mallard WA and soon, possibly, Keogh SA and Eastman ACT). Either the Tasmanian judicial system is perfect, or the state’s self-correcting justice processes are out of kilter with the rest of the nation, where major errors have been found in legal procedures, police behaviour, forensic examination and “expert” testimony in many cases.

Police-Crime-Justice Commission? No major inquiry has been held in Tasmania into the state’s police force or justice system (there was an inquiry into a particular shooting 20 years ago). By comparison with other states, it seems that the time is near when police and legal/justice practices and procedures should be more closely examined. The Yacht No-Body case may provide current examples of questionable practices.

Fly-by-days: A procession of people has been sacked or left positions early over the past decade or so, flying off the island by day. Some have aimed to introduce change and modernisation, to their personal detriment: some haven’t fitted in. The phenomenon would benefit from closer academic analysis.

Scrutiny of Bills committee in the Tasmanian Parliament: While major forestry legislation is often subjected to exhaustive consultation for years, other proposed laws which would alter and sometimes heavily proscribe liberties and freedoms receive relatively scant public attention. CLA believes there should be a regular process for public review, probably by a permanent Scrutiny of Bills or Human Rights committee of Parliament which automatically takes submissions and holds public hearings.

The social and political environment: It has been observed that: “The reality is that Tasmania has bred a dominant social coalition that blocks most proposals to improve.” (Jonathan West, ‘Obstacles to Progress’ in *Tasmania The Tipping Point?* ed Julianne Schultz and Natasha Cica, Griffith Uni Press, 2013, p51). Writers in the *Tipping Point* describe a society that is insular, parochial, and distrusting of outsiders. There appears to be a pattern of sizable portions of the “establishment” (legal, bureaucratic, police, political) rejecting change, new ideas and outsiders. If the forestry industry debate – which has dominated political and social discourse in Tasmania to the exclusion of other important societal issues for decades – can be bedded down, there are important systemic questions to be discussed, addressed and decided over the next decade. This potential lively backdrop provides fertile ground for positive change, CLA believes (*as Tasmanian CLA Director, Richard Griggs, comments below*).

ENDS REPORT

COMMENT: The critiques noted under ‘social and political environment’ above provide as much opportunity as problems for CLA, Tasmanian Director and media spokesperson, Richard Griggs, said on reading a draft of this report. He stressed optimism in Tasmania’s unique ability to make drastic leaps forward and a track record of going from dragging the chain to leading the pack. *“In my lifetime, Tasmanian has transformed from the last State to decriminalise homosexuality in the 1990s to the first to pass gay marriage laws through a chamber of Parliament in 2012. Tasmania can, if thoughtful and brave, be a leader in protecting individual freedoms, which is why CLA’s voice needs to be heard.”* However, Tasmania could, if hasty and lazy, trample individual rights in rushing not to be ‘left behind’ by the other States, he said.

ENDS COMMENT