

Kalisch emerges from ABS bunker with new, intrusive Census questions

The next national census, in 2021, is likely to carry questions about gender identity, smoking, previous or current service in the military, sexual orientation and chronic health conditions, the Australian Bureau of Statistics boss David Kalisch has revealed.

Some questions likely to disappear include the number of cars people have or their internet access options. The only reason for dropping the internet question appears to be so the government is not embarrassed by failed NBN rollout and service speeds.

Kalisch, who presided over a census disaster in 2016 when IT systems failed dramatically to deliver during the \$500m exercise, said lessons from that calamity “are informing” planning for the 2021 event. Given past performance – the ABS is a very slow learner, and frequently interprets “lessons” uniquely, and muddle-headedly – the census is no certainty to improve.

The national statistician also claimed that all names collected from the last census have now been destroyed, while the address data will be destroyed by August 2020.

But such a claim is a disingenuous furphy, Australian Privacy Foundation guru (and CLA member) Prof Roger Clarke says.

“The data from this census, other censuses and surveys, and multiple government agencies, is all consolidated against an alternative identifier, and that identifier is linked to a database of names and addresses,” Prof Clarke said.

And, CLA says, increasingly the same type of information is available to be linked to the national photo ID database – believed to hold more than 8 million photos of you and me and at least a third of the Australian population – and to any data about us. <https://tinyurl.com/y2ergvvc>

‘Mandatory’ is a political ploy: CLA President

Mandatory sentencing laws are political posturing for the sake of election gain. They do nothing for justice: in fact, they frequently cause injustice, CLA President Dr Kristine Klugman said last month.

She was rejecting the proposal of the Coalition government to legislate for mandatory sentences for federal child sex offenders.

Dr Klugman said the federal government should pass a law to ban all mandatory sentencing legislation Australia-wide, rather than itself introducing new mandatory penalties.

“It would be easy to convince the states and territories to abandon mandatory sentencing if the federal government used its purse strings power,” she said.

“Of course, the federal government has to first put morality, ethics and principle for the national good above the publicly-stated approach of politicians like Home Affairs Minister Peter Dutton to use ‘law and order’ for his own political benefit.

“Mr Dutton is quoted as saying, in Niki Savva’s book *‘Plots and Prayers’* about the Morrison-Turnbull overthrow, that he – Dutton – would have won a federal election if he had become Liberal leader because he would have made the core election issue about law and order, which favours him personally.

“In other words, he was prepared to mount an election campaign not on what was needed for the nation necessarily,

but on what was good for him personally.”

Photo: Niki Savva with her illuminating book (ABC pic)



Enforcing sentence duration would not act as deterrent, Law Council says

Mandatory sentencing for federal child sex offences would undermine court discretion in determining appropriate punishment and would not act as a deterrent, the Law Council of Australia says.

LCA President, Arthur Moses, said child sex offending was abhorrent. While such offending deserved the full force of the law, mandatory sentencing opened the door to other unintended consequences, he said. “Whatever the crime, judges always must retain discretion to ensure sentences are appropriate to the facts of a case. If judges make mistakes or are not applying accepted sentencing principles then their decisions can be appealed.

“Furthermore, the Australian Law Reform Commission has previously recommended against the mandatory sentences in relation to federal offenders.” LCA media release, 3 Sept 2019

Dutton seeks more image-boosting powers

Home Affairs Minister Peter Dutton wants the personal power to cancel people’s citizenship if they have dual nationality and they have rejected their allegiance to Australia.

In a proposed new law, he says they could do this by being sentenced to three years in jail for a terrorism offence...or, if over 14, simply by being “engaged in terrorist conduct”, without conviction or decision by a public official.

In DuttonWorld, the guilty would be whomever he says is guilty. And he will backdate his decision-making to 2003, and be able to cancel people’s citizenship without telling them.

Dr James Renwick (photo: ANU), Australia’s Inspector General of Intelligence and Security (IGIS), warned parliament the the proposed law did not sufficiently protect human rights, and was likely to breach international law.

It is a truly frightening place that the abuse of the rule of law in the name of terrorism is taking Australia, CLA says. Little by little, liberties and rights are being swept away for the sake of the Coalition and Ministers like Dutton boosting their images for being “tough on law and order”.

– AAP and Daniel McCulloch of Fairfax. <https://tinyurl.com/y3h7wbbk>



Prisons: Australia losing battle

In the past 10 years, the average number of people in custody in Australia has more than doubled, increasing by 52% (14,897 people), the latest ABS figures show. Female jailing rose 75%.

By comparison, Australia’s resident population of 18 years and over went up by just 19%, Australian Demographic Statistics show.

The rising numbers warehoused in jails around the nation account for recently announced plans to build more prisons in Queensland, WA and Tasmania. Just about everywhere, extensions are under way.

The total number of people in custody in the latest figures includes those in jail, as well as people on parole or sentenced to probation.

But just held in jail, there were 43,306 people at the end of June 2019. They were in:

- NSW (31% or 13,553);
- Queensland (21% or 8887);
- Victoria (19% or 8153 persons); and
- WA (16% or 6943 persons)

Prisoners churn through the system, with about 17,000 going in and out of prison every three months.

During the June quarter, 66% (28,666) of the churn were sentenced and 34% (14,635) were unsentenced.

In the three months to 30 June 2019, 16,999 prisoners entered jails in Australia. Most of them were unsentenced, comprising 76% (12,977) of all prisoner receptions, with sentenced prisoners at 24% (4022). These figures mean the problem of overcrowding in prisons, and remand prisoners – unconvicted – being mixed with sentenced prisoners, is getting worse at a quickening rate.

The average daily number of Aboriginal and Torres Strait Islander (ATSI) prisoners during the June quarter 2019 was 12,176. This represented an increase of 2% (213) since the June quarter 2018.

ATSI prisoners represented 28% of the total full-time adult Australian prisoner population during June quarter 2019 (ATSI people comprise about 3.3% of the Australian population). – ABS 4512.0 June Qtr 2019 190912 <https://tinyurl.com/y35ran9o>

Law Council calls for a Bill of Rights

Law Council of Australia President Arthur Moses last month called for a national bill of rights.

The Australian Constitution provided “minimal protections” of citizen freedoms, he told the National Press Club, meaning Australia must enact a Human Rights Act or a Charter ... “a coherent legal framework to:

- express and protect rights and freedoms;
- promote the universal, indivisible nature of human rights, inherent in the Australian psyche but strangely not its law; and
- provide a vehicle to balance tensions between freedom of speech, freedom of the press, public safety, national security, and other fundamental human rights.”

Moses challenged journalists, lawyers and bureaucrats: “Question threats to all rights and freedoms, not just those that are threats to your freedoms...challenge those who would seek to shut them down. Do not be quiet Australians. That is not your job,” he said.

When words like the rule of law or freedom or security are “thrown around carelessly like confetti, they become white noise...there has been a trend in recent years of parliamentarians tripping over themselves to enact laws in the name of national security without understanding the effect of these laws on our media or the rights of innocent citizens,” Mr Moses said. “The result is an erosion of rights and freedoms taken for granted over centuries.” <https://tinyurl.com/y6kw67vv>

NOTE: CLA totally supports the call for a national Bill of Rights. But there’s a snowflake’s chance in hell that the current Coalition government will introduce one. So we are concentrating on promoting Bills of Rights in the States and Territories. ACT, Victoria and Queensland (from 1 Jan 2020) have one: the Labor government in WA is committed to having one, and we’re hoping the NT will begin debate on introducing a Bill of Rights this year. Tasmanian Director of CLA, Richard Griggs, is leading the campaign in that state, which involves more than 20 community organisations.

Two probes quiz village eyewitnesses whether SAS murder allegation is true

AFP detectives have interviewed local eyewitnesses present in the village when Australian special forces soldiers are alleged to have assaulted, then murdered, a handcuffed detainee, reports say.

Special Air Service (SAS) regiment troops – deployed to Darwan village when the alleged events occurred – have also been quizzed about what happened to Afghan shepherd, farmer and father Ali Jan, Nick McKenzie and Chris Masters reported in *Fairfax Media* last month.

Ali Jan, who had been detained by the soldiers, was allegedly kicked off a small cliff and later shot dead by an SAS soldier near the village in Oruzgan province of Afghanistan in September 2012.

Australian soldiers have obligations under Australian and international law to treat detainees humanely and protect them from violence.

A federal police spokesperson has confirmed that “investigators recently deployed to Afghanistan in support of the war crimes investigations. The AFP were supported by Afghanistan authorities in country and inquiries with international partners remain ongoing.”

Separately from the AFP investigation, Supreme Court judge and Army reservist officer, Major General Paul Brereton (photo), is holding a military legal investigation into allegations that a small number of SAS and Commandos had committed war crimes in Afghanistan between 2006 and 2014, including the mistreatment and murder of defenceless prisoners of war.

Commandos are reservist soldiers of 2nd Commando Regiment, who serve with the SAS as part of Australia’s Special Operations Command. The Commando reservists are drawn from professions, trades and hobbies which bring a wide range of special skills to patrol units.

Chris Masters, who was the only journalist embedded with Australian special forces soldiers in Afghanistan, believes a desensitisation occurred within the forces that allegedly allowed a “kill count mentality to develop”.

The particular allegation under police investigation is that Ali Jan was killed after he had been detained and handcuffed by a small SAS team in the village of Darwan in Southern Afghanistan on 11 September 2012.

The SAS patrol team had helped arrest around fifty male villagers from Darwan during a sweep through the small village as they searched for rogue Afghan army sergeant Hekmatullah, who weeks earlier had murdered three Australian soldiers and who was eventually captured in February 2013. <https://tinyurl.com/y6j9g6hs>

Lowly soldiers exhibit moral courage: claim

A *Fairfax-60 Minutes* report last month claimed that Australian special forces soldiers had confessed to “murdering and brutalising detainees in Afghanistan in incidents that colleagues insist cannot be written off as occurring in the fog of war”.

Members of both of Australia’s special forces units – the SAS and the Commandos – had given evidence to the army’s war crimes inquiry about the summary execution of at least four prisoners, in breach of the Geneva conventions, the report said. “Multiple defence sources, speaking on condition of anonymity, have confirmed that compelling evidence exists of Australian



soldiers assaulting or murdering in cold blood unarmed or handcuffed detainees in Afghanistan between June and November 2012.

“More than a dozen serving and former special forces members, including high-ranking officers, stress that it was soldiers themselves who had brought the conduct to light,” the report said. <https://tinyurl.com/y5c9s8zl>

Why do these military probes into SAS matter?

The government has deployed Australian troops on and off to Afghanistan since 2001, mostly on.

The SAS and associated Commando troops were constantly lauded by politicians and military chiefs for their achievements. They were awarded Victoria Crosses for Australia (the first Australian VCs in 40 years), DSCs, DSMs and gallantry medals.

Those awarded the highest honours were feted as Young Australian of the Year, chairman of the National Australia Day Council, etc. Every Anzac Day they are eulogised by the military and Ministers in public.

If that whole “hero” edifice is built on a reality of elite soldiers actually being ill-trained, ill-disciplined instruments of human rights abuse and even murderers of innocent Afghans, including children, Australia’s two-decade-long political jingoism based on heroic militarism totally unravels.

It’s official: Terrorism no longer the major threat

Australia’s outgoing spy chief has warned state espionage and foreign interference pose the greatest threat to national security.

Duncan Lewis, the former director general of the Australian Security Intelligence Organisation, told a Lowy Institute forum last month there were three major confrontations our nation would have to deal with going forward — espionage and foreign interference, terrorism and cybersecurity.

The long-serving public servant, who retired on 30 September, warned foreign interference was the greatest threat facing our nation. He said foreign interference and espionage was the most concerning, even more than terrorism.

He warned foreign interference and espionage posed an “existential threat” to the nation, noting the danger was it was more subtle and difficult to recognise than the threat of terrorism. <http://tinyurl.com/y4afw6w2>

The self-serving remarks, designed to secure extra funds and resources for the spook industry in Australia, ignore the reality that self-serving politicians of the ruling parties, Labor and Liberal/National, are the greatest threat to the nation. They can do far more damage in one session of parliament – or in one day at party gatherings – than the Lewis external hobgoblins can do in a year.

No special exemptions...except for us: ASIO

“ASIO does not support broad exemptions for particular classes of people, industries or professions,” the spook agency told federal parliament in response to a question on notice.

CLA notes that ASIO holds these broad exemptions:

1. Reveal an ASIO agent’s name, and you go to jail for 1 year.
2. Reveal an ASIO mission or raid, and you can go to jail for 10 years. (Even if the raid was a disaster, people were killed, and ASIO and its agents acted beyond the law, no-one is allowed to mention any of those facts, ever).

CLA agrees with ASIO: let’s get rid of broad exemptions...and for ASIO, as well as for everyone else.

Secretaries get to filter major report

The Secretaries Board is evaluating the report of a panel inquiring into the Australian Public Service.

Prime Minister Scott Morrison said in a speech to the APS in August that the departmental secretaries, chaired by new Secretary of the Department of Prime Minister and Cabinet, Phil Gaetjens (photo), will evaluate the recommendations of an independent panel and report to Cabinet on relevant issues and findings.



This process inserts another level of conservatism between ideas put forward in 700 submissions and 29 workshops and the end product.

The government commissioned the ‘independent’ review on 4 May 2018 to ensure the APS is fit-for-purpose. It makes a mockery of ‘independent’ in that the final brief to government will arrive heavily filtered by the very mandarins most likely to be criticised, CLA believes.

The ‘independent’ review was supposed to report by 30 June 2018, so the process is already three months behind...perhaps that itself is indicative of one of the major problems, that deadlines and commitments are frequently not met by the government and its employees who comprise the APS.

– media release, APS Review team, by email 190924
Statement: <https://tinyurl.com/yybs6jzz>

Corruption continues: Caesar judges Caesar ‘very benignly’, former AG says

Systemic corruption remains rife in Queensland, former state attorney general Dean Wells claims.

Wells was a Labor AG who helped to implement recommendations of the Fitzgerald inquiry 30 years ago.

The Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (1987–1989) into Queensland Police corruption was a judicial inquiry presided over by Tony Fitzgerald QC.

The inquiry resulted 18-year Premier Sir Joh Bjelke-Petersen resigning, the calling of two by-elections, and the jailing of three former ministers and the Police Commissioner (who also lost his knighthood). It was the prime catalyst for ending the National Party’s 32-year run as Queensland’s governing party.

The Bjelke-Petersen era was noted for the restriction of civil liberties, increased police power and a gerrymandered electoral system.

Wells, now a barrister, told *Guardian Australia* he believes the state needs a new inquiry to address creeping problems with oversight of police and the public sector. “Process corruption is still rife in Queensland.”

Wells is particularly critical of the way the state’s Crime and Corruption Commission operates on what it calls “the devolution principle”, which means the vast majority of complaints about public sector agencies are ultimately handed back to those same agencies to investigate and act.

“It’s not just Caesar judging Caesar, it’s Caesar judging Caesar very benignly,” he said. <https://tinyurl.com/y65amgtd>
Wikipedia: <https://tinyurl.com/y34evpco>

Assisted Dying bill reaches Upper House

WA’s Voluntary Assisted Dying bill has leapt one hurdle – the Lower House – but faces a higher bar in the Upper House.

The bill passed 45-11, meaning it attracted about 80% support. That figure mirrors community polling.

However, the UH is considered far more conservative, and may elect to vote contrary to the overwhelming will of the people, but in accordance with individual conscience.

That is an MP's right, of course, but hardly seems a reasonable approach when the community so strongly supports one side of the debate. – sourced from several media outlets

More racist police actions, reports say

WA Police have again been accused of racism after an Indigenous woman who sought their help – after she had been robbed and bashed, including suffering a broken rib the night before – was arrested, charged and jailed instead of being able to report the violent robbery.

Keennan Dickie said after being assaulted and robbed on a Saturday night, she walked to a fast food restaurant to seek help because her phone and money had been stolen. Police officers who attended noted her injuries and told her that she had outstanding fines and would need to attend a police station to settle them and to report her assault after she had recovered. She spent the rest of the night in hospital, where x-rays confirmed she had a broken rib.

Ms Dickie said she went to Mirrabooka Police Station to report the assault the next day, but was taken into custody before she could. "I asked to make a report about an assault on the previous night and, while I was waiting, a police officer came out and informed me that I was under arrest," she said.

She was put in a holding cell and then transferred to Melaleuca Women's Prison.

The culture within the WA Police continues to be a major problem, CLA believes. An Indigenous woman was shot dead by police in Geraldton last month, when family members believe police had the option of using a stun gun if – and it is not proven – the woman had a knife, as police claim.

The core problem with all these incidents is the WA Police will investigate whether WA Police did the wrong thing. CLA believes it is long past time that the WA Parliament legislated to stop police-investigating-police (PIP) in serious matters, as both these cases are. <https://tinyurl.com/yxocpp2d>

Cutting jail-to-pay-off-fines will save money

WA is soon to get a law to drastically cut the jailing of people for unpaid fines.

The legislation was tabled in the WA parliament last month. It will cancel all unserved warrants for unpaid fines – wiping the slate clean for a new start – but people can still to be jailed in "strict circumstances" if a magistrate issues a warrant to that effect.

Attorney general John Quigley said the death of Yamatji woman Ms Dhu was the "catalyst" for the reform. She died after being detained in a prison cell in Port Hedland in August 2014, after "unprofessional and inhumane" treatment by police. She was locked up to work off unpaid fines worth \$3600.

Quigley said 433 people were jailed for unpaid fines last year, at a cost of \$1.56m. He estimated the reform would free up 80 prison beds and save \$1.8m a year. <https://tinyurl.com/y5fjwtfz>

Spit hoods must be phased out: Ombudsman

Children as young as 13 were pinned on the floor by youth justice workers and forced to wear spit hoods in a South Australian detention centre, an SA ombudsman report reveals.

Only SA now allows using spit hoods in youth detention centres after their use in the NT's Don Dale youth detention centre led to a royal commission in 2016.

SA's Marshall government has said it would phase out use of the hoods. Ombudsman Wayne Lines recommended the use of spit hoods be phased out within a year.

In a report released last month, he said their use was "inherently traumatic" and not consistent with the "objects and guiding principles of the youth justice system".

Spit hoods have been used at the Adelaide Youth Training Centre (AYTC) since 2014 and their use has been recorded since 2016. Between October 2016 and June 2019 they were used on 57 occasions against 22 children. One-third of all reported uses of spit hoods were against the one child, who was placed in a spit hood 19 times in nine months.

Lines reviewed the CCTV of 12 incidents where spit hoods were applied, during which children aged between 12 and 17 were restrained by a number of adult staff members. <https://tinyurl.com/y35ztxth>

Appeals court is chance to laterally arabesque

The SA government plans to set up a separate Court of Appeal with dedicated, permanent judges.

"Presiding over an appeal is a different judicial function to that of a trial judge and this would allow for this expertise to be fully harnessed," SA AG Vickie Chapman said last month.

As in other states, there will be a president of the appeal court, and a number of other appointed judges.

CLA notes that this may prove a convenient way to laterally arabesque the current chief judge of the Supreme Court, Chris Kourakis. The details of his role, when SA's Solicitor-General, in not releasing key documents to Henry Keogh have never been announced publicly. The failure to disclose – a mandatory requirement – kept Keogh in jail wrongfully convicted for about nine years longer than he should have been.

The SA government was forced to pay Keogh \$2.6m in compensation for the 19 years he was jailed.

Kourakis has been chief judge of SA since 2012. The AG plans to hold immediate consultations over the *Supreme Court (Court of Appeal) Amendment Bill 2019*. <https://tinyurl.com/y3s86jqb>

Top judge wants forensic laws changed

Justice Chris Maxwell, President of the Victorian Court of Appeal, said last month there was little proof that forensic techniques such as gunshot analysis, footprint analysis, hair comparison and bitemark comparison could reliably identify criminals.

He called for urgent change to state, territory and federal law, so that judges had to consider the reliability of forensic evidence before it was shown to juries. Maxwell says he believes innocent people may have been jailed because of too much faith in forensic techniques that have proved to be flawed.

Daniel Gurvich, chair of the Criminal Bar Association of Victoria, said the Victorian government should establish an inquiry into the accuracy of forensic science, calling it "a matter of great concern in the administration of justice".

The Australian comments follow two critical American reports, published in 2009 and 2016, which forced major changes to the US and British legal systems.

Victoria Police "refuse to accept the reports", said Associate Professor Richard Bessed, deputy director of the Victorian Institute of Forensic Medicine.

The institute, part of the Department of Justice, is Victoria's top authority on forensic medicine and regularly works with police, the coroner and the courts.

There has been no change to laws or court procedures anywhere in Australia.

Dr Linzi Wilson-Wilde (photo), director of the National Institute of Forensic Science, rejected Justice Maxwell's criticisms. "The evidence provided by government forensic services providers is robust and accounts



for limitations in the assessment and interpretation they perform, and in the reports they prepare.” Liam Mannix reported him as saying. <https://tinyurl.com/yxycpj48>

That’s a “forensic” comment that needs total re-examination, CLA says. Firstly, Dr Wilson-Wilde is demonstrably wrong (see the cases of PathWest, where deliberately false reports were created, and state laboratories that have made gross errors due to contamination). Secondly, governments – that is, police services in particular – should not be the ones providing ‘independent’ forensic ‘expertise’ to courts, as happens in Tasmania for example (see items below).

Cannabis legal! It’s enough to drive MHRs to pot planting at their ‘expense’ homes

Using and cultivating small amounts of cannabis will be legal in the ACT from February 2020.

The ACT Legislative Assembly has passed a law allowing possession of up to 50gm per person and the growing of a maximum of four plants per household.

Cannabis – aka marijuana – may not be bought or sold.

While Commonwealth laws prohibit the possession of cannabis, it is unlikely the federal police would over-rule the ACT Legislative Assembly. The situation is somewhat cloudy, though, because the AFP provide the police officers who comprise the separate, contracted ACT Policing body.

Given that many members of the federal parliament own houses and flats in Canberra, usually paid for by their expense allowances, it is highly likely that some of them will take advantage of the right to grow and roll their own in the nation’s capital, whereas they will be banned from doing the same thing in their home state.

Tasmania Special Report: October 2019

Appeal court ‘not guilty’, so the SAC says

All is hunky dory with Tasmania’s sentencing, the state’s Sentencing Advisory Council has pronounced through chair, emeritus professor Arie Freiberg. <https://tinyurl.com/y5459s2g>

He said a SAC study refuted criticisms of the Court of Criminal Appeal by the former director of public prosecutions, Tim Ellis, who is now a barrister.

Figures show that, for sentences over the four years 2013 to 2017, and appeals to 21 October 2018:

- some 1114 people sentenced in the Supreme Court generated 68 appeals against sentence with nearly a quarter (23%) successful.
- convicted people made 70.6% of appeals, but only won in 14.6% of cases. When the Crown appealed (29.4% of the time), it won 80% of its appeal. It would, wouldn’t it, CLA comments, if the legal-judicial system was skewed in its favour, as Ellis claimed.

Of course, CLA points out, such statistics tell us absolutely nothing about the quality of the legal-justice system in Tasmania. What is revealing is that the study showed successful offender appeals against sentence were proportionately greater in Victoria and NSW than in Tasmania. That strongly suggests the Tasmanian appeals system is a relative failure.

Prof Freiberg said Tasmania was very different from the “large and diverse jurisdictions” of NSW and Victoria. Ain’t that the truth, CLA says, and notes that different does not mean better.

SAC should feel judge quality, not numbers

The Tasmanian SAC would do much better community service by analysing the comments of appeal court judges, rather than numerical outcomes.

For example, the appeal findings in the original Sue Neill-Fraser appeal contain faulty logic, unsustainable assumptions, and incomprehensible ‘judgement’ on issues such as to what constitutes ‘significant’ error.

CLA believes the SNF schemozzle demonstrates and proves quite clearly all the faults Ellis claims do exist in the Tasmanian court structure. Here is an innocent women convicted of a murder that may not have happened (there’s no body, so how do you know it was murder). There’s no weapon and no believable motive. She has served 10 years in jail already.

The SAC sentencing study followed questions raised about the structure of the Court of Criminal Appeal last year. Tim Ellis, the former DPP responsible for prosecuting SNF, was representing a man appealing against his sentence. Ellis said the court’s structure — no separation between sentencing judges and appeal judges — could lead to judges being “prone to group think” and “protecting each others’ judgments”.

Ellis ought to know: he was literally at the heart of the legal system in Tasmania when SNF was convicted, and held the position of state DPP for 16 years. Given that he prosecuted her, and conducted the state’s case in her first appeal, and also her failed bid for a High Court review, and that he admitted a major error of his own in relation to whose DNA was on a glove, perhaps he should now offer to support her current appeal, if he believes the system is flawed.

Incidentally, SNF is now appealing her conviction under the state’s new ‘Right To Appeal’ law...with one of the appeal clauses the way forensic evidence was presented to the jury and judge in the case!

Barrister Barns excoriates current Tasmanian government...and opposition

“The Liberal Party plays the law and order card, not because there is any evidence to show it is good policy, but because they think it is a useful political tactic,” said Hobart criminal barrister Greg Barns last month.

“If you oppose their irrational and evidence-free proposals like mandatory jail terms and abolishing suspended sentences ... then it enables them to cry that you are soft on crime.

“The consequences of the Liberal Party’s intellect-free policies is of course higher crime and crowded prisons.

“The introduction of a law to abolish remissions is in the same vein. There was no evidence provided to the Tasmanian Parliament that abolishing remissions, which are a useful incentive to ensure prisoners’ participation in rehabilitation, was good policy. Unions, legal services, and NGOs like Anglicare all pointed out the danger of removing such a tool,” Barns wrote.

He explained that the local ALP power-brokers had originally planned to vote against the Liberal Bill to abolish remissions. Then, suddenly, in the Upper House, the ALP representatives turned turtle.

“There is no explanation for the ALP backdown other than its tacticians had obviously decided there are not votes in standing behind good policy,” Barns wrote.

“So the losers from this tawdry affair are of course prison workers, prisoners and the community itself as recidivism rates increase.

“The other loser is democracy. The signal sent by the ALP now is that it will succumb to the dangerous law and order agenda of the Hodgman government for fear of being tagged as ‘soft on crime.’



"This not only represents an abdication of its responsibility as a political entity to oppose such mindless cynical initiatives, but it confirms that democracy is no longer about taking responsibility for the long term, but is simply about winning votes," Barns commented.

Police to get power to issue instant charges

The government is about to hand Tasmanian police on the beat a very big stick in the form of power to issue instant, on-the-spot, go-to-court charges giving a firm date to appear before a magistrate.

Worse, the same police will be able to withdraw such an order – again, merely on their say-so – before the court due date.

The likelihood of these provisions being abused by police is enormous, CLA believes. Police officers are effectively being handed threat powers to enforce their will over anyone they choose to confront.

On the streets, the new law will become police bullying. "Do as we say or we'll charge you this instant," could be a regular refrain.

The powers are contained in a massive overhaul of how the petty courts work, under the *Magistrates Court (Criminal and General Division Bill 2019 (No 27)*.

It was read formally in the Upper House of the Tasmanian Parliament last month, by Mrs Leonie Hiscutt (photo), the government's leader.



"For example, a police officer who observes an offence being committed will be able to serve the alleged perpetrator then and there with a court attendance notice, which requires that person to attend court at the place and on the day and time specified in the notice," she read out.

"The bill also contains provisions that allow for both a court attendance notice and charge sheet to be withdrawn without the leave of the court at or prior to a defendant's first appearance."

Another unique provision in the new law will be that a sick person can be forced to attend court by video link if they are too ill to appear in person, Mrs Hiscutt said.

"This (the court's power to order attendance by video on its own say-so – Ed) is a general provision that is designed to improve the flexibility and efficiency in the courts. Examples of when this provision might be useful include when an expert witness, who is located interstate, is unable to attend court or when a party is unable to attend court because of illness."

The proposed law also does away with court transparency: "A new measure introduced by the bill is a prohibition on the publication of information relating to preliminary proceedings without the express permission of the court." At the moment, there is no restriction on publishing details.

The new law is specifically and glibly designed to cut court costs, speed up processes partly in secret, and shovel more work into the magistrates' court rather than the Supreme Court, which is super-clogged.

ODD SPOT: Justice moves at snail speed

The speech to the Upper House of the Tasmanian Parliament (above) reveals that justice hastens slowly...

"The move to develop legislation to replace the Justices Act 1959 was approved in broad terms by a previous government in 2001 and the project has continued and evolved since that time. The impetus for the project has largely come from the Magistrates Court itself with successive chief magistrates, magistrates and court staff finding time – despite their busy schedules – to progress the project."

Thank goodness they worked so hard to "progress" the matter: it has only taken them 18 years...so far.

Overcrowding up, police abuse up, secrecy up, forced appearances up...

The Tasmanian Magistrates Court is already overloaded: the new law will make its overcrowding worse.

The criminal and general jurisdiction of the Magistrates Court in 2018-19 dealt with 16,648 criminal lodgements for adults and 16,176 criminal finalisations for adults, parliament was told (see above items).

The Magistrates Court annual report indicates that in 2017-18 the criminal and general jurisdiction of the Magistrates Court finalised 18,047 criminal complaints, 4403 breaches of orders, and 1644 other applications. (The 2017-18 figures do not include restraint orders and family violence applications).

The reason for the major change in the basic law of Tasmania is saving time and money: it has nothing to do with delivering better justice to citizens, CLA believes.

Included in the statement to the Upper House of Parliament was this giveaway of the reason for change:

"The average total number of attendances per finalisation of matters in the Criminal and General Division jurisdiction of the court has increased in recent years from an average of 3.8 attendances per finalisation in 2011-12 to an average of 4.4 attendances in 2017-18.

"These changes aim to ensure that every appearance in the Criminal and General Division of the Magistrates Court will be a meaningful one and is expected to reduce the time that will elapse from the date of charging to the completion of the matter and the average number of attendances per finalisation," parliament was told.

In other words, police are being given excessive, instant, go-to-court powers because it suits the government's and the courts' convenience. People can be forced to appear by video link even when they are sick. The court's processes will be held in secret, by default.

That's no way to run a legal-justice system, CLA believes.

Hypocrisy runs riot...on film and with police

The Tasmanian government has kicked in \$100,000 for filming partly in Tasmania a five-part crime series about an Adelaide murder in 1979.

Elise Archer, Minister for the Arts, said: "The Hodgman majority Liberal Government is proud to have supported the production of *Debi Marshall Investigates: Frozen Lies*, a fascinating new true crime documentary series. Across five explosive episodes, Debi Marshall, a Walkley award-winning investigative journalist, explores the 1979 murder of Adelaide lawyer Derrance Stevenson.

"An accompanying podcast further reveals Debi's investigative prowess and highlights additional material to the series as she attempts to bring justice to victims," Archer says. <https://www.tas.liberal.org.au/news/true-crime-series-filmed-tasmania>

This statement by AG Archer is hypocrisy run riot.

When a real-life film crew, using its own funding, was investigating and filming a real-life and current (2009-2019) injustice in Tasmania – the Sue Neill-Fraser case – the Tasmanian Police put the film crew under surveillance, organised the NSW Police to raid the production facilities in Sydney to seize the raw film and video, charged people who had appeared on film with thought crimes, and prevented the key investigator and film-makers from any further travel to Tasmania under threat of arrest and jailing.

Elise Archer, as well as being Minister for the Arts, is also Attorney General, Minister for Justice and Minister for

Corrections. Pity she's apparently also Minister for Gross Hypocrisy.

Perhaps Archer can explain what is the difference between Marshall's "*investigative prowess and (bringing) additional material to the series as she attempts to bring justice to victims*", which is worth \$100,000 of assistance from the Tasmanian government, and the behaviour of "The Hodgman majority Liberal Government" when producer-director Eve Ash was doing exactly the same thing in relation to the Tasmanian "murder" of Bob Chappell, where SNF is yet to receive justice. See: <https://www.cla.asn.au/News/government-hypocrisy-over-filming-in-tasmania/>

Ends TASMANIA special report

NT Special Report: October 2019

NT dispenses with evidence and proof

The NT is planning to bring in new Firearm Prohibition Orders that allow the police to ban people having a firearm for 10 years on secret, never-to-be-disclosed intelligence, without giving any reason.

The new law would also increase penalties for firearms offences in general, and give police open slather to search a person, premises or possessions without a warrant,

The Commissioner of Police will not be required to give any reason for issuing an FPO on "confidential criminal intelligence". Police will be able to issue an FPO based on:

- prior criminal history
- prior behaviour
- persons you associate with
- confidential criminal intelligence about you or your mates, and
- police information – belief – that you may pose a threat to the community if you acquire a gun.

FPOs implemented in Victoria, SA, NSW and Tasmania are said to be an effective tool for dealing with violent offenders, motorbike gangs and their associates. But when anyone operates a secret conviction regime based on giving no reasons and without reputable evidence, how would you know, CLA asks?

Remember, these laws will apply to anyone in the community, not just bad guys: if the police don't like you for whatever reason, they can stop you getting a firearm. For many people in the NT, having a firearm is just part of their rural lifestyle and sporting activity, CLA notes. – media release, Minister for Police Nicole Manison 190917

Government reforms political donation regime

The NT government has passed the Electoral Legislation Further Amendment Bill 2019, which is based on

recommendations made by Justice John Mansfield (photo) in his Political Donations Inquiry.

There is now an indexed \$40,000 cap on electoral expenditure for individual candidates, with a pooled cap for political parties of a maximum \$1 million if the party stands candidates in 25 electorates.

There are also new requirements for disclosures by third party campaigners and associated groups and caps on electoral expenditure for associated groups.



If you break the law, you can go to jail for up to 10 years and may face stiff penalties of up to \$232,500.

– media release, Chief Minister Michael Gunner 190919

Youth get practical chance to make amends

Young offenders around Katherine in the NT can, from this month, make physical amends in their communities for their wrongdoing.

Kalano Community Association has been given \$1.5 million over five years for community youth diversion programs in Katherine and Beswick, Barunga, and Mataranka.

The partnership stems from the NT government commitment to transfer decision-making and government service delivery to Aboriginal control.

The community youth diversion programs will operate from this month (October 2019) for children and young people referred by the NT Police or the local or Supreme Court.

Aboriginal leaders will decide what the young offenders will have to do to repair the harm they have caused the community, such as housing repairs, mechanical repairs, maintenance and boosting essential services.

The MLA for Katherine, Sandra Nelson, said: "We are giving young people in Katherine and surrounding areas the opportunity to repair the harm that they have caused, as well as giving them education and training pathways so that they can become productive members of our community, all initiatives that I have been advocating." – media release, Minister for Territory Families, Dale Wakefield, and MLA Katherine, Sandra Nelson, 5 Sept 2019. NB: Nelson is a member of CLA.

ODD SPOT: The plot thins...

In a first for burials in Australia, the NT's proposed new Burial and Cremation law 2019 will provide that a funeral director is NOT required for a burial at a public cemetery. Funeral directors have become de rigueur because most jurisdictions are silent on the matter. In WA, a burial can only be conducted by a funeral director or by any one else following application for a permit to do so. In Queensland, cemeteries are regulated by local government authorities and whether a funeral director is required would seem to vary from one authority to another. The main reason for 'NOT required' clause in the NT law was to make funerals (including family-led funerals) easier in remote Indigenous communities. – advice courtesy of the departmental legislative drafters and the NT Parliament committee system.

Draft Aboriginal justice agreement released: The NT government is consulting on a final draft of the NT's first Aboriginal Justice Agreement. Among its main aims are cutting both Indigenous offending and imprisonment. Research, evidence-based data and the testimonies of Aboriginal people collected during two years of consultations, involving 80 communities and 120 sessions, have gone into the draft: <https://justice.nt.gov.au/attorney-general-and-justice/northern-territory-aboriginal-justice-agreement> Submissions close 31 March 2020 – media release, AG Natasha Fyles 190910.

NT to introduce corporate industrial manslaughter: The NT government plans a new industrial manslaughter law to ensure all businesses face the same level of penalty if reckless or negligent conduct has caused a workplace fatality. Now, only individuals can be charged with manslaughter under the NT Criminal Code, so a sole trader can face a maximum penalty of life in prison, but there's no equivalent penalty for a body corporate. Maximum penalty will remain life imprisonment. Once enacted, the NT will join QLD and the ACT as the Australian jurisdictions with an industrial manslaughter offence. – Media release, AG Natasha Fyles 190914

Youth justice laws improved: As part of overhauling its youth justice laws, the NT is drastically curtailing the time young people can spend in custody without proper external supervision. The circumstances of a young person in custody will be reviewed by a senior sergeant of police every four hours and by a judge after 24 hours. Before the new amendment, the

time limit was seven days. The NT is starting to get its youth justice system a little more 'right': 71% of youths have successfully completed their community-based orders recently, compared to just 51% three years ago. – media release, Minister for Families Dale Wakefield 190918.

ENDS NT Special Report: October 2019

ODD SPOT: Doctors should not happy-snap

The Royal Australian College of GPs has issued new guidelines advising against doctors using their personal phones to take clinical photos.

They should first ensure they receive informed consent – letting patients know about why the photo is being taken, how it will be stored and transmitted, with whom it will be shared and why, and whether the photos will be de-identified.

The RACGP also advises that clinicians should avoid third-party storage options, like the cloud-based apps, to limit the risk of a data breach and instead upload photos straight to patient medical files “as soon as practicable”, deleting the photo from their own device immediately afterward.

Automatic backup of photos to the cloud should also be disabled if clinicians are going to use their own phone to take photos. <https://tinyurl.com/yya8q8a6>

Australian briefs

It's a no-brainer: As many as 60% of adult prisoners report histories of traumatic brain injury, the result of external force applied to the head. Corrections Victoria recently commissioned neuropsychological assessments of 120 prisoners. 2 in every 5 men and 1 in every 3 women had a brain injury. The leading cause was alcohol and other drug abuse. – Australian Institute of Judicial Administration News p3, www.braininjuryconference.com.au

Abortion no longer a crime: The NSW Parliament last month passed a bill decriminalising abortion. It negates a 119-year-old law. The Abortion Law Reform Act 2019 passed its final hurdle after more than 70 hours of debate in both NSW houses of parliament, and weeks of protest.

Canberra pets in bubble of their own: Next year a new law, changing the status of animals from “property” to sentient beings, comes into effect in the ACT. Animals will have a right to free movement: owners could be penalised for tying a dog up for more than 24 hours, leaving it unable to exercise. The laws also recognise an animal's right to food, water, shelter, clean living and health care, with specific offences for failing to attend to those necessities. <https://tinyurl.com/y6drqs7q>

Comments by CLA's members and others

(mostly in letters to the editors)

Govt complicit in abandoning Australian citizenship rights

Australian-Chinese writer Yang Hengjun is accused of carrying-out espionage within the territory of the Peoples Republic of China. On that basis he is clearly subject to the laws of that country, irrespective of any self-serving bleating coming out of Canberra.

The situation of WikiLeaks founder, the Australian Julian Assange, is quite different. The attempt to extradite him to the US is for him to be charged with crimes against its laws: laws that can reasonably apply to US citizens for alleged crimes they may commit anywhere in the world but, for the rest of us, would only count if we committed such crimes on US soil. The Walkley Award-winning journalist Assange is accused of crimes under US law, when he is neither a US citizen and was not on US soil when he allegedly committed the alleged crimes.

The complicity of the Australian government in supporting the attempts by the USA to persecute Assange reflects a far greater abuse of his rights than anything thus far inflicted on Hengjun. What western governments and their media accomplices seem determined not to acknowledge is that the day the US succeeds in extraditing Assange, we will all of us have become subject to the dictates of US law, no matter our citizenship and no matter where we are. And with that, sovereignty is dead and the value of citizenship is surely made worthless.– John Richardson, CLA member, Wallagoot NSW

Government is shrivelling, disappearing

Our country and its alleged democratic polity is being ritually poisoned by those in power. How can a Minister say that testing for drug use and then having people's social security payments ripped away will help them? Is the plan to increase crime levels to fill up private prisons, or kill the unemployed, or both? It is certainly obvious that the plan to shrink the social security budget is well under way. Demanding a sample of your bodily fluids before receiving welfare help is a total violation of civil liberties, and an extension of the creeping police state.– Elizabeth Chandler, CLA member, Napoleon Reef NSW

Government is becoming plaything of the rich

"It will be that defining phenomenon of our age: a grassroots movement funded and built by a multimillionaire. And, potentially, the next political earthquake. Taking us out of Europe was only step one of the big disruption, it turns out. Next up: the party political system, and the destruction of the traditional boundaries between left and right. There is no longer any way, with current legislation, of guaranteeing a free and fair election – Carol Cadwalla, writing in *The Guardian UK* about Arron Banks, the man who funded the Brexit Leave campaign, and for whom 2020 is where the vision is. Could the same happen in Australia? You bet your Palmer it could! <https://tinyurl.com/n6y5nto> Contributed by CLA member Christina Marruffo, Inglewood WA

Where's the opposition?

Labor needs to develop some guts, and some respect for the liberty of the subject, in national security debates. The arguments for an increasingly unfree surveillance state need to be countered, and with conviction as well as an open mind. The political business of putting up ever-more-extreme policies has been more to test Labor than save us from terrorism. It's a test Labor has been failing. – Jack Waterford in *The Canberra Times* 190920

CLA report – main activities for Sept 2019

Speech: 'Right from wrong': CLA CEO Bill Rowlings was one of the keynote speakers at a rally outside the ACT law courts which was in support of ex-ASIS man Witness K and lawyer Bernard Collaery .

They have been charged with offences against secrecy laws during the time East Timor had taken Australian to the International al Court of Justice to get a treaty overturned. The treaty was negotiated after Australia bugged the East Timor negotiating team's conference room.

Photo: CLA CEO speaking at the protest rally.

Rowlings again urged the government to stop the Witness K and Collaery trials immediately, and to announce a full and open public inquiry into the entire negotiating



regime and Australian Ministers, public servants and oil/gas firms' involvement.

He said Australia's trade negotiation reputation was in tatters. It was time to reset the standards of the Rule of Law (RoL) and the Rule of Morals and Ethics (RoME) that we want our representatives to abide by.

WA report: Letter prepared by Director of CLA in WA, Margaret Howkins, to the Premier and Police Minister (and Shadows), Commissioner of Police and selected MPs calling for a major change to police training re using weapons, and to the system of police-investigating-police over shootings and other major matters, such as those involving serious complaints. Excerpt from the letter:

The number of WA citizens killed by WA Police using weapons has become alarming. There appears to be a serious, systemic problem within WA Police, as police-caused deaths are escalating.

Media reports confirm (see attached) that, in the past two years, WA Police have been responsible for the deaths of at least four (4) people in separate incidents, three of them shot by handguns and one following the discharge of one or more WA Police stun guns.

One such shooting death is a tragedy. Two are cause for alarm. Now that the number has reached four (4), it is obvious that there is a systemic problem within WAPOL.

NOTE: The same sentiments as expressed in the letter were contained in a lead letter run by the West Australian newspaper, under the signature of Margaret Howkins, Director WA of CLA.

- Email responses from MPs Alison Xamon & Lisa Baker thanking CLA for their letter + media report on police shootings of civilians over the past few years. Both politicians assured CLA that they intended to address the issue in the WA Parliament.
- Shadow premier and shadow police minister responded to CLA's letter and media report about police shootings of civilians by offering a meeting with the shadow police minister.
- Letter from the CLA Director in WA published as lead letter in the *West Australian* newspaper demanding a change in legislation to stop police investigating themselves after killing incidents.
- (Photo right, with Margaret Howkins 'on hold'): Poster created by CLA members in WA for ANZSOC criminology conference in Perth in December. Photo taken outside Noggos coffee shop near police training college, with plenty of police watching, giving advice). Handcuffing offered.
- WA CLA members attended two September rallies
 - 'Go Gently' outside of parliament (euthanasia, well supported. Legislation passed Lower House).
 - School children's Climate Change walk through Perth's city centre.

Meetings/planning with CLA members:

- Rosemary Jennings CLArion proof reader
- Diana Simmons CLA representative to Sydney human rights functions
- John and Tricia Simmons and Thomas Mautner re current activities
- Skype with Margaret Howkins WA Director, re Police Investigating Police poster
- Julie and Kathy Klugman re current political events (Pacific Islands, Indonesia)
- Rosemary Jennings (CLArion proof reader) re nuclear developments, gender issues

- Margaret O'Callaghan about developments in Africa, particularly Zambia and Zimbabwe

Public forum attendance

- AFTINET meeting at Parliament House - Parliamentary forum on Regional Comprehensive Economic Partnership.
- 'Trust in Politics', analysis based on Australian Electoral Survey finding 2019 federal election, ANU: Prof Ian McAllister, Prof Patrick Dumont, Mark Kenny (ABC and Australian Research Fellow)
- Rally: Protect Whistleblowers, CEO Bill Rowlings spoke along with Sister Susan Connelly, Rod Campbell of the Australia Institute and ACT MLA Caroline Le Couteur
- Upcoming: Whistleblowers, Media Freedom and Your Right To Know, forum Manning Clark House, Bill Rowlings on panel
- 16th Australia-Vietnam Human Rights Dialogue and the 6th Australia-Lao PDR Human Rights Dialogues 2019: CLA Director Jennifer Ashton

Submissions made/under way:

- ACT government Intensive Correction Orders (alternative to prison)
- NT Parliament on mental health legislation and on proposed police powers legislation on firearms
- Reform of Question Time
- Fair and Equal Australia inquiry: Australian Human Rights Commission
- WA Parliament: submission proposing major changes to the Corruption, Crime and Misconduct Act 2003 (also includes proposal for new legislation for WA Police to prevent police-investigating-police in the future). Author: Director CLA in WA, Margaret Howkins.



East Timor: CLA member and NT MLA Sandra Nelson visited Timor Leste's capital Dili, during the month. Her report is here: <https://www.cla.asn.au/News/nelson-explains-what-freedom-means/>

Tas: Work continues for watering the seedling concept of a Bill fo Rights for Tasmania.

NT: CLA Treasurer Sam Tierney and CLA NT Convenor Caitlin Perry met briefly to discuss current issues.

Outpost reports: Alice Springs: CLA member Jerry Fitzsimmons organised a vigil supporting Tasmania's wrongfully convicted Sue Neill-Fraser on the 10th anniversary of her jailing. He reports: 'Very cold nights on the lawns prior to vigil and the Uniting church approved use of their screen inside. Small group of 10 or so attended, including a few Aboriginal men and women. Screened the DVD 'Shadow of Doubt', distributed Information from CLA and Sue's Support Group in Tasmania and discussed it on the night. Same info also distributed throughout Alice Springs prior to the vigil. I will continue to advocate and support SNF while this notorious injustice prevails. The SBS 'Insight' program on wrongful convictions publicly demonstrated why.

Media:

\$10K cash limits, cashless society, Australia card – CEO comments: <https://www.sydneycriminallawyers.com.au/blog/a-step-too-far-morrison-moves-to-criminalise-cash-payments/>

Interview for The Wire community and Indigenous radio's main current affairs bulletin over Intelligence and Security Legislation Monitor's recommendation that the federal government repeal automatic citizenship loss provision (CEO Bill Rowlings).

NT News: CEO quoted on proposed new warrantless and evidence-free gun laws for NT Police.

INTERNATIONAL

High Court rules mass surveillance illegal

The High Court of South Africa's Pretoria division last month declared mass surveillance activities unlawful because they contravene the Constitution.

The ruling will influence other national high courts asked to rule on the legality of widespread surveillance.

The verdict came in a case filed by an investigative journalism organisation that had challenged parts of the country's controversial surveillance law, local news website *News24* reported.

The Regulation of Interception of Communications and Provision of Communication-Related Information (RICA) Act was allegedly used by the government to record phone communications of journalist Sam Sole in 2008. At the time, Sole was investigating the decision to drop corruption charges against former President Jacob Zuma.

After the amaBhungane Centre for Investigative Journalism demanded to know the basis of the surveillance, the State Security Agency said it had acted on a court order.

The journalism centre challenged the constitutionality of the law, and said it violated the right to privacy. It urged the court to declare it unconstitutional. The court found that the law was inconsistent with the Constitution in a number of areas, <https://tinyurl.com/yxbcmzas> <https://tinyurl.com/yykdf3rm>

The full judgement: <https://tinyurl.com/y36yq3ge>

Seeing potential instead of a problem

Refugees are potentially wealth generators for nations, rather than drains on economies: refugee women could generate up to \$US1.4 trillion extra to annual global GDP if employment and wage gaps were closed, a new report finds. The report says:

- Closing wage and employment gaps for refugee men and women, and equalising wages and employment rates between genders in countries that host 90% of the world's refugees could boost global GDP by up to \$US2.5 trillion.
- Closing pay gaps and removing barriers for refugee men and women in Turkey, Uganda, Lebanon, Jordan, Germany, and the US alone – six countries which together host almost eight million refugees, or 40% of the world's refugee population – could boost overall GDP by \$US53 billion.

- This is five times the combined annual budget of the UN Refugee Agency and International Organization for Migration.

The analysis was authored by Dr Jeni Klugman and Raiyan Kabir of the USA's Georgetown Institute for Women, Peace and Security <https://giwps.georgetown.edu> and jointly published by GIWPS and the International Rescue Committee <https://www.rescue.org/> Report: <https://tinyurl.com/y4polo3w>

ODD SPOT: NZ's national sport is watching All Blacks win

The NZ Parliament has shown fleetness of foot recently. The bill to allow bars to stay open to show Rugby World Cup matches from Japan outside normal hours was first announced by Prime Minister Jacinda Ardern on a Monday...and introduced to Parliament on the Wednesday, being passed into law that night.

Only the Greens voted against it. "How much longer are we going to continue to tag the sporting history of our country, of which I am incredibly proud, to drinking?" asked Greens co-leader Marama Davidson.

The ACT* party's David Seymour called the Greens wowsers.

Nationals' Gerry Brownlee had a question for them: "I wonder if all those who are going to turn up to bars to watch the games would be more acceptable in the Greens' eyes if they were having a puff on the old wacky baccy, and rather than looking at the screen just imagining what's going on."

The Rugby world cup climaxes on 2 November. It's highly likely the All Blacks will win it.

* The NZ ACT party is akin to Australia's Liberal Democrats.

The Greens, in agreement with the government, are likely to pass a law in 2020 allowing personal cannabis use – report by VP Tim Vines.

Five to be tried...after being locked up 20 years

Five men will be tried at Guantanamo Bay from January 2021, nearly 20 years after the fact, for their alleged role in the 11 Sept 2001 terrorist attacks on New York's Twin Towers and Washington's Pentagon.

Judge Colonel Shane Cohen has set the trial start date, 16 months from now. Defendants include Khalid Shaikh Mohammed, a senior al-Qaida figure said to have masterminded the Aircraft attack on the USA.

The men were first charged in 2008: military commission proceedings began in 2012. There have been more than 30 pre-trial hearings and endless procedural arguments, but the cases have atrophied. On 11 January 2021 the court on Guantanamo Bay will select a military jury.

Mohammad, described by the the 9/11 commission report as the principal architect of the attacks, was captured in Pakistan in 2003 and held and tortured in secret CIA black sites in Afghanistan and eastern Europe for three years, before being kidnapped to GBay in Cuba in September 2006.

His co-defendants are Walid bin Attash, alleged to have run an al-Qaida training camp in Afghanistan; Ramzi bin al-Shibh, a Yemeni accused of helping organise logistics; Ammar al-Baluchi, alleged to have helped to fund the hijackers and organise their flight school training; and Mustafa Ahmad al-Hawsawi, a Saudi accused of acquiring cash, credit cards and clothing for the hijackers. <https://tinyurl.com/yyfcy6r7>

'Freedom' is newly defined in Trumpsylvania

The *Justinian* legal blog, run out of Sydney by erstwhile *Gadfly* columnist in *The Saturday Paper*, Richard Ackland, has a correspondent under the name of Roger Fitch Esq. reporting once a month on US doings.

Fitch this month has reported on US happenings related to freedom laws and religious freedoms, issues which are close to the surface in Australia also. Here's part of his September 2019 report:

"Fresh Orwellianisms continue to bubble-up from the cranks who inhabit Trump departments: 'freedom gas' for methane and natural gas, and 'natural law' for inserting religious dogma into human rights law.

"The suspicious 'natural law' distortion is part of a new 'Commission on Inalienable Rights' inspired by rogue academics at sundry religious universities. It will provide "fresh thinking about human rights" and propose "reforms of human rights discourse where it has departed from ... natural law and natural rights" (read same-sex marriage and gay rights).

"The 'natural law' could gain traction with some of Trump's judges, including a supreme court about to review Trump-backed discriminatory employment practices already struck down by several appeals circuits and opposed by the EEOC," Fitch reports.

No more private prisons

The private prison industry is set to be upended after California lawmakers passed a bill banning the facilities from operating in the US state.

The move will probably also close down four large immigration detention facilities that can hold up to 4500 people at a time.

The legislation is being hailed as a major victory for criminal justice reform because it removes the profit motive from incarceration. It also marks a dramatic departure from California's past, when private prisons were relied on to reduce crowding in state-run facilities.

Private prison companies used to view California as one of their fastest-growing markets. As recently as 2016, private prisons locked up approximately 7000 Californians, about 5% of the state's total prison population, according to the federal Bureau of Justice Statistics. But in recent years, thousands of inmates have been transferred from private prisons back into state-run facilities. As of June, private prisons held 2222 of California's total inmate population. <https://tinyurl.com/y48syfve>

Dili gains a human rights presence

Dili's new Human Rights Centre at the National University of Timor Leste was launched late in August, on the 20th anniversary of the tiny nation's independence referendum.

Dignitaries included Nobel laureate Dr Josè Ramos Horta, the EU Ambassador Alexandre Leitao and the Minister of Higher Education, Science and Culture, Prof Dr Longuinhos dos Santos.

The HRC starts as a 23-month project funded by the European Union. It is expected to affiliate with the Global Campus of Human Rights' (GCHR) Asia-Pacific network, led by Mahidol University in Thailand. – media release, GCHR 190827

Saudis lash out at Australia

Saudi Arabia has retaliated, focusing on Australia, after coming under attack at the UN last month for its appalling human rights record.

Australia's UN ambassador, Sally Mansfield, delivered a statement on behalf of 24 nations to the UN Human Rights Council in Geneva, condemning Saudi Arabia over numerous human rights abuses, including arbitrary detention, torture, enforced disappearances and the murder of Jamal Khashoggi. Backers of the statement included the UK, NZ, Canada and Germany.

"We remain deeply concerned at the human rights situation in Saudi Arabia," Mansfield said. "Civil society actors in Saudi

Arabia still face persecution and intimidation. Human rights defenders, women's rights activists, journalists and dissidents remain in detention, or under threat. We are concerned at reports of torture, arbitrary detention, enforced disappearances, unfair trials, and harassment of individuals engaged in promoting and defending human rights, their families and colleagues."

The next day the Saudi ambassador, Abdulaziz Alwasil, said minorities, migrants and Muslims face "horrific violations of human rights ... racist and extremist policies" in some countries.

"Unfortunately, these have become popular and even accepted by some western parliaments, they are even sponsored by certain governments. We see in some countries, radicalism against Muslims, we see xenophobia, racism. And some governments sympathise with them, like Australia. Here we refer to the massacre (in NZ- Ed) perpetrated by Brenton Tarrant – an Australian – which was based on hate speech." <https://tinyurl.com/y4wp3f4z>

The Saudi envoy is not noted for his clear thinking on human rights. *Arab News* reported that, in 2017, he said that "a call for the globalisation of human rights did not mean imposition of principles and values contradicting Islamic values". Translating his statement in other words, "human rights in Saudi don't extend to women, only men". <https://tinyurl.com/y6xq2zwh>

Second report on war crimes issued

A UN report last month produced compelling evidence of war crimes allegedly by the Saudi-led coalition fighting a war against Houthis rebels in Yemen. The coalition of countries led by Saudi Arabia has starved civilians, bombed hospitals and blocked humanitarian aid during the five-year conflict, the experts reported.

The UN report, the second by a team of experts appointed by the UN, warned that countries which arm the Saudi military, such as Australia, the US, UK and France, could also be guilty of war crimes.

The Group of Independent Eminent International and Regional Experts is Kamel Jendoubi (Tunisia) as chairperson, Charles Garraway of the UK, and former Australian MHR for Fremantle, Melissa Parke (Australia). <https://tinyurl.com/y52knh8q>
Disclosure: Ms Parke is a member of CLA. *Photo shows her comforting a Yemeni child in 2018.*

Blurring the usefulness of facial recognition

When a school in northern Sweden experimented with facial recognition as a system to document student attendance, the Swedish Data Protection Authority fined the municipality 200,000 SEK (about \$45,000) for violating the nation's general data protection regulation.

It's the first time anyone in Sweden has been fined for violating the digital privacy law, which began operating in May 2018.

Meanwhile California has become the largest US state to ban police from using body cameras with facial recognition software after lawmakers passed a three-year moratorium last month.

The new law is being brought in as legislators nationwide struggle to keep regulations up with the fast-growing, and inaccurate, technology. The ACLU recently ran a demonstration



using 120 images of California legislators against a 25,000 image mugshot database using Amazon's Rekognition software: it threw up 26 matches of – presumably – innocent people.

US retail giant becomes gun-reduction advocate

Walmart, the giant US retail store which has been the USA largest seller of guns and ammunition, has stopped selling certain short-barrel rifle ammunition and all handgun ammunition, and has called on Washington to enact stronger background checks to “remove weapons from those who have been determined to pose an imminent danger.”

Recently, a gunman killed 22 people at a Walmart store in El Paso, Texas, and a disgruntled Walmart worker shot two people dead at one of the company's stores in Mississippi.

The company said it also supported a new debate over an assault rifle ban. Several years ago the company stopped selling the type of assault-style rifle that was used in the El Paso shooting. <https://tinyurl.com/y3wbj99z>

International brief

Declare your own truth, visualise your own reality: “Science has become just another voice in the room,” said Dr. Paul A. Offit, an infectious disease expert at Children's Hospital of Philadelphia. “It has lost its platform. Now, you simply declare your own truth.” – Article in the NYT about Anti-vaccine sentiment taking hold in the USA: <https://tinyurl.com/y3hya9tx>

DATES:

All 2019, World: UN Interntl Year of Indigenous Languages

3 Oct, Hobart: 6-7.30pm, Burbury Theatre Sandy Bay campus UTAS. 2019 Sandy Duncanson Social Justice Lecture: Elizabeth Broderick AO, Australia's longest serving Sex Discrimination Commissioner and UN Special Rapporteur discusses the challenge of reaching gender equality. <https://tinyurl.com/y5fnfvmm>

8 October, 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>

13 Oct, Christchurch NZ: Wrongful Conviction Day: When the truth matters. Speakers Bruce MacFarlane QC of Canada, Dr Robert Moles and Assoc Prof Bibi Sangha of Adelaide, David Tamihere and Sandy Watson. Hosted by Justice For All Inc. TSB Room Turanga Library 1.30-5pm. Info: justiceforallincorp@gmail.com

10 Oct, Canberra: *The two University freedoms: Academic and speech.* Prof Adrienne Stone of Melbourne Law School discusses distinct differences between academic freedom and freedom of speech within universities. 1-2pm Weeks Library, Law School ANU. <https://tinyurl.com/y223xqzz>

16 Oct, Canberra: ‘Equal justice’ for First Nations Australians? NT Chief Judge John Lowndes and ANU Law's Dr Anthony Hopkins discuss First Nations Australians in the criminal justice process in the NT, in particular the extent to which that process provides “equal justice”. 5-7pm Law Theatre ANU. <https://tinyurl.com/y5k2uy29>

17 Oct, Brisbane: Prospects of Reform of Investor-State Dispute Settlement (ISDS), Prof Chester Brown U.Syd, judge James Douglas Qld Supreme Court, Prof Anthony Cassimatis Qld U. law school, 5-6.45pm, Banco Court, 451 George St Brisbane. Details: <http://tinyurl.com/yyq5qczp>

31 Oct, Brisbane: Australian Academy of Law and the Courts: what do they mean to each other today. Address by CJ of the High Court, Susan Kiefel. Banco Court, QEII Courts. 5.30pm. Register: www.academyoflaw.org.au/events

1 Nov, Canberra: Technology, public law and public administration conference. China in the World building – discussing unique challenges of automation and AI to liberal democratic governments, administration and public law. Details: marketing.law@anu.edu.au

8-9 Nov, Melbourne: Justice for Young People conference, Australasian Inst of Judicial Admin. Rendezvous Hotel. Details: <http://tinyurl.com/y2udcflk>

23 Nov, PNG: Bougainville referendum

25 Nov, Sydney: Future crime problems and security solutions - How to anticipate them and what to do about them. Emeritus Prof Paul Ekblom, U. of Arts London. 6-7.15pm, Common Room New Law Building (F10)U. Sydney. <https://tinyurl.com/yxt2gr8j>

1-4 Dec, Hobart: Polar Law Symposium, discussing polar law, polar marine resources, native peoples and human rights, the Antarctic treaty system, and developments in international law. <https://tinyurl.com/yxa35azb>

02 Dec, Adelaide: Academic symposium, Histories of Fascism and Anti-Fascism in Australasia, 9am-5pm, Flinders U. Victoria Sq. Details: Organiser Evan Smith: evan.smith@flinders.edu.au

10-13 Dec, Perth: ANZ Society of Criminology conference: ‘Justice Reimagined’. Perth Convention Centre. Details: <https://tinyurl.com/y4wzjmce>

2020:

10-13 Feb, Western Sydney: 3rd Advancing Community Cohesion Conference – The Way Forward, Western Sydney Uni Parramatta campus, organised by CLA member Prof Sev Ozdowski (photo). Details and rego: <https://tinyurl.com/y52j6zqp>

21 March, Canberra: Start, 60th year of the ANU College of Law celebrations. Details: <https://tinyurl.com/y46hwot9>

16-17 April, Wellington NZ: A NZSIL Oceans and International Environmental Law workshop. Details: <https://www.anzsil.org.au/event-3515188>

13-15 May, Darwin: Inst of Patent and Trade Mark Attorneys of Australia. Info: <https://tinyurl.com/y3eqnug9>

23-26 June, Brisbane: Asia Pacific ministerial conference on Indo-Pacific natural disaster risk reduction, hosted by DFAT. Details: <http://tinyurl.com/y5qb9ysy>

2-4 July Canberra: 28th ANZ Society of International Law conference, ANU. Details: <https://www.anzsil.org.au/events>

19-21 Nov, Hobart: Australasian Association of Bioethics & Health Law Conference, Hobart Function Centre, 1 Elizabeth St. Info: <https://tinyurl.com/y25tn84z>

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 in Australia.

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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