

## Sue Neill-Fraser wins right to full appeal hearing

Nine and a half years after being jailed, wrongly. Six years after Civil Liberties Australia first campaigned for a new appeal law for Tasmania. Three years after her latest court bid for a new hearing began...

Sue Neill-Fraser has won a new appeal.

*Photo: The appeal decision, as reported in The Mercury Hobart.*

Three supreme court judges will hear her appeal, from a date to be set. Interstate judges should be involved, to ensure a fair hearing this time.

Judge Michael Brett on 21 March 2019 ruled there was “compelling” evidence that SNF’s original conviction may have been “unsafe”, as lawyers say. In other words, there is evidence that she may well have been as innocent all along as she has always claimed.

Friends and family and supporters have known she is innocent for more than a decade, ever since her husband Bob Chappell disappeared on Australia Day night in 2009. He had stayed overnight aboard their yacht, the *Four Winds*, moored in Sandy Bay to work on electrical problems.

At dawn, rowers going out to train discovered the yacht half sunk. Chappell was missing; his body has never been found.

Judge Alan Blow, now chief judge of Tasmania, sentenced SNF to 26 years jail with 18 years non-parole when a jury found her guilty after an agglutination of imaginary “facts” and non-happenings concocted by police with febrile imaginations into the criminal charge of murder. The case was entirely circumstantial.

The jury was spun the tale engineered by police selectively gathering information to bolster their mythic imaginings, illustrated by forensic photos that gave the entirely wrong impression, and hindered by the court not being able to hear the truth from some witnesses and potential witnesses.

A Tasmanian appeal court reduced her sentence to 23 years, 13 non parole. The High Court of Australia refused to hear a further appeal.

Her conviction was confirmed even after the prosecutor, Tim Ellis, admitted he had falsely claimed SNF’s DNA was on a rubber glove which Ellis said was used to clean up the alleged crime scene. The DNA was not hers: it belonged to Chappell’s son, Tim.

The appeal courts found no “significant” error had been made in the original trial. “Significant” is the judges’ weasel word, used to acknowledge there has been an error, but also to excuse judges from correcting it.

*Photo: Producer of ‘Undercurrent’, shown over six parts on Ch 7 recently, Eve Ash, answers questions during a talk organised by CLA at the ACT Legislative Assembly in late March 2019.*

The new appeal hearing in 2019 is likely to be told the original trial was riddled with what lay people might describe as significant errors by police, people giving ‘evidence’, prosecutors, the judge...the list goes on.

For now, there is the compelling statement by a homeless girl, then 15-years-old Meaghan Vass. She denied at the original trial that she had ever been on the yacht. However a very large sample of her DNA, the size of a dinner plate, was found on board.

Last month, ‘live’ on *60 Minutes*, and in writing during the filming of the Ch 7 series *Undercurrent*, she has admitted being on board the yacht and seeing Chappell bashed repeatedly. She also said that it was SNF – not her – who was the one NOT on board the yacht at any relevant time.

Sue Neill-Fraser should be freed immediately, by Governor’s edict if necessary: 10 years locked up in jail, innocent, is a heavy price to pay for the incompetence of the state’s legal systems and of its employees.

Note: This issue of CLArion carries a number of items on SNF due to the significance of the above breakthrough. This is the only individual wrongful miscarriage case CLA has ever supported. We have been working on it for seven years.



## Australia's third human rights act passes

Australia now has three Human Rights acts, with Queensland joining the ACT and Victoria.

The Qld act, which passed in late February, is the most broad-reaching and accessible.

It protects people's rights to freedom, respect, equality and dignity. Queenslanders have the right to access health care and children have the right to access an education.

People are able to complain to Qld's Human Rights Commission. <http://tinyurl.com/y5cjucq9>

## Williams believes anti-Huawei push is commercial

Clive Williams, visiting fellow at the ANU's Centre for Military and Security Law, has told the ABC that some leaders of the UK intelligence community would no doubt like to see the UK fall into line with the US, in order to safeguard the Five Eyes intelligence relationship.

But Prof Williams noted that the UK "had never been afraid to adopt contrary policies to the US, and does not seem to have suffered in the past from doing so".

Intelligence officials say allowing Huawei to participate in the countries' 5G mobile networks would create national security risks. But Prof Williams said there were suspicions that US officials and electronics business leaders publicly expressed security concerns without supporting evidence, in order to give American companies a competitive edge.

"Australia and New Zealand are always quick to fall into line with the US when it comes to publicly expressing US security concerns because they want to be seen as close reliable allies," he said. "They are prepared to pay more for an inferior 5G product if that's what it takes to maintain the close relationship."

<http://tinyurl.com/y67xdcrg>

## CLA's AGM concludes, 10 Directors returned

CLA's annual general meeting, electronically and by post, took place last month.

The formal declaration is later in this newsletter, and also online at <https://www.cla.asn.au/News/> There you can read the comments made by members as part of the AGM process.

The Directors thank members for their unwavering support.

## AG Porter takes 'cruel of law' to new lows

Attorney-General Christian Porter is so abusing the Australian legal system that he ought to be ruled in contempt of a court over which he, as the nation's First Law Officer, nominally presides.

Porter appears to be delaying with the Witness K/Bernard Collaery case. As well, he is ruling everything connected with the case is secret, so secret that even charged lawyer, Collaery, is not permitted to see the evidence against him. That's right, the charged man is not permitted to see what he is being charged over.

The government desperately does not want the case to be top of mind in the lead-up to an election. As *Crikey's* Bernard Keane puts it:

"This tactic is central to the government's desire to prosecute K and Collaery out of sight of the media and the public. It obscures the question of the culpability of John Howard, Alexander Downer, David Irvine and a range of security officials in the illegal bugging of the East Timorese cabinet — and the feckless removal of counter-terrorism resources from Indonesia at a time of terrorist attacks against Australian targets there to enable it. But it also affords considerable procedural opportunities for Porter's lawyers to delay proceedings further."

Keane goes on to reveal that the man briefing the AG's lawyers is Chris Moraitis, now secretary of the AG's Department. Moraitis, says Keane, "therefore has a key role in the Commonwealth's attempt to cover up ASIS' crime in Dili, the prosecution of K and Collaery and its efforts to delay the prosecution as much as possible."

Then Keane asks: "Which DFAT officer was the senior legal adviser who helped then foreign-minister Downer negotiate the notorious CMATS treaty with Dili, the one for which Australia's negotiation position was informed by ASIS' bug in the East Timorese cabinet room?"

Chocolates for the lady who answered "Chris Moraitis". And here – below – is the picture to prove it, by AUSPIC's Howard Moffat in a DFAT annual report:

The caption reads (leaving out the literals): *The Minister for Foreign Affairs Mr Alexander Downer and his East Timorese counterpart Dr José Ramos-Horta sign the Treaty on Certain Maritime Arrangements in the Timor Sea on 12 January 2006. The Prime Minister Mr John Howard and then East Timorese Prime Minister Mr Mari Alkatiri observe the signing, which concluded an intensive series of eight negotiating sessions held in Canberra, Sydney, Darwin and Dili from April 2004 to November 2005. The department's Senior Legal Adviser, Chris Moraitis (far left) looks on.*



CLA agrees with Keane's comment: "This is Australian politics' biggest scandal, and the most powerful people in the country are ensuring you know as little about it as possible." The rule of law has become Porter's cruel of law.

## **Scheme helps more than 60,000 to reduce vulnerability**

The Work Development Order scheme in NSW has sharply cut the impact of fines on people who are financially vulnerable.

NSW adopted the scheme in 2011: it allows people to pay off outstanding fines through activities including volunteer work and engagement in treatment for issues like alcohol or other drug addiction.

Legal Aid has reported that since the scheme began, more than 102,000 WDOs have been approved for over 63,000 participants, resolving \$124,756 million in unpaid fines. In the past year, \$35 million in fines has been cleared.

'This is a stunning example of constructive, collaborative public policy work leading to sustained impact,' said PIAC CEO, Jonathon Hunyor. 'It is a scheme that is particularly important in addressing the financial vulnerability that can lead to, and entrench, homelessness.'

– Public Interest Advocacy Centre (PIAC) Bulletin 190322 [www.piac.asn.au](http://www.piac.asn.au)

## **Street earns more criticism**

Judge Alexander 'Sandy' Street has again been criticised by a more senior judge.

Street, who sits on the federal circuit court, took 75 days to publish written reasons for a judgment he delivered orally in Sydney in July 2018. He dismissed an application by an Iranian asylum seeker for a review of a visa rejection and ordered him to pay more than \$7300 in costs.

But the man had only 21 days to submit an appeal...which he could not do without knowing the written reasons for Street's decision.

Street has been repeatedly criticised by appeal courts.

In the recent case, federal court judge Nye Perram was critical of Street's processes. His failure to publish a judgment or respond to the man's lawyer's emails and phone calls "should never have happened" and showed "a disheartening degree of professional discourtesy", Perram said. <http://tinyurl.com/y4b2x9ym>

For links to previous stories on judge Street, please go to the CLA website: <https://www.cla.asn.au/News/> and use the search box.

## **Prominent Australians call for stop to empire building, by jingo**

Prominent Australians are calling for the government to stop the national war memorial's planned expansion, saying the proposed \$498 million project is unjustified.

"Novelists Tom Keneally and Richard Flanagan, author and speechwriter Don Watson, Australia's first female premier Carmen Lawrence, historians and ex-senior public servants and diplomats are among 83 signatories to an open letter saying the money could be better spent," Fairfax reported last month.

Opponents include 24 Australians awarded the highest national honours, former Australian War Memorial director Brendon Kelson, former deputy director Michael McKernan, and five of its ex-staff. Leading architects and journalists joined them in opposing the overhaul. <http://tinyurl.com/y2tg56wn>

## **Australia pays \$12m to make Philip Morris disappear in smoke**

Ensuring Australia's right – instead of a multinational company's right – to decide on the nation's cigarette packaging has cost taxpayers at least \$12 million.

It took two FOI cases and about five years for the truth to be revealed.

"Australian taxpayers were only awarded half of the costs of defending Australia's tobacco plain packaging laws against tobacco giant Philip Morris in March 2017," Dr Pat Ranald of AFTINET said in a media release last month.

"This shows yet again the unacceptable secrecy and lack of public accountability surrounding the Investor-State Dispute Settlement (ISDS) provisions in some trade agreements which allow foreign investors to sue governments over public health and other national laws.

"A global company has special legal rights to bypass a High Court decision and claim compensation in an international investment tribunal that has less transparency and accountability than our national legal system. These special privileges for foreign investors should not be included in any trade or investment agreement."

The US company lost its case for compensation in Australia's High Court. It shifted some assets to Hong Kong, claimed to be a Hong Kong company, and claimed hundreds of millions in compensation under an obscure Hong Kong-Australia investment agreement, Dr Ranald said.

"It took nearly five years for an international tribunal of investment lawyers to decide in 2015 that Philip Morris was not a Hong Kong company, and that the case was an abuse of process.

"The tribunal took another two years to award some legal and arbitration costs to Australia.

"But the total amount of costs, and the percentage awarded to Australia, were blacked out in the publication of the original costs decision," said Dr Ranald.

"The first FOI case to reveal the costs resulted in the Australian government releasing figures which showed total legal costs of \$39m. The government refused to reveal what percentage of the total costs had been awarded to Australia in the Philip Morris ISDS case," she said.

"The second FOI case, taken by a legal publication, to obtain the percentage of costs actually awarded in the ISDS case, has now revealed that Australia claimed a total of A\$23,045,242.33 in legal fees for its defence, and 666,119.82 Euros in arbitration fees,(A\$532,530.35) but was awarded only half of these two amounts, a total of \$11,788,936 million," said Dr Ranald.

"Assuming that Philip Morris has complied with these costs orders, defending the ISDS case and being awarded only half of the costs therefore cost Australian taxpayers almost \$12 million."

## **Police admit to wasting \$4.5m in bid to keep their illegal activities secret**

Victoria Police has revealed it spent \$4.52 million on a legal fight to keep the use of a criminal defence barrister as an informer during Melbourne's gangland war a secret due to fears she and her family "would be murdered".

"Our priority throughout has been the safety of the lawyer and her family who we feared would be murdered if identifying information was released," the statement said.

"We are duty bound to do all we can to keep people safe." <http://tinyurl.com/ycv6h2rs>

CLA has chosen to not name her, though this article does:

<https://www.abc.net.au/news/2019-03-01/lawyer-x-informer-3838-identity-revealed-nicola-gobbo/10826958>

## **The NT claims booze problem is going down the drain**

The NT's health minister issued a media release recently that addresses booze problems in the north:

- A 44% reduction in alcohol-related assaults in Alice Springs between September and December 2018 compared to the same period in 2017.
- A 24.5% decrease in alcohol-related Emergency Department presentations in NT hospitals in December 2018 compared to December 2017.
- More than 3000 litres of alcohol marked for illegal secondary supply seized since the creation of the Alcohol Policing Unit.
- A crackdown on licensees doing the wrong thing, with the Police Commissioner suspending five liquor licences since June 2018. – media release, AG and Min for Health, Natasha Fyles, 190228

## Rules around youth detention clarified

The NT has amended the *Youth Justice Act* to clarify and tighten the framework for managing safety and security risks in youth detention centres.

The changes stem from the problems which have plagued the Don Dale youth detention centre.

The amendments include:

- clarifying when force and restraints may be used;
- creating a consistent test to determine what is a reasonable use of force and restraints;
- clarifying “emergency situation”, which is relevant to when force is used;
- permitting screening and pat down searches of detainees in a broader range of circumstances; and
- allowing the transfer of a detainee from one detention centre to another.

The amendments apply retrospectively to May 2018. “This will remove any doubt about the original intention of these key provisions in the legislation,” Minister for Territory Families, Dale Wakefield, said in a media release 190321.



### **ODD SPOT: Sorry lot of coppers see boasts flushed down sewer**

These recent comments on the national police is by their closest independent observer since the Australian Federal Police was formed:

“It’s a sorry story, and from a sorry and poorly led police force. It is an organisation given more and more resources and powers of surveillance and evidence gathering, even as its outcomes, whether in drugs, in leak inquiries and other matters in the public eye, are, in the modern managerialist phrase ‘less than optimal’. It is time the AFP, and its culture, was subject to searching external review. The public, and government, deserves a whole lot better.”

“We have had a year of record police and Border Force seizures of serious illegal drugs, including cocaine, ice, ecstasy and heroin – and another record year for exuberant media conferences at which senior police bureaucrats take credit for the successes of their underlings. And then the Australian Criminal Intelligence Commission has to come out this week with the results of testing for drug residues in the national sewage systems. It showed that there have never been so many dangerous drugs available. The net value of illegal drugs sold has never been so high, and that there was not the faintest bit of evidence that police activity has had the slightest effect on drug demand or supply, whether in local or national markets. The PR impression that slowly the cops are making an impression is wrong. Even if some cops believe otherwise. <http://tinyurl.com/y58l4jpf>

– Jack Waterford (photo), former editor and editor-in-chief, *Canberra Times* Feb 2019

## Barrister Richter claims police have not sought the truth

Barrister Robert Richter launched Robin Bowles’ book ‘Death on the Derwent’ in Melbourne at the end of February, and made about 20 points beginning with “I’m here to talk about an innocent woman”.

He described the Sue Neill-Fraser case as being “characterised by threats, intimidation, and prosecution of witnesses”.

He said that (CLA member) Barbara Etter was a victim who had been deprived of her right to practise law, and he noted that “everybody has been ‘bugged’”. He promoted a Royal Commission – which Civil Liberties Australia has also called for, formally, in a letter to the Attorney-General for Tasmania. (She instantly rejected the idea).

In closing, Richter said: “The police investigation was improper in that it tried to prove the case, not find the truth.”

## Current drug law suppresses personal freedoms

At the recent LibertyFest conference held in Perth, Greens MLC Alison Xamon and upcoming Senate candidate for the Liberal Democrats, John Gray, co-chaired a discussion on the severe need for drug law reform in WA.

The discussion was dominated by a consistent theme emphasising the need for new legislation to allow freedom of personal choice in a way that does not impede on the rights of other members of the community.

The deregulation seen in nations such as Portugal frequently surfaced in the discussion.

What was made consistently clear however, was the fact that our current legislation continues to not only give rise to a suppression of personal freedom, but is systematically burdening community safety (in complete contradiction to the purpose of the legislation).

While this issue may not dominate at the next State election, it is certainly a prominent and addressable question of public policy. – report by CLA's WA student spokesperson, Sam Coten.

## **Bad odour keeps resurfacing around Fremantle**

There seems to be a huge and ongoing problem, which has lasted for more than a decade, among WA police in the Fremantle area.

Currently 12 police face disciplinary action or the sack.

The police are again under fire from the state's corruption watchdog over the "unprofessional" and "inhumane" treatment of an injured woman detained in Fremantle, with 11 officers now facing disciplinary action and a 12th facing the sack over the January 2017 incident.

Police Commissioner Chris Dawson has apologised for what happened and said he accepted the Corruption and Crime Commission report into the incident, which was released last month in full.

<http://tinyurl.com/y2s6zfhb>

Separately, WA Police have charged one of their own employees with corruption after she allegedly sold confidential information for more than \$16,000. She was due to appear in court in late March. Police allege the offences took place between August 2017 and January 2019 when she worked at the Police Assistance Centre.

## **Australian briefs**

**Foreigners again gain special legal rights:** The Australia-Hong Kong free trade agreement and separate investment agreement signed last month still gave special rights to foreign investors to bypass national courts and sue governments for millions of dollars in international tribunals if they can argue that a change in law or policy would harm their investment, known as Investor-State Dispute Settlement or ISDS," AFTINET's Dr Patricia Randal commented. The investment agreement replaces the notorious 1993 Hong Kong agreement which the Philip Morris tobacco company used to claim hundreds of millions of dollars in compensation for Australia's tobacco plain packaging law, she said. – media release AFTINET 190326

**Taxpayers ripped off, CCC claims:** A WA Corruption and Crime Commission report last month alleged a senior public servant, Craig Steven Peacock, had acted corruptly for at least a decade, costing WA taxpayers more than \$600,000, according to CCC boss John McKechnie. Peacock represented WA in Tokyo for 17 years. The CCC alleges that Mr Peacock, who had his role terminated, used his 'position of trust to enrich himself in ... a decade of double-dipping on cost of living allowance claims and payments. "There was a sense of entitlement about his behaviour and his attitude towards the public purse," Mr McKechnie said. <http://tinyurl.com/y2y6uhm3>

**Swapping Justice for Health:** The Office of the Public Guardian in the NT has been transferred from the Department of Health to the Department of Attorney-General and Justice, in line with other Australian jurisdictions. All financial administration orders held by the Public Guardian will be transferred to the Public Trustee this year. Financial administration orders are put in place for Represented Adults – those who have impaired decision-making capacity and do not have a family member or other person to take on the role. – AG and Minister for Justice, Natasha Fyles (photo) 190307

**One-punch law extended to all emergency services:** The NT last month passed a Criminal Code Amendment Bill so that people who assault fire and rescue, emergency services and St John ambulance officers will face the same penalties as those who assault NT police. The new law also includes an amendment to make the offence of "violent act causing death" colloquially known as the "one punch" law, an alternative verdict to both murder and manslaughter. – media release Natasha Fyles, AG, 190312



## Members' contributions

### Some ideas to improve life and detention

Thoughts on the vexed issue of rehabilitation in detention:

- It would be good to have all students leaving formal education experience a gap year. This to include living away from home with peers, in a regulated camp environment where social norms could be experienced and developed. Year to include community service, in hospitals, aged care, environment support (green corps, bushfire volunteer) etc. Some formal learning – work experience and exposure to detention.
- It should be accepted that detention is a rite of passage for the generationally unemployed.
- Everyone facing court be comprehensively assessed for cognitive function, hearing loss, poor vision, dental decay and impact of psychological history. Findings to be included in sentencing process.
- All police and prison officers should have to undergo mandatory behaviour management courses for dealing with intellectually impaired people
- Problems such as foetal alcohol syndrome, exposure to domestic violence, sexual abuse and bullying can have devastating lifelong impact and consequences if not addressed appropriately: victims need support throughout life.– Rosalind Byass, Stawell Victoria

### Serried ranks of the weaponised ignorance

SNF supporters are defenders of justice in a medieval battle: each tier of state authority lined up, row behind row, firing off ignorance weaponry at our faces of logic and common sense. What a lesson this is in the cowardice and arrogance of elected authorities & the justice system in Australia. – Margaret Howkins, after Meaghan Vass on *60 Minutes* publicly confirmed Sue Neill-Fraser didn't murder Bob Chappell.

### Who is colouring War Memorial's view of sacred?

...the Australian War Memorial...is, indeed, both a memorial and a museum. In this context, it's interesting that its usual excuse for not memorialising the Aboriginal (and non-Aboriginal) dead of the Frontier Wars is that the matter is already dealt with by the National Museum of Australia. Some war dead are more sacred than others, it would seem. – Geoff Page, Narrabundah ACT (*Canberra Times* 190316)

## CLA report – main activities for March 2019

### Annual General Meeting formally declared

The AGM was conducted in March: Directors were chuffed by favourable comments on CLA's work nationwide from our members. The executive is very grateful for the ongoing support by members.

The voting rate was 52%, about the same as the previous year. An error in financial reporting is being corrected. The annual report (including financial report) and the President's report for 2018 is available on the CLA web site: [www.cla.asn.au](http://www.cla.asn.au) You can use the search button to find it.

**Formal Declaration:** Civil Liberties Australia's annual general meeting for 2019 has concluded, with a positive vote by the 52% of members eligible to vote. The percentage vote is the same as last year. Individual votes in 2019 on the 2018 year were:

Approve President's Report:	Yes: 129	No: 0
Approve Annual Report:	Yes: 129	No: 0
Approve Treasurer's Report:	Yes: 128	No: 1

A comment re the Treasurer's report is contained in the 'Comments', which are online.

The Board thanks members for the strong approval indicated by the voting, and for the positive comments many members chose to make. A representative selection is on the CLA website

There was also an election for Directors in 2019, as there is every second year: 10 current Directors stood for re-election (one current Director, Mark Jarratt, stood down for work reasons). As 12 positions were available, the 10 who stood are Directors. They are: Jennifer Ashton, Frank Cassidy, Richard Griggs, Margaret Howkins, Dr Kristine Klugman, Eloise McLean, Bill Rowlings, Sam Tierney, Rajan Venkataraman and Tim Vines. The Directors vote on executive positions at the next meeting of the Board.

The 2019 Annual General Meeting is hereby declared closed. – W.M. Rowlings, Secretary and Returning Officer, 31 March 2019



Photo taken 2 August 2013: Bill Rowlings, CEO of Civil Liberties Australia, and CLA President, Dr Kristine Klugman (who took the photo), gave the first briefing to then-Shadow Attorney-General of Tasmania, Vanessa Goodwin (Liberal MLC), on why a new 'Right To Appeal' law was needed, mirroring the one passed earlier that year in SA. Goodwin, who became AG in early 2014, lived up to her word to CLA and introduced the new law in Nov 2015. On 21 March 2019, Sue Neill-Fraser became the first person to be granted a new appeal hearing under the law. Goodwin died of a brain tumour in early 2018: CLA pays tribute to a politician of principle on whose word you could rely.

### Justice for Sue Neill-Fraser:

CLA organised a public meeting at the ACT Legislative Assembly, sponsored by Greens Member of the Legislative Assembly, Caroline Le Couteur, whose assistance we gratefully acknowledge.

'Undercurrent' Ch 7 TV series producer (and CLA member) Eve Ash gave a detailed talk, explaining the flawed investigation and forensic disaster behind Australia's worst miscarriage involving a female since Lindy Chamberlain, baby Azaria and the dingo, and worst wrongful conviction for murder this century.

*Photo: Eve Ash, Caroline Le Couteur, and CLA President Dr Kristine Klugman.*



A disappointingly small number of people attended, despite widespread publicity. Questions reflected deep public concern at the injustice to Sue: a grandmother, rotting in Risdon Prison in Hobart, and innocent. Ten years locked up so far, wrongly. A new appeal has been granted under the CLA-promoted legislation.

You can write a card of support to Sue Neill-Fraser, PO Box 24 Lindisfarne TAS 7015

### Meetings

- Shane Rattenbury, ACT Minister for Justice, Corrections Minister:
- Queensland Productivity Commission inquiry into prisons (submissions)
- 'Right to Appeal' legislation to be voted on in the ACT Legislative Assembly
- CLA's Regulations project: seeking his support/advice
- Consent Laws: CLA proposes a 5-10 year trial, then review
- Consorting laws: CLA thanks the ACT government for not passing such legislation.

### Meetings with members/friends

Rosemary Jennings, Thomas Mautner

Roger Clarke, Australian Privacy Foundation: to discuss strategy and tactics around privacy issues for the rest of 2019 and in a new Parliament.



Bill Stefaniak, former Member of the ACT Legislative Assembly and Member of the AAT.

Dying with Dignity Victoria President, Lesley Vick, and economics guru husband, Ken Davidson

Winsome Byrne, media/journalism expert.

Xiao Lin King, fourth year Law student at ANU who will be leading a national project, in conjunction with CLA, on improving/correcting juvenile injustice, particularly as it relates to Indigenous people.

*Photo: Xiao Lin King discussing the project with CLA Vice-President Tim Vines last month.*



## INTERNATIONAL

### Commission will inquire into killing of 50 at mosques

New Zealand will hold a royal commission into circumstances surrounding the massacre of 50 people in two Christchurch mosques last month.

Prime Minister Jacinda Ardern said: “It is important that no stone is left unturned to get to the bottom of how this act of terrorism occurred and what, if any, opportunities we had to stop it.”

Agencies taking part in the inquiry include the NZ Security Intelligence Service, the Government Communications Security Bureau, police and Customs and Immigration. <http://tinyurl.com/y35yymc5>

A perceptive analysis of Ardern’s leadership: <http://tinyurl.com/y44s6fss>

### UK to issue warnings about far-right terrorism

The UK will issue official threat-level warnings for far-right terrorism amid rising concerns about white supremacist murder attempts, the *Guardian* reported last month.

The threat levels will be issued following assessments by the Joint Terrorism Analysis Centre (JTAC), an elite Whitehall unit that already produces similar warnings for Islamist and Ireland-related terror.

The mosque attacks in Christchurch NZ, when 50 Muslims were murdered as they prayed, allegedly by a white supremacist gunman, have triggered fresh concerns about whether the threat from the extreme right is being taken seriously enough. <http://tinyurl.com/y62flcz7>

### CASHLESS: Reports of two battles for your dollars and cents

#### SWEDEN:



CLA member, Emeritus Prof Thomas Mautner (photo, *Canberra Times*), reported that he was unable to use cash in Sweden in many establishments during his recent annual three-month visit to the country where he was brought up.

Even as a perfect Swedish speaker, he was not able to deposit or withdraw cash from three major banks in the country. The branches of only one of the four big banks still allows you to deal in cash.

On the way back to Australia, he was almost lost in the never-never-land outside a main airport. Entering the airport terminal required a roughly \$20 payment. He had the cash...but no card. So he was refused entry.

After much argy-bargy, a security guard – personally – accepted Thomas’s cash, and then used his (the guard’s) card to grant entry for Thomas.

#### USA:

Philadelphia’s mayor signed a bill last month which bans cashless retail stores, making the city the first in the USA to require that bricks-and-mortar retail stores accept cash.

The state of Massachusetts has required retailers to accept cash since 1978.

The move is a major blow to Amazon, whose new Amazon Go stores are cashless and queue-less.

Philadelphia’s law takes effect 1 July. It will not apply to stores like Costco that require a membership, nor to parking garages, or hotels or rental car companies that require a credit or debit card as security for future charges. Retailers refusing cash transactions can be fined up to \$2000.

Privacy advocates say that being forced to use a digital payment to buy things is a de facto requirement to share records of personal purchases with third-party companies. <http://tinyurl.com/y6f5eze9>

### Why it’s important for a jury/judge to go to the scene of the crime

“The new investigation also raised questions about (Rhonda) Wicht’s next-door neighbor’s claim that she had seen a man matching Coley’s description drive away the morning of the killings (of her and her son, 4). Exactly 39 years after Wicht’s murder, detectives returned to the apartment to peer out her window.

“There was no way, they concluded, that (the witness) could have seen from her window whoever was inside a truck parked outside. It would have been difficult to see the distinctive diamond stripe she claimed to have noticed on the truck’s side at that hour. There simply wasn’t enough light.”

The California Victim Compensation Board recently voted unanimously that Craig Coley should receive a nearly \$2.7m payment, or \$195 for each of the 13,991 days — more than 38 years — he was wrongfully incarcerated. The board said it “unequivocally accepts that Coley is actually innocent” of the murders.

According to the formal Governor’s pardon, three current and former police officers told his office that the detective at the time had “mishandled the investigation or framed Mr. Coley.” The pardon did not identify the detective. <http://tinyurl.com/y3l4na22>

<https://www.latimes.com/local/lanow/la-me-ln-craig-coley-wrongful-conviction-20180215-story.html>

### **ODD SPOT: Blessed relief: US Supreme Court decides judges not immortal**

The petition presented the following question: May a federal court count the vote of a judge who dies before the decision is issued?

A judge on the US Court of Appeals for the Ninth Circuit, Stephen Reinhardt, died on 29 March 2018, but the Ninth Circuit counted his vote in cases decided after that date.

The Supreme Court ruled unanimously that “practice effectively allowed a deceased judge to exercise the judicial power of the United States after his death. But federal judges are appointed for life, not for eternity.”

– US Supreme Court *Yovino v Rizo* No. 18–272. Decided 25 Feb 2019, Cornell Law School report <http://tinyurl.com/y6fdf5bw>

### **737 prison inmates given life**

Gavin Newsom has executed an executive moratorium on the death penalty, ending the current execution risk for 737 inmates awaiting execution in California.

The execution chamber at San Quentin state prison will close immediately. California’s controversial lethal injection protocol will end.

More than 60% of prisoners on death row are “people of colour”, as US reporters say tweely.

The governor’s decision brings California in line with Colorado, Oregon, and Pennsylvania – all of which have governor-issued moratoria – and adds momentum to a national movement working to end capital punishment. <http://tinyurl.com/y4wtv8y8>

### **Simple print test releases prisoner 36 years late**

Technicians in a US crime lab ran a set of fingerprints collected at the scene of a rape through a national database. Within hours, the experts had established a match with a serial rapist.

But that was almost four decades after the attack on 9 Dec 1982, when a woman was raped and stabbed in her home in a well-to-do neighbourhood in Baton Rouge, Louisiana.

Archie Williams (photo, on his release) went to prison for the crime, even though it was known at the trial that the fingerprints were not his.

One day last month, Mr Williams, now 58, was released from the Louisiana State Penitentiary after serving 36 years.

He has fought for 20 years to get the prints run through the database. The US has an almost ‘automatic’ right for prisoners to double check DNA, not fingerprint, evidence. <http://tinyurl.com/yxcpoogc>



### **CACI company called to account**

“US military investigators long ago concluded that CACI interrogators conspired with US soldiers, who were later court-martialled, to ‘soften up’ detainees for interrogations,” the Center for Constitutional Rights claims in a legal filing which has just received a court date after 13 years.

A US Army general has referred to the treatment as ‘sadistic, blatant, and wanton’, Jonathan Michels reported.

“A number of low-level military officers were court-martialled over their roles in the abuse, but CACI has gone unpunished and continues to reap millions of dollars in government contracts,” according to CCR.

<http://tinyurl.com/y3ls2lfn> See also: <http://tinyurl.com/y446vy8r>

## Are Four Eyes helping the USA with secret surveillance?

The US National Security Agency has quietly stopped intruding on privacy and the rule of law in America by analysing logs of Americans' domestic calls and texts, for two reasons:

- the NSA can't guarantee the program is operating legally, under the ironically named Freedom Act; and
- they can get the information from other Five Eyes partners (UK, Canada, NZ and Oz), who don't face the same restrictions on telephone tapping of prime targets.

The program gathered 151 million records in 2016, despite obtaining court orders to use the system on only 42 terrorism suspects in 2016, along with a few left over from late 2015. In 2017, it obtained orders for 40 targets and collected 534 million records.

In a podcast last month, Republican security adviser Luke Murry said the NSA hasn't used the program in months.

President George W. Bush started the program to chase Al Qaeda conspirators immediately after the 2001 aircraft terrorist attacks, and a court later secretly blessed it, according to a *NY Times* report. Whistleblower Edward Snowden disclosed the program's existence in 2013, explaining how both governments and private companies harvest and exploit personal data.

The program analyses social links to hunt for associates of known terrorism suspects. Technology has evolved to the stage where the spooks can source the same information from taps applied on networks by other Five Eyes partners.

So, while "the US program" might have stopped, CLA believes it is nowhere near as certain the actual tapping has. Australia's spooks should be asked whether they are doing the ultra-secret dirty work of US (and other) partners: but Australia's secret operators are never called to account publicly, as those in the USA are. <http://tinyurl.com/yyaelgns> – LW

## Minorities children are prime targets of stun guns

Half the children shot by police with stun guns, and a third of those restrained using spit hoods, in England are black or from other minority ethnic groups, according to children's rights campaigners.

The data, compiled from freedom of information requests, showed that in the first nine months of 2018 police across England used electronic stun guns 839 times on people aged under 18, compared with 879 uses on children in the whole of 2017.

Researchers also found a sharp rise in the use of spit hoods against children, with 114 incidents in the first nine months of 2019, more than double the 47 uses in the whole of 2017.

The findings are published in a report by the Children's Rights Alliance for England, which pointed to an extreme disproportionality in the use of both weapons against children of colour, particularly in London.

<http://tinyurl.com/y6yhhfst>

## 437 innocent people acquitted over 22 years

There is often discussion in Australia about whether the federal, state and territory jurisdictions need a statutory body to review criminal cases which may have gone wrong (or some form of national body which can inquire into all jurisdictions).

The UK has two such bodies, one for England, Wales and Northern Ireland (EWNI), and one for Scotland which has a separate foundation for its legal system.

These are current casework statistics for the EWNI CCRC.

The Criminal Cases Review Commission achieves a 67% success rate: it started work in April 1997. Between then and 21 January 2019 it has:

- Referred 658 cases.
- Of the 648 cases where appeals have been heard by courts, 437 appeals have been allowed and 198 dismissed, that is a success rate of referred cases of about 67%.
- A further 705 cases are currently under review at the Commission and 148 are awaiting review.

The CCRC has received 24,658 applications (including all ineligible cases: about half of applications are ineligible, so a more accurate figure of cases fully considered is about 12,330. <https://ccrc.gov.uk>

The statistics show the EWNI CCRC has freed about 20 people a year. With Australian law founded on English law, and our prison population roughly half that of EWNI, it is reasonable to assume that 10 prisoners a year here would be freed if there was a safety net system here as there is in the UK.

## International briefs

**Gangs use kids to deal drugs in expansion of modern slavery:** Vulnerable children being lured into dealing drugs has led to a doubling of modern slavery cases involving UK minors in Britain. Data from the National Crime Agency showed the number of modern slavery cases involving UK children rose from 676 in 2017 to 1421 in 2018. Gangs are using children to traffic drugs from inner-city areas to provincial towns, where they are used to sell drugs. Nearly two-thirds of the 2018 cases, 987, were linked to labour exploitation. <http://tinyurl.com/y2h7h2x4>

**Gun suicide up:** Suicides by gun increased 22% over the past decade in the USA. Guns, which remain plentiful and accessible, were used in nearly half of the nation's 47,173 suicides in 2017, analysis showed. <http://tinyurl.com/y694uqv7>

**Poverty exists amid plenty:** "(C)hildhood poverty figures from UNICEF...show 29% of children in the USA grow up in poverty, more like Mexico than the Nordic countries at 9–11%." – Michael Marmot. Some 700,000 children live in poverty on the streets of London. <http://tinyurl.com/y6t5alnj>

## DATES:

**All 2019, World:** UN International Year of Indigenous Languages

**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](mailto:supremecourtlanguage.conference@nt.gov.au) or phone 0447 286 342

**16 April, Perth:** Glass Houses: Internet of Things and its encroachment on intimacy. Lecture: Dr Gilad Rosner of the UK on privacy and data protection. 6-7pm Woolnough Theatre, Geology Bld, UWA. Info: <http://tinyurl.com/y6c7bh2q>

**17 April, Brisbane:** Prof Caroline de Costa and panel members Tracy Pickett, Dr Glenn Gardener and Dr Melanie Jansen discuss the legal and ethical issues around implementing Queensland's Abortion Reforms. 5.30-7pm OHW room, L12 S Block, 2 George St Brisbane. Details/booking: <http://tinyurl.com/y3wal32a>

**30 April, Canberra:** Places of justice in Australian environmental law: Lessons from Victorian and NSW coal-mining towns. Melbourne Law School lecturer Brad Jessup will discuss his research for a PhD at ANU on local environmental conflicts. Hedley Bull Centre, 12.30-1.30pm. Details: <http://tinyurl.com/yxtp3hw7>

**2 May, Perth:** Aboriginal Protection and the Politics of Reform in 19thC British Empire, lecture by U. Adelaide Prof History, Amanda Nettlebeck, Fox Theatre, Arts Bldg, UWA 6-7pm. Info: <http://tinyurl.com/y395uent>

**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](mailto:kerryn.baker@anu.edu.au)

**29 June - 3 July, Melbourne:** Regional Comprehensive Economic Partnership (RCEP, involving 10 ASEAN countries, and China, Japan, India, Korea, NZ and Australia) 26th negotiating round: another trade deal being kept secret from Australian citizens during negotiations, and which gives special rights to foreign investors..



**4-6 July, Canberra:** 27th ANZSIL conference at Crawford School, ANU: International Law Futures. Prof Christina Voigt (Photo) (U. Oslo) and Dr Joshua Meltzer (IUCN Climate Change Task Force).

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

**11-12 July:** International Bar conference, Singapore. <http://tinyurl.com/yykzexn5>

**15 August, Launceston:** Peace Festival lecture: Power of Integrity, by Dr Simon Longstaff. Info: <http://tinyurl.com/y2caff6l>

**22-24 August, Queenstown NZ:** Aust & NZ Bar Assns conference. Info: Camilla Williams [events@austbar.asn.au](mailto: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.

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*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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