

Sue Neill-Fraser (SNF) decision imminent: The decision by a single judge, Michael Brett, on whether to allow the convicted murderer a new, three-judge hearing on 'fresh' and 'compelling' evidence is expected any day. If approved, it is vital at least two judges be from outside Tasmania. CLA believes she is innocent and that the police-legal-court humans and systems in Tasmania have combined to create a grave miscarriage of justice. She has served 9 1/2 years of a 23-year sentence.

If it could happen to Sue
it could happen to you



Spooky MPs raise the bar on hypocrisy

In a moment of gob-smacking* hypocrisy, the chair and deputy of federal parliament's spook committee are claiming "the ability to report freely and fairly on national security is a vital part of our democracy".

Their hypocrisy extends to the famed "on water" matters, under which nothing can be reported of what Border Force is doing in the Indian Ocean and Timor Sea in relation to refugee claimants and boats. Not a word of criticism has emanated from the spook committee about "how vital" it is to report "freely and fairly" on boats, refugee claimants and on-water national security. See article on CLA website: www.cla.asn.au

Direct: <https://www.cla.asn.au/News/spooky-mps-raise-the-bar-on-monumental-hypocrisy/>

Petitions: far more form than substance

The Parliament giveth, and the Parliament taketh away... petition-wise.

The Standing Committee on Petitions has recommended that petitions with at least 20,000 signatures be considered for debate in a special time to be set aside for petition debate in the Federation Chamber.

At first glance, the proposal looks positive: however, it's only for petitions with more than 20,000 signatures, and the debate would be in the second (Federation) chamber only.

For those not familiar with federal parliament procedure, a debate in the Federation Chamber is like watching an under 18s match compared to top-of-the-table clashes in the AFL or NRL or A League. Sure, it's football, but it doesn't really matter in the overall scheme of things. No-one takes any notice.

As usual, the MPs want to educate: they want new teaching materials developed "to be targeted at school-aged children". Note that word: "at": that's how MPs think

The committee's recommendations contain not one word of actually doing something about whatever it is the petitioners want. It would seem the MPs don't think doing that is the business of parliament. <http://tinyurl.com/y3bkuj4a>

Hurry up Mr Dutton – you said this was urgent

Remember that "urgent" consultation process – on a proposed national sex offender register – that Civil Liberties Australia was given 6.5 working days to respond to during the early January parliamentary and school holiday period? We lodged our submission on 10 January. (The Law Council of Australia was given three days!)

Five weeks later, on 18 Feb, CLA asked the relevant section of the department what had happened to the consultation process. Here's the reply:

"The Minister for Home Affairs is still carefully considering the feedback received during the initial consultation process that concluded in January. We will continue to consult key stakeholders, including the CLA, as the proposal develops further."

Kind regards, Julie Zezovska

Assistant Director, Child Exploitation and Family Violence

Seems the process wasn't quite so urgent after all. Seems the Minister, Mr Peter Dutton, can take all the time in the world, but civil society is treated with contempt by the imposition of ridiculous deadlines. The increasing arrogance of politicians continues to amaze.

The 'Dutton Database' has received such a poor response from around the states, CLA is told, that those jurisdictions fear the Minister will go it alone with a federal register, having clearly not thought through the likely damage to families (up to 75%+ of sex offending is within the family) and the stirring of vigilantism.

Stand by for a ballyhoo-ed, pre-election, law-n-order announcement aimed at redneck voters.

CLA submission: <https://www.cla.asn.au/News/wp-content/uploads/2019/01/sub-CLA-190109.pdf>

Latest secret trade deal eliminates public input

Another round of secret talks for a mega-trade deal between Australia and 15 Asia-Pacific countries covering half the world's population took place in Bali last month.

With global corporations dominating the agenda, civil society groups and parliaments have been marginalised, the trade-watch organisation AFTINET's convener, Dr Patricia Randal, said. "The public and parliament will not see the text until after the deal has been signed."

The Regional Comprehensive Economic Partnership (RCEP) talks, including India, China, Japan, South Korea, New Zealand and the 10 ASEAN countries, began in 2012 and hope to conclude by late-2019.

The agenda includes:

- special rights for global corporations to bypass national courts and sue governments for millions of dollars in unfair international tribunals if they can argue that a change in law or policy would harm their investment, known as ISDS.
- stronger monopoly rights for pharmaceutical companies to charge higher prices for medicines, which would delay the availability of cheaper versions of those medicines; and
- increased numbers of temporary migrant workers, who are vulnerable to exploitation, without testing if local workers are available.

CLA AGM is under way this month: Just a reminder that the CLA annual general meeting, mostly conducted electronically, is under way from this month. Most members will receive information by email, while the few people not comfortable with e-communications will receive mail packages.

Leaky blackshirts get their ASIO mates offside

ASIO boss Duncan Lewis (photo) was scathing last month about a front page report in *The Australian* using leaked information: he accused the newspaper of misrepresenting ASIO advice.



"The advice that ASIO gave was not what was represented on the front page of *The Australian*

newspaper," Mr Lewis told a Senate estimates hearing. "When reporting wrongly attributes advice from ASIO, or where our classified advice is leaked, it undermines all that we stand for," Lewis said. "Breakdowns in these controls are seriously damaging."

Home Affairs/Border Force* department secretary, Michael Pezzullo, defended *The Australian's* report and praised its author, national affairs editor Simon Benson, as a "senior and distinguished" reporter.

It is not immediately apparent to Civil Liberties Australia how a departmental secretary has such detailed knowledge of one particular reporter among the hundreds who cover parliaments and the public service.

Mr Pezzullo has referred the leak of classified information to the AFP for investigation. Wouldn't be fun if the AFP, for the first time in circumstances like this, actually found the leaker? <http://tinyurl.com/y2euskap>

* Home Affairs officers wear black shirts.

Happy birthday! ASIO, the Australian Security and Intelligence Agency, turns 80 this month:

Here's an article from 2011 on its efficacy: <http://tinyurl.com/yfzelm> which includes this:

ASIO: "...a sometimes disreputable, often politicised and always shadowy presence, not just monitoring communists but also peace activists, scientists, writers and, surprisingly, even judges."

Can ASIO be trusted? The case of Tim Anderson

This is a review of a book – both the review and the book are by noted barristers:

He (Hosking) discusses some 'terrorism' offences, a discussion that usefully reminds everyone that there is nothing new, not in the deluded conduct of the actors, the panic alarmists (we'll all be murdered in our beds), the imperfections small and large in the police response, and the media opportunists.

He sets out first, among several examples, the fateful history of Tim Anderson and his colleagues (all Sydney members of the Ananda Marga), who were falsely accused, convicted, served about seven years, and were released only after an inquiry found that Seary, the main witness for the Crown, 'had lied on at least fifty occasions'.

For Anderson it was not over as four years later (1989) he was charged with the 1978 Hilton Bombing in which three people died. Those charges arose from information given by a prison snitch and another Ananda Marga member who was later labelled as 'unreliable'. Anderson was found guilty as an accessory before the fact. That verdict was overturned on appeal and a verdict of acquittal entered.

– review by barrister / barrister trainer, Hugh Selby, p86, issue 161, Vic Bar News: book *'Justice Denied'* by Bill Hosking QC and John Suter Linton, Harlequin Books. https://www.vicbar.com.au/sites/default/files/VBN_161_2017_Winter_compressed-2.pdf

NOTE: No-one has ever been convicted for the Hilton bombing 41 years ago. Many people believe the prime suspects are ASIO themselves and/or NSW Special Branch police. https://en.wikipedia.org/wiki/Sydney_Hilton_Hotel_bombing

Tim Anderson sacked by Sydney Uni

In February 2019 Sydney Uni sacked lecturer Dr Tim Anderson for showing a lecture slide featuring the Nazi swastika imposed over Israel's flag.

Dr Anderson (the same Anderson as in the above article) was a senior lecturer in political economy,

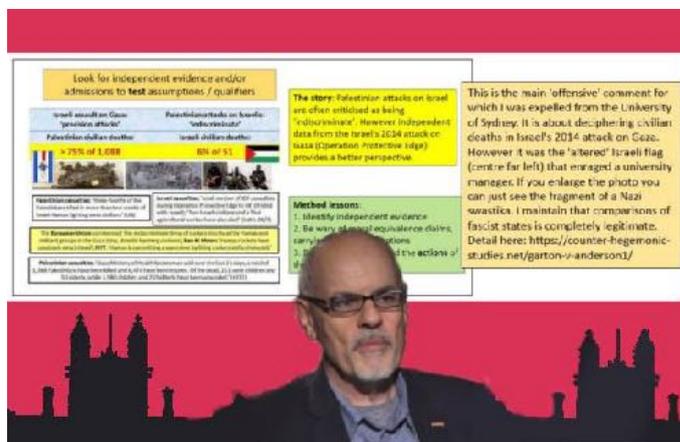


Photo above: Anderson and the offending slide: the swastika occupies about 0.1% of the image, somewhere near the Israeli flag at mid-left. You can't identify the swastika in this image.

Sydney Uni suspended him three months ago and demanded he "show cause" why his employment should not be terminated for "serious misconduct". When he showed why he should not be sacked, the university rejected his appeal.

The lecture slide featuring the image was "disrespectful and offensive", and "contrary to the university's behavioural expectations and requirements for all staff", Sydney U's administration said.

Dozens of academics opposed the sacking. They said academic freedom was "meaningless if it is suspended when its exercise is deemed offensive".

Dr Anderson has been offside with federal education ministers and other powers-that-be for his numerous trips to Syria and North Korea. Always of radical bent, he has expressed solidarity with the Syrian regime.

On Facebook, Dr Anderson stood by his actions and said the image was barely perceptible. "If you enlarge the photo you can just see the fragment of a Nazi swastika," he said. "I maintain that comparisons of fascist states are completely legitimate."

Anderson has been a major contributor over many years to the work of the NSW Council for Civil Liberties.

Paddle pop cttee waves through flawed Bills

New government legislation that is deeply flawed is being waved through by a parliamentary committee.

The Scrutiny of Bills committee "leaves it to the Senate" in the vain hope that enough responsible Senators will have sufficient time and integrity to band together, cross-party, to prevent legislative abuse.

But the Senators don't have the time or resources to fully consider all legislation.

The system is not good enough, Civil Liberties Australia says. The Scrutiny of Bills committee should reject legislation that it finds is flawed, and send it back to the government for amendment.

If it doesn't, it's not a "scrutiny" body but acting as a paddle-pop person waving through legislative traffic.

Here are examples from 'Scrutiny Digest 1 of 2019', dated 15 Feb. The committee says:

Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018

- *Broad discretionary powers and trespass on rights:* the committee leaves to the Senate the appropriateness of expanding the minister's discretionary power to determine that a person ceases to be an Australian citizen.

- *Retrospective application*: the committee leaves to the Senate the appropriateness of retrospectively applying the power to remove citizenship based on convictions made up to 13 years ago.

Migration Amend't (Streamlining Visa Processing) Bill 2018

- *Significant matters in non-disallowable instruments*: the committee leaves to the Senate the appropriateness of leaving significant elements of the visa processing framework to non-disallowable legislative instruments.

Dear Scrutiny committee members from CLA: show some courage, please!

How PM Abbott's jobs-for-the-boys worked out

In December 2014, after being in office a year, Prime Minister Tony Abbott handed out jobs for the boys.

Two people who made Federal Court judges were Salvatore Vasta and Alexander (Sandy) Street. A third beneficiary was John Lloyd, who was made Public Service Commissioner.

How did the appointments work out? Check out these stories:

Lloyd: *'John Lloyd, public service commissioner, quits amid questions over conduct'*

<http://tinyurl.com/y5odc3tb> Guardian 4 June 2018

Street: *'Judge Street again runs foul of justice principle'* <https://www.cla.asn.au/clarion/1901CLArion.pdf#page=5>

Photo: Sandy and Sally Street when a loving couple.

Vasta: *"Brisbane judge's ruling overturned by Family Court as a 'gross miscarriage of justice'"* <https://www.abc.net.au/news/2019-02-19/brisbane-judges-ruling-slammed-by-family-court/10825922>



Appointments story from 2014: <http://tinyurl.com/y65hx2dm>

In February 2019, Attorney-General Christian Porter appointed a new round of boys (mostly) to jobs. <http://tinyurl.com/y6hv8s7w> Keep an eye out in 2024 for our report on their performance.

One party plans money-earning whistleblowing

Labor is planning to introduce a form of US 'qui tam'* do-b-in scheme, in which people who identify crime, corruption and – particularly – people ripping off the government can share in the money saved.

Civil Liberties Australia has long advocated that Australia adopts such a scheme, like that in the USA, which encourages more whistleblowing by providing potentially large financial rewards.

The Labor plan includes a rewards scheme where a whistleblower would receive a percentage of the penalties that eventuate from the wrongdoing their information reveals.

Opposition Leader Bill Shorten, speaking on the ABC's 'Insiders' program, promised a protection authority, as well as to overhaul current laws into one single whistleblowing act, and to fund a prosecutor to "bring corporate criminals to justice". Rewards would be funded by the penalties collected by the government, and the amount determined by the relevant investigative or law enforcement agency.

"In the US, for prosecutions which result in more than \$1 million worth of penalties, the whistleblower can get between 10 and 30%," said Greg Golding, partner of law firm King & Wood

Mallesons. "\$US30 million was the largest award ever made under that scheme."

Whistleblowers have previously helped to uncover Commonwealth Bank's dubious financial planning practices, and convenience store giant 7-Eleven's exploitation of its workers.

* Qui tam is part of a Latin definition that describes the type of warrant used in the scheme. <http://tinyurl.com/ycogseq9> and <http://tinyurl.com/yb8j5ku4>

Roberts-Smith lawyer's claims of bias backed by 'no evidence whatsoever'

Allegations made by a lawyer representing soldier Ben Roberts-Smith that an Australian Defence Force war crimes inquiry was leaking against him have been found to be backed by "no evidence whatsoever".

There was no factual foundation to the claims, by Sydney defamation lawyer Mark O'Brien, that an official working for a war crimes inquiry had engaged in grave and potentially unlawful misconduct, an inquiry found. O'Brien made the claims in a hearing and in a national newspaper. <http://tinyurl.com/yy7pvzql>

Given the finding, the NSW Law Society may decide to take action against lawyer O'Brien for making false claims.

Ben Roberts-Smith (photo), recipient of the Victoria Cross award for bravery, is being investigated by the Inspector-General of the ADF and, separately, by the AFP since June 2018, over allegations he committed war crimes in Afghanistan. The investigations have become clouded by a defamation claim by Roberts-Smith against *Fairfax Media*, which raised the allegations in a series of articles, and by a domestic violence claim.

In support of a truth defence, should it be needed, *Fairfax* has alleged that Roberts-Smith was involved in six unlawful killings in Afghanistan, including an alleged incident in 2012 in which he is said to have kicked Ali Jan, an unarmed and handcuffed Afghan man, off a cliff before directing a soldier under his own command to shoot the man. <http://tinyurl.com/yxkwp6ex>

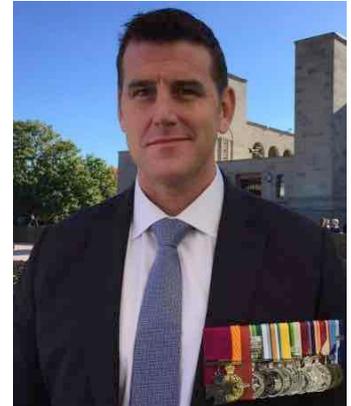
Separately, the *Fairfax* articles also allege that, after a function in Canberra, Roberts-Smith punched a woman with whom he was having an affair. Roberts-Smith denies the claim. The allegation has special relevance: Roberts-Smith was named Australian father of the year in 2013 from the family point of view, and a proven domestic violence claim would leave a marked stain on the long line of medals on his chest.

Roberts-Smith's defamation action claims the *Fairfax* articles cast him as a war criminal, "a callous, inhumane" murderer and a domestic violence offender.

Establishing why Roberts-Smith case matters

There are numerous side-stories to the above matter, apart from whether a lawyer will be taken to task by the self-governing legal profession over the recently-decided case.

Roberts-Smith received his VC at a time when, by historical comparisons, the ADF was handing out medals much more freely than in previous years-wars, including Australia's top award, the VC. It was also proposing to hand out VCs posthumously for actions last millennium that didn't rank for a VC at the time.



Effectively, the military establishment publicised and promoted Roberts-Smith as a war hero, possibly THE Australian war hero.

He was feted and embraced for promotional purposes by the government, the ADF and the Australian War Memorial, particularly by its director Brendan Nelson and its board chairman, Kerry Stokes, who is a media proprietor in commercial opposition to the *Fairfax* group (which is now part of the *9 News* organisation).

It was *Fairfax* who broke the articles that may have seriously tarnished Roberts-Smith image. The war articles, *Fairfax* said, were based on statements by soldiers who served with him.

Further, Roberts-Smith is inherently and by inheritance a pillar of the WA 'establishment'. His father is a former Major-General, Len Roberts-Smith, who was also a former WA Supreme Court judge and as well commissioner of the Corruption and Crime Commission. Ben's brother is a noted opera singer.

In 2015 Ben was appointed chair of the National Australia Day Council. He was also named general manager of the *Seven* rural network and of metropolitan station *Seven Brisbane*, owned by Stokes.

Should the allegations against Roberts-Smith be allowed to stand, it would be a very dark day for many 'establishment' groups in WA and Australia. There might also be a detailed inquiry into the awarding of medals by the ADF, and the extent to which recipients' backgrounds and service details are checked before awards are made.

Contrasting society's treatment of two men

It's illuminating to see how society has treated the two men, Ben Roberts-Smith and Tim Anderson.

Each has shown remarkable courage, in different ways of course. Roberts-Smith's physical courage is rewarded by medals, appointments, status and jobs. Anderson's moral courage – to non-fashionable, politically incorrect causes – continuously draws down rebuke, non-preferment, and now the sack.

ODD SPOT: Line-tamer!

ATTORNEY: Can you describe the individual?

WITNESS: He was about medium height and had a beard.

ATTORNEY: Was this a male or a female?

WITNESS: Unless the circus was in town, I'm going with male. – from 'Disorder in the Court', things actually said in court,

Third jurisdiction to get a bill of rights this year

In 2019 Queensland will get a Human Rights Act which will provide for both a right to education focused on inclusion and equality, and a mechanism to bring complaints to a newly-enlarged Qld Human Rights Commission.

The new QHRC will expand on the old Qld Anti-Discrimination Commission.

A parliamentary inquiry has recommended 4-2 that the law be passed. Two Liberal National Party members made a 'statement of reservation', even though acknowledging the strong community support for the bill.

Civil Liberties Australia made a submission to the inquiry. Report: <http://tinyurl.com/yd9twzfd>

The Qld act will go beyond the ACT act and the Victorian charter by including the rights to health services and education drawn from the International Covenant on Economic, Social and Cultural Rights.

It will also have a stand-alone provision recognising the cultural rights of Aboriginal peoples and Torres Strait Islander peoples,

which is informed by provisions in the UN Declaration on the Rights of Indigenous Peoples.

The government has committed funding of \$2.3 million over four years (\$0.6m a year ongoing) as part of the 2018-19 Budget for the new law to operate.

New inquiry could change prisons nationwide

Civil Liberties Australia is making a submission to a major new inquiry in Queensland that could have ramifications across all Australian prisons and detention centres.

Members are invited to contribute their comments and ideas: see below.

CLA gave up arguing for prison reform on liberties and rights grounds a decade ago: we started to argue on the grounds of costs to taxpayers for inefficient correctional facilities. That is, inmates are costing about \$107,000 a year but are not being rehabilitated: more than 50% return to jail within two years of release.

As well, studies show that the indirect costs for each prisoner may be about \$40,000 a year across a range of family and community involvements.

And numbers of prisoners in general are up hugely. For example, in Qld, the rate of imprisonment (prisoners per head of population) rose 44% between 2012 and 2018. It will cost Qld up to \$6.5 billion to build up to 5800 new prison cells within six years if the state doesn't find a better solution to the problem.

By the way, the situation with women is worsening: female imprisonment is up 62% over the past 10 years – there was a sudden jump in the comparative rate in 2012.

These trends for jailing more people come despite homicide rates being much lower (about two-thirds down since 1980), and reported offences being down similarly, even after a slight uptick (probably due to family violence reporting) in the past two years.

What has happened is that idiotic politicians and media outlets continue to campaign for "locking people up and throwing away the key". That would be a silly response to falling crime rates, even if money was limitless. But it isn't and it's ordinary citizens who are paying a high price for political stupidity now, and will pay a higher price in future if the trend continues.

New ways of approaching rehabilitation?

In our submission, CLA is proposing that jails become skills learning centres for inmates and guards, and that different types of detention be designed to deliver different lessons, therefore creating much less expensive buildings than sandstone or brick walled-edifices with machine gun towers on the corners.

Prisons are now effectively hideaway houses for the mentally ill and drug-addled people of society, who comprise possibly 75% of the inmates. They are also places used to "punish" Indigenous people for being different: in Qld, 32% of prisoners are Aboriginal or Torres Strait Islanders, by comparison with those people representing around 2.5% of the state population.

For five years, CLA has argued that prisons across the nation are a disgrace, due to:

- overcrowding,
- virtually no rehabilitation programs,
- little education for post-release, and
- inadequately staffed by people not well-trained, with few on-job learning or growth opportunities,

There are 25,000 "correctional officers" – who used to be called prison guards – across Australia.

In NSW, there are 9000, with about 1600 “community correction officers” supervising offenders on parole and on court-ordered community service work. In 2019 the NSW officers/guards celebrated their own, special, national day of Friday 18 January. <http://tinyurl.com/y75mbmbj>

If Australia continues to jail people at the current rate, based on Qld figures the nation will have to find more than \$25 billion just for new jails over the next decade.

The Qld Productivity Commission inquiry is looking for fresh ideas. So is CLA for our submission. To read the QPC report: <http://tinyurl.com/yxu24zxb> To contribute to the CLA sub, please email the secretary – email address at the top of this newsletter.

How many people jailed for major crimes in Australia are innocent? Here’s an external analysis, based on a seminal paper produced by Civil Liberties Australia CEO Bill Rowlings: <https://wrongfulconvictionsreport.org/2018/12/26/what-percent-innocent/>



9-0 US drubbing calls Australia’s forfeiture laws into question

A 9-0 ruling from the US Supreme Court last month may have impact in Australia.

The ruling says US states and counties may no longer claim “excessive” sums under civil forfeiture laws.

Here, we permit the federal and state governments to abuse the same principle under the name of proceeds of crime (PoC), or crime-used property, laws. In some cases, you don’t have to be convicted of a crime to maybe lose all your assets.

The reason the US ruling may have an effect here is that recently retired WA chief judge Wayne Martin (left) is just wrapping up an inquiry into whether or not the laws in WA are reasonable. WA and the NT have the most punitive PoC regimes.

Martin is certain to take the US Supreme Court ruling into account, particularly when it came in at 9-0.

See ‘**US Supreme Court reins in runaway civil forfeiture ‘take’ by states, agencies**’, below

Cop makes sergeant with criminal record

A police officer from WA, Sergeant Nathan Trenberth, struck someone in the head multiple times while making an arrest in Fremantle in 2017, WA’s Corruption and Crime Commission reported.

The same man had a conviction for unlawful assault when a constable in 2006: in that instance he punched someone four times in the head at Perth’s Sky Show, *9 News* reported. Fined \$1400, the young officer with a criminal record was allowed to stay in WAPol. In 2009, he made sergeant.

Figures from the 2013 and 2016 financial year, *9 News* said, indicated 8 out of 10 police officers who were convicted of crimes while on the job were allowed to keep their position.

Police Minister Michelle Roberts said an investigation into Trenberth’s conduct was under way. He resigned from the police before the CCC tabled a report in parliament last month. <http://tinyurl.com/y3n8ddne>

Claremont accused to trial, after two years in jail

Bradley Robert Edwards, 51, will face a nine-month trial in July 2019 over the alleged 1990s murders of Ciara Glennon, Jane Rimmer and Sarah Spier, collectively known as the Claremont serial murders.



Prosecutor Carmel Barbagallo (left: ABCpic) told a preliminary hearing last month that forensic scientists were examining and further analysing the fibres from the car Mr Edwards was allegedly driving when Ms Glennon went missing and from the clothes she was wearing on the night.

The State is hoping to include propensity evidence in the trial – that’s evidence not linked directly to the alleged crimes but which might show relevant past conduct.

The former telecommunications worker and Little Athletics volunteer has also been charged over two separate sex attacks on teenagers in 1988 and 1995, *Perth Now* reported. <http://tinyurl.com/yb99jye2>

Report child sexual abuse...or go to jail

The ACT is about to pass a new law making it a crime to not report suspected child sexual abuse.

ACT Attorney-General Gordon Ramsay said the offence, which will carry a penalty of up to two years in jail, would apply to all adult Canberrans. If an adult believed, on reasonable grounds, that a child had suffered sexual abuse it would become criminal not to report that to police. The law extends to the Catholic Church’s confession booth.

The government’s own report into the issue said that including priests in confessionals would have little impact on detecting or prosecuting child sexual abuse.

The new crime appears to put clergy into an impossible position: report child abuse and be immediately excommunicated under canon law, or not report abuse and be imprisoned under Australian law. <http://tinyurl.com/y4sgdjvz>

‘Consorting laws’ are abused to target Aborigines, health boss says

Indigenous community leader Julie Tongs has warned against introducing blanket anti-consorting laws that she says would give police another avenue to target and arrest Aboriginal people.

Liberal shadow attorney-general Jeremy Hanson is pushing for the laws, which he claims would prevent bikie gang members and other members of organised crime getting together.

Health service chief Tongs said similar laws operating in NSW have unfairly targeted Indigenous people, the homeless and young people. The proposed ACT legislation is modelled on the laws in NSW.

A 2016 report by acting NSW Ombudsman John McMillan* presented damning findings of the laws failing to target organised crime and rather being used by police in response to minor crimes where other legislation would have been more appropriate. The report found 38% of people issued with official warnings under the laws were Aboriginal, despite Indigenous people accounting for only 2.5% of NSW’s population.

The ACT government opposes such laws. <http://tinyurl.com/y6rdj4ws> *McMillan is a member of CLA. <http://tinyurl.com/y6rdj4ws>

Fourth’ Right to Appeal’ law may come this year

Indications in *The West Australian* newspaper last month were that the WA AG, John Quigley, would ensure the passage of the ‘Right To Appeal’ law in that state in the near future, the third in the nation.

And the ACT may be next.

The WA law will mirror a law introduced in SA in 2013, then mirrored in Tasmania in 2015.

The law is the one under which Henry Keogh was released after serving 19 years in jail in SA in a miscarriage of justice, for which he received compensation of \$2.5m. It is the same law under which Sue Neill-Fraser is now appealing in Tasmania.

Civil Liberties Australia and SA academic Dr Bob Moles have been campaigning for half a decade to introduce the legislation throughout Australia. It operates if a convicted person can prove 'fresh' and 'compelling' evidence has come to light in their case, sufficient to overturn the original verdict.

In the ACT, indications are that the same law may well be in place before the end of the year. There is a formal agreement between the ruling Labor/Greens coalition in the ACT that the issue of a Right To Appeal law will be taken before cabinet by the end of 2019.

If successful, it would make the fourth jurisdiction, and would make the spread of the law throughout Australia almost inevitable in the long run. Now for some national mechanism to review wrongful convictions.

Canberra hosts second pill test

ACT Chief Minister Andrew Barr has approved potentially life-saving pill-testing trial at this year's Groovin the Moo music festival on 28 April 2019.

It will be the festival's second pill testing trial in Canberra: last year's trial was declared a success. The trials in the national capital are the only ones to have so far been held at an Australian music festival.

The trial comes after five young people aged 19 to 23 have died at festivals in NSW alone from September 2018 to January 2019, prompting a NSW coronial investigation.

The STA-SAFE consortium, which will run the trial, said the Groovin the Moo pilot would be significantly bigger than the first. There would be some changes based on lessons learned from last year, but the testing regime and technology would be the same.

The trial will be run by Pill Testing Australia (rebranded from STA-SAFE) at this year's sold-out Groovin the Moo festival, which will be held on April 28 at Exhibition Park. <http://tinyurl.com/y3vp7wa1>



Bronitt to head Sydney Uni law school

Professor Simon Bronitt (right) has been appointed head of school and dean of the University of Sydney law school from July 2019.

His research interests include terrorism law and human rights, comparative and criminal law, covert policing, family violence and mental health policing. He is co-

author of a textbook, *'Principles of Criminal Law'*, used as a core text in Australian unis.

Prof Bronitt joins U. Sydney from U. Queensland where he has been Professor of Law and deputy head and deputy dean (research) of the TC Beirne school of law since 2014. He was previously director of the national ARC Centre of Excellence in Policing and Security hosted by Griffith U in Brisbane, and before that spent 20 years at the ANU law school in senior leadership roles, including running the National Europe Centre.

For 16 years he has been a CLA member, as is now his son, Aaron, just entering his 2nd year of law studies at ANU. <http://tinyurl.com/y5nz93ng>

Officer took to genital photo-shopping

A resigned Sydney police officer must pay a \$1000 fine and be of good behaviour for two years after he took intimate images from an arrested woman's phone and sent them to other police on Facebook.

Steven Albee, 29, was a senior constable in the Nepean area when he arrested a woman who refused a drug test during a traffic stop in April 2017.

He seized the woman's phone and used police investigative software on it to access three private photos of the woman's genitals, and one of her boyfriend's torso and penis. Albee uploaded two of the photos to a Facebook group chat with four other serving police officers.

Albee was charged with using a carriage service to menace, harass or offend. He pleaded guilty in November 2018, and has resigned from NSW Police. <http://tinyurl.com/y65lspji>

How big is 'The Community' of spooks?



Noted columnist – and former editor – of the Canberra Times, Jack Waterford, has recently given an excellent rundown in that newspaper of national capital's quintessential, self-selected elite, otherwise known as Australia's 'spookdom'.

They call each other 'The Community', a whispery description suited to their propensities, like Flinders and Bauer, to meet in back passages.

Waterford (photo) says:

"Strictly, there are six members of the Australian Intelligence Community, (or seven when one counts the new 'co-ordinating' office of national intelligence): ASIO, ASIS, ASD, DIO, the AGO and ONA. But the "community" now informally includes the AFP, Border Force, the Criminal Intelligence Commission, Austrac, as well as folk such as the National Intelligence Coordinating Committee, the National Intelligence Collection Management Committee, the centre of counter-terrorism, the cyber security centre and so on.

"So many, indeed, that we probably need some bodies, outside of home affairs, to coordinate them.

"And of course other departments which claim, like home affairs, to be central policy agencies providing 'co-ordinated strategy and policy leadership' on security and intelligence matters have bureaucratic divisions containing phrases such as 'national security' and 'terrorism'.

"Defence and Foreign Affairs and Trade have such divisions, and so, if on smaller scale, do the agencies that control the spending. The administrative functions of such bodies do not, usually, have anything much to do with actual security agencies inside the portfolio umbrella. Such agencies – ASD or defence intelligence, or ASIS, have their own warriors, advocates and agents waging bureaucratic warfare on the Canberra chessboard. The extra added ingredient from the public service is to guarantee departmental secretaries a place at the table, and a slice of the pie.

"I think there are about 7000 women and men inside the AIC as narrowly defined, and (depending on how many one thinks are doing intelligence work), perhaps another 4000 in the wider security community, such as the federal police.

"It is hard to establish how many ordinary public servants are supping at the national security trough – because the modern, agile and transparent APS no longer reports how many people are assigned to which functions, and many departments do not even publish organisational charts. There would be at least 1000."

Waterford asks:

"With intelligence and security, the usual cry is who will guard the guardians. But we must also ask who will coordinate these coordinators? Or cull them if one doubts that they add value: there's probably \$500 million to be saved that could build a hospital or two. Or even a warship."

– Canberra Times 2 Feb 2019 <http://tinyurl.com/y7p6qo63>

ICAC keeps it in the legal family...

The new Independent Commission Against Corruption (ICAC) in the NT, which has just begun operating fully, has kicked the NT Anti-Discrimination Commission out of their long-established office (complete with interview rooms and hearing room).

The ADC is now squeezed into a pokey little office away from the other justice-related agencies, and is not as accessible in terms of mobility and public transport.

Ken Fleming QC was appointed as the ICAC Commissioner on 13 June 2018. He began on 2 July 2018.

He has recently appointed Matthew Grant to run the ICAC office as general manager – Grant started in the job on 7 January 2019. Mr Fleming announced the appointment on 7 February 2019, one month later.

Mr Grant will lead investigations, prevention and business services.

He was most recently an executive member of the WA Corruption and Crime Commission (CCC), overseeing investigations into misconduct and corruption. Earlier, he was with the AFP for a decade and managed multi-agency investigations and operations. He has a Bachelor of Investigations.

Oh, did anyone mention Matthew Grant is the brother of the NT Chief Justice, Michael Grant (photo)? We don't suggest an ICAC investigation into the appointment is warranted. But, if one was, who would run it?

– from local CLA sources



Dodson gets gig as treaty man

Katherine-born Yawuru man and former Australian of the Year, Professor Mick Dodson, starts early this month as the Northern Territory's first-ever treaty commissioner.

Prof Dodson has spent his working life fighting for the rights and interests of Aboriginal and Torres Strait Islander Australians.

The appointment follows signing of the historic Barunga agreement between the NT Government and the NT's four land councils in June 2018. The signing paved the way for consultations to begin with Aboriginal people about a treaty.

Prof Dodson will deliver an interim report and public discussion paper within 12 months, with a final report to be delivered no more than 18 months after the delivery of the discussion paper.

The NT is looking for a part-time, female, Aboriginal deputy commissioner to help the commissioner. Applications close 17 March.

Qld court decisions slow, but cheap

Queensland has the largest backlog of criminal court cases in the nation.

Qld Law Society President Bill Potts said a new Qld Productivity Commission report revealing the state was the most clogged in Australia came as no surprise and was the "smoking gun" to support long-held views in the legal profession that more funding was urgently needed "Queensland courts are so

underfunded that the justice system is in a state of crisis," Mr Potts said.

Queensland's magistrates courts have a backlog of more than 6200 criminal cases – 16% of the year's crime caseload – that are more than a year old. That compares with 1.9% in NSW and 10.2% in Victoria.

The report found across all criminal courts, the Qld government spent \$835 to finalise each case, compared with \$1164 in NSW and \$1324 in Victoria. <http://tinyurl.com/yyp4qtlm>

Australian briefs

Copped sneaking a peak: A former WA police officer has been sentenced to six months jail on 177 charges based on unlawful computer access. Adrian Trevor Moore, 48, accessed the personal details on the WAPol database of 90-plus women he found on dating websites and the like. <http://tinyurl.com/ybvbdtw2>

Reorganise? Not on my account, please! Parliament tax committee chair Jason Falinski said last month: "The committee found that the ATO's digital reinvention of its services has changed every aspect of our tax administration framework for taxpayers and tax professionals alike. Taxpayers now have greater responsibilities to meet their obligations, and the work of tax professionals has increased rather than declined". Of course! Every time the parliament or bureaucracy 'reorganises' for 'greater efficiency', the people who suffer are ordinary citizens and taxpayers. Every time the result is effectively a transfer of resources and funds TO the government, CLA believes. <http://tinyurl.com/y6qmbu2x>

Defamation reform...again! Attorneys-General throughout Australia have agreed to a timetable for defamation reform to allow all parliaments to begin enacting changes from the middle of 2020. The NSW-led Defamation Working Party (DWP), consisting of representatives from the Commonwealth and each Australian state and territory government, will formulate new Model Defamation Provisions for the digital age. Two rounds of public consultation are scheduled to allow people to contribute to nationally consistent defamation law. <http://tinyurl.com/y7kk2727>

Looking to improve victim compensation: The NT government this week concludes a series of public information sessions on a victims of crime discussion paper. Proposed reforms include introducing victim-offender conferencing for adult offenders and improving restitution and compensation orders under the *Sentencing Act*. – media release, AG Natasha Fyles 190211

Murder redefined: Qld's Criminal Code and Other Legislation Amendment Bill 2019 redefines murder to include the unlawful killing of another if the death is caused by an act or omission with reckless indifference to human life. It is meant to capture child manslaughter cases at the 'higher end' of culpability, involving violence or significant neglect but where intent to kill or 'cause grievous bodily harm' can't be proved beyond a reasonable doubt. The bill also increases the maximum penalty for failing to supply information from three years imprisonment to seven years. – Premier and AG joint media release 190211.

Age shall weary them, unchecked: The NT government last month rejected a CLA proposal for regular testing of the physical and mental health of judges as they age. We also

suggested a mechanism for peer review of performance – by fellow judges – but it seems all parts of the legal profession in Australia are against performance appraisal in general. CLA supported the raising of the retiring age to 72, which the government will pass. The Attorney-General acknowledged that there was a “lack of articulated procedures for managing complaints which then initiate mechanisms for removal”. Although the NT Supreme Court has a published protocol for dealing with judicial complaints, there is no such protocol for the Local Court or for the NT Civil and Administrative Tribunal.

AG looks for X lawyers in his state:

WA AG John Quigley (photo) wants reassurance that WA police have not used defence lawyers to spy on their clients. He has written to Police Minister Michelle Roberts asking her to “seek assurances” from WAPol Commissioner Chris Dawson that WA lawyers have never acted as police informants and passed on confidential information to law enforcement bodies. In Victoria a Royal Commission is inquiring into the activities of police, the office of the director of public prosecutions and lawyer X, or EF, or 3838 (pick your choice of codename), who tipped off police about the people she was defending in court. <http://tinyurl.com/y578rb9u>



Voting to return to full preferential: The NT is planning to revert to full preferential voting in elections and to loosen strict requirements so that a ballot can be counted if the intention is apparent. As well, polling stations will get an exclusion zone around them and there’ll be strict rules about how party campaigners are to operate near booths. The new provisions are in the Electoral Legislation Amendment Bill 2019 Serial No 72. <http://tinyurl.com/y4c27jba>

High Court judge Michael Kirby AC CMG said:

‘The protection of our liberties does not ultimately depend on parliaments or even the courts. It depends on the love of the people for liberty.’

Members’ contributions

We need a Royal Commission in Tas (you can sign a petition)

There must be a Royal Commission held into the (Sue Neill-Fraser) gross miscarriage of justice. There have been far too many of these wrongful judicial decisions in the past . Time for “justice” to have a meaning for all Australians. – Elizabeth Chandler, Napoleon Reef NSW

You can sign a petition – <http://tinyurl.com/y99gadw8> – for a Royal Commission into the legal system and justice in Tasmania after court hearings conclude in the Sue Neill-Fraser case. CLA’s Australia Day letter of request for an RC or open inquiry into the Sue Neill-Fraser case (after the case concludes) was almost instantly rejected by Tas AG Elise Archer: <http://tinyurl.com/y4zrfofo>

Abuse of the presumption of innocence?

The West Australian 20 February 2019 on P1 referred to the accused as “The story of a killer” instead of referring to him as “alleged killer“. I trust the WA independent media council will agree that *The West* should always bear in mind not to abuse the presumption of innocence principle. – Brian G Tennant AM JP Subiaco WA. Note: The letters editor of *The West* did acknowledge my letter with thanks.

Come the election, what do we need? CLA members say...

Embrace the Uluru Statement

My overwhelming response to help ensure some restoration of decency and outline a way forward for Australia is for us to embrace the Uluru Statement to 'make ancient sovereignty a fuller expression of Australian nationhood'. Paul Daley's '*On Patriotism*' should be on the curriculum for all year 10 students, throughout the land. – Rosalind Byass, Stawell Victoria

From investigating to paying their own way

- Establishing a federal ICAC able to investigate and prosecute past, present and future misdemeanours by federal politicians in their official capacity;
- Developing a criminal justice system that comes down hard on all men and women throughout Australia who mistreat minors, particularly babies. One of the easiest things you can do is get someone pregnant without taking real responsibility for this activity. Some troglodyte is left minding an infant and decides to belt or bash it to stop it crying because he knows no better;
- Actively opposing candidates who are climate change deniers; and
- As MPs are paid \$200,000-plus each year, make them pay for their travel costs: don't give them \$280 or so for each night in Canberra. – Les Brennan, Sunshine Bay NSW

Trade without tax

The legal right to trade in gold and silver without it incurring tax: the rationale behind this is that the Reserve Bank of Australia lends the government “money” (out of thin air) and then demands interest repayments, which is what taxation was brought in to pay. – Peter Lines, WA

Protect the elderly

Many years ago we recognised that our children were vulnerable and took steps to protect them. It became mandatory for those involved with them to report any abuse, or suspected abuse. As we become more co-ordinated in states and territories in defining abuse, isn't it time we took a similar path with older people, making it mandatory for those involved with them to have the same reporting requirements? Just a reminder that older people form an increasing part of society, and voters. – Audrey Guy, Ngunnawal ACT

CLA report – main activities for February 2019

Board meeting on 17 February 2019. Among the more important policy and other decisions made were:

Secretarial position support: CLA will be seeking someone to help with secretariat work about one day a week, either a younger uni student or an older retired person. Subcommittee to investigate and pursue.

Extending the reach of submissions: The Board decided to take the opportunity to spread CLA's “already good ideas” in submissions by more active distribution and media processes. We had great success by preparing a quality submission, with professional members’ great help, into the ‘consultation’ around Home Affairs Minister Peter Dutton’s sudden urge to have a national sex register. By completing early, we were able to send out copies of our submissions to all state and territory Attorneys-Generals, which they found very helpful, according to reports. We intend to adopt this practice more in future, whenever deadlines allow.

Prisons inquiry, led by Queensland: The Board considered the national importance of the current Qld Productivity Commission inquiry into prison costs and reforms, and CLA’s submission to it (due 17 April). We subsequently discussed the

initiative in detail with ACT AG Gordon Ramsay, who reinforced the importance of the process in national terms.

Database-membership system: CLA is to invest in a new database and membership-subscriptions system under a proposal prepared largely by webmaster Lance Williamson, who was thanked for his extra effort and initiative in finding/recommending the new system. The new system will replace CLA's original system, which has been in place about 12 years. Technology, software and combination options have expanded hugely since then.

Social media: We plan to step up our social media activity, with our youngest director, Eloise (Elly) McLean taking the lead along with fellow law student Aaron Bronitt. Elly outlined to the Board opportunities to involve students around issues such as music festivals, the environment, and gender issues.

Protest/anti-boycott laws: One of our Tasmanian Directors, Richard Griggs, is preparing a submission to the Tasmanian Government on the next attempted tranche of their protestors (anti-boycott law). Earlier versions have not fared well in appeal jurisdictions. National V-P Tim Vines will help prepare the submission, due to national import of the move by Tasmania, the likelihood of 'mirroring' unattractive legislations in other jurisdictions, and the inclusion of freedom of political communications issues.

WA report: Margaret Howkins was congratulated on a most comprehensive, excellent report, in which she noted, particularly, that police violence is increasing in the West. Many more details are coming to light as people record police activity on mobile phones.

In light of these developments, V-P Tim Vines CEO Bill Rowlings will prepare a 'How To...Safely' article for publication and the CLA website on 'What to do – not do when recording police'.

Photo: CLA WA Director Margaret Howkins and one of the two CLA Tasmania Directors Rajan Venkataraman met for a colourful coffee while the Howkins family was on holiday in Hobart in Jan 2019.



National Media Spokesman's

report: Tim Vines reminded the Board that the importance of privacy around a Sex Offender Register was mainly to protect the victim, as perpetrators are frequently (70%+) family members or friends.

- AG Christian Porter interview on Sky (ie, not in Parliament) to be followed up: the Commonwealth Attorney-General apparently breached his duty to the court and as the nation's First Law Officer in refusing to use "alleged" in relation to a refugee person charged, but not convicted. CEO to investigate follow-up options such as a letter to the AG, or a possible request to the WA Bar Assn to issue him a reprimand.

- Tim Vines reported on another letter and his PhD article on the Defence Trade Controls Act. He explained the complexities of Defence now seeking, in a review, to impose further restrictions on communications between scientific and academic researchers.

CEO Bill Rowlings gave the Board a detailed rundown on the **status of the Sue Neill-Fraser case** in Tasmania. Decision by judge Michael Brett expected around the end of February: either yes to new, full-bench appeal, or no. Three new books released in the past six months: reviews by BR of recent ones are on the website. A six-part doco series on Ch 7 is running through February and March. It can also be watched on catchup, 7Plus: <https://7plus.com.au/undercurrent-real-murder->

[investigation](#) Tim Vines highlighted the recent NSW Court of Appeal decision, which the NSW AG is appealing, as to 'fresh' and 'compelling' evidence – click on the 2018 Decision tab for a summary of the NSW decision. <https://www.ruleoflaw.org.au/double-jeopardy-bowraville-murders/>

Condolences: The Board voted to send a condolences letter to member Tricia Miles on the death of her husband, the longtime CLA member and former ACT Chief Justice Jeff Miles. ENDS BOARD.

The 2019 DFAT-NGO consultation: CLA representative Elly McLean submitted a comprehensive report to the board. "Throughout the day, Civil Liberties Australia and other participating networks had the opportunity to engage with senior DFAT representatives, hear from guest speakers and presenters, and share their expertise and perspectives". The report is online at: <https://www.cla.asn.au/News/dfat-report-on-2019-annual-ngo-forum-on-human-rights/> Also attending for CLA was Director Jennifer Ashton.

Meetings:

Meetings were held with Hugh Selby barrister and academic on judicial education, and on the Sue Neill-Fraser case, and with Roger Clarke of the Australian Privacy Foundation. The President and CEO also met with member John Passant (photo, with the CLA President) who conducted an interview on CLA to appear online in *Independent Australia* for whom he is the Canberra – Parliament House political correspondent.



Meeting with ACT Attorney-

General: President Dr Kristine Klugman, Director Jennifer Ashton and CEO Bill Rowlings represented CLA at a networking meeting with ACT AG Gordon Ramsay and his legal and departmental legal advisers. Matters discussed include:

1. 'Right to appeal' law to be considered by Cabinet in the ACT in 2019;
2. Regulations in general were discussed, including the complex nature of their application. More research and inquiry is needed, with the ACT Dept of Justice willing to help CLA dig deeper;
3. CLA congratulated the government in its stand to refuse bringing in anti-consorting laws, despite the customary 'law and order push', and on deciding to try more pill testing initiatives; and
4. The Queensland Productivity Commission report on jails was discussed at length, with the ACT government keen to explore options to solve overcrowding and reduce new building costs. CLA will take up this issue at a scheduled meeting with the Greens representative in the ACT government, Minister Shane Rattenbury, who holds the Justice and Corrections portfolios. These meetings are part of CLA consulting widely on our submission, including with two current CLA prisoner members, one former CLA prisoner member, and two criminologists. We note the justice reinvestment initiatives of the ACT government, which are seen as leading the nation.

Media:

- Tasmanian Times: CLA calls for Royal Commission into Sue Neill-Fraser case: <https://tasmaniantimes.com/2019/01/letter-to-the-editor-on-justice/>
- Dutton's Child Sex Offender Register Proposal Is Political Fodder, by Paul Gregoire: Sydney Criminal Lawyers <http://tinyurl.com/jcqel8zu>

- What percent innocent? Andrew Urban quotes extensively from an analysis of wrongful convictions in Australia by CLA CEO: <https://wrongfulconvictionsreport.org/2018/12/26/what-percent-innocent/>
- Does perverted justice prevail in Australia's deep south? Tasmanian Times: (copy of Colin McLaren book review, which is on CLA website, as is the review of the Robin Bowles' book, 'Death on the Derwent')

Submissions lodged:

November 2018

Inquiry into legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff, Senate Legal and Constitutional Affairs Committee, federal (Venkataraman);

Queensland Human Rights Bill 2018, QLD (Griggs);

Independent (Martin) review of the WA Criminal Property Confiscation Act 2000, WA (Coten)

December 2018

NT Parliament Economic Policy Scrutiny Committee inquiry into retirement age of judges and magistrates, NT (Rowlings); Senate Select Committee on a National Integrity Commission, federal (Rowlings).

VALE:

Jeffrey Miles AO died in February 2019. He was a member of Civil Liberties Australia from its early days, and a sound adviser to us when we sought help with curly questions of law and legal practice. Jeff (photo) was a former chief judge of the ACT for 17 years until 2002, and a judge of the Federal Court. Before that, he was a judge of the National Court of PNG and a Supreme Court judge in NSW. Earlier in his career he was appointed Public Defender in NSW.



Ann Symonds AM died late last year. She was a longtime member of CLA and a Labor Member of the NSW Upper House from 1982 to 1998. Her passion was drug law reform, and she helped create the Parliamentary Group for Drug Law Reform, which continues to operate in Australian parliaments today. She also helped women escape domestic violence and in caring for children of prisoners.



INTERNATIONAL

US Supreme Court reins in runaway civil forfeiture 'take' by states, agencies

The US Supreme Court ruled 9-0 last month that the Constitution places limits on the ability of states and local agencies to take and keep cash, cars, houses and other private property used to commit crimes.

Known as civil forfeiture in the USA, it is a system to raise revenue that is easily abused – frequently, the property seized has been out of all proportion to the crime committed.

The particular case before the court was that of Tyson Timbs, a small-time drug offender who sold about \$320 worth of heroin to undercover police. He was sentenced to a year of house arrest and five years of probation, and was ordered to pay \$1200 in fees and fines.

Then state officials seized Timbs's \$60,000 Land Rover, which he had bought from proceeds of his father's life insurance policy, saying he had used it to commit crimes.

The Eighth Amendment, which bars "excessive fines," limits the ability of the federal government to seize property. Now the Supreme Court has ruled that the clause also applies to the states under the [14th Amendment](#), one of the post-Civil War amendments. <http://tinyurl.com/y4v39sbb>

Liberties and rights continue long-term decline

'Freedom in the World' has recorded global declines in political rights and civil liberties for an alarming 13 consecutive years, from 2005 to 2018, the US organisation reports in its 2019 report.

The global average score has declined each year, and countries with net score declines have consistently outnumbered those with net improvements.

A total of 68 countries suffered net declines in political rights and civil liberties during 2018, with only 50 registering gains.

FitW reported that challenges to American democracy were testing the stability of its constitutional system and threatening to undermine political rights and civil liberties worldwide.

"While democracy in America remains robust by global standards, it has weakened significantly over the past eight years, and the current president's ongoing attacks on the rule of law, fact-based journalism, and other principles and norms of democracy threaten further decline." <http://tinyurl.com/y8gyvd8k>

Are Trump and crew playing anti-rights game?

Natalie Nougayrède, a columnist writing in *The Guardian*:

"(Mike) Pompeo's talk of freedom, above all, echoed (John) Bolton's thinking.

'All Americans celebrate their own individual freedoms, and are at least well wishers for others around the world to enjoy the same freedoms,' Bolton noted in 2000. However, attacking the EU, he added that the "'human rights' rubric has been stretched in a variety of dimensions to become an important component of globalists' effort to constrain and embarrass the independent exercise of both judicial and political authority by nation-states".

"Today, that thinking fits perfectly with rightwing populists in Warsaw and Budapest who complain about the EU's response to their curtailing of independent judges and media," the columnist wrote. <http://tinyurl.com/y5m2wbpbx>

'Burning injustice' leaves a blackened outcome

When Theresa May became UK Prime Minister in July 2016, she placed fighting "burning injustice" at the heart of her vision to put the "union" back into the politics of the Conservative and Unionist party.

Among a litany of examples of such injustices, she included: "If you're black, you're treated more harshly by the criminal justice system than if you're white."

Meanwhile, the Labour MP David Lammy was conducting a landmark review of the treatment of and outcomes for black, Asian and minority ethnic (BME) individuals in the criminal justice system. At that time around 40% of inmates in youth jails – young offender institutions (YOIs) and secure training centres (STCs) – were from BME backgrounds, a figure Lammy felt was shockingly high.

Last month it emerged that the situation had worsened: now 51% of inmates in YOIs identified as being from a BME

background – nearly four times the 14% BME proportion in the wider UK population. <http://tinyurl.com/yd94ebwe>

Male lawyers need to do more

Men in the legal profession need to “call out” other men if they witness sexual harassment, according to the UK barrister and baroness Helena Kennedy QC (photo), who has urged such behaviour to be made the subject of disciplinary action.



In the wake of a fresh outcry over sexism among barristers and patronising remarks by judges, there have been calls for tougher action to prevent female barristers being forced out of the profession.

Chris Henley QC, chair of the Criminal Bar Association, raised the issue last month in a weekly message in which he shared stories from female colleagues.

One female barrister, who has young children, had been told by a male judge: “You should really think about whether the bar is right for you,” after she raised childcare issues when he wanted to sit late.

Another young barrister said she had changed careers after a judge had shouted at her “like a toddler”. <http://tinyurl.com/y2u3pnpl>

ODD SPOT: FBI believes rights have all the rights

The FBI opened a “domestic terrorism” investigation into a civil rights group in California, labeling the activists “extremists” after they protested against neo-Nazis in 2016.

US federal authorities ran a surveillance operation on By Any Means Necessary (Bamn), spying on the leftist group’s movements in an inquiry that came after one of Bamn’s members was stabbed at the white supremacist rally, according to documents obtained by the *Guardian*.

The FBI’s Bamn files reveal:

- The FBI investigated Bamn for potential “conspiracy” against the “rights” of the “Ku Klux Klan” and white supremacists.
- The FBI considered the KKK as victims and the leftist protesters as potential terror threats. It also downplayed the threats of the Klan, writing: “The KKK consisted of members that some perceived to be supportive of a white supremacist agenda.” <http://tinyurl.com/yc6h2kjl>

Big Brother joins UK police to predict crime

In 14 UK police forces, discriminatory computer programs are predicting who will commit a crime, where.

Shady algorithms ‘map’ and deliver biased data, Liberty UK says in *Policing by Machine* which exposes:

- assessing likelihood of offending or reoffending based on offensive profiling;
- algorithms which entrench pre-existing discrimination, directing officers to patrol areas already disproportionately over-policed;
- Programs which assess a person’s chances of being the victim of crime, being vulnerable or being reported missing;
- a severe lack of transparency: the public is not told how predictive algorithms reach their decisions. Even police

don’t know how the machines have come to their conclusions; and

- the significant risk of ‘automation bias’ – a human decision-maker simply deferring to the machine and accepting its indecipherable recommendation as correct.

“Predictive policing is sold as innovation, but the algorithms are driven by data imbued with bias, firmly embedding discriminatory approaches in the system while adding a ‘neutral’ technological veneer that affords false legitimacy,” Liberty police officer Hannah Couchman said.

“Life-changing decisions are being made about us that are impossible to challenge. In a democracy which should value policing by consent, red lines must be drawn on how we want our communities to be policed.” <http://tinyurl.com/ycesl9a3>

POLICING BY MACHINE



LIBERTY

Europe tackles tricky web copyright laws

A controversial overhaul of Europe’s copyright laws won support from a majority of European governments last month – next step is a pivotal vote by the European Parliament this month or in April.

Supporters of the legislation say it’s a benign overhaul of copyright that will strengthen anti-piracy efforts. Opponents warn that the most controversial provision, known as Article 13, could force internet platforms to adopt draconian filtering technologies, a cost that could be particularly burdensome for smaller companies.

Online service providers have struggled to balance free speech and piracy, and Europe has been a leader in imposing controls.

Article 13 is not yet public, but indications are that there are very tricky balances to be struck to avoid further benefiting copyright holders over ordinary citizens going about their web activities. <http://tinyurl.com/yy5suzfw> ...and for another take on the issue: <https://www.youtube.com/watch?v=89ZkydX0FPw&feature=youtu.be> Achtung: Language grossier.

International briefs

Other people’s DNA can identify you: More than 15 million US citizens have offered up their DNA to online genealogy services in recent years. While they represent a small fraction of all people, the pool of profiles is large enough to allow 60% of white Americans — [the primary users of DNA sites in the USA](#) — to be identified through the databases, according to researchers. Researchers believe that in the coming years, 90% of Americans of European descent will be identifiable, even if they have not submitted their own DNA. <http://tinyurl.com/y68chbcv>

Enforce regs or risk deaths: Of the 177 care homes inspected by the London Fire Brigade 101 – 57% – were issued with a formal notification instructing them to address safety concerns. The brigade said it believed the findings would be repeated if similar inspections were carried out across the UK. Similarly in Australia, the fact that federal, state and territory governments do not enforce regulations of all types means we live in a far less safe country, CLA believes. <http://tinyurl.com/y9tx9edn>

DATES:

All 2019, World: UN International Year of Indigenous Languages

2-3 March, Canberra: Angry? Biased? Burned Out? 2019 annual conference of the National Judicial College will examine emotion and bias in the court room, including how judges engage emotionally with their work, the impact on them and how to alleviate impacts. <http://tinyurl.com/y8qufoaq>

13 March, Melbourne: Crime and Networks workshop, 9.30-4pm, Deakin Downtown, Docklands. Details: caitlan.miller@flinders.edu.au

21-22 March, Brisbane: Community Legal Centres Qld state conference, Hotel Grand Chancellor. Info: 07 3392 0092 or admin@communitylegalqld.org.au

5-7 April, Alice Springs: Language and the Law III, translators and people for whom English is not a first language. NT Supreme Court in Alice. Details, email: supremecourtlanguage.conference@nt.gov.au or phone 0447 286 342

24-25 May, Melbourne: Justice for Young People conference Australasian Inst of Judicial Admin. Rendezvous Hotel. Details: <http://tinyurl.com/y2y2sxhf>

Mid-2019, probably Sydney: 'Free and Equal in Dignity and Rights: A national conversation on human rights', organised by the Australian Human Rights Commission. Details: <http://tinyurl.com/yanftqn3>

25-27 June, Noumea: 'Democracy, Sovereignty and Self-Determination in the Pacific Islands', at Uni of New Caledonia, run by the Pacific Islands Political Studies Association. Details: kerryn.baker@anu.edu.au

5-10 July, Rhodes, Greece: Hellenic Australian Lawyers Assn 2nd conference. Details: <http://tinyurl.com/yc4d6wxo>

July: International Bar conference, Singapore

22-24 August, Queenstown NZ: Aust & NZ Bar Assns joint conference. Info: Camilla Williams events@austbar.asn.au

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)

ENDS ENDS ENDS

Is Australia the wrongful conviction capital of the world?

Many of the original convicts transported to Australia apparently claimed they were convicted on trumped up charges.

If they were – and almost certainly some were – then Australia probably held the world record, pro rata of 'imprisoned' population, for most miscarriages of justice at some time in our history

But how do we fare now? CLA is researching wrongful convictions in Australia. So far, the one below is the earliest apparently reputable ("deathbed") claim to have been convicted in error*.

Voice from the past: William Riddle, immediately before his execution by hanging in Sydney Town, NSW, 190 years ago:

"My good friends and fellow prisoners, look at the state I now stand in, innocent of what I am going to die for – but I forgive my prosecutors, and I forgive every one. I prefer death to living in chains and fetters in such a country as this."

– 20 March 1829, as reported in *The Australian*, Sydney, on Saturday 21 March 1829, found in Trove <https://trove.nla.gov.au/newspaper/article/36867701>

William Riddell (Riddle or Riddel, spellings differ):

Hanged at Sydney (20 or 23 March 1829, dates differ) for the murder of John Heley in the Muswellbrook district.

Riddell apparently desired Heley's wife; Heley was found dismembered in a stump hole. Riddell was an atheist, republican, radical, autodidact. He ran up the steps to the gallows, took snuff and said: "I prefer death to living in chains and fetters in such a country as this". <http://tinyurl.com/y9panee2>

One circumstance remains to be mentioned. Riddle solemnly and pertinaciously persisted to the last in maintaining his innocence of the crime for which he suffered death.

He acknowledged that he had got a fair trial, and that the jury could do no otherwise than find him guilty from the evidence that was adduced against him.

But he uniformly and solemnly disclaimed all knowledge of the murder, though he hinted his suspicion of its being perpetrated by some person whom he did not name, expressing his hope, at the same time, however, that the law would be satisfied.

It must be acknowledged, indeed, that the evidence however apparently conclusive, was altogether circumstantial, and that, though the jury may have been perfectly justified in finding a verdict of guilty, the unhappy man may notwithstanding have been innocent of the murder. – <https://trove.nla.gov.au/newspaper/article/2192081>

* IF YOU KNOW of any other early claims of wrongful conviction in Australia – or even significant ones in recent years for major crimes – please let us know.