

Senators push for moratorium on disclosing your genes info to insurers

A cross-party group – Labor and Greens – is trying to get the federal parliament to bring in a national moratorium on using predictive genetic test results in life insurance policies.

The move has ramifications for everyone who has any form of life or medical insurance.

If you have a genetic test, you may be obliged to report the results to your insurer. The insurer could then amend the policy against your originally-purchased entitlements, both in terms of dollar amount and diseases/accidents covered, because of what is revealed by your genes.

Labor Senators (photos) Deborah O'Neill and Chris Ketter, along with Greens leader Senator Richard Di Natale, moved the motion in the Senate last month.

The current self-regulation of using genetic data by the life insurance industry is conflicted, they say.

There's a need for safeguarding against the improper use of genetic information, the notice of motion said.

The motion criticises the government for not responding (as at late September) to a unanimous report by the Parliamentary Joint Committee on Corporations and Financial Services on 27 March 2018.



The government is supposed to respond within three months, or by the end of June.

The motion proposed that the current “duty to disclose” health and medical information to an insurer should not apply because the genetic data from ‘home’ tests is not accurate or reliable enough.

The three Senators say that there should be a moratorium on the requirement to disclose data, as has been introduced in the UK.

– Notice of Motion to the Senate, lodged 180917

ABC: Ups and downs in being Australia's punching bag and conscience

The sacking of ABC managing director Michelle Guthrie provides a classic example of the main responsibility of the senior executive of all major public corporations, which is public relations.

Basically, she was dismissed for not being adept at lobbying and PRing the government for more money.

For contrast, consider how the Director of the Australian War Memorial, Brendan Nelson, has smooched and cajoled his way into record funding for another ‘national institution’ over the past five years, even proposing a windfall, one-off \$500m gift from government recently to the already best-supported historical institution in the nation.

The AWM is a much easier gig to sell than the ABC, and Defence/Veterans Affairs have a new industry in manufacturing copious extra ‘named’ days to celebrate old battles as well as creating new Victoria Cross winners from historic records to promote publicly.

But the concept of a former politician-lobbyist is an interesting thought to head the ABC, though there are potential bias dangers of course. Ironically, the best qualified person for the role as managing director might be recently ex-PM Malcolm Turnbull.

Perhaps the salaries of heads of major public bodies should be much reduced, to virtually zero, with incentive payments according to how much extra Budget funding they produce (including negative payment if budgets go backwards, which would encourage a lot more movement of unsuccessful people).

The same system could easily apply to banks, big insurance companies and institutions like universities, cutting exorbitant salaries unless they were truly earned.

As Guthrie fell, so *Four Corners* showed how the ABC is indispensable as the nation's conscience.

Yet again, the program sparked a Royal Commission, this time on aged care.

There's something entirely refreshing about the fact that a smallish Australian TV program once a week, extremely poorly staffed and funded by international comparisons, can have such a major and regular impact on the conscience of the nation.

Politicians seem unable to see what needs doing in Australia until it is presented to them on *Four Corners* in digestible chunks, with real people speaking to moving pictures.

Reverting to who is paid how much, and why, it would seem the *Four Corners* people should receive bonuses of 50% of their basic annual pay whenever their work produces a Royal Commission.

Some of them might get rich, quickly. There's a strong argument that funding for the *Four Corners* staff bonuses should be taken by tithes from the salaries of Ministers and Members of Parliament, whose irresponsible inaction the program regularly exposes.

Minister suddenly sees the (dark) light coming from aged care centres

More than 3000 submissions poured in to the office of the Minister for Aged Care, Ken Wyatt...just on what the Terms of Reference (ToR) for the Royal Commission into the Aged Care Sector should be.

Minister Wyatt (photo) was against holding a Royal Commission just two weeks before it was announced; now he's an RC convert.

The ToR submissions came online from community groups, residents, their families, aged care providers and other stakeholders and are "a measure of Australians' interest in the Royal Commission," Minister Wyatt said. <http://tinyurl.com/y9eseq3d>

Prime Minister Scott Morrison warned the nation to brace for "bruising" information about the mistreatment suffered by elderly Australians in an industry worth about \$20 billion a year.

Some 1.3 million seniors are in various types of aged care service involving the Commonwealth government. About 240,000 live in aged care facilities, and the latest figures show about 84,000 people rely on care packages to stay at home. Others use home support services like having meals delivered.



Political promise still unrealised

It is nearly 60 years since this promise – still unfulfilled – was made. We still don't have good dental care for all children.

National dental treatment for children

Our final plan for help to Australian families is the proposal to organise an Australia-wide national system of free dental treatment for children under 16. The care and upkeep of children's teeth is of tremendous importance both to them and to national health. The National Plan of Dental Treatment for Children will be worked out in co-operation with the State Governments, and the Australian Dental Association.

– Herbert ('Doc') Evatt (photo), leader, Australian Labor Party, delivered at Sydney NSW, 22 November 1958

<http://electionspeeches.moadoph.gov.au/speeches/1958-herbert-evatt>



Troops call-out law about to haunt Australians

"This is a law against the people, not a law for the people."

That's one of the summations by Civil Liberties Australia of the proposed Defence 'Call out the troops' law which is about to be rubber-stamped by the federal parliament's Liberal/National and Labor majority.

The bill – Defence Amendment (Call out of the Australian Defence Force) Bill 2018 – is due back before the House of Representatives this month after a Senate committee said the government should define what "specified circumstances" mean.

This was the only fault the Coalition-dominated committee could find, despite a litany of criticisms made to them about the proposed law by Civil Liberties Australia (CLA), the Law Council of Australia (LCA), Australian Lawyers for Human Rights (ALHR), university professors, other senior academics, military experts and the parliament's own Human Rights Committee.

The Australian Greens are so concerned about the proposed law that the political party presented a dissenting report which recommended making the changes to the bill that the CLA, the ALHR, and the LCA recommended. The Greens believe the bill should not be passed by the parliament in its current form.

Wimpish Senate Scrutiny Committee gives coded warning only

The Senate's Scrutiny of Bills Committee is less than impressed with the Commonwealth government's ultimate power grab in re-defining and expanding national troop call out powers.

But, commenting on the Defence Amendment (Call out of the Australian Defence Force) Bill 2018, the committee abrogates its responsibility, and merely damns the bill in its archaic, politesse language:

- **"Trespass on personal rights and liberties:** the committee leaves to the Senate the appropriateness of leaving significant terms undefined, lowering the threshold for matters a minister be satisfied of before determining a call out order should be made, and allowing an order to remain in effect for 20 days before requiring a positive decision to revoke or continue it.
- **"Use of force:** the committee leaves to the Senate the appropriateness of allowing ADF members operating under a call out order to use force, including deadly force.
- **"Immunity from liability:** the committee leaves to the Senate the appropriateness of limiting the legal liability of ADF members who exceed their legal authority," is what the Scrutiny Committee says.

This bill, which is a shocker, should not pass.

But the Coalition is relentless over anything to do with centralising "security" powers, and Labor is intestinally in knots, having been wedged into a position where it believes it can't be seen to be "soft on terror".

The bill gives huge powers to the central government to forcefully override citizens and states, CLA says. CLA's CEO Bill Rowlings said: "Today's reality is that no parliament which had a majority of statesmen and women would allow this bill through. Unfortunately, parliament now is nearly devoid of people of principle: the principal aim of most MPs is the main chance for their own re-election and personal advancement."

– from *Scrutiny News*, 13 Sept 2018

Committee fails to see bill in context

The Scrutiny Committee fails the parliament and the people again in its wishy-washy comments on an intelligence bill which is before the parliament:

"Office of National Intelligence Bill 2018: the committee leaves to the Senate the appropriateness of a reversal of the burden of proof and allowing privacy rules to be set out in non-legislative rules not subject to disallowance or sunseting."

This bill is proposed while a major review into the entire national intelligence system is under way. Common sense, CLA says, would see this bill postponed until the review is completed...and that is what the Scrutiny of Bills Committee should have said.

The committee is also "seeking advice" – more code words – on how the Australian Federal Police Regulations 2018 would give broad discretionary power to dispose of property to the AFP, and what rights owners of the property have or don't have when the police have unilaterally sold the owners' goods.

Nothing should engage a Coalition government more than personal property rights, but again individual rights continue to be lost to centralised, uniformed power. – drawn from *Scrutiny News*, 13 Sept 2018.

Police powers further ramped up

Travellers, their friends and relatives could face fines of up to \$4200 or imprisonment if they do not comply with new police powers to demand IDs be produced at Australian airports.

Police will also be empowered to eject people from airports, and to ban them from flights.

Under legislation introduced to Parliament by the Morrison government, police will be able to carry out identity checks when they suspect people are involved in criminal activity that poses a threat to the public. The new law would continue the dangerous trend that mere suspicion is becoming sufficient to be "punished" as though guilt had been established. Police are being turned into mini-magistrates, able to penalise people based on the police's thought processes only.

Police will be able to issue a "move on" directive if someone refuses to cooperate, or if the police believe it will disrupt an imminent security threat. The person can also be banned from entering airports for 24 hours. They could also be imprisoned for up to 12 months if they provide misleading information or for up to two years if they are deemed to be obstructing a Commonwealth official.

If police "deem" you are obstructing, you have to prove you were not, thus reversing the usual way the burden of proof operates.

Greens Senator Nick McKim warned that the Home Affairs Minister, currently Peter Dutton, could not be trusted with law enforcement agencies in his ministry and called on Labor to oppose the legislation. "There is no justification for this 'papers please' policy," he said. "This adds to the over 200 legislative changes over the last 20 years which remove fundamental rights and freedoms from Australian people." The proposed laws are in addition to a \$300 million expansion of security at Australian airports, including the introduction of advanced X-ray and body scanning machines. <http://tinyurl.com/y7o4gxae>

15 Indigenous people die in custody each year

A total of 147 Indigenous people – some children – have died in custody in the past 10 years.

The figures, revealed by *The Guardian*, are a national shame.

Aboriginal groups have demanded the government immediately allow independent monitoring of all detention centres, with Indigenous prisoners as the priority.

Just 2.8% of the Australian population identifies as Indigenous: however, Indigenous people make up 27% of the prison population, 22% of deaths in prison custody and 19% of deaths in police custody.

A total of 407 Indigenous people have died since the end of a royal commission that outlined ways to prevent Indigenous deaths in custody almost 30 years ago, the report said. <https://tinyurl.com/y9n869xk>

Australia's Indigenous people are officially the most incarcerated on the planet', says the ACT's Deputy Director of Public Prosecutions, Shane Drumgold. Read his article at: <https://www.cla.asn.au/>

Trade deal gets the nod, against party principles

The Labor majority report of the Senate Standing Committee on the trade deal, TPP-11, approved the treaty for signing...but strongly criticised many aspects of it and recommended changes by a future government, AFTINET's Dr Patricia Ranald (photo) said last month.



"This was not unexpected, given the decision of the ALP caucus majority last month to support the TPP-11, despite its inconsistency with ALP policy. In practice it would be difficult for a future Labor government, having endorsed the implementation of the deal in opposition, to negotiate such changes with the other 10 governments in the TPP-11 after implementation," the fair trade network's convenor said.

"We welcome Centre Alliance committee member Senator Rex Patrick's more consistent recommendation that, given its flaws, TPP-11 should not be implemented until after such changes are negotiated, and note that the Greens and other cross-benchers also oppose its implementation."

Dr Ranald noted that the Senate report identifies the following serious flaws in TransPacific Partnership-11:

- The inclusion in the TPP-11 of ISDS* provisions which permit foreign corporations to bypass Australian courts and to sue the government in international tribunals over changes to domestic laws;
- removing labour market testing for temporary contractual service providers covering over 450 trades and professions from TPP-11 countries which would mean an increase in temporary migrant workers vulnerable to exploitation without first testing if local workers were available;
- insufficient information to stakeholders and parliament before the TPP-11 was signed; and
- no independent analysis of the costs and benefits of the TPP-11. A number of private reports indicate the deal will be of precious little benefit to Australia, at great cost to urban populations. – AFTINET media release 18 Sept 2018

* Investor State Dispute Settlement: a procedure where companies can bypass the law of Australia, and ignore High Court decisions by seeking a different arbitrated outcome.

Commonwealth is anything but a model

Don't hold your breath for the Commonwealth being made accountable for monitoring and enforcing its obligation to act as a model litigant, as the High Court of Australia held was mandatory back in 1912.

The Senate committee system has become so unworkable that a simple inquiry – that it was given six months to complete – is set to take 13 months, with no firm commitment it will meet its new deadline.

In the 1912 case of *Melbourne Steamship Co Ltd v Morehead*, Australia's first Chief Justice, Sir Samuel Griffith, described the obligation of the Crown (or Commonwealth) in litigation as:

"[T]he old-fashioned, traditional and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary."

This 106-year-old standard – or a very long number of years older than that, if Griffith CJ in 1912 is believed – applies because of the Crown's position as "the source and fountain of justice".

But the government does nothing to conduct annual surveys of whether its departments and agencies are doing the right thing legally. It takes virtually no enforcement action should a breach inadvertently come to its attention.

Government departments and agencies can flaunt their legal responsibilities, and they do. With the deepest of pockets (that is, unlimited taxpayer funds), they can put poor people battling Comcare, Centrelink or Veterans Affairs through a legal nightmare. Similarly, they can screw over small businesses, which quickly run out of the time and cash to fight the government.

Liberal Democrat Senator David Leyonhjelm is trying to force the government to do its legislated duty.

Through his November 2017 *Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill*, he is trying to make parliament enforce recommendations of the Productivity Commission made in September 2014, four years ago. The PC recommended that:

- government, agencies and legal representatives should be subject to model litigant obligations; and
- compliance with these obligations should be monitored and enforced, including by establishing formal avenues of complaint to government ombudsmen for parties who consider that model litigant obligations have not been met.

The bill was referred to the Senate Legal and Constitutional Affairs Committee for an inquiry and report. Civil Liberties Australia has given evidence before the committee.

The committee was supposed to report on 8 May 2018. Then that was extended to 26 June 2018, then that was extended to 27 July 2018, then that was extended to 19 September 2018...and now that has been extended to 7 December 2018.

This is a classic case of "Justice delayed is justice denied", CLA's President, Dr Kristine Klugman said. "Not only will the parliament, the executive, the AG and his department and a parliamentary committee not do the right thing, it appears they are all actively delaying even presenting a report to parliament.

"The Productivity Commission has already held an inquiry, and reported, four years ago. The only thing that can be delaying the Senate committee is that the government has to find a 'saleable' answer to its years of irresponsibility, under Liberal and Labor governments, before putting a report before the people. Of course, if the government calls an election early in 2019, the whole issue will fizzle away...again."

<https://tinyurl.com/ycdr8xe5> and <https://tinyurl.com/ycuub6cz>

Payne gives spook backup to island nations

Foreign Minister Marise Payne told last month's Pacific Islands Forum on Nauru that Australia would next year establish a new Pacific Fusion Centre, a big-brother like agency to advise island states on security.

The centre would help Pacific governments "enforce their laws and protect their sovereignty", she said.

Senator Payne said the centre would help island nations to better identify and respond to security threats, like illegal fishing, people smuggling and narcotics trafficking.

She said Australia would also help provide strategic policy development in the region with a new Australia Pacific Security College, from early 2019. <https://tinyurl.com/ycoto5wd>



Photo: Minister Payne with former Australian Human Rights Commissioner, now U. Western Sydney Professor and CLA member Prof Dr Sev Ozdowski, whose 9th International Conference on 'Human Rights Education – Unleashing the Full Potential of Civil Society' takes place in Sydney late in November (see **DATES**).

Spook monitoring body told to pick up its act

The agency responsible for investigating corruption in Australian law enforcement bodies has been told in a new report that it has no way of knowing how efficiently it investigates corrupt conduct, and to pick up its act.

It was the first time the Australian Commission for Law Enforcement Integrity had undergone such an audit. The Australian National Audit Office told ACLEI to improve how it manages cases, and allocates resources. The auditor general couldn't say whether the commission was running efficiently, because there was nothing in place to measure whether ACLEI was or was not efficient.

The audit report said the watchdog didn't have the data or benchmarks to inform itself or parliament if it was getting value for money as it tried to detect, investigate and prevent corruption.

ACLEI accepted all three recommendations made in the report, but said it would be challenging to develop efficiency measures. <https://tinyurl.com/yc9uu8xz>

CLA notes that football teams, symphony orchestras, scouts and girl guides as well as unions and corporate bodies can develop robust efficiency measures, but somehow Australian government departments and agencies seem incapable of doing so, or instead produce meaningless nonsense, like the Attorney-General's Department and the Department of Foreign Affairs and Trade.

Civil Liberties Australia's members are available, even keen, to develop measures for departments and agencies, at commercial rates.

Gender-bender law will save our dunny heritage

What do you call a person who is not a 'her' or a 'him'? And how do you identify a dunny?

For the first time in Australia, the Queensland government is wrangling the language, legally.

A proposed law introduced to parliament last month would make it legal – always – to use 'he' and 'she', 'husband' and 'wife', and the like. But it also would not be illegal if you used different terms for the same people, or terms for people who are "trans-gender" or "gender neutral" or whatever.

The parliamentary debate around the name game legislation should be a hoot. As well as words, the bill will cover symbols and images.

The Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill 2018 defines gender-specific language as words, symbols or images that directly or indirectly designate, or are associated with, the male or female gender. Examples include: male, female, man, woman, boy, guy, girl, him, her, he, she, Mr, Mrs, Miss, Ms, husband, wife, widow or widower

The new Queensland gender-bender law aims to protect:

1. your right to use traditional gender-based language; and
2. businesses and other organisations from suffering disadvantage when they provide facilities and services that exclusively recognise gender as either male or female.

The bill de-claws anti-discrimination law "to reflect accepted shared values without undermining the rights of individuals to use a diverse range of gender classifications in day-to-day environments". Examples include language in government and non-government employment ads and descriptions, and in schools, the military and providing public and private facilities and services.

So, your right to use a toilet marked 'Male' or 'Female' will be preserved in the sunshine state. No trans-gender person will be permitted to take out an anti-discrimination case that says the toilets should be marked 'Male...and Others' and/or "Female...and Others".

The official government word is that "Nothing in this Bill is intended to prohibit the use of non-traditional gender language or the provision of facilities and services by any individual or entity. The provisions in this Bill protect individual rights and liberties by ensuring that the day-to-day use of gender based language is protected whilst not limiting the use of other language in the same circumstances."

938,736 – each W – is the answer in dam damages case

There's a German-English joke that starts with the jokester giving the answer, "9W". The jokester then asks: what's the question?

The question, said to have been asked of the famous composer, is: "Do you spell your name with a 'V', Herr (V)agner?", said phonetically in German. "Nein, W" is the answer.

For broadcaster Alan Jones last month, the answer was “\$938,746 W x 4”.

That’s the amount Jones and radio stations 4BC and 2GB (owned by Macquarie Media, part of Fairfax Media) must pay to each of the four Wagner brothers of Queensland’s Toowoomba region.

Jones and the radio stations were found to have defamed John, Denis, Neill and Joe Wagner by his repeated claims on radio that they were responsible for 12 deaths during Brisbane floods.

The wall of the Wagners’ quarry collapsed during the 2011 Grantham floods. The floods ultimately inundated all low-lying parts of Brisbane City. As well as the deaths, there was massive damage.

The Wagners sued for \$4.8m damages. Judge Peter Flanagan last month awarded them \$3.75m.

Judge Peter Flanagan said the 76 defamatory imputations brought before the court were “extremely serious” and of the “gravest kind”. They included imputations by Jones on his radio show that the Wagner family was part of a “massive cover-up” to avoid responsibility for the deaths.

In 30 broadcasts between October 2014 and August 2015, Jones made defamatory claims that the family had covered up their “culpability” in the flood deaths and had lobbied Queensland Premier Anastasia Palaszczuk to avoid exposing the “truth”.

Jones had also accused the brothers of being corrupt over their project to build an airport at Toowoomba.

The case seems to prove the adage that you need to be rich and/or famous to secure defamation justice in Australia. <http://tinyurl.com/y9cevcch>

ODD SPOT: Official statisticians stuff up the crime count – drug ‘crisis’ disappears

The NSW Bureau of Crime Statistics and Research (BOCSAR) double counted more than 80,000 drug crimes in the state over nine years.

In the 12 months to March 2011, BOCSAR had mistakenly inflated the number of drug use and possession offences by 7096, or more than 30 per cent. This showed that drug offences were up 31.7% on the previous 12 months, when in fact they were only up 8.9% .

It is believed the false drug offence statistics created a false perception of a drug crisis in NSW for almost a decade, and skewed millions of dollars in funding to police and resources allocated to fighting drug crime.

The mistake occurred because the Bureau double-counted figures that had already been double-counted by police. <https://tinyurl.com/yc5qxvkd>

Forensic science makes quarter of legal errors, SA told

Brian Saady spoke with *ABC Radio SA* interviewer Amanda Vanstone last month on false or misleading forensic science being responsible for 24% of the 2258 exonerations that have occurred in the US since 1989, according to the US National Registry of Exonerations.

Saady is US blogger: here’s his latest on ‘Forensic Evidence Goes Bad’: <http://tinyurl.com/y8dy2x3g>

“As a proactive measure, the Obama administration formed the National Commission on Forensic Science in 2013 to improve standards. However, (US) Attorney General Jeff Sessions decided in 2017 to [discontinue](#) the commission.

“In 2015, the Department of Justice, the FBI, the Innocence Project, and the National Association of Criminal Defense Lawyers (NACDL) released an alarming [report](#) that found a 90% error rate in 500 FBI cases that the team reviewed. Remarkably, 26 out of 28 FBI hair analysis “experts” provided erroneous statements. Worst of all, several people were executed as a result of this evidence. Of the 35 cases that ended in a death penalty sentencing, 33 included erroneous statements from FBI staff.”

Listen to the interview: <http://tinyurl.com/y8f2hunc>

South Australia in particular has a 30-year problem with forensic science. Justice campaigner and legal author Dr Bob Moles says convictions in some 400 criminal cases decided in SA between about 1970-2000 are questionable because the state’s then chief pathologist was not legally qualified to give many of the opinions he gave and judgements he made.

Just as alarmingly, some people may have escaped arrest, trial and possible jail time because of forensic reports that may have been plain wrong, including in three cases alleged as possible battered baby deaths.

Former Premier/AG calls for Criminal Cases Review Commission

Former Tasmanian Premier and Attorney-General, Lara Giddings, last month called for Tasmania to establish a Criminal Cases Review Commission to show a lead to the rest of the country.



She said that the provisions of the state's three-year-old, further right to appeal legislation "set the bar too high" to be truly effective in delivering justice.

Giddings was officially launching Andrew L. Urban's, '*Murder by the Prosecution*' (Wilkinson Publishing) at Fullers Bookshop in Hobart. The book concentrates on Australian miscarriages of justice, especially that of Tasmanian woman (and CLA member) Sue Neill-Fraser.

LEFT: Sue Neill-Fraser (SNF) pictured outside the Launceston Courthouse on 31 August 2018 in the first public photo of her for about three years. – Rosemary Phelps photo.

Due to foot problems for which no adequate treatment has been available via Risdon Prison, she is now largely confined to a wheelchair.

Her court case, seeking a new three-judge appeal, is being considered by Judge Michael Brett. It is likely there will be one more day's hearing, sometime this month, before he makes a decision, in November or December.

The long-running appeal has been beset by legal delays and police tactics that have seen witnesses arrested and charged with offences before they were able to give their evidence in the SNF case. The police have become players in this tragedy of justice.

Parliament wants inquiry into police

A Victorian parliamentary committee has called for a major overhaul of the state's police oversight system after a 15-month inquiry into how claims of misconduct and corruption are investigated.

In a report tabled in parliament, the joint committee stopped short of recommending a new body to deal with complaints, but called for major reforms.

The report made 69 recommendations aimed at improving the complaints system, including a requirement that the state anti-corruption watchdog, Independent Broad-based Anti-corruption Commission (IBAC), investigates more allegations of serious police misconduct.

It found the current system was "extraordinarily complex and confusing" and based on an "intricate, overlapping, and sometimes fraying patchwork of laws, policies and processes".

Currently, about 98 per cent of complaints are referred back to Victoria Police for investigation.

The report also called for the creation of a new dedicated Police Corruption and Misconduct Division within IBAC that is properly resourced to investigate complaints, according to Liberal MP Kim Wells, the committee chair.

Key points:

- IBAC told to investigate more complaints against police involving serious misconduct, assault or wrongful arrest;
- Recommends creating a new unit within IBAC called the Police Corruption and Misconduct Division;
- Lawyers praise the recommendations as 'absolutely historic'.

<https://tinyurl.com/ybdvy946>

Police use force against 13-year-old...then charge the victim

WA Police have launched an internal inquiry after a magistrate ruled a senior police officer had used violent, unreasonable force against a 13-year-old boy during an unlawful arrest.

In a scathing judgment, magistrate Michelle Ridley described the actions of Senior Constable Grant George as "forceful", "aggressive" and "harmful".

She said the fact none of his police colleagues, including his district inspector, thought his actions were over the top "indicates a much deeper cultural issue within the WA Police".

The magistrate said the footage showed that despite never being formally placed under arrest, the boy was repeatedly pushed, jostled, threatened with a closed fist, grabbed by the arm and the shirt.

Ms Ridley also found the CCTV vision was in stark contrast to the sworn evidence provided by Sen. Const. George and another officer, Sen. Const. Michelle Giles. "They were not credible witnesses," the magistrate said.

In throwing out charges against the boy, Ms Ridley said it was deeply troubling that police apparently believed such aggression was reasonable. She urged police to have the "maturity to address, rather than deny, the underlying issues which exist within its ranks.

These are not 'isolated incidents' as they would have the community believe, she said. <https://tinyurl.com/ybs5fy4b>

Reports of police violence in WA are so regular that it is obvious an independent police complaints commission is urgently needed. While establishing one is the formal policy of the ruling Labor Party, it claims lack of funding is delaying implementation.

Meanwhile, WA citizens continue to be harassed and bashed regularly by their own police force, seemingly with impunity. WA Director of CLA, Margaret Howkins, is actively leading a campaign to establish an Independent Police Complaints Commission (IPCC), similar to the one credited with cleaning up aspects of British police malpractice.

Serco runs 'full service' prisons

The number of staff having it off with prisoners at WA's all-male Acacia jail jumped to six this past month. The sexy six, who have all resigned or been sacked for "having inappropriate relationships with prisoners" in the past three years, have been referred to the Corruption and Crime Commission (CCC). Six other cases also are being investigated.

The medium security Acacia, 60km from Perth at Woorooloo, is run by private company Serco. The jail holds about 1400 prisoners, under the control of 300 guards and about 200 support staff.

Corrections Minister Fran Logan told the WA Parliament that he had previously "raised grooming and drug-related issues" with Serco.

Corrective Services Commissioner Tony Hassall recently told a parliamentary committee that eight positions out of 22 in the Corrections' investigations services unit were vacant. The resignations emerged after a CCC report to parliament in June explained how easily guards smuggled drugs into prisons after they had been "groomed and corrupted" by crime gangs. <http://tinyurl.com/y7bxnxu4>

In jails throughout Australia, guards are so powerful industrially that corrections ministers and governments turn a blind eye to repeated drug smuggling into prisons.

Alleged killer to be tried by judge only; two years in jail already

The alleged infamous Claremont serial killer is likely to be tried by a Perth judge sitting without a jury.

Bradley Robert Edwards (photo) has been charged with murdering Sarah Spiers, Jane Rimmer and Ciara Glennon in the mid-1990s around suburban Claremont. He also faces a break-in charge in 1988 and a charge of sexual assault in 1995.

Already in custody nearly two years, since December 2016, the 49-year-old appeared in the WA Supreme Court last month.

Prosecutors want the 2019 trial heard by a judge alone, without a jury. The court will consider their application on November 1. <http://tinyurl.com/ybzyxeuy>

Police were much criticised for decades over their inability to solve the crimes, and also for their own abuses in naming as "persons of interest" people they wanted to denigrate, such as then civil liberties leader Peter Weygers.

For justice to be done, charged people are entitled to be brought before the courts in a timely fashion, CLA believes.

Edwards' more than two years in custody without a trial is a serious blight on WA justice, and WA Police, the Office of the DPP and former barrister now Attorney-General John Quigley should be ashamed of the delay in bringing the matter to trial.



Australian briefs

New NT prison supremo: Scott McNair is the new Commissioner of Correctional Services in the NT. He took over today (1 Oct 2018). With 32 years of experience in both public and private corrections, Mr McNair will be an asset in his role as Commissioner of Correctional Services. McNair was originally a soldier, serving in Northern Ireland, and gained his jail spurs in prisons in the England and Scotland. He has also managed two high security prisons in Brisbane before being promoted to Deputy Director of Operations and later Director of Prisons for Serco Asia Pacific. – media release, NT AG Natasha Fyles 180904.

Punching above his weight: Civil Liberties Australia member and ACT barrister Jack Pappas has been elected vice-president of the ACT Bar Association. Unusually for barristers, Jack is as well known for punch-throwing with his fists as with his tongue – he is a noted trainer of young boxers.

Children still being ‘stolen’: Speaking after a forum for National Child Protection week in Darwin last month, NT Families Minister Dale Wakefield said the government had removed 324 children across the NT in 2017. More than 60 cases occurred in the Barkly region. <https://tinyurl.com/yd88lnke>

What happens when ManNa stops falling?

In 2017, official figures supplied to the Senate showed offshore refugee processing facilities on Manus and Nauru had cost Australians almost \$5 billion since 2012. The money is ManNa from heaven for the struggling island economies. But when does it run out...and what then for the islands, Civil Liberties Australia asks? <https://tinyurl.com/y9ww25wr>

From A. Sex Party to seeing Reason:

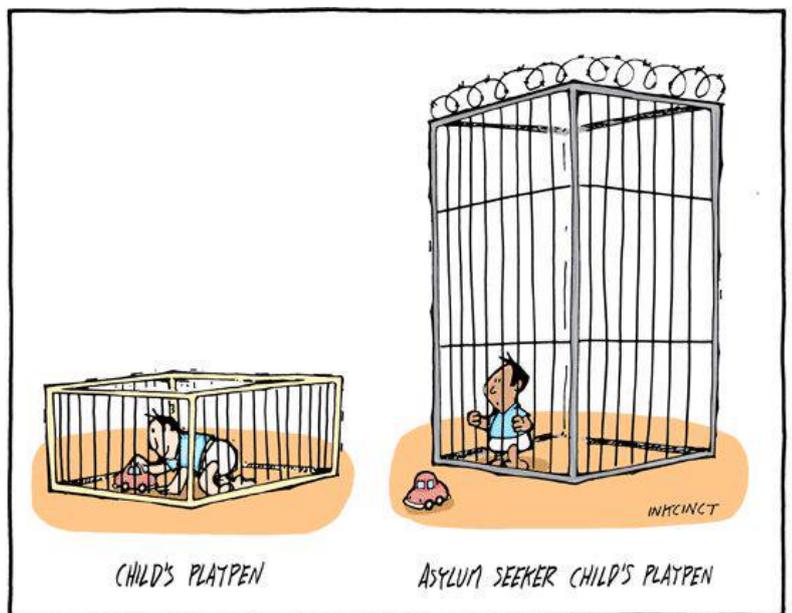
CLA member Fiona Patten has written an autobiography of her life's journey, so far. *'Sex, Drugs and the Electoral Roll'* celebrates how a smokey-throated clothes designer worked her way through the sex industry to become a Member of the Legislative Council of Victoria, now representing the Reason Party. As a 'swing' voter in the tightly balanced upper house, she has skilfully parlayed individual convictions into progress for society on issues like preventing domestic violence, creating exclusion zones around abortion clinics, providing drug injecting rooms and allowing citizens the choice of dying when and how they want to. In the book, she pays tribute to Robbie Swan, partner and also CLA member. Allen & Unwin, 366pp, RRP \$32.99. – Bill Rowlings and <https://tinyurl.com/y96bb8uw> PS: Fiona and Robbie are makers of stimulating TV election ads: <https://tinyurl.com/yconvruo>

High Court makes it to the Top End, at last: The High Court of Australia sat for the first time ever in Darwin in the Northern Territory last month – even though it had sat in other Australian capitals for more than 100 years. The case being decided in the NT Supreme Court building involves a native title issue. <http://tinyurl.com/y7cbw5v9>

Members' letters:

Asylum lunacy

The people detained on Nauru and PNG exercised their right to apply for asylum and are being punished for that. They have been deprived of their freedom for five years. How much longer will this continue? Another five years? Or 10? Or for the term of their natural life? The news media should ask the politicians in Federal Parliament. It is a pity that they don't. Instead, they give far too much attention to the trivial pursuits on Capital Hill. – Thomas Mautner, Griffith ACT <https://tinyurl.com/y726w7qr>



Integrity means standing up to be counted

While I fully support the establishment of a National Integrity Commission, Opposition Leader Bill Shorten's call for the government to do likewise must surely give cause to pause ('Shorten says trust in politics at a low point, urges PM to back corruption watchdog', Canberra Times, 16 September 2018). The deafening silence of Shorten and his Labor Party in the face of the government's persecution of Bernard Collaery and Witness 'K' over the government's East Timor cabinet bugging is evidence enough of their cynical opportunism and lack of moral principle. I already have my 'Vote 1: Bernard Collaery & Witness K t-shirt and, like the soon to be majority of Australians, ticking the box for Shorten, Morrison or any of their equally despicable accomplices will be last thing I'll ever do. – John Richardson, Wallagoot NSW

CLA report – main activities for September 2018

Witness K/Bernard Collaery case: CLA is networking with activists agitating for internal political party action against the prosecution of people for allegedly revealing operations of the Australian government and spy agency ASIS over the East Timor gas and oil reserves negotiations.

Submissions:

Federal:

Aged Care – Staffing Ratios: CLA was considering making a submission to an inquiry into a private member's bill, the Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018, lodged by the Member for Mayo (SA, Centre Alliance, Rebekha Sharkie) in September. The bill was aimed at making it mandatory for aged care centres to report their staffing ratios. We had begun to alert CLA members who live in aged care accommodation, asking for their experiences and comments. However, the bill has been superseded by the government's announcement of a Royal Commission into the Aged Care sector. If any CLA member would like to suggest material for the CLA submission to the RC, please forward it to the secretary by email or by post.

National Intelligence Community Review: deadline for submissions to this process is early December. Contributions from members of CLA are welcome. Send to secretary, please.

Petitions: CLA plans to make a submission to the review of the petitioning process to federal parliament. There's an inquiry – by one house of parliament only – into:

- the role and operations of the Standing Committee on Petitions; and
- petitioning the House of Representatives, including a review of Standing Orders and other relevant practice and procedures.

The Committee will look at how the petitions processes and procedures work in other jurisdictions. Several Australian parliaments have updated the process to make it much more user friendly, with electronic petitioning available. Director Richard Griggs, who has first-hand experience with the Tasmanian Parliament's petition system over a number of years, is running this project: anyone who would like to contribute to the CLA submissions can do so via the secretary.

ACT:

ACT Legislative Assembly Inquiry into the Crimes (**Consent**) Amendment Bill 2018: "Civil Liberties Australia would like to demonstrate support for the ACT Greens' proposal regarding updating the law to change the definition of consent to be positive; "a clear, unequivocal and freely given 'yes'". Lead author Elly McLean.

QLD:

Anti-Discrimination (Right to Use **Gender- Specific Language**) Amendment Bill 2018: see 'Gender-bender' article above. The Qld parliamentary committee holding an inquiry into the bill is required to report by 19 March 2019, so the deadline for submissions will likely be about 20 December 2018.



Consultations:

DFAT consultation with NGOs on Vietnam dialogue: The 15th Annual Australia-Vietnam Human Rights Dialogue 2018 was held in Hanoi on 28 August, and the discussions were “frank, broad-ranging and constructive”, the Department of Foreign Affairs and Trade reported to a briefing of NGOs on 19 September 2018 in Canberra. CLA comprised two of about 10 representatives of NGOs who met with an equal number of DFAT people to give feedback on the Hanoi meeting.

General issues raised by the Australian delegation included encouraging the government to give civil society organisations a voice (particularly in relation to the next Universal Periodic Review in January 2019), the issue of civil and political rights, and concern over the detention of civil rights activists. Australia raised specific cases including those of jailed Vietnamese dissidents; however, Vietnam calls them ‘security risks’. Vietnam responded by raising Australia’s own situation with deaths in custody, gender violence and same-sex marriage.

CLA commented that it does seem hypocritical for Australia to be lecturing Vietnam when our own record on the rights of Aboriginal peoples (death rates, health and rates of incarceration), and overseas detention of refugees is so poor. DFAT conceded that our position is stronger when we abide by standards of human rights ourselves.

The Australian delegation had discussions with civil society organisations and visited a temporary detention centre. DFAT human rights people have not visited detention centres in Nauru or on Manus Island.

A positive aspect was a roundtable with students and lecturers from the Vietnam National University School of Law to discuss human rights issues. Partnership with the Monash University’s Castan Centre is a promising development. Elly McLean, law student ANU, and Kris Klugman, president, represented CLA.

Yemen report: The UN Group of (three) Experts, which included former Fremantle WA MHR and CLA member Melissa Parke, reported formally to the UN Human Rights Council in September 2018.

Conclusions and recommendations: In summary, the Group of Experts has reasonable grounds to believe that the governments of Yemen, the United Arab Emirates and Saudi Arabia are responsible for human rights violations, including unlawful deprivation of the right to life, arbitrary detention, rape, torture, ill-treatment, enforced disappearance and child recruitment, and serious violations of freedom of expression and economic, social and cultural rights, in particular the right to an adequate standard of living and the right to health.

CLA comments: Melissa Parke is to be congratulated on her work on this important task. See her article here: <https://www.cla.asn.au/News/the-very-least-the-world-can-do/> Photo shows her comforting a child during an interview in Yemen.

The situation in Yemen is an international disaster that has received scant attention because the world’s media concentrates on the personal primping, preening and posturing of ‘leaders’ instead of the issues, problems and suffering of people.

VALE: Ken Horler QC and civil libertarian (died 16 September 2018). Horler was a major force in the early days of the NSW civil liberties movement. From the 1960s to the late 1980s Horler held numerous positions including Vice President and, from 1987-92, President in the NSW body.



INTERNATIONAL

PM promises citizenship to millions of refugees

Pakistan’s new Prime Minister, former top cricketer Imran Khan, has promised citizenship to 1.5 million Afghan refugees who have lived in the country for decades.

Pakistan’s 2.7 million refugees mostly come from Afghanistan. They fled the Soviet invasion in 1979, or more recently have fled violence and economic turmoil.

In a surprise announcement last month, Prime Minister Khan said: “Afghans whose children have been raised and born in Pakistan will be granted citizenship inshallah (God willing) because this is the established practice in countries around the world.

“They are humans. How come we have deprived them and have not arranged for offering them national identification card and passport for 30 years, 40 years?”

UN surveys reveal about 60% of the Afghan refugee population was born in Pakistan, meaning almost 1.5 million people stand to benefit. PM Khan also promised the same treatment for Bengali refugees, which would include the Rohingya minority. <https://tinyurl.com/ybgeaoyv>

Just Do It...to spite Trump

A top sportsman who first knelt during America's greatest 'religious services' two years ago – who's now suing because no-one will employ him – has become a national icon without having to play his sport.

Colin Kaepernick is the NFL quarterback who inspired a player protest movement of kneeling when the US national anthem was played before American football games, which are a 'religion' on TV in the USA.

He has just become the 'face' of sports merchandiser Nike (slogan: JUST DO IT.) for the 2018-19 American football season, even though he's still unemployed.

Nike's use of Kaepernick's image appears to be standing up to bullying by President Donald 'Tweetledum' Trump, who wanted America's super-rich football team owners to order all their players not to kneel during the anthem at pain of being sacked. But many of the players have so far stayed relatively strong, either raising their fists instead of kneeling, or not coming out to play until after the pre-game ceremonies, and anthem, are over.

An arbitrator has ruled Kaepernick has an arguable case which can go to court for his claim of collusion between the owners by not employing him: his statistics are way better than many employed quarterbacks.

Last season, despite not playing, Kaepernick's football jersey was the 39th most popular in sales out of the 1000 or so players in the competition. At the US Open recently, he received a standing ovation when he turned up courtside as a spectator.

Supporting Kaepernick's kneeling iconography has become a citizen's way of saying: Up you, Tweetledum!
– Bill Rowlings, CEO CLA and <http://tinyurl.com/yb69fdd8>

Police scanning produces smaller error rate this time

Police in South Wales scanned the faces of more than 44,000 people at an event in Swansea earlier this year – and found only 10 false positives.

That's a big improvement over a similar trial run at a 2017 soccer championship in Cardiff, in which 92% were incorrect matches. Police attributed the improved matching to a "new algorithm".

During the event, the facial recognition system flagged someone who had an outstanding arrest warrant, and officers took the person into custody.

In August 2018, the American Civil Liberties Union used Amazon's Rekognition tool to show that it falsely identified 28 members of the US Congress as people who had been arrested. <http://tinyurl.com/yckskrd7w>

Jailed doppelganger seeks \$1.5m

Nearly two decades ago, Richard A. Jones was convicted of aggravated robbery after being picked out of a lineup by witnesses who said he stole a mobile phone from a store parking lot in Kansas.

While Mr Jones, who maintains he is innocent, was serving his 19-year sentence at Lansing jail, inmates told him he looked like a prisoner named Ricky.

Last year, a judge threw out Jones's conviction after the original witnesses were shown side-by-side photographs of the two men and said they could not tell them apart. (Photo: Jones left, Ricky Amos right).

Last month, Jones, 42, filed a petition against the state of Kansas seeking more than \$1.5m in compensation, or about \$90,000 for each year of the 17 years he spent in prison for a robbery he said he did not commit.

When jailed, he was 25 and father of two daughters. Now 24 and 19, he missed their growing up.

Convictions based on eyewitness identification is the single greatest cause of wrongful convictions in the USA. Eyewitness IDs played a role in more than 75% of convictions overturned through DNA testing, according to the Midwest Innocence Project, which helped Jones win release. <http://tinyurl.com/yco4mv77>



Europe's Human Rights Court reins in UK's spooks

The European Court of Human Rights has ruled that the mass surveillance scheme used by the GCHQ—the UK's signals intelligence agency – violates the European Convention on Human Rights.

The bulk surveillance unlawfully intrudes on the private and family life and freedom of expression of British and European citizens, the court found.

In an allied ruling, the court said that sharing intelligence gathered from bulk surveillance – as GCHQ does with Australia, NZ, Canada and the USA under the "Five Eyes" intelligence and security alliance – does not violate the human rights charter.

But – and it is a big 'BUT' – the judges warned that using such intelligence to bypass restrictions on surveillance of a member state's own citizens would violate the charter.

CLA supposes that it has become common practice for one country, which is barred by its own legislation from spying on its own citizens, asking for one of the other four remaining 'eyes' to do the spying instead and to share the information with the supposedly barred country. Of course, this is all in the realms of spookdom, and we can neither confirm nor deny our suppositions.

The case was brought by Big Brother Watch, Amnesty International, the American Civil Liberties Union and other civil liberties organisations from Europe and North America, as well as the Bureau of Investigative Journalism and others.

The court did not find that the surveillance itself was illegal. However, the court did find that individuals' privacy rights applied from the moment communications and data were captured by surveillance systems, not just when they were viewed or processed by human analysts. And the ruling also found that surveillance violated freedom of expression because of its potential chilling effects on journalists.

Of course, in Australia journalists are already barred by law from mentioning anything at all about most national spook activities.

International briefs

The weed gets the nod, constitutionally: South Africa's Constitutional Court has ruled to allow private use of marijuana, including the right to grow the plant for personal consumption. In doing so, it upheld a lower court's ruling that the criminalisation of cannabis was unconstitutional. Several government departments, including the health and justice ministries, oppose legalisation and warn of harmful effects. But in a unanimous judgment, read by Deputy Chief Justice Raymond Zondo, the Constitutional Court decriminalised home consumption, saying "the use of cannabis must be for the personal consumption of the adult". <https://tinyurl.com/y87w5rhh>

Raped sister wins abortion appeal: An Indonesian court has dropped abortion charges against a 15-year-old girl raped by her older brother. The Sumatran court ruled in favour of the teenager's appeal. She had been sentenced to six months jail for having an abortion in July, when she was about six months into her pregnancy. The court also asked the state to bear the cost of the legal process. The girl was pardoned apparently because her actions were taken under forced circumstances. <https://tinyurl.com/y9z63crw>

Two journos jailed 'after evidence planted on them': Reuters journalists arrested in Myanmar while investigating a massacre of Rohingya Muslims are in jail for seven years for breaching the country's Official Secrets Act. Wa Lone, 32, and Kyaw Soe Oo, 28, were arrested in December 2017. The landmark case is a test of progress towards democracy in the former Burma. Judge Ye Lwin said the men "tried many times to get their hands on secret documents and pass them to others. They did not behave like normal journalists". The two men say the documents were planted on them at a restaurant where they went for a meeting with police...called by the police. <https://tinyurl.com/y7gqte2d>

Sex options expand in India: Gay sex is legal again in India after the Supreme Court described a law dating from 1862 as "indefensible and irrational". The court last month ruled unanimously that homosexual activity was again legal. The ban on homosexuality – punishable by up to 10 years jail – was briefly overturned in 2009, but the Supreme Court reinstated it in 2013. Now the dreaded Section 377 law appears to be gone forever. <https://tinyurl.com/yb7lkrq>

Middle class are biggest druggies, boozers: Middle-class people consume more alcohol and illegal drugs than those living below the poverty line, according to a UK report by a cross-party group of academics and campaigners. The Social Metrics Commission report compares the circumstances of those living above and below the poverty line. It found two-thirds (66%) of those who are comparatively better off

have drunk to excess in the last year, compared to just 58% of the most deprived. It also found that 22% had taken illegal drugs, 9% higher than less well-off people. In the capital, London, 28% of households live below the poverty line <https://tinyurl.com/y8jsxnch>

DATES:

1 Oct, World: International Older Persons Day <https://tinyurl.com/6eq6p5l>

2-5 Oct, Brisbane: National Family Law conference, Law Council of Australia. Details: <http://tinyurl.com/yc8t4z93>

3-7 Oct, Byron Bay NSW: 16th International Criminal Law Congress, at Elements of Byron Bay. Speakers include CJ Susan Kiefel, Qld CJ Catherine Holmes, Don Watson and Prof Megan Davis. Details: <https://tinyurl.com/y7jyqq3>

2-3 Nov, Canberra: Annual ANU Public Law weekend, with top academic and judicial speakers, including the High Court's Judge Stephen Gageler, Prof Gabrielle Appleby, and Prof John McMillan (photo). "In 2018, special emphasis on celebrating administrative law at the ANU, particularly the stellar careers of Emeritus Professors Robin Creyke AO and John McMillan AO". Details: <http://tinyurl.com/y8kcaon2>



8 Nov, Canberra: 'Presenting, choosing, measuring, changing history': an Honest History symposium, Law Lecture Theatre, ANU, Canberra: Frank Bongiorno, Michael Brissenden, Pamela Burton, Michael Cooney, Shaun Crowe, Paul Daley (launching book: 'On Patriotism'), Emily Gallagher, Tjanara Goreng Goreng, Carolyn Holbrook, Benjamin T. Jones, Ann McGrath,

David Stephens, Sue Wareham, Clare Wright. Info: <http://tinyurl.com/yd2bzf5>

10 Nov, World: International Day of Human Rights; 7th anniversary of CLA's planting of the Australian National Liberty Tree at the National Arboretum, Canberra.

11 Nov, Melbourne: Corporate Reporting & Governance: 'Is current corporate reporting model fit for modern society?' 12-2pm, KPMG offices, 147 Collins St. Deakin Law School's Centre for Corporate Reporting Governance presents Michael Bray, Deakin's KPMG Fellow in Integrated Reporting, and Gill North, Professorial Research Fellow, Deakin Law School. <https://tinyurl.com/ydhe9ecs>

12-13 Nov, Canberra: 'Happy anniversary? Reflecting on marriage equality after one year', at ANU. Speakers include Rosemary Auchmuty U Reading, England; Tiernan Brady, marriage equality campaigner (Australia and Ireland); Quinn Eades, La Trobe U; Anja Hilke Meyer, UTAS (photo), Carol Johnson, U Adelaide. Details: Email: marylou.rasmussen@anu.edu.au



13-16 Nov, Canberra: Asia Pacific Coroners conference 'Three cats in a freezer and other tales!' Info: <http://tinyurl.com/y8aro9kh>

15-17 Nov, Sydney: Australian Bar Association conference, Intntl Conf Centre. Info: <http://tinyurl.com/yczmcvsc>

20 Nov, Brisbane: Investigative Journalism in the Era of Fake News, Marian Wilkinson, Bruce Woolley. 6-8pm, Customs House, 399 Queen St, <https://tinyurl.com/y89as2xz> NOTE: This is not a free event.

SPECIAL: 26-29 Nov, Western Sydney: 9th International Conference on Human Rights Education – Unleashing the Full Potential of Civil Society. Contact: Dr Sev Ozdowski AM, Coordinator, International Human Rights conference series, President, Australian Council for Human Rights Education. Email; S.Ozdowski@westernsydney.edu.au Website: <http://ichre2018.com.au>

28 Nov, Darwin: NT Human Rights lecture series: A Giraffe, the Bush and Human Rights: Deb Martin, Life Education. RSVP to Suzy on 08 8914 2300 for catering, or contact: nthumanrightsawards@nt.gov.au

10 Dec, World: International Human Rights Day <https://tinyurl.com/y79ssoyz>

2019:

July: International Bar conference, Singapore

2022:

10 May, Adelaide: 50th anniversary of the death by drowning of law lecturer Dr George Ian Ogilvie Duncan, thrown into Torrens River by a group believed to be police officers. Led to SA enacting the first homosexual law reform act.

CLArion is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au)

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