

The worst of times may morph into best of times

With a virus threatening life on a planetary scale, the health of Australia's fundamental principle of justice, the rule of law, is under serious threat.

In these worst of times, there's hope that aggregated wrongs may produce better understood liberties

- The Covid-19 pandemic has demonstrated with crystal clarity that the simplest of freedoms and rights every Australian thought they 'owned' could be whisked away instantly – having friends or relatives over, going to the shops, walking on the beach, driving where and when you like, traveling interstate or overseas – all these were suddenly at the whim of politicians.
- Courts stopped being open: witnesses J and K and people stained with the term "whistleblowers" (Boyle (photo), Collaery, McBride) face rough justice, secretly administered to shut them up and close them down.
- For all of us, freedom of speech and the sanctity of one's own home disappeared when agents raided the underwear drawers of a journo's home, and the offices of ABC.
- More police were charged with killing and assaulting Aborigines in Australia, and in the USA. We all learned there's a desperate 'kneed' to make Black Lives Matter like white lives.
- More politicians rorted expenses, granted themselves titles out of the public eye, and spent tax revenue for party political gain and to save their own seat of power, or that of their mates.
- Your digital life online is under threat (see next item). The nation's existing politicians want to twist Australian democracy to their own liking (see the item after that).



Power is in the people: speaking out is needed

Despite the above, there's a growing acknowledgement that we are being let down by the people governing, surveilling, herding and policing us.

A fight to regain rights appears to be under way, embryonically.

The Black Lives Matter movement is as worldwide as the pandemic, and a simple gesture by sporting teams is ramming home the need to reverse inequity. For the non-religious among us, kneeling suddenly has new meaning. We should be galvanised by the statement: Blessed are the meek...

At least 85% of Australians believe it is long past time Aborigines were better treated. But we can start by stopping police abuse of them through assaults and shootings. And we can change police culture by having independent investigators so the <5% of bad police who do the wrong thing can be held to account. Police unions should support the move: it will help the image and repute of the 95%-plus of good police.

Undoubtedly, we all need to speak out – shout, even – to demand greater personal privacy under legislation government and from multi-billionaires who have stolen our lives and encapsulated them digitally for their personal profit. There must be a better way: there's no reason Australia cannot find it and lead the world.

A growing murmur, loud enough for even politicians to pick up, is clearly indicating that we are not happy with secret trials. The laws around them, and the laws around secret surveillance and panicked terrorism responses, are attracting people who say it's time for a total revision.

We want our rights back. We don't want powers given to administrators and/or police during a pandemic to be anything other than highly temporary. It's time to restore our civil and political rights, not curtail them.

And most of all, we want crook, grasping, or crony politicians reined in.

We demand a national integrity commission, with teeth, under which all those with power over the people can be summoned to account simply and easily. That includes politicians, bureaucrats, police, spooks and anyone else who cheat, game or abuse the goodwill of Australians.

Taking back our House: it belongs to the people

CLA member Dr Tony Murney, a security expert, has written a three-part series critiquing the excessive – and dangerous – security measures at Parliament House in Canberra.

Designed to keep Members safe, they put children at risk, he says, and threaten an international incident if high-powered weapons were ever used in anger.

Read his series here: Pt 1: <https://tinyurl.com/y9stzs4c> Part 2: <https://tinyurl.com/y8y7pffp> Part 3: <https://tinyurl.com/y8x6o3k3>

Wright delivers broadside over loss of privacy

The Law Council of Australia's president, Pauline Wright, laid the stakes on the table last month in an article for *News Ltd*.

"A few months ago, the federal government quietly began to clear a direct path between your private digital data and law enforcement agents. For the sake of your privacy, it's time to wake up and pay attention," she said.

"The Telecommunications Legislation Amendment (International Production Orders) Bill, introduced in March, essentially allows Australian law enforcement agencies to go straight to foreign communications providers, such as Facebook and Microsoft, and access your private data."

She explained that currently ASIO and Australia's myriad other spook entities can't do that: instead they have to make formal govt-to-govt requests, which take time where time is a partial safeguard.

The new bill proposes instant access to your private, commercial data held by US, British and other entities.

Australian security agencies would be able to siphon your data instantly, straight from the source.

Will transparency be buried with body of COAG?

President of Civil Liberties Australia, Dr Kristine Klugman, was one of the first in Australia to sound a warning bell over the federal government's push for a 'national cabinet'.

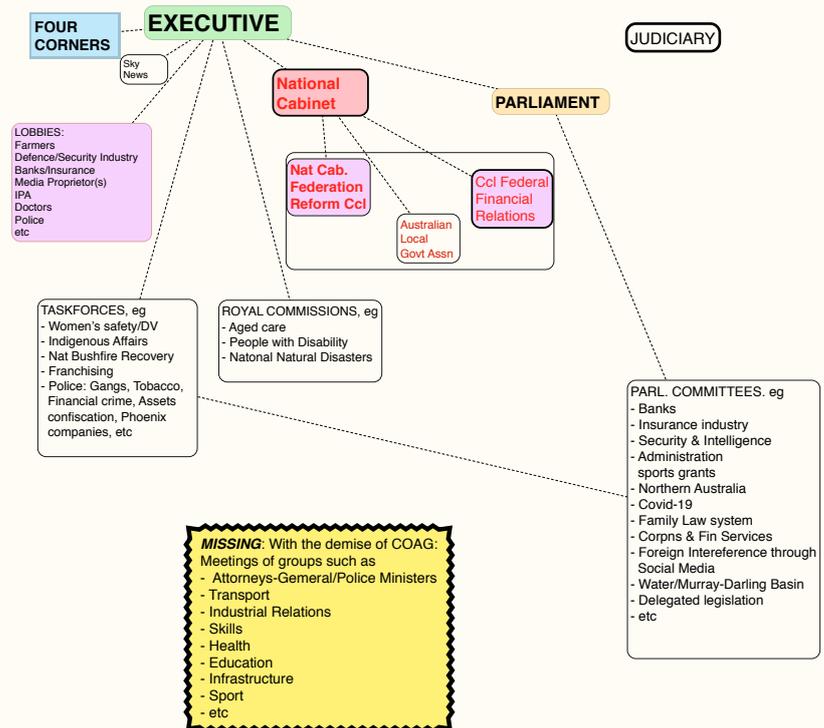
"The Prime Minister has declared the Council of Australian Governments, COAG, dead," she wrote in a letter to the editor.

"Instead he plans to make the National Cabinet of federal, state and territory governments a permanent fixture ('COAG is dead, long live national cabinet', 29 May 2020). He argues that the more "streamlined" and less 'cumbersome' nature of the National Cabinet has made it successful in responding to Covid-19 and he thinks this will carry over into the future.

"But will it? Is there any reason to believe that an arrangement set up to deal with an emergency will work for long and complicated negotiations on difficult issues? How long will the 'goodwill' of the National Cabinet last when it confronts the reality of disagreements over the management of the Murray-Darling or the carve-up of the GST?"



What the system is...



“Mr Morrison criticises the ‘bureaucracy’ and ‘paperwork’ of the old COAG system. But it was because of that paperwork that the public could know what was on the agenda and what decisions were reached.

“They could have their say on those decisions and they could follow up a month, a year or five years later to see whether those decisions had been implemented. In other words, there was a measure of scrutiny and accountability.

“Will any of this be possible under the National Cabinet? Or will it all be hidden away under ‘cabinet confidentiality’?” Dr Klugman asked.

Will it be more authoritarian?

Will Australia will become more authoritarian on account of the COVID-19 health measures?

Civil Liberties Australia is concerned that governments are always less enthusiastic about reinstating rights than they are about taking them away.

“Australians have been promised that the rights around freedom of movement suspended to limit the spread of COVID-19 will be reinstated once the crisis is over,” CLA President Dr Kristine Klugman said.

“This is the same promise made when the Australian government responded to the terrorist threat after 9/11. The 9/11 crisis is over and many of the rights ‘temporarily suspended’ then remain compromised.”

The suspension allowed for longer investigation periods, questioning and detention warrants for non-suspects including family members, journalists, children and innocent bystanders. It also allowed the introduction of warrantless searches, control orders, more intrusive surveillance measures and evidence procedures that exclude the defendant and their legal representatives amongst others.

“Rights reinstatement after a crisis in other countries similar to Australia is grounded in legal protections for civil and political rights. Australians do not have the protection of a national Civil and Political Rights Act, and reinstatement is almost completely down to the ‘good judgement’ and ‘self-restraint’ of political leaders. “Are we confident of that?” Dr Klugman said in letters to the editor last month.

Virus law enforcement done in secret

The Qld Human Rights Commission has asked police for more data on the enforcement of coronavirus-related public health directions, as people claim they have been unfairly targeted and concerns emerge others may never be able to pay the fines.

No data beyond the fines issued at a regional level have been released, despite similar calls from other human rights and civil liberties advocates. Weekly updates have stopped.

Amid concern for vulnerable members of the community, Queensland Human Rights Commissioner Scott McDougall has requested the figures along with details about reviews for each fine. <https://tinyurl.com/ybveq3vc>

Arrogant High Court comes a cropper

The High Court has been rudely bucked off its high horse.

Chief judge Susan Kiefel was forced last month to confess that one of its former high profile judges, Dyson Heydon, had been

found “guilty” by an external adjudicator of serially harassing six female associates.

But you had to wait until the third paragraph of the chief judge’s admission statement to find out that harassment was formally found to have occurred (“borne out”, Kiefel weasels), and until the sixth paragraph to find out who the ex-judge is. Heydon has denied the allegations/findings through his lawyers.

A retired former Inspector General of Intelligence and Security (IGIS), Dr Vivienne Thom, examined the allegations...though why she was chosen by Kiefel and crew is a mystery.

Thom has zero published experience in the sexual harassment area. Her main role in recent years has been keeping secrets and not finding any major illegal behaviour in Australia’s mushrooming spook agencies.

Kiefel, the judges and the court heavies – all “ashamed” – have apologised to the six young women, the puzzling media statement says. It’s puzzling because the court was told “last year” of the allegations: the SMH has reported that was in March 2019. Thom took “some months” to complete her investigation...which leaves nearly a year of the High Court fumbling around to try to find a way to announce the devastating news in the least damaging fashion.

A rapid and transparent public disclosure this was not.

High Court judges’ associates are the brightest of the bright from Australia’s top law schools. They go on to glittering careers usually, but would be even more restricted than other young female lawyers about speaking out for fear of how their future work prospects would be damaged.

For more detailed analysis and commentary, please see the extended article by CLA CEO Bill Rowlings on the CLA website at: <https://www.cla.asn.au/News/wp-content/uploads/2020/06/article-High-Court-Rowlings-200623.pdf> The item includes coverage of former CLA Vice-President Noor Blumer and her revelations about judge Dyson Heydon in 2013.

COPY THIS! How much superior is the High Court to the Federal Court?

Four times...or at least \$3 per page.

At the High Court, it costs \$4 a page for photocopying HC documents, whereas photocopying cost \$1 per page for documents of the Federal Court of Australia.

Fees apply from 1 July 2020 in both cases.

Civil Liberties Australia wonders whether the HC photocopiers are more expensive, or is their output recompensed because of their Canberra lakeside view, or are the HC clerks less skilled at pressing buttons than Federal Court clerks, and hence each button press takes them four times longer?

Perhaps the ink is four times weightier on the page at the High Court?

CLA judges this (no appeal allowed) to be a perfect, mathematical illustration of High Court hubris and arrogance, as well as an unjustifiable government rip-off: most instant print places and libraries charge around 25 cents a page.

– source: Government Notices Gazette C2020G00465 09/06/2020 Annual federal courts and tribunals fee increases from 1 July 2020, Attorney-General's Department <https://tinyurl.com/yayyejbj8>

BLM: Australia imprisons at four times US rate

The ABC's indigenous affairs correspondent Isabella Higgins put the George Floyd protests in context for Australia last month:

"In the US, African Americans make up about 14% of the population, and roughly 30% of the country's inmates. Indigenous Australians make up 3% of the population and about 30% of the prison population.

"We lock up Indigenous Australians at four times the rate of black Americans. It's an even more jarring figure in the youth detention system, where about 50% of all detainees are Indigenous.

"It's a crude and imperfect comparison, but it still paints a picture of our justice system." <https://tinyurl.com/yabq5jk5> Higgins is the current Walkley Award Young Australian Journalist of the Year for shortform journalism. She has a Torres Strait Islander background.

Maybe 64% of Black Lives Matter in Australia?

The Australian government announced in 1987 there would be a Royal Commission into Aboriginal Deaths in Custody. It made 339 recommendations: less than two-thirds (64%) were fully implemented. In 1991, the year the royal commission handed down its report, the Indigenous incarceration rate was 14%: since then, it has nearly doubled to 27%. Since 1991, 434 Indigenous Australians have died in custody, *Guardian* research has identified. – from <https://tinyurl.com/ybmdex4v>

...but 99.54% of police lives matter in the US

Civilians have filed 2600 misconduct complaints against Minneapolis police officers in recent years. Only 12 (0.46%) resulted in any discipline against an officer, with the most severe punishment a one-week suspension. George Floyd was 'necked' in Minneapolis by a police officer's knee.

ODD SPOT: Depends what floats your boat

"I think it is incredibly selfish. It's incredibly self-indulgent." Was that Australia's Finance Minister Mathias Cormann commenting on the rorts that politicians get up to with their expense accounts? Or the fact that Australia's Parliament is the laziest in the western world?

No, that was Cormann criticising nationwide protests on behalf of Aborigines. "I think it is incredibly selfish. It's incredibly self-indulgent. And yes, it does impose unnecessary and

unacceptable risk on to the community." said Cormann, about Black Lives Matter protests in Australia during a Covid-19 pandemic. It seems the right time to protest BLM on behalf of Aborigines is never, according to some politicians.

PIP: Time to end police-investigating-police

Stopping police investigating police would be a major step in ending the abuse of Indigenous people in Australia, CLA Director Margaret Howkins said last month.

It would also benefit all the community, including non-Indigenous Australians, who claim to have suffered at the hands of police.

Howkins, who leads the CLA anti-PIP (police investigating police) campaign, backed the calls from other groups for a five changes to acknowledge that black lives do matter:

- introduce independent, external-to-the-force investigations of all deaths in custody and in any cases of complaints against police;
- Get rid of over-the-top bail laws and mandatory sentencing, and decriminalise drunkenness.
- Stop imprisoning Indigenous kids and raise the age of criminal legal responsibility from 10 to 14.
- Implement the remaining two-thirds of recommendations from the royal commission into Aboriginal deaths in custody, as well as proposals in the Australian Law Reform Commission's Pathways to Justice report and the "countless independent investigations, coronial inquests and reports that have been published in the three decades since".
- Stop solitary confinement of Indigenous people in police and prison cells. <https://tinyurl.com/y7lqp3qq>

Photo show CLA member Lacy Gow (left) and Director WA Margaret Howkins planning the online petition to gain support for the PIP program (see CLA Report, later).



Caution! Biased, racist police at work here

NSW Police pursue more than 80% of Indigenous people found with small amounts of cannabis through the courts while letting others off with warnings.

The over-concentration forces young Aboriginal people into a criminal justice system that legal experts say "they will potentially never get out of".

Between 2013 and 2017 the police disproportionately used the justice system to prosecute Indigenous people, despite a specific cautioning scheme brought in to keep minor drug offences out of the courts.

During the five-year period, 82.55% of all Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.29% for the non-Indigenous population, the data compiled by the NSW Bureau of Crime Statistics and Research shows.

The data shows police were four times more likely to issue cautions to non-Indigenous people. In the five years to 2017, only 11.41% of Indigenous Australians caught by police with small amounts of cannabis were issued cautions, compared with 40.03% of the non-Indigenous population. <https://tinyurl.com/y9mfalul>

Scandal opens cops to investigation...by cops

WA Police are investigating current and past allegations of sexual harassment within their own force after Commissioner Chris Dawson demoted a senior executive following a sex scandal.

Assistant director John Purcell, during an affair with a junior colleague, used the police computer system to receive nude photos of the woman from 2013 to 2016.

An Internal Affairs email audit laid bare the affair: Purcell complained to the WA Industrial Relations Commission over a large drop in his pay. The IRC, in a recent ruling, said his demotion was appropriate as his misconduct could only be described as "brazen and cavalier". <https://tinyurl.com/y9fj8u3c>

When Australia's Defence Forces had major sex problems some years back, they called in outside experts to investigate: WAPOL's self-searchery will have no public credit, because it is not independent, CLA says.

ODD SPOT: People save six weeks 'work' by not reading contracts

Researchers estimate that the average internet user would spend 250 hours a year reading digital contracts if read word for word, including privacy policies and terms of service. Amazon's Kindle's terms of and conditions (73,198 words) read aloud took ten hours. – from 'Graphic justice: pictures worth 1000 words', an online exhibition. <https://tinyurl.com/yaqvuvvw> Supreme Court Library of Qld.

Our spooks sway the Oz government; US NSA sways our spooks: Toohey

"Australia's national security agencies and departments exercise an unprecedented sway with this government," noted national security author and commentator Brian Toohey said last month.

"Ministers and their staff are particularly fascinated by the Five Eyes group led by the US National Security Agency, which makes aggressive use of cyber espionage techniques that it condemns when used by others. Many enthusiastic supporters believe this "whites only" club shares exclusive electronic signals intelligence. But the NSA shares intelligence with more than 30 countries whose policies the US wants to shape.

"The government should be extremely careful about letting Australia use the Five Eyes group for economic policy-making. If the Trump administration has its way, Australia will be involved," he warned. <https://tinyurl.com/y93psqpc>

Suddenly, spookss have finger in commerce pie

The federal government's sudden enthusiasm for economic talks among finance ministers from Five Eyes intelligence-sharing countries is so far vague, with no details about frequency of meetings or agenda.

Some experts say the idea of coordinating economic policies with security partners is a deep misunderstanding of our modern economic interests, given the group excludes Asia and most of Europe.

The government announced last month that the other Five Eyes countries – the US, UK, NZ and Canada – would hold "regular" meetings to coordinate economic responses during the Covid-19 pandemic. <https://tinyurl.com/y9clwx9d>

ASIO on its way to becoming a political player

ASIO – again – wants to expand its powers.

This time, it is to quiz suspected foreign spies and their sources. ASIO claims, without proof, that there are more spies in Australia now than 50 years ago. (Well, there would be,

wouldn't there, CLA comments. That's what population and economic growth does for you!).

And, of course, the new ASIO powers should allow badgering children just 14yo, down from 16.

The new power would extend questioning powers beyond terrorism to include espionage and acts of foreign interference along with politically-motivated violence. See where this is heading?

The Attorney-General could approve questioning warrants directly without involving a judge, as in the past. See where this is heading...into political use of spook agencies. <https://tinyurl.com/y9h5wskh> and <https://tinyurl.com/y9hx4uoc>

Factional fires burn Labor

The national executive has intervened in Labor Party affairs in Victoria to effectively disenfranchise all party members for two years or more.

CLA's concern is that, while they are fighting each other and for their own positions of power, state and federal MPs of any party are not fighting for the people, which is what they should be doing.

Former state premier Steve Bracks and former federal minister Jenny Macklin (photo: Odyssey House) will act as administrators. All member voting rights are suspended until at least 2023 while they supervise an audit of the membership.



Some of the footage broadcast by *Nine* was shot inside the office of the federal backbencher Anthony Byrne, a former close associate of state MP Adem Somyurek.

In some texts, Byrne allegedly labelled a NSW powerbroker a "crooked, corrupt fuck", allegedly described a female Labor figure as a "ratfucker", and allegedly threatened to "dynamite" the left faction's recruitment attempts, according to the Australian. *The Age* – which alleged Byrne had also labelled a female MP a "drunk" – reported that the texts were released by Somyurek as apparent political payback.

The former state MP kept up the pressure a day later, telling the *Nine Network* that Byrne "taught me everything I know about branch work". He professed concern about the federal MP's mental health. Byrne declined to respond, so we can't report his agreement or disagreement with the unsought assessment.

The factional battles in Victoria are unlikely to end unless discredited internal power-brokers are laterally arabesqued, or forcibly wedged out of seats they believe are theirs by divine right.

The situation is ripe for Victorian anti-corruption commission probes, and maybe for the local and federal police. How the surveillance footage came to be shot in Byrne's electoral office is the first conundrum.

Federally, the usually under-the-radar Byrne is suddenly in bright focus. PM Scott Morrison said it was up to Labor leader Anthony Albanese whether Byrne remained deputy chair of parliament's security and intelligence committee (SIC).

Some SIC members offered praise for Byrne's contribution. CLA would most certainly not echo those comments. <https://tinyurl.com/yb5mxbeye>

Porter is career wrecker: Collaery

Limbo lawyer Bernard Collaery has blamed federal Attorney-General Christian Porter for ruining his career.

Porter, on becoming AG, gave formal approval for legal action against Collaery and Witness K.

Porter's predecessor, George Brandis, declined to authorise the prosecution to proceed. But the hard man of the Morrison government, Porter, gave carte blanche for a blackwash of the reputations of the two men.

In a secret court with secret evidence a secret trial* is claiming that Collaery and Witness K did something wrong in acting to help East Timor after Australia in 2004 had bugged ET's Ministerial negotiators, secretly, in Dili, the fledgling nation's capital.

Civil Liberties Australia believes the Australian government should be 'on trial' for the bugging, done by our spooks to achieve commercial advantage in an oil-gas deal over the Timor Gap deposits. Basically, Australia used spies and planted electronic bugs so the negotiators from Foreign Affairs and the AG's Department knew the other side's negotiating positions in advance. The deal was worth billions of dollars.

Eventually international pressure forced Australia to re-negotiate – without bugging – on terms much more favourable to the East Timorese. Had it not done so, Australia faced being pilloried in the international court system.

"It's impossible to conclude other than [that] the horse has bolted in this case. Whatever damage may have been done to Australia's reputation was done years ago," former NSW Supreme Court judge Anthony Whealy said last month.

The truth is that the Australian government damaged the nation's reputation, not Collaery or Witness K. <https://tinyurl.com/y75s2g33>

Porter has so far spent \$2.063m prosecuting Collaery and witness K, a phenomenal amount for a two-person assault that has not yet reached trial. <https://tinyurl.com/yckqjobg> *Late last month, the ACT Supreme Court ruled key parts of the trial must be held in secret. <https://tinyurl.com/ycusqha5>

AG talks big but fails to show us integrity

Attorney-General Christian Porter is talking integrity while displaying anything but.

Last month he told reporters that the government had "given a commitment" to create a national integrity commission...but noted that it might not happen in this parliamentary term. He blamed Covid-19.

For all intents and purposes, it was obvious Porter had committed to legislation in the current parliamentary term, CLA said. "He is in danger of becoming the Minister for Weaseling," CLA President Dr Kristine Klugman said.

Porter said he was "revisiting the bill now", and progress would depend on the "level of agreement that you can get through parliament and particularly the Senate. I'd like to go out and test some of those views particularly amongst the key cross benchers," he said.

ODD SPOT: Covid app is about 25% effective

The federal government's Covidsafe contact tracing app works as few as one in every four times for some devices, documents tabled in the Senate have revealed.

The evidence for the first time shows the true state of the operation of the app, despite continuous claims from the government services minister, Stuart Robert, and the Digital Transformation Agency over the past two months that the app "works".

Since the launch of the app in late April, developers have highlighted ongoing problems with the contact tracing app being able to exchange Blue-e-tooth hand shakes with iPhones if the iPhone screen is locked.

The handshakes are crucial for recording close contacts in the event that one of the users tests positive for coronavirus, so the other user can be contacted and tested for the virus.

Justice continues its delayed course

So many of Sue Neill-Fraser's supporters were in court for a directions hearing last month that it reached capacity and the jury room had to be opened to accommodate the overflow.

The space shortage was actually due to COVID19 social distancing and the way in which court staff had sat everyone well apart, reported Rosie Crumpton-Crook of the SNF Support Group (and of CLA).

"Six of Sue's supporters braved the stormy weather to be there and were joined by six media representatives," she said.

SNF appeared by video link from Risdon, represented by Paul Smallwood who was video-linked from Melbourne. Jack Shapiro represented the Crown, video-linked from his nearby office. Helen Wood (photo) was the only appeal judge present, appearing in person.

She said that the directions hearing was to confirm the date of the appeal: two dates were set aside, 17 August and a back-up date of 2 November 2020, with two weeks allocated for the hearing. It was the appellant's great hope that the appeal would start on 17 August, she said. Hear! Hear! says CLA.

The Crown had not yet lodged all its documents, the court was told. There will be a further directions hearing on 3 July 2020 at 3.15pm.

'Alphabets' want discrimination law changed

WA's LGBTIQ+ advocates want Premier Mark McGowan to reassess state laws after the US Supreme Court recently decided to protect against workplace discrimination on sexuality or gender identity.

The court ruled 6-3 that such discrimination was covered by the Civil Rights Act of 1964.

Former senator and veteran advocate Brian Greig warns that by contrast, WA laws are among the worst in Australia, still allowing for LGBTIQ+ people (the 'Alphabets' colloquially) to be sacked.

"WA law gives special privilege to religious schools to expel LGBTIQ students and sack gay staff," Greig said. "In 2015, a Mandurah Christian School pushed out a seven year old girl when it discovered she was being raised by two gay dads. In 2017, a history teacher was dumped from a Rockingham Baptist college when it learned he is gay during the postal survey on marriage equality.

"This discrimination is only possible because of an archaic section of WA's Equal Opportunity Act."

Spokesperson for LGBTIQ+ advocacy organisation, just.equal, Rodney Croome, says the US ruling should move the Morrison Government to reconsider the legislation.

"The US Supreme Court has sent a clear message to the Morrison Government that enacting stronger discrimination protections for LGBTIQ people is the right thing to do, regardless of where you sit on the political spectrum," Croome said.

"The decision confirms LGBTIQ inclusion and dignity to be a civil right that trumps the divisive and dehumanising ideology behind Australia's flawed Religious Discrimination Bill.



Neill-Fraser learns likely appeal date

DELAYED Sue Neill-Fraser, who has spent nearly 11 years in jail for murdering her partner Bob Chappell, has been told the likely date for her long-awaited second bid to clear her name.



"It's time for the Morrison Government to withdraw the Religious Discrimination Bill and instead enact a broad ranging Human Rights Act to protect all rights equally." <https://tinyurl.com/yamakful>

Big Oil loses Hitler reference case

A BP refinery worker sacked for mocking the company's approach to bargaining over pay, using a popular Hitler meme, has beaten the Big Oiler.

Scott Tracey, a worker at a WA BP oil refinery, was fired in January 2019 after he posted a video to an employee Facebook group using a popular meme format, where humorous subtitles are overlaid on footage of Hitler screaming in his bunker in the 2004 film *Downfall*.

BP fired him. He had "distributed material which is highly offensive and inappropriate". Big Oil won the first round, when the Fair Work Commission found the video was "inappropriate and offensive" and likened his bosses to Nazis.

But Tracey won his job back on appeal, with the full bench of the commission finding that the video was clearly satirical and no reasonable person would really believe BP executives acted like Nazis.

Australian Workers Union secretary Daniel Walton, who represented Mr Tracey, said BP had forced him to endure two years of stress about his livelihood.

"For BP to seriously allege Mr Tracey was actually comparing management to Nazis is embarrassing," Mr Walton said. "But to drag this out has been pigheaded, mean spirited, and foolish."

He said BP should apologise to Mr Tracey and its workforce for dragging out the dispute. "Australian workers have always been able to take the piss out of their bosses, with their colleagues, in their own time. For BP management to spend so much time arguing otherwise reveals real arrogance." <https://tinyurl.com/y7t5jxjh>

DPP opts for surprise second trial

The WA DPP has decided to re-try Scott Austic, starting 26 October 2020, despite clear photographic and video evidence presented in court that someone likely planted evidence to secure a wrongful conviction.

He was convicted of murder in 2009 and sentenced to a minimum of 25 years jail. He has been locked up for 13 years.

But his conviction was overturned in May by the WA Court of Appeal which suppressed its reasons: no-one is permitted to know why the court acquitted him, so all anyone can do is speculate.

However advocates for Austic have pointed out for a decade that a packet of cigarettes mysteriously appeared on a table in police photo-video evidence whereas it was not present in a photo of the same scene taken by police 30 hours earlier.

The alleged murder weapon, a knife, mysteriously turned up in the open in an almost bare paddock when detectives searched it...but a dedicated line of trained SES searchers had not spotted the bright, shiny knife a day and a half earlier.

And a forensic scientist gave evidence at this appeal hearing that the blade of the mysteriously-appearing knife alleged to have killed Stacey Thorne in 2007 in a frenzied stabbing attack



was not long enough to have caused the depth of some of the wounds she suffered.

There is doubt whether bloodied footprints at the murder scene match Austic's feet.

Given this background,

it is surprising that the WA DPP has decided to go ahead with the new trial. Something similar happened in the ACT with the David Eastman case, where Eastman was found not guilty at a second trial after being released.

That second trial is thought to have added about \$2-to-3 million to the eventual compensation package of \$7.8m that Eastman won from the ACT government for serving 19 years in jail wrongfully convicted over the murder of assistant ACT police commissioner Colin Winchester in 1989. <https://tinyurl.com/ybt77pwh>

CLA and other observers will be watching closely to see whether former or currently serving police officers are charged with any offences in relation to the Austic case.

When federal, state and territory governments run secret trials or produce secret rulings, like here, it is not the people's justice or the rule of law. Austic – after 13 years in jail as a vicious killer – is now out on bail.

State opens prisons to visitors again

Huge new penalties have come in with the re-opening of WA jails to face-to-face visitors on 27 June.

Any visitor trying to smuggle in contraband, like drugs, faces a \$12,000 fine and 18 months' jail. That's a sixfold increase on money penalty, with jailing as extra punishment introduced for the first time. The penalties had not been changed for nearly 40 years, Corrective Services Minister Fran Logan said.

Visitors can also be fined \$6000 (up from \$1000) if they refuse a search. They face 12 months' jail and a \$6000 fine for loitering around a prison or concealing an article for a prisoner.

Visits will involve physical distancing, hygiene practices and individual assessments of visitors before they enter the prison, including taking their temperature. - media release, Minister Logan 2006223.

Gunner loads up for law'n' order election; CCTV breeds like cane toads

Young offenders will become forced labour, working for no pay, and adults who recruit kids to crime face 10 years jail under new NT laws bolstered in the run-up to the scheduled 22 August 2020 Territory election.

This looks like the starting point for the traditional NT law'n' order election campaign: long on promises, short on solutions that work.

As usual, police numbers will be beefed up again and there will be a "a massive increase in CCTV cameras across the Territory", Chief Minister Michael Gunner's media release says.

The government's extra measures include:

- forcing young offenders to clean up graffiti and weeds, and do landscaping;
- increasing checks of youth on bail;
- bringing back family agreements so courts can order families into conferencing and counselling, education or training, housing management, financial counselling or on-country programs;
- more money for victims;
- new community accountability boards comprising businesses, elders and the community to moralise on offender consequences and community expectations;
- more boot camps and on-country work camps with behavioural programs and training and education for at-risk youths (*but no behavioural programs for at-risk police officers*);
- more police at schools and extra CCTV in suburban locations, with more CCTV monitoring (*when CCTV does not reduce crime*);

- continuing COVID-19 spot fines for spitting and coughing on frontline workers;
- recruiting and training more Aboriginal police liaison officers in communities;
- developing safety plans for big communities; and
- a 10-year infrastructure plan for remote stations.

– media release, CM & Police Minister Nicole Manison 200620

Change the culture

CLA President Dr Kristine Klugman responded to a letter 'making valid points about Aboriginal disadvantage in employment and levels of education being associated with their rates of incarceration'.

As if this wasn't serious enough, clearly there are other factors at play, she said.

"An Indigenous deaths in custody report by the Australian Human Rights Commission found Indigenous people were 17.3 times more likely to be arrested than non-Indigenous people. The data raises questions about whether police forces suffer from unconscious bias and systemic racism in their decision about whether to arrest an individual, Dr Klugman said.

"There is a strong belief among Aboriginal communities and legal experts that police treat Aboriginal people differently for trivial offences. The data supports this view. Such misdemeanours as non-appearance at court, unpaid fines, and driving unlicensed, uninsured or unregistered often result in jail for Aboriginal people but not for whites.

"While police college training is usually appropriate, standards slip in the "real" policing world. A change of culture in police attitudes and alternatives to jail, like justice reinvestment, are necessary to stop this downward spiral of Aboriginal incarceration," she said.

State claims integrity shield is nation's best

Attorney-General and Minister for Justice Yvette D'Ath said the new Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment law, passed last month, will:

- remove cash for access in Queensland politics;
- end the political advertising arms race; and
- remove plastic bunting from electoral polling stations.

"These laws put in place tough consequences, including potential time in jail, for cabinet ministers who deliberately fail to properly declare interests and potential or actual conflicts," the AG said. "They will cap donations and election expenditure, making Queensland a national leader in this field."

Under the laws, if a cabinet minister acts in a deliberate manner to hide their interests so they or someone they know can gain advantage they could:

- be removed from office;
- face up to two years in prison; and
- face hefty fines.

"No other state in Australia does this," the AG said. "The Federal Government doesn't do this. No other state government." media release, AG, 200619 <https://tinyurl.com/y77pdypz>

Australian briefs

More youth camps: The NT government is spending \$4.54 million over the next five years to develop new youth intervention work camps at Seven Emu Station, near Borroloola, to help deter at-risk youth offending. The Jarrdimba Bayamuku Aboriginal Corporation will deliver intensive short and long-term camps which focus on building cultural knowledge and identity and understanding consequences, as well as developing personal responsibility, work ethic and experience, and problem-solving skills. Young people will come

mainly from communities in the Borroloola, Big Rivers and Top End Regions, but referrals will be considered from across the territory. – NT govt media release

Hardship cases to get legal help: WA has introduced a pro bono requirement on all law firms who undertake legal services for government departments and agencies. They must subscribe to the National Pro Bono Target, and provide pro bono legal services in WA for 'approved causes' to the value of at least 10% of their state government legal work. AG John Quigley said the new rule would improve access to justice for people in greatest hardship. <https://tinyurl.com/y9op2flw>

Elections come thick and fast:

Tasmania's Legislative Council elections for the seats of Huon and Rosevears, delayed due to Covid-19 from May, will be held on 1 August 2020.

NT enrolment closes on Friday 31 July for the election on 22 August.



The ACT plans to expand pre-poll voting massively to reduce crowds on election day, 17 October, after recommendations from the independent ACT Electoral Commission Officers, chaired by Dawn Casey (photo). From 28 Sept plans are for 15 early voting centres, up from the customary 5. All 15 are slotted to be open for extended hours the day before, and on, polling day.

In **Queensland**, the October 31 state election will be conducted in a more-or-less normal fashion. However, AG Yvette D'Ath says there will be an "election period" rather than an election day, with "more pre-poll locations, longer pre-poll hours, and more pre-poll voting days in the two weeks prior to the election". <https://tinyurl.com/ycvbkxtp>

Planet's most imprisoned and disadvantaged people: ACT DPP Shane Drumgold, delivering the 2020 Silk Bows dinner address to the nation's legal dignitaries, 3 February 2020, at the High Court of Australia, on his formal elevation to the title of Senior Counsel:

"Although we must keep an eye on our traditions, we are responsible for ensuring our profession grows and evolves to be fairer for all Australians, not just the privileged with the resources to afford quality representation. Particularly first Australians, who it should be remembered that, apart from two original Constitutional provisions expressly denying rights afforded everyone else, are totally absent from the very DNA of our Constitution and are currently amongst the most imprisoned and disadvantaged people on the face of the planet." <https://tinyurl.com/yc7b66xm>

Charged officer to stand trial: A policeman charged with murder over the shooting death of an Aboriginal woman in WA's Mid West region will stand trial. He is pleading not guilty. Joyce Clarke, 29, allegedly held a knife when the constable shot her outside a Geraldton home on 17 September 2019. The policeman, whose identity is suppressed due to safety concerns for his family, will make his first appearance in the WA Supreme Court on 17 August. The WA Police Union is backing the officer, who remains on bail with a \$100,000 personal undertaking and \$100,000 surety. <https://tinyurl.com/y93guowe>

Police get mental health help: Mental health nurses will operate from Sydney police stations, going to psychiatric emergencies alongside officers as part of a new \$6m program. The NSW government is employing 36 specialist mental health clinicians across 10 police area commands and districts in Sydney. The move follows a successful pilot program in the St George police area, during which police officer time needed was cut by about 45 minutes per incident. The new funding means the Police, Ambulance and Clinical Early Response (PACER) program can be expanded. NSW Police last year

attended more than 55,000 mental health incidents. <https://tinyurl.com/y7md2sss>

Senseless jail time cut: No more senseless jail time for fine defaulting: WA is to largely stop sending people to jail for not paying fines, which will slash Indigenous imprisonment. The changed law results from the case of Yamatji woman Ms Dhu, who died in custody in August 2014 after being locked up for \$3622 in unpaid fines, which she was 'paying off' at the rate of \$250 for each day of detention. Premier Mark McGowan said the new laws end "destructive, wasteful and unfair part of our justice system. Western Australians have been dragged through prisons for situations that simply do not justify it," he said. However, the new laws still keeps jail as a last resort.

New book examines the 'mask for executive power': The Crown stands at the heart of the NZ, British, Australian and Canadian constitutions as the ultimate source of legal authority and embodiment of state power. A familiar icon of the Westminster model of government, it is also an enigma. Even constitutional experts struggle to define its attributes and boundaries: who or what is the Crown and how is it embodied? Is it the Queen, the state, the government, a corporation sole or aggregate, a relic of feudal England, a metaphor, or a mask for the operation of executive power? *'The shapeshifting Crown: locating the state in postcolonial New Zealand, Australia, Canada and the UK'* edited by Cris Shore, David V. Williams. Cambridge University Press 2019.

Survivors can now speak out: The NT has give survivors the right to speak out under their own names about their experiences at the end of criminal court cases under the Sexual Offences (Evidence and Procedure) Amendment Bill 2019. The new laws stems from the #LetHerSpeak campaign. Before, to speak out publicly, survivors of sexual assaults in the NT were required to apply for a court order. – media release, AG Natasha Fyles 200624.

Comments by CLA's members and others (mostly in letters to the editors):

Why was Rio Tinto given permission?

Editor, *The Age*, 200529: If there had been iron ore under one of the pyramids and Rio Tinto wanted to destroy it to get at the ore, there would have been an enormous outcry. Yet Rio Tinto has been allowed to destroy sites of similar significance, not just to Aboriginal history but to the history of humankind. Why? – Bill Godfrey, New Town, Tas (NB: Most of the Aboriginal sites date to a period 10 times earlier, at least, than the pyramids).

The Johns brothers are funny peculiar, not funny ha-ha

My partner loves NRL, and was watching a post game discussion on the *Matty Johns Show on Fox Sports* when I heard the commentators sniggering about cardboard cutouts in the audience. I went to look at what they were laughing about and was appalled to see Hitler there (Photoshopped by the TV program into the audience). I don't take offence easily but having delved into the deaths of my family in Poland, in the most barbaric way, at the hands of Hitler I felt really upset. How insensitive, stupid and lacking awareness. – Eve Ash (photo), South Melbourne, Vic.



Ed: People can judge the Johns brothers by their deeds: Matthew – or Matty – Johns was accused of sexual assault (he admitted to group sex with 11 other Cronulla-Sutherland footballers and one 19yo woman in a NZ hotel, but said all acts were consensual). Brother Andrew Johns has acknowledged taking drugs during his career (his admission involved ecstasy, which can increase energy for hours, apparently) and so is an admitted drug cheat. Matty Johns and Fox Sports apologised the next day for the Hitler idiocy. The

Johns brothers are champion apologisers because they do it so frequently.

Let's reform justice for the 2% at least

Bucolic Sutherland Shire is the ideal place to raise a family, have a prawn curry-and-pavlova weekend meal, go to a rugby league match on Saturday and to church on Sundays. It is an harmonious shire, despite the Cronulla riot as, according to the shire council, 97.8% of their population claim Australian, UK or Irish origin. About 1% identify as Aboriginal or Torres Strait Islander. Throughout multicultural Sydney only 63.8% claim Australian, UK or Irish origins.

It is only natural then for a long-term resident to respond to the murder of an African-American in this way: *"As upsetting and terrible that the murder that took place – and it is shocking, that also just made me cringe – I just think to myself how wonderful a country is Australia."* (said by PM Scott Morrison).

Let me just add to the chorus of voices that is saying Australia is not all that wonderful when we have had 437 Aboriginal deaths in custody since 1991. Aborigines make up about 3% of the population and 28% of those in prison. CLA urges that after National Reconciliation Week, we look at how we can reform justice and equity systems so that Australia is truly a "wonderful place" for all its inhabitants. – Jennifer Ashton, Director CLA, Ainslie ACT.

Putting the cart before the carpenter

While the 'Homebuilder' grants proposed by the Morrison government will help those who already have housing, it does nothing for the homeless and poor. Precisely the same outcome could be achieved by providing government housing for the under privileged. 'Homebuilder' also misses the point that governments of all stripes have spent many years dismantling the TAFE system, preventing it from providing qualified tradespeople. All the money in the world in the pockets of home owners is not going to make qualified tradespeople suddenly appear. – Gerry Gillespie, Queanbeyan NSW

The government should declare an amnesty

Editor, *Age*, May 2020: The point has long been made. The Morrison government should declare an amnesty and release long-held refugees into the community. – Ewa Haire, Moonee Ponds, Vic

Clarion call to a better future

The Age editorial ('Australia not immune from racial tensions', 3/6) invites us to explore and understand the lived experience of both African Americans and Aboriginal people. African Americans were taken to America in chains: here we put Aboriginal people in chains in the colonisation of Australia. The rejection of the Uluru Statement of the Heart, for "Voice. Treaty. Truth", is a stark reminder of how conservative politicians vetoed this opportunity to forge a national identity and true sovereignty. The tragedy of what is happening in the US must surely now invoke a clarion call to ensure a future where Aboriginal sovereignty is enshrined and nation-building is more than symbolic acts. – Judith Morrison, Mount Waverly, Vic

Cashless push is ageist discrimination

Both seniors, my partner and I are totally against the total loss of privacy, and the complete control over everything we do, that would come from a cashless society. Many small businesses would go to the wall. The tragedy is that generations X, Y and Z have embraced card payments for everything and are subsequently heavily in debt as they lose control of their spending. This is exactly what the ruling elite want: these younger people will never own their own home unless they have well-off parents! I can't believe that legal tender can just be refused by any business that feels like doing it, which is happening more and more. Why have so many ATMs been removed and bank branches closed? Age discrimination is

happening on a grand scale aided and abetted by a government that doesn't care about seniors or 'baby boomers'. I never thought that I would be so horrified and indeed scared at what is happening in this country. Stress kills and maybe that's the end game, to hasten the demise of those pesky old people "stuck in the past"? – Alex Hodges, Birdwood SA.

Heard the one about the abbot and the patron saint?

Firmly stifling my incredulity on reading the name topping the list of Queen's birthday honours, I then came to the name of one Graham Frederick Richardson. I was surprised Richo's gong attribution did not include his being the patron saint of gravediggers since he surely knows where most of the bodies are buried. – Ann Darbyshire, Hughes ACT.

King Leo was known for his handiwork

(One writer) implies that statues of great men had some sort of universal approval in their own time because values were different then (Letters, Cba Times December 12). I imagine that the slaves and exploited peoples of that time who suffered under these men had quite a different view. King Leopold II, for example, was universally condemned in his own time for the deaths of possibly 10m people in the Congo and the paying of rubber quotas in chopped off hands, including the limbs of children. Belgium thought fit to give him several statues* as a bringer of civilisation and culture to his colony. An appropriate plaque giving a history rather than an eulogy might be a better solution than tearing a statue down. (*Note: Belgium is removing some of his statues to museums). I note that the new defenders of statues have nothing to say about the long-time regular vandalism, including bombing, of Karl Marx's grave in London's Highgate cemetery. I guess some statues are more equal than others. – David Roth, Kambah ACT

CLA report – main activities for June 2020

Meetings:

Skype and Zoom sessions with:

WA Director Margaret Howkins and CLA member, retiring MLA Sandra Nelson NT
New member Greg Fraser re federal ICAC
CLA member Colin Neave (photo) former Ombudsman and ANZ Ombudsman
Physical meeting with member Lynne Bliss



Campaigns:

Campaign for CPR is proceeding. Led by Chris Stamford, CLA is lobbying for inclusion to a commitment to Civil and Political Rights Act in the national Labor Party policy platform. Approaches have been made also to the Minderoo Foundation and the South West Aboriginal Land and Sea Council in WA, to gain their support for a CPR Act federally and in WA.

Submissions:

Tasmania: Transfer of driver's licence photos to the National Driver Licence Facial Recognition Solution – petition to the Tasmanian Legislative Council (Griggs) 9 June
Federal: Homelessness in Australia – submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs (Venkataraman) 12 June
Calls for parliamentary committee inquiry into suicide in ADF (Kay Danes, supported by Rowlings) 12 June
Federal: Scrutiny of delegated legislation – submission to the Senate Standing Committee for the Scrutiny of Delegated Legislation (Rowlings) 24 June
Federal: Effectiveness of the ASIO Amendment Bill 2020 – submission to the Parliamentary Joint Committee on Intelligence and Security (Venkataraman) 24 June

Federal: Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade – submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade (Stamford) 30 June

CLA calls for more parliament, not less, in emergencies: to Select Committee on Covid-19

Media

Interview with *ABC Radio Brisbane Drive* program (Klugman); Vaccinations, polio vaccine, role of Rotary: 4 June

Letter to Editor, *Canberra Times* (Ashton); Aboriginal deaths in custody: 4 June

Letter to Editor, *The Mercury*, Hobart (Venkataraman); Parliamentary scrutiny and COVID: 6 June

Letter to Editor, *Canberra Times* (Klugman); COAG and the National Cabinet: 6 June

Quoted in the *The Mercury*, Hobart (Griggs); Petition to recall drivers licence data from national database (see photo): 13 June

Quoted in the *The Examiner, Launceston* (Griggs); Petition to recall drivers licence data from national database: 13 June

Articles: See website: main ones this month

- High Court Comes a Cropper (Bill Rowlings, CEO CLA)
- Petition asks for licence photos back (Richard Griggs, Tasmanian Director CLA)
- Let those who are locked up/down breathe fresh air (name withheld)
- Tear down that wall: (CLA member Dr Tony Murney): a 3 part series on the excessive security at Parliament House, which is symbolic of the excessive terror laws.

Correspondence:

"...the greater the power, the greater the need for security". And "serious consideration of the effectiveness of the Australian Intelligence Community is now well overdue...". Statements by former Special Minister of State John Faulkner in his major treatise on the Australian security community, as mentioned in emails between him and CLA President Dr Kristine Klugman. With Sue Neill-Fraser, on prison issues and appeal matters

NT: Report from Director Caitlin Perry

The Judicial Commission bill has become the Act. CLA objected to the provisions in a formal submission. The new law effectively cements in place a status quo of the past few decades, which hasn't worked. <http://newsroom.nt.gov.au/mediaRelease/33460>

New measures "Cutting youth crime and supporting our police" announced to the horror of youth justice advocates in the NT. Measures include to "swiftly hold people responsible for their actions" and huge increase of CCTV. See item above.

A new party (Territory Alliance) candidate Robyn Lambley is advocating a curfew on young people, widely rejected by anyone who knows anything about youth justice. <https://tinyurl.com/y8o9k5n7>

NT ICAC findings against now former-speaker Kezia Purick have shaken up the parliament in its dying days. <https://tinyurl.com/ydcyj7ko> The MLA for Namatjira, Chansey Paech, aged 33, was elected as the first Indigenous Speaker of an Australian parliament. The Member for Karama, Ngaree Ah Kit, was elected as the NT's deputy Speaker, which was the first time in history two Aboriginal people have held the top spots.

Bill to amend federal Electoral Act to ensure NT keeps two MHRs: referred to federal Committee on Electoral Matters for inquiry. <https://tinyurl.com/y7c5drze> Submission close 10 July.

WA: report from Director Margaret Howkins

Lacy Gow, Linda Diep, Owen Kipling – all new members this year of CLA, based in Perth – are making major contributions to the progress of the PIP petition and the local and national campaigns for Civil and Political Rights.

Gow has steered the online petition against the continuing of PIP (police investigating police), and has enlisted the help of friends to gather signatures for a paper version. Online has around 1000 signatures with 200 already secured for the paper versions. Their work is ongoing.

Law student Diep has researched and analysed all contributors to the major, statewide 2007 WA human rights consultation process, with a view to CLA in WA being better prepared for the next push for a state's right act.

Meanwhile fellow law student Kipling is working closely with CLA's Canberra-based Chris Stamford to produce core documents and targeted letters to potential major allies, the Minderoo Foundation of Grace and Twiggy Forrest and the South West Aboriginal Land and Sea Council.

Another CLA law student, Sam Coten, is among the lead advocates of the LGBTQI+ group (see item above) which has met with Premier Mark McGowan to push for equal treatment under the law.



Left: CLA President Dr Kristine Klugman and WA DoJ DG Dr Adam Tomison meeting in Perth in 2017.

CLA wrote to DG of the Dept of Justice WA, Dr Adam Tomison for an update on how reform of the age of criminal responsibility, being led by WA, is proceeding now that COAG has been abandoned. His quick reply indicated WA's work was close to finalisation.

Skyped with CLA Director Caitlin Perry in NT about possible projects and with retiring NT MLA, and CLA member, Sandra Nelson who is soon to move permanently to Perth.

Prisoners: two phone calls and half a dozen letters, all expressing more positivity as Covid-19 threat declines, the new pro bono legal system kicks in, and hope comes from the Qld Productivity Report.

Created PIP petition online: around 1000 supporters; BLM petition also under way, at 200 signatures

Analysed annual report of CCC and two April CCC media releases re ongoing WAPOL police behaviour and alleged assault. CLA has written to the CCC about issues arising.

Meeting scheduled with Ethnic Communities Council President, Suresh Rajan.

INTERNATIONAL

1.4m people have their right to vote restored

The opinion by Judge Robert L. Hinkle of the US District Court is 125 pages long, but nearly everything you need to know is in its opening sentence: "The State of Florida has adopted a system under which nearly a million otherwise-eligible citizens will be allowed to vote only if they pay an amount of money."

That system violates at least two provisions of the Constitution, Judge Hinkle ruled: the Equal Protection Clause and the 24th Amendment, which bans poll taxes.

The court's decision, following an eight-day trial by videoconference, resolved a challenge to a law Florida's Republican-led legislature passed last year. The law, known as S.B. 7066 and approved along strict party lines, requires Floridians with a criminal record to pay off all fines, fees and

restitution owed in connection with their sentence before being eligible to vote.

The law was a response to what had happened in the 2018 mid-term elections, when Floridians overwhelmingly voted to amend the State Constitution to eliminate a lifetime ban on voting by people with a criminal conviction who had completed their sentences. Under the ban, roughly 1.4 million Floridians, disproportionately poorer people and people of colour, were denied a voice in the electoral process.

The amendment automatically restored voting rights to all but those convicted of murder and felony sex offences. <https://tinyurl.com/ya9vpqbg>

Juries may go to catch up with Covid backlog

The England and Wales legal jurisdiction is looking at trials before a judge without a jury to tackle 41,000 cases built up so far during the pandemic crisis.

Only a small proportion of crown courts are sitting, with jurors and court staff often spread out over three courts and linked by video to observe physical distancing.

Lord Chief Justice, Lord Burnett of Maldon, proposed one option was for less serious crimes – categorised as "either-way offences" – to be heard by a judge sitting with two magistrates (instead of a jury) if the backlog continues to accumulate.

Separately, the suggestion of a judge sitting alone on either-way cases is supported by some members of the judiciary and lawyers. It is a permutation that would involve changes to only a portion of cases.

The Ministry of Justice is considering whether to hire larger venues to create special "Nightingale" emergency courts. Other suggestions include: smaller juries as were used during the second world war; allowing defendants to opt for a judge-only trial; or making all trials judge-only for a period.

Criminal cases normally fall into one of three categories: the most serious, which are triable only on indictment in the crown court; the least serious that can be tried summarily in magistrates courts; and those triable either in a magistrates or crown court.

Either-way offences include the bulk of middle-ranking criminality, such as theft. These cases are usually sent to the crown court because magistrates consider their sentencing powers to be insufficient or a defendant thinks his chances would improve before a jury.

ODD SPOT: Sore winner sues

A personal trainer is suing his date after he caught a cold sore from her. Londoner Martin Conway claims that he was left "traumatised" after contracting the sore from his 2019 date, who he knew as Joanna Lovelace. She was "negligent" in kissing him when she had an active cold sore, he says, and his life and work has been seriously affected as a result. "[She] had a moral and ethical and legal duty to warn me of the risks that I would be exposed to," the 45-year-old said. Conway is suing the woman for \$250,000 in compensation. <https://tinyurl.com/ybnn6tdn>

When Will the Killing Stop? By The Editorial Board of the *New York Times*

July 7, 2016 (NOTE the date, 2016 is correct)

The killing in Minnesota was the 123rd killing of a black person by law enforcement in America so far this year, according to the American Civil Liberties Union.

Fortunately, the rise of social media and smartphones in the hands of witnesses has delivered video evidence to much of (America) of what black communities have known all too well.

The latest killings are grim reminders that far more reforms are needed to make law enforcement officers more professional and respectful of the citizens they have a duty to protect. Intensive training, stricter use-of-force standards and prosecutions of officers who kill innocent people are necessary to begin to repair systems that have tolerated this bloodshed.

And beyond that, with killings happening in cities, suburbs and rural communities, there needs to be leadership in every police department in the country that insists on cultural and attitudinal change. Credible civilian oversight of the police has to be a factor if community trust is ever to be restored. <https://tinyurl.com/yau83xhs>

ODD SPOT: Police half as heavy on whites

London's Metropolitan police statistics show that officers enforcing the coronavirus lockdown were more than twice as likely to issue fines to black people than to white people.

The Met issued 973 fines between 27 March and 14 May. White people, who make up 59% of London's population, received 444 fines, or 46% of the total; black people, who make up 12% of London's population, received 253 fines, or 26%. Asian people, who make up 18% of London's population, received 23% of the fines.

Dr Krisztián Pósch, a crime science lecturer at University College London, shows a clear disproportionality: "Compared to their share of the population, people from a black ethnic minority were 2.17 times more likely to receive a fine and Asians around 26% more likely. In comparison, whites were 23% less likely to be fined." <https://tinyurl.com/y7ft4b9l>

Lord Steyn said in *Re S*:

"A criminal trial is a public event. The principle of open justice puts, as has often been said, the Judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process. Moreover, the public interest may be as much involved in the circumstances of a remarkable acquittal as in a surprising conviction. Informed public debate is necessary about all such matters. Full contemporaneous reporting of criminal trials in progress promotes public confidence in the administration of justice. It promotes the values of the rule of law." *Re S* [2004] UKHL 47, [2005] 1 AC 593 at [30] Lord Steyn: <https://tinyurl.com/y9e3rtlp>

This was cited in favour of refusing a request for name suppression in a recent NZ case. Obviously, it's not relevant in *Oz*, where AG Christian Porter is a promoter of secret trials.

ODD SPOT: Liberty outweighs politics

Rachel Bovard, the senior director of policy at the (Republican-aligned) Conservative Partnership Institute, said that many in her generation wanted to see an interventionist government in areas of policy like trade and finance. "I think that's gone unquestioned for so long, and it's become this national theology: Private enterprise is good. Full stop," Ms. Bovard, 36, said. "I prize my liberty, whether it's liberty from a tyrannical government or a tyrannical corporation."

"The really bad news is we are in the grip of an administration that sees everything as marketing, spin, branding," said David Kaiser, a former professor at the Naval War College and a historian. "And I don't think is really capable of thinking through a problem and acting on it." <https://tinyurl.com/y8bzbh4r>

Protesting will get you on several databases

For years, police and spook agencies have used mobile phone location data to target people – now political activists are in the same game, particularly in the USA in the lead-up to the 2020 election.

The mass protests nationwide, there and in Australia, over Black Lives Matter and against police-investigating-police, is a rich new data trove, according to *Ars Technica*.

In the USA, political advocacy and voter-registration groups are reaping the bounty. They are using geofencing to contact people who attended protests, reaching out to every device that was in a certain area at a certain time, without specifically identifying the individual. In this case, activists reach out with political messages.

A geofence is a virtual perimeter for a real-world geographic area. It can be applied to data collection by GPS data.

Jason Berlin, founder of a voter-registration group called Field Team 6, told the *Wall Street Journal* that such location-based tactics are "deeply spooky yet extremely helpful." He uses Facebook to deliver targeted advertising to users whose devices were near recent protests in Detroit, Houston, Raleigh, and Tallahassee. "We're actively looking at where the protests are popping up and then readjusting our targets," Berlin explained.

Police usually need a warrant to track a specific individual's mobile phone. But the other way around – picking a location, and then looking at who was there – is not so restricted.

Recently, Florida police mistakenly identified a man riding his bike near the scene of a burglary as the top suspect. The private sector also uses geofencing tools to target individuals. Ambulance-chaser law firms, for example, can advertise to people who have visited hospital emergency rooms. <https://tinyurl.com/ya5c5cg4>

International briefs

IT giants ban facial recognition use by police: Google has banned the police from using its controversial facial recognition software for a year. The ban comes after civil rights advocates raised concerns about potential racial bias in surveillance technology. IBM also said it would stop offering its facial recognition software for "mass surveillance or racial profiling". The decisions follow growing pressure on firms to respond to the death in police custody of George Floyd. Amazon said the suspension of law enforcement use of its Rekognition software was to give US lawmakers the opportunity to enact legislation to regulate how the technology is employed. <https://tinyurl.com/ybf9bxe4>

Rogues 1, Rules 0: "Politics is becoming a contest of character, not merely ideology – a choice between government by not-so-lovable rogues who don't seem to accept that the rules apply to them, and something that for the last few years has been made to look bland, dull and out of touch by comparison." – Gaby Hinsliff, *Guardian UK* <https://tinyurl.com/y7osqdyt>

Ensuring justice is transparent: In Britain, there is a difference of opinion between the judiciary and the Ministry of Justice over how transparent virtual justice can be. Should all courts where the public normally enter also be accessible online? The MoJ says that during the virus crisis everyone ought to be able to see online hearings. Judges fear that those granted access might record proceedings illegally or disrupt proceedings remotely. Allowing journalists, who are schooled in court reporting restrictions, to watch fulfil, it is said, the requirement for public scrutiny. <https://tinyurl.com/y89fwlwb>

Jacinda Ardern seems too good to be true. Maybe our expectations have been lowered by the quality of leaders elsewhere in the world. <https://tinyurl.com/y86qj2hz>

Chinese propose faceID to curb gaming youngsters: Two members of China's top advisory body propose using facial recognition technology to tackle gaming addiction in children, which is a growing national problem. Xhu Yongxin and Guan Tiangang, members of the Chinese People's Political

Consultative Conference, tabled the proposal during the body's annual meeting in Beijing recently. <https://tinyurl.com/y7alfeja>

Zoom explains: *Ars Technica* reports that Zoom has suspended accounts or disrupted meetings involving critics of the Chinese government. Zoom has claimed that, as a "global company", it had to comply with the law in countries where it operates, including China. "We regret that a few recent meetings with participants both inside and outside of China were negatively impacted and important conversations were disrupted," Zoom said. "It is not in Zoom's power to change the laws of governments opposed to free speech." Zoom says it will "modify its processes" to better protect users. <https://tinyurl.com/ybamjvr8>

World's biggest pilgrimage curtailed for a year: Only Muslims living in the Kingdom of Saudi Arabia will be able to take part in this year's hajj, the annual pilgrimage to the Islamic holy sites of Mecca and Medina, which usually attracts about 2.5 million visitors from throughout the world. The Saudis will allow only a limited number of local residents to the event, starting in late-July, to contain the spread of Covid-19. KSA had recorded 161,000 cases of coronavirus and more than 1300 deaths at 24 June 2020. <https://tinyurl.com/ybflez4d>

DATES: PLEASE CHECK AGAINST CANCELLATIONS

2-3 July, Canberra: State of the Pacific conference, ANU. Details: <https://tinyurl.com/vclsw8z>

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

5-10 July, Rhodes, Greece: Keynote High Court judge Stephen Gageler. Details: <https://hal.asn.au/rhodes2020/>

13-14 July, Brisbane: Australasian Law Reform Agencies conference. Info: <https://tinyurl.com/wpl6gwz>

27-29 July, Sydney: 2020 National Closing the Gap Indigenous Health Conference. Info: <https://www.indigenoushealth.net>

20 Aug, Brisbane: Forensic evidence in criminal proceedings, Prof Gary Edmond UNSW, Supreme Court 5-6.45pm. Details: <https://law.uq.edu.au/event/session/13484>

21-25 Sept, Sydney: 22nd triennial meeting Intl. Assn Forensic Sciences with 25th symposium of the ANZ FS Society, Convention Centre. Register/details: <https://iafs2020.com.au/>

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

6 Dec, Christchurch NZ: Date by which Scott Watson's next parole bid must be heard. Watson was convicted of a double 'yachtie' murder in 1998 in a case that has generated great controversy as to the safety of the conviction: <https://tinyurl.com/yx2dtjvv> <https://tinyurl.com/sdue78q>

7 Dec, Canberra: Inaugural director of CIPL (see below), Professor Philip Alston, of NYU Law and UN special rapporteur on extreme poverty and human rights, will deliver the annual ANU Geoffrey Sawer Lecture at 6pm on 7 December 2020. Info: <https://tinyurl.com/u99bbks>



8-9 Dec, Canberra: Public Law and Inequality, international conference to mark 60th anniversary of ANU Law and 30th of the Centre for International and Public Law at ANU. Guest speakers include Prof Julie Suk of the City U. of New York (left) and Prof Asmi Wood of ANU <https://tinyurl.com/vfmsqaz>

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)

Mid-year special chitchat report...from a correspondent in Eng-gur-lund

To a Civil Liberties Australia Director:

Firstly, no need to reply. You have enough on your plate right now. This is just chitchat to keep in touch with people who matter.

I'm in awe of your capacity for hard work on behalf of others. If only that could be extracted and synthesised it would be of greater benefit than a Covid vaccine. We'll cure Covid in due course but we still need a cure for stupidity, populism, selfishness and consumerism.

The UK, or more accurately, Eng-gur-lund, continues to slide into a state that puts us a close second to Brazil as a world class leader. PM Boris lies, spouts gibberish, makes ridiculous and unsustainable promises and takes his lead from his team of "SpAds", his special advisers. Sadly the phrase "Spads" has unfortunate history because of its derogatory association with genuine special needs. Perhaps the phrase is sarcastic re his advisers?

I try to keep in touch with Oz things by means of the local library's "PressReader" app. I browse the Oz edition of the *Guardian* and something called *The West Australian*. The latter seems to be what my mother used to call "cock and crime", mostly salacious reporting of sexual antics, corruption and crime...but that's enough about the police!

Not much better here of course but luckily (?) the UK seems to be based on "trending", ie, whatever immediate cause is generating the most social media traffic. Sadly it's all based on soundbite clichés from the twitterati and doesn't appear to involve anything vaguely related to knowledge, critical thinking or any form of cranial activity.

It all started with Brexit of course, then Covid fake news, then Cummingsgate, then BLM, then statues (I loved all the placards that couldn't spell Rhodes). Currently, it's leftie Stalinist work-shy snowflake teachers who are "blocking" children returning to school. Futile to point out that it's years of cost cutting and the government's own social distancing regulations that are the real cause.

Double-digit IQs seem to think that Covid is over, thus oblivious to the fact that we are still at level 4, masks should be worn in public and are compulsory on public transport, Parliament can't sit properly, 100s die every day, Covid unemployment is heading for 1 million and it's illegal for me to drive 80km to Wales.

The weather's not helping, it never does. First it taunts us with absurdly fabulous sunshine when we aren't really allowed out and now that we can to some extent we have biblical rain and floods. What a bastard God is.

NB from the Editor: Any complaints about irreverent mentions of Boris, Comings/Goings, UK, Roads/Roweds, teachers, 'The West', police, God or any other suspects, please write to: HMTQ, BP, London SW1A 1AA.

NB 2: An early partial 'cure for stupidity, populism, selfishness and consumerism' may be the US 2020 Presidential election.