

Keep watch as proposed new laws roll off the lips of would-be rulers

There are several rounds of election coming up in the next nine months in states and territories.

Tasmania's Legislative Council elections for Huon and Rosevears, on 1 August 2020.

NT election on 22 August.

The ACT on 17 October.

In Queensland, on 31 October (see **Comments**, later, for the cast of who is standing).

WA on 13 March 2021.

Please keep an eye in real time on the number of "law and order" dictates proposed by incumbents and would-be overlords. Poor politicians know only this one-card trick to motivate people to vote for them. Unfortunately, more "law and order" means more prisoners and more jails, which is directly against citizens' financial interests. It's not the politicians or the promisers who pay the prison bills.

Something similar is happening in the USA, trotted out by President Trump's dispatching of federal troops to major state capitals apparently to divide the electorate and win votes in the 3 November 2020 election.

CLA wonders how long it will be before an Australian Prime Minister decides to do likewise here. A new 'Let Loose the Troops' Act, recently passed, allows for similar 'send in the troops' initiatives in Australia on the say-so of the federal government only, without the traditional need for states to make a request.

The rights of prisoners are a hodge podge

A report, specially commissioned by CLA, shows prisoner voting rights in Australia are all over the place. Law student Martin Churchill produced the excellent, quality product under supervision of the Pro Bono Centre at the Uni of Queensland.

"It's a terrific piece of work, especially given the circumstances all students are facing this year," CLA Vice-President Rajan Venkataraman said.

The main take-home messages are:

1. The laws in Australia are a jumble - different states have different rules about restricting prisoners from voting.
2. There is no evidence that restricting prisoners from voting deters people from committing crime.
3. There is no evidence that such restrictions help in the rehabilitation of prisoners (in fact there are some suggestions that it could set back rehabilitation by cutting prisoners off from civic engagement).
4. There is no evidence that allowing prisoners to vote undermines the democratic process.
5. And – the most important argument in Venkataraman's view – in Australia these restrictions significantly disenfranchise Indigenous people as a result of their over-representation in Australia's prisons. – *CLA will make the report available on our website soon.*

Here's precisely how new laws push us further towards a police state

People wonder why civil liberties advocates are alarmed by the direction that new federal laws are taking us. Here's an example. It's for a new, child sex offences law.

Most people agree that child-protection laws need to be strong, with harsh penalties. But the government uses such laws as a wedge for introducing similar draconian provisions into other laws to thwart the traditional Rule of Law in Australia. The process is turning Australia into a police state

These provisions should not even be in child sex offence laws, let alone where they will end up.

The new *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019*, which became law on 22 June 2020, amends the *Crimes Act 1914* to allow:

- revoking parole without notice;
- imposing mandatory minimum penalties;
- increasing maximum penalties;
- demanding judges state and record why they decide to allow bail;

- refusing bail as the initial presumption (against the starting point of every Bail Act in the nation);
- making cumulative sentences the normal approach;
- inserting extra, new, mandatory considerations for judges at sentencing; and
- adding ‘residential treatment orders’ (*whatever that means*) for intellectually disabled offenders.

Provisions like these start out in child protection laws, then slide into terrorism laws before morphing a year or two later into every new criminal law or amendment the federal government introduces. Then they slither their way into state and territory laws. Slowly Australia slides into a fascist approach, CLA says.

The Australian Parliament, and its Members and Senators individually, should oppose this descent into fascism, but refuse to use the power they possess to do so. Executive government rides roughshod over Parliament because of weak parliamentarians and parties.

It is time Parliament asserted itself. Where are our states-men and -women? <https://tinyurl.com/y7x6kwvx>

Legal action so slow it fails the ‘timely’ test

The AFP have referred a brief of evidence to prosecutors over the ABC’s investigation and publishing details of alleged war crimes by Australian troops in Afghanistan.

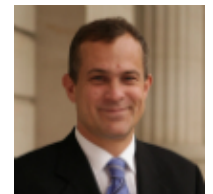
The case is already three years old, and has not reached formal charge stage. It would probably be 2022 before the matter can come to trial.

The case, which began in July 2017 when Defence complained to the AFP, included a raid on the ABC’s headquarters in June 2019. Only recently the AFP delivered material to the Commonwealth Director of Public Prosecutions, Sarah McNaughton (photo: CDPP). Her five-year term ends in May 2021, so any decision she makes may be left to others to implement, while she is likely elevated to a judgeship somewhere.



Defence claims that some of the material used by the ABC’s journalists was classified. One elephant in the room is that Defence classifies just about every piece of information it possesses. CLA would not be surprised if it started classifying its media releases!

Apparently, only journalist Dan Oakes (photo: ABC) is in the government’s gunsights and not his compatriot Sam Clark. Together, they were responsible for the 2017 Afghan investigation, which uncovered alleged unlawful killings and other misdeeds by Australian troops in Afghanistan.



Now it is up to the DPP to decide whether or not to prosecute: she has to determine if there are reasonable prospects of securing a conviction, and whether the public interest requires prosecution. With a gung-ho track record over other cases (Witness K and Bernard Collaery are examples), Oakes’ and the ABC’s prospects of avoiding a costly trial look grim.

If the case goes ahead, it will be a test case without doubt as to the rights of Australian journalists to investigate and publish. It should also test the boundaries of what government departments can claim as “classified”.

The Commonwealth should pay all costs, so that the ABC’s dwindling budget is not further reduced.

Attorney-General Christian Porter has said publicly that he is “seriously disinclined” to approve prosecution of journalists. This would be an ideal opportunity for him to prove his bona fides. <https://tinyurl.com/ya5rxovv>

SAS proud reputation destroyed by ‘arrogant pricks’, their own CO says

Elite SAS soldiers committed war crimes in Afghanistan, the current special forces CO has admitted.

Major-General Adam Findlay blamed “poor moral leadership” during a confidential briefing to dozens of troops at SAS headquarters in Perth earlier this year.

“(He) also made the stunning admission that war crimes may have been covered up,” investigative journalists Nick McKenzie and Chris Masters reported in an exclusive article.

General Findlay blamed the war crimes on “one common cause”. “It is poor leadership,” he said. “It is poor moral leadership.”

He said one positive aspect of the four-year internal Inquiry under way in the ADF was that it showed some SAS soldiers were brave enough to blow the whistle on war crimes. He described their “moral courage” while warning anyone who had lied to the inquiry out of “misguided loyalty” had been identified as “perjurers” and would be removed from the SAS “as a minimum”.



Hear, hear, CLA says. There are many people who have lived very high on the hog off the Defence gravy train who are allegedly courageous, but the vast majority of them have not demonstrated the moral courage of these un-pipped SAS soldiers.

Left: SAS soldiers in Afghanistan: Army pic

General Findlay said a small number of officers had allowed a culture to develop which permitted abhorrent conduct. He said a handful of experienced soldiers including patrol commanders and deputy commanders, who typically led five-man SAS teams on missions, had also facilitated the culture.

The general said the inquiry officer, NSW judge Brereton, a major-general in the Army Reserve, was compiling "a

raft of findings". The reason his inquiry had taken four years was because "a number" of new whistleblowers had recently emerged to speak up.

The special forces commander also called out a very small number of those who had served in the elite SAS who acted as "self righteous entitled prick[s]" who believed the rules of the regular army didn't apply to them. He said arrogance in this small group had fuelled a poor internal culture and "caused all the problems". <https://tinyurl.com/y6v6xzmd>

Porter must kibosh all charges, CLA says

Adelaide tax whistleblower Richard Boyle now faces only 24 charges, instead of the original 66.

But CLA and others have called for the government to drop all charges against the man who revealed allegations of the ATO abusing garnishee notices to recover money, and of internal ATO competitions, with prizes, for which employee could garnishee the most people.

Boyle, who worked for the ATO, tried to report his concerns internally, through channels. But the ATO paid only lip service to an inquiry, a federal parliamentary committee reports.

Boyle is one of numerous whistleblowers under legal assault by the government, some through secret trials. The others are David McBride for allegations of SAS abuses in Afghanistan, and lawyer Bernard Collaery and his client, Witness K (who can't be named because he used to work for ASIS, the super hush-hush Australian international spy agency).

Federal AG Christian Porter should ensure all the charges against all them are withdrawn. <https://tinyurl.com/y76ulnfg> Absolutely no useful purpose stems from prosecuting Australian citizens who should be rewarded for their courage instead of facing life in jail, CLA says.

Three-card trick 'increases' legal aid funding

Attorney-General Christian Porter has announced \$248m for legal services.

The funds are part of a \$2bn five-year agreement with the states and territories, including \$1.2bn for legal aid commissions, \$441m for Aboriginal and Torres Strait Islander Legal Services (ATSILS) and \$284m for community legal centres.

In addition to the \$2bn agreement, the government has committed \$8.75m for legal services to recent bushfire victims in NSW, Victoria, Queensland and SA.

The announcement is somewhat of a furphy, as part of the \$248m is merely continuing an annual amount of \$151m that had run out of authorisation, CLA says.

Whoever is funded, however they are funded, the number of legal cases against kids must be cut.

CLA has been an instrumental player in a years-long campaign to set the age of criminal responsibility at 14, rather than the 10 years of age it is now.

Civil liberties and human rights advocates, lawyers and others have built on the the new momentum of Black Lives Matter to try to keep children aged 10 out of jail.

Australia's Attorneys-General are due to meet this month to formally consider the change.

There were almost 600 children aged 10 to 13 in detention in Australia last financial year. More than 60 per cent were Aboriginal or Torres Strait Islander children. <https://tinyurl.com/yxa8akbl>

WA leads way on jailing Indigenous youth

WA had the highest rate of Indigenous youth detention per 10,000 young people – at 284.1– in 2018-19.

WA also had the greatest difference in detention rates between the two groups: the rate for Aboriginal and Torres Strait Islander (ATSI) youth was about 21 times the rate for non-ATSI young people, Victoria's Sentencing Advisory Council figures show.

In Victoria, the rate for ATSI juveniles 10-17 was about 10 times the rate for non-ATSI youth.

The ACT had the largest decrease in detention rates for ATSI young people: from 205.54 in 2017–18 to 150.51 in 2018–19, a decrease of 26.7%. But Indigenous jailing in the ACT remains very high. <https://tinyurl.com/y5m5qvz5>

In the NT, Indigenous young people are jailed at a rate 43 times that of non-Indigenous children and 17 times the national rate. The next worst ratios are in Queensland (23 times), Western Australia (21 times) and South Australia (20 times).

"We have heard reports of Aboriginal children in out-of-home care as young as 12 years old being issued with fines for breaching social distancing orders," Change the Record co-chair Cheryl Axleby said.

Ex-Defence boss plumps for votes over war

The more we spend on military hardware, the more important that parliament gets the power to vote on whether the country goes to war, a former defence secretary has said.

Paul Barratt, defence supremo from 1998 to 1999, also warned that Covid-19 could drive countries towards automated warfare, a trend that would increase the risk of conflict.

A joint parliamentary committee investigating the implications of Covid-19 for Australia's foreign affairs, defence and trade saw early hearings focus on the country's reliance on "fragile" offshore supply chains.

Australians for War Powers Reform, led by Barratt, told the inquiry the pandemic would have "profound effects upon the balance of power and influence in the world, and in our region in particular".

Their submission said letting the executive government, alone, decide whether to send in Australia's defence forces into international armed conflict is "not a safe and secure basis for defence policy".

"The 'war powers' should be relocated to the federal parliament, subject to adequate provision for the government of the day to take emergency action in response to direct threats," it says.

In an interview with *Guardian Australia*, Barratt said the announcement recently that Australia would spend \$270bn on new and upgraded capability for the ADF over the next decade made the call for war powers reform "even more important". He said the strategic update kept the door open to Australian participation in US-led military coalitions outside the Indo-Pacific region. <https://tinyurl.com/yc2fduk4>

Australia has tended to run off to mini-wars instantly, on a sudden decision of a small political elite called the Executive at the behest of USA Presidents, CLA comments. "Who would you rather have making Australia's decisions about going to war, Donald Trump and a handful of ill-determined Australian ministers, or the Australian Parliament?"

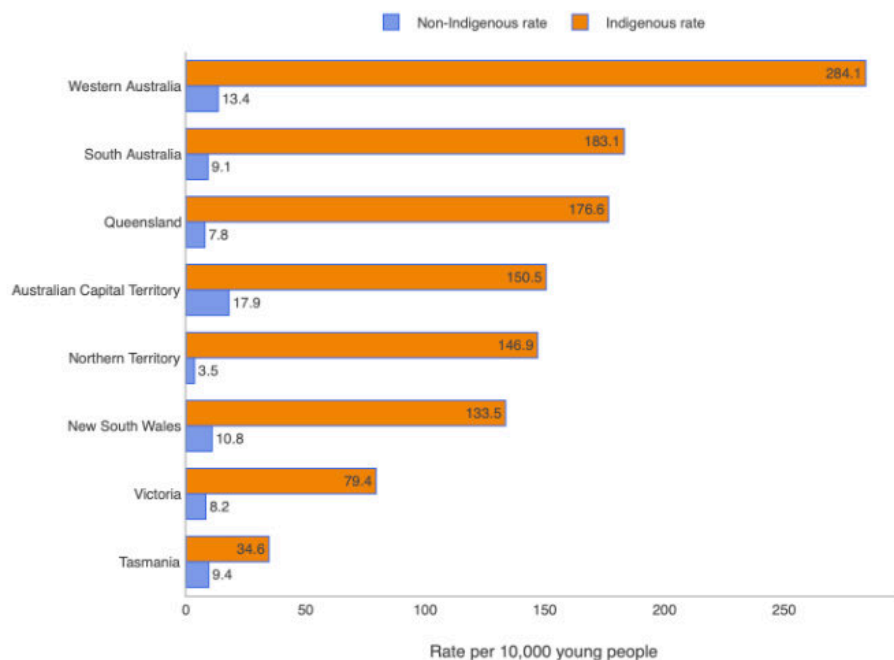
SECURITY SPECIAL:

Battle joined over powers of spooks, police

There is a new battle going on in Canberra over whether spooks and police should have more powers.

In a major development, the outgoing (actually gone, from 30 June) Independent National Security Legislation Monitor, Dr James Renwick, wants spook and police powers curtailed.

Rates per 10,000 young people (aged 10 to 17 years) in youth detention in 2018–19, by Aboriginal and Torres Strait Islander status



An attorney-general should not have the power to approve orders that would force tech and social media companies to spy on citizens on behalf of spooks and police, Renwick said in his final report.

Discussing encryption legislation, he said such secret and intrusive surveillance should be managed by the Administrative Appeals Tribunal: a new investigatory powers commissioner should be appointed to the AAT full time for the role. <https://tinyurl.com/yamns2ml>

For the best analysis of how over-egged Australia's security and intelligence powers are, along with police and troops' ability to ensure a police state, see Dr Tony Murney's submission to the latest ASIO power-grab attempt. It's submission No. 26: <https://tinyurl.com/y8lb6fw3> *There is a brief precis below.*

ASIO wants to interrogate children aged 14 and plant bugs on cars, or in your handbag, without a warrant. Law Council of Australia spokesman David Neal told a parliamentary committee last month that ASIO's questioning powers under the Bill were broader than China's security laws (see comparison below).

Never look a gift kit in the mouth...unless it's Chinese!

Meanwhile the US CIA-inspired public relations campaign against all things Chinese became bizarre last month, as Twiggy Forrest's \$200m gift to the nation of urgently needed Covid-19 virus test kits came under question.

Beijing Genomics Institute is the maker of the Twigg's kits.

A group considered a frequent mouthpiece for the federal government, the Australian Strategic Policy Institute in Canberra, claimed a BGI subsidiary, Forensic Genomics International, was linked to what it called a "DNA dragnet" involving multiple companies, which collected DNA data from millions of men and boys with no serious criminal history. <https://tinyurl.com/y8utawro>

How would you describe the DNA testing which millions of Westerners pay to have done, other than "collecting DNA data from millions of men and boys (and women and girls) with no serious criminal history".

ASPI appears to be suffering a severe case of deep-penetration brown-nosing to the Morrison government and "The Community", as the spook/police/military intelligence sector is known in the national capital.

The more it brown-noses, the less independent it proves itself to be.

SIC duo main instigators of anti-Chinese rhetoric

CLA has written at length over the past two years about the anti-Chinese campaign which began in Australia when the chair of the Security and Intelligence Committee (SIC*), the Liberal ex-SAS officer Andrew Hastie, gave a speech in the federal parliament's second chamber denigrating a Chinese businessman, to the accompaniment – literally – of "hear-hear" cheers from the deputy SIC chair, Labor's Anthony Byrne, who was virtually the only MP in the chamber listening to the propaganda.

The odd couple had just returned from "security briefings" by the CIA and other agencies in Virginia and Washington DC, USA.

The defamatory (under parliamentary privilege) duo went on to be among the first in the world to pillory telecommunications company Huawei for its alleged potential to cough up data to the Chinese government. By contrast, of course, no Australian telecommunications entity would EVER be obliged to cough up data to Aussie spooks and police and to General Christian Porter and Admiral Peter Dutton of Border Force, would it?

Oh, sorry, we forgot. There's a Bill before the Parliament right now to make such handovers compulsory in Australia. (see 'Battle joined over powers of spooks, police' – above).

* it is officially the Intelligence and Security Committee, but SIC is a more appropriate shorthand.

Repeal Hong Kong's new anti-human rights laws: me too, say Australians

By the same token (see story above), the new anti-human rights rules that apply to Hong Kong citizens, about which there is justified worldwide anger, are generally reflected in Australian law introduced since 2001's twin towers airliner terrorism in New York and attack on the Pentagon in Washington DC.

Treason? Yep. Sedition? You bet. Instant detention? Yes. Secret trials? Of course (at least one under way now). Draconian control orders? Surveillance by e-means across your e-devices? Certainly. Secret entry to your home to plant bugs and manipulate your computer, so it reports to "them"? Yes...and so on, and so on. Only now is the "Australian way" becoming the Hong Kong way.

These are all laws enacted in Australia before the Chinese introduced their new laws and others to Hong Kong. If the Chinese crackdown is over-the-top, Australia's laws have been tumbling rapidly down the other side from the top of the Hill of Excess for nearly two decades.

CLA suggests the Australian government gets rid of the Australian laws of the same ilk that the Hong Kong people don't like. If such anti-human rights laws are wrong in Hong Kong, according to Australian government ministers, the same and similar provisions should certainly not apply in Australia.

How about – as CLA has been requesting for more than 10 years – we undertake a thorough review of the excessive powers given to spooks and police here.

We should rewrite all Australian terrorism laws to be strictly compatible with human rights, and include the laws in the Crimes Act, where they should have been from the outset. Civil liberties and human rights people should draft the new laws, not the apprentice Draconians who drafted the laws we have now.

What about that ASIO bid for even more secret powers?

In his submission to the SIC group of parliamentarians considering a Bill to give ASIO more secret powers, CLA member and security expert Dr Tony Murney highlights some facts:

- Recent ASIO reporting has chosen to only reflect 2014 to 2019 – amongst the few years of slightly elevated terrorist activity in Australia. Whether this is coincidental or deliberately manipulative, it overstates the impact of terrorism.

Right: CLA President Dr Kristine Klugman, and security experts, Dr Tony Murney and Mark Jarratt.



- A fact lost on most Australians is that eight children were murdered in Cairns three days after (Sydney's) Lindt Café siege in 2014 (*in which two people died, one killed by police: Ed.*); and 11 people were murdered in the Quakers Hill Nursing Home massacre of 2011. For some reason, the human tragedy of these events has been lost from the public consciousness. These two incidents alone involved a total loss of life over three times that of the six-year terror total.
- Regardless of which method (of calculating risk) is used and of possible quality issues with the available data, the result for all practical purposes is the same. **The likelihood of an Australian being killed in a domestic terrorism incident is extremely low.**
(emphasis in original. One reasonably calculated estimate of the risk is 1 in 60,261,497)
- Australians are at far greater risk from several other threats including deaths from crime, suicide and even shark attack.
- “The risks of transforming ASIO from a security and intelligence organisation into a ‘secret police’ force under new leadership or under different political circumstances are not ameliorated. Should this happen, successive future governments should give full and serious consideration to abolition of the organisation because once the die is cast, it will be very difficult for the organisation to resume its original role in society.”
- (ASIO's) attempt to align this Bill with various human rights obligations is collectively and often individually nothing short of a complete and comprehensive disgrace on the part of ASIO which claims to be acting in the interests of protecting Australian citizens. ‘Weasel’-worded attempts to circumvent the original intent of human rights obligations is in the interests of ASIO, rather than the people of Australia,
- ASIO's claim that the threat environment is ‘worsening’ is empirically wrong in respect of terrorism.
- In 2000-2001 ASIO had a staff 586 officers and a revenue of \$69.5 million. It had only 453 permanent staff and serious consideration had been given to abolishing it on a number of occasions following collapse of the USSR in 1991 and the end of the Cold War. It suffered the ignominy of being shunned and pushed to the periphery of government.
By 2019 it had 1,986 staff, a monumental budget of \$547.5 million and a new headquarters building costing \$680 million at a premium address on the shores of Lake Burley Griffin.

- Enhanced budgets, big salaries, increased staff and shiny new buildings are powerful incentives to keep the whole show rolling. – Submission No. 26: <https://tinyurl.com/y8lb6fw3> by Dr Tony Murney

Needless to say, Dr Murney was not called by the SIC committee to give evidence: people and entities called to give evidence are dominated by pro-ASIO groups, and the ‘token’ appearance of a body like the Law Council of Australia, which struggles to concentrate the SIC minds on the Rule of Law in Australia.

Why you can’t trust ASIO

ASIO lies. Through its teeth. Constantly. Every ASIO new recruit is taught to lie. Lying is ASIO’s trade.

It is the core competence of the entity. The entire organisation is based on secrecy and lies. People use false names. They lie about where they work, even to their siblings and relatives and to their friends.

So why anyone, including a parliamentary committee, would believe anything ASIO wrote or said is the epitome of naivety, a word defined as lack of “experience, wisdom or judgment”. That is an excellent summation of the work of the committee oversighting ASIO.

CLA has for a decade or more been asking of the SIC group of MPs on the committee that they require one simple thing of ASIO: **justify** the claims you make publicly. If you claim terrorism attempts/incidents are up, specify them, provide some facts. If you claim to have thwarted attacks, tell us where and when and how in enough detail to prove your claims.

In a world of secrets and lies, anyone can claim anything. And ASIO does, including the unbelievable.

ASIO, if you want new powers, prove in a public submission that you need them. Undertake a “blue paper” process that CLA believes all spook, police and military intelligence claims/proposals should go through (like a white or green paper for major Defence and other expenditure and developments).

Instead, groups like CLA and the Law Council of Australia are required by the SIC parliamentarians to prove a negative without access to proper data: that is, the SIC group demands that CLA and the LCA prove that ASIO does NOT need extra powers, rather than ASIO proving that it does.

It’s a corruption of the parliamentary committee process. It’s a system designed for lies to rule.

ASIO becomes a PR agency first, spook agency second

ASIO gets away with this approach because it has adopted public relations spin, slowly at first, now completely. The PR push ramped up further when the latest Director-General, Mike Burgess, took over.

Before joining ASIO in September 2019, Mr Burgess was Director-General of the Australian Signals Directorate. (ASD’s motto: ‘Reveal their Secrets, Protect our Own’).

Burgess has a long history of working in spookdom, but he spent some years recently in the commercial world of Telstra, and then ran his own private sector cyber consultancy. He brings private sector marketing and PR to the secret world of ASIO.

About his time at ASD, it was said: “Burgess’ leadership of the ASD has seen an unprecedented openness by the agency, driven in part by its need to compete with the private sector for talent. The director-general has described the process as the agency coming ‘out of the shadows’, according to one news outlet.

<https://tinyurl.com/ycn5gxmz>

CLA describes the process as Burgess becoming the PR master of the spookdom, and his Shane Warne-like talent for spin probably helped to secure his choice as head of ASIO.

How the spin works

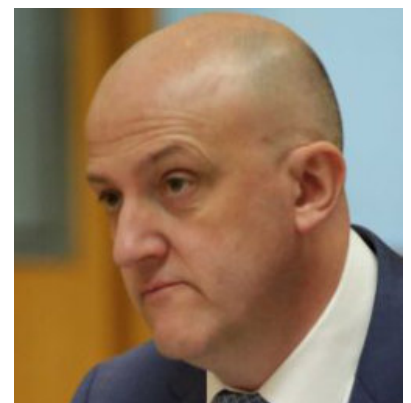
An example of ASIO spin was the “public” address Burgess gave in February 2020.

It was described in the media as “a rare public address from inside ASIO’s heavily fortified Canberra headquarters” to an “audience of diplomats and intelligence officers”.

CLA says it was Burgess’s opening salvo in his new PR war on ASIO and the government’s behalf. *(Photo of Burgess: ABC, by Ian Cutmore)*

“The number of terrorism leads we are investigating right now has doubled since this time last year,” Burgess told an audience of diplomats and intelligence officers.

That is a perfect example of Burgess’s spin: Was there 1 terrorism lead last year, and now there are 2? Or were there 100 leads last year, and now there are 200?



Of course, the Burgess PR approach is meant for you to take away the impression – if you attended the “lecture” or you read about it in the media – that there were 10,000 terrorism leads last year, and now there are 20,000. CLA leans towards the 1, then 2, interpretation: but then, who can believe anything ASIO says.

The improbability of the Burgess/ASIO ramped-up threat

The media report of DG Burgess’s address continues:

“The Director-General warned a terrorist attack on Australia was still ‘probable’ and it was ‘truly disturbing’ to see extremists trying to recruit children as young as 13 or 14”, respected ABC Defence correspondent Andrew Greene reported after the February 2020 Burgess promulgation. <https://tinyurl.com/ycmwtrgm>

So, if Burgess believes 13-year-olds are a danger, why does the new ASIO Bill only propose children 14 and older be subject to the draconian provisions? He even repeated his “children as young as 13 or 14” to the July parliamentary hearing on the ASIO Bill.

Surely Burgess is deficient in his duties if he isn’t demanding that 13-year-olds should also be rounded up, interrogated and kept in kid jail? And why stop at 13? Young children have been bombers overseas.

The fact is that Burgess is full of...spin.

The fact is, backed up by nearly 20 years of statistics, that a terrorism attack in Australia is not “probable”, as Burgess claims, by any sensible use of the English language.

There was 1 “terrorist” attack (by ASIO’s self-selected definition) in each of 5 individual years of the past 19 years. Statistically, that is far from making an attack “probable”.

For 12 of those years in a row, there were no terrorist attacks. None. Not a one.

(“Terrorist/terrorism” are very loosely defined by ASIO, to suit their own statistical purposes. For example, their “terrorists” includes Man Haron Monis and the Lindt Cafe siege in Sydney).

“(MHM) was known to be criminally disturbed, an alleged serial rapist and alleged co-conspirator in the murder of his wife. His criminal modus operandi was not terrorism...” says security expert Dr Tony Murney. (see Dr Murney’s analysis in his ASIO Bill submission – links provided above).

Did Burgess lie?

The ASIO DG told a parliamentary inquiry in person last month that he was offended by a “beyond the pale” suggestion that an aspect of the proposed powers was broader than the wording of Hong Kong’s new national security law.

The co-chair of the Law Council’s national criminal law committee, Dr David Neal, made the suggestion.

Mr Burgess said he was “actually offended* by that statement”, claiming that ASIO was “actually prohibited under our bill from getting involved in protests”. He then said: “The only time we get involved (in protests) is if there’s acts of violence.”

So which is it, DG Burgess? Does ASIO not get involved in protests, as one statement of yours claims; or does it get involved in protests if there’s violence, as the next words out of your mouth said?

Of course, ASIO would have to be on the scene in advance, one would think, to be able to see whether acts of violence started to occur.

“Unable to lie straight in bed” might be a fair assessment of DG Burgess’s contradictory evidence before a parliamentary committee. But then, from a man who runs Australia’s professional liars, and who is the spin-master for spookdom, how much can you believe anything he says?

Unfortunately, the naive SIC committee probably does. <https://tinyurl.com/ya8f75mt>

* Some of us appearing as witnesses have been “actually offended” by things said and done by members of the Parliamentary Joint Commission on Intelligence and Security. But, of course, they operate under parliamentary privilege, notably that privilege being their own.

Can ASIO powers be applied domestically to BLM protestors?

Yes, they can.

The practical reality is that ASIO can determine whenever it likes that some domestic activity “might” have further implications that “could” become ASIO business.

The Law Council of Australia’s Dr Neal Davis warned at the recent hearing that the proposed new ASIO powers relating to politically motivated violence could be applied to Black Lives Matter protesters, particularly if they were involved in property damage.

As they could to people protesting about Covid-19 lockdown excesses by politicians, police and anyone else. As they could to any protest that had an ‘anti-government’ edge to it.

Because ASIO's choice of which activity to surveil, analyse, research and record images and data about is totally within its own purview – no-one is permitted to question what it decides to investigate.

ASIO has absolute carte blanche to run its own agenda. and that's what it does, for bad or good.

ENDS Security Special:

Govt won't reveal its shameless secrets

Decades-old documents relating to Australia's involvement in the Indonesian invasion of Timor-Leste will remain secret after a court upheld the Australian government's refusal to release them.

It took the administrative appeals tribunal more than two years to rule on the case, finding that releasing the documents "could reasonably be expected to cause damage to the security or international relations of the commonwealth".

Academic Kim McGrath had repeatedly sought access from the National Archives to the diplomatic cables and cabinet documents which relate to maritime border negotiations between Indonesia and Australia in the 1970s.

The archives has resisted granting access to the documents, and its decision was upheld in the tribunal last month.

"My mind boggles at what could be in the documents from 40 to 50 years ago that could damage the relationship between Timor-Leste and Australia," McGrath told *Guardian Australia*.

"The relationship has survived Australia's support for the Indonesian invasion in 1975, Australia's cover-up of the atrocities against the Timorese, Australia's reluctance to go in in '99 and support independence, the bugging in 2004, the continued bullying through the rest of the maritime boundary negotiations, and the raid on Bernard Collaery's office where AFP and ASIO took Timor-Leste's documents in breach of diplomatic immunity," she said.

"That relationship has already been tested on so many levels."

McGrath said the relationship with Indonesia had survived incidents such as the Snowden revelations that Australian spy agencies targeted the phones of the president, his wife, and ministers. <https://tinyurl.com/y7p88gu2>

ODD SPOT: Robberies up, men are the victims, knives the weapon of choice

Robberies in Australia rose for the fourth year in a row last year, with 11,775 robberies in 2019, up 16% on 2018, according to the Australian Bureau of Statistics. About half were armed robberies, with a knife the weapon in nearly half of that half. More than three-quarters of victims (76%) were men. While robberies have increased recently the 2019 figure is substantially lower than the 14,600 recorded in 2010. <https://tinyurl.com/y9t7z9ae>

VC winner's defamation hearing goes into lockdown

Laptop computers will have to be "locked down" in safes and used by lawyers in designated rooms only during a defamation case involving former SAS soldier, Ben Roberts-Smith VC.

He is suing *The Age* and *The Sydney Morning Herald* over articles claiming he allegedly committed murder on an overseas deployment. He has denied the claims.

Roberts-Smith says the articles portrayed him as a war criminal, and so he is suing for defamation. The secrecy around the defamation trial is dictated by security laws.

The laws are under the supervision of AG Christian Porter. <https://tinyurl.com/y6v8b3yk>

ODD SPOT: Peter Dutton narrowly avoids jail

Minister for Home Affairs Peter Dutton last month avoided – by mere hours – arrest and a likely jail sentence for contempt of the Federal Court.

In a complicated case over an Iranian who arrived in Australia by boat seven years ago, in July 2013, Dutton had been refusing to decide whether the man could have a protection visa, despite judge Geoffrey Flick ordering him to do so.

Flick blasted Dutton for his "unapologetic reluctance to take personal responsibility for his own non-compliance with the law" and said the minister lacked candour in communications with the court by claiming he was not available to make a decision on the visa. Commentators question whether Dutton could retain his role as a Minister if he refused to obey a lawful court order.

The game of brinkmanship ended when an appeal court overturned a previous case, allowing Dutton grounds to refuse the Iranian man's protection visa legally, if not morally. <https://tinyurl.com/ydhzxn4l>

Are extra powers worsening police attitude?



Critics worry that emergency and near-limitless Covid-19 powers handed to police commissioners could set back attitudinal and cultural gains made as a result of the worldwide Black Lives Matter campaign.

Are the police bosses getting too big for their boots, CLA asks?

NSW Police Commissioner Michael Fuller preempted his own assistant commissioner Stacey Maloney before she made a statutory decision on whether a protest march should be given a permit.

In a radio interview hours before a formal application was made for a BLM protest march, Fuller said he had already given instructions to block the demonstration, branding protestors "selfish" and claiming it could hurt NSW for "five or 10 years economically" if the protest march went ahead.

Assistant Commissioner Maloney claimed during a court appeal by protest organisers that she had taken no notice of her boss's inappropriate comments before she decided to ban the protest. It was a fascinating comment: CLA wonders how long an assistant commissioner can last in the job if she ignores what her boss is saying publicly. <https://tinyurl.com/y2x3yqsk>

Have the police caught the political virus?

Michael McGowan reported in the *Guardian* that, as the newly-designated state emergency operations controller, Commissioner Fuller has become "the face of the state's response to the Covid-19 pandemic. The role gave him responsibility for enforcing the state's unprecedented crackdown on civil liberties and public movement during the height of the lockdown."

David Shoebridge, a NSW Upper House Greens member, said that appointment had "blurred the line" between the public health response to the pandemic and law enforcement, as well as cementing a view that the police were not independent from government.

"The government feels under pressure to align itself to the force and Mick Fuller is on a mission to align himself with the government. The end result is a highly politicised police."

Shoebridge trots out track record

David Shoebridge MLC accused Fuller of having a track record of being "loose with the truth", quoting an instance where he questioned coronial practice in NSW.

"It is poor practice if this is going to be the way forward in coronials that mystery witnesses turn up and they are hidden behind the veil of anonymity and then I am held to account for that. I think it's a disgrace to democracy, to be honest with you," Fuller said.

But legal representatives acting for Commissioner Fuller were later forced to correct the record: police knew the woman's name. <https://tinyurl.com/yyjm4rbs>

Hardline top cop has a few bad days

Commissioner Fuller is a hardliner over rejecting pill-testing at music festivals, and also when speaking out with approval over strip-searches of young females and males since he took on the top job in 2017.

He told a newspaper that curtailing police powers would create a "generation of kids that have no respect for authority" and said young people should have "a little bit of fear" of police.

Former NT and also AFP Police Commissioner Mick Palmer called the comment "terrifying".

"As a long-time colleague of NSW police and a friend of several past commissioners, it is the first time I have ever heard the use of the word 'fear' as a basis for gaining respect and I am saddened by it," he said.

Fuller also defended the NSW Police officer who was filmed tripping an Indigenous boy and slamming him face-first on to a pavement in Sydney, saying the officer "had a bad day".

Perhaps Commissioner Fuller frequently has bad days when he repeatedly speaks out inappropriately.

Huge health persona data breach proves need for more privacy protections

Medical records of West Australians have been compromised, apparently over many months, in an enormous privacy breach.

Thousands of government health messages were published on a public website for the world to access. *WAtoday* reported that the AMA's WA president Dr Andrew Miller was appalled. "If I hadn't seen it with my own eyes, I would find it hard to believe. We want answers from the top immediately as to how they will fix it. It's unforgivable."

Detailed, sensitive information hacked and posted to the public forum included management of the COVID-19 crisis in WA, a *Nine News Perth* investigation revealed last month. There were more than 400 webpages posted online, with open access.

Information included messages between health officials and doctors, such as details of people in quarantine, including phone numbers and addresses, and how their cases were being managed. <https://tinyurl.com/y27pz9jw>

WA rolls out Indigenous suicide funds: not nearly enough, say activists

The WA Government has committed almost \$10 million to funding regional-specific Aboriginal suicide prevention initiatives to be rolled out across the state as part of the WA Recovery Plan.

Embracing the notion of 'nothing about us without us', the regional plans will be Aboriginal-led and locally supported to ensure a culturally appropriate response to suicide prevention across the state.

However, Director of the National Suicide Prevention and Trauma Recovery Project, Mineng Noongar woman Megan Krakouer, said \$10 million is "an insult to Western Australia's 120,000 First Nations people".

Should the \$10 million be allocated across five years as part of the Suicide Prevention Action Plan 2021-2025, only \$2 million per year will be dedicated to Aboriginal suicide prevention. This \$2 million then has to be split between WA's regions.

"It's less than \$300,000 each year for each of [the] seven regions to consult over another five years to design plans," said Krakouer. "It will all be spent on inexperienced people consulting and there will be nothing for actual life-saving and changing [initiatives]. <https://tinyurl.com/y656vvq7>

Bar is anti anti-consorting laws

"There is no evidence that anti-consorting laws work in Australia or would work in the ACT," the territory's Bar Association President, Steven Whybrow (photo) said last month.

"Recent reports suggest there are only about 30 bikies active in Canberra who are all well known to police. These laws, whilst seemingly directed to deal with those 30 or so outlaw motorcycle gang members, will apply with equal force to the other 350,000 citizens of the Territory.

"Experience has demonstrated in other jurisdictions that such laws are disproportionately applied against vulnerable members of society including Indigenous and indigent persons and those suffering from mental health issues," said Mr Whybrow.

"The Bar Association strongly opposes the introduction of such Draconian, unfocused and unnecessary laws in the Territory." – media release, ACT Bar Assn 200723



Govt extends recognition of family practices

The Queensland Government has taken steps toward recognising traditional family practices through introducing the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020*.

Introduced by Torres Strait Islander and Member for Cook, Cynthia Lui, the Private Member's Bill was adopted by the Government.

The name of the Bill, *Meriba Omasker Kaziw Kazipa*, translates to 'for our children's children'.

For generations, raising children in TSI communities has meant the full support of extended families: however this has never been recognised by law.

Lui said the introduction of the Bill was an historic milestone for Queensland and would help the state on its "journey to reframe its relationship with First Nations peoples".

The Bill will recognise a child's cultural parents by law, allowing important decision-making to occur with ease. The child would also have the same legal rights, including inheritance, as a biological child of the parents.

TS ministerial champion Shannon Fentiman, who met with families about the Bill, said it would allow Torres Strait Islanders' legal identities to match their cultural identities. <https://tinyurl.com/y5df6klw>

Judge Sal Vasta rebuked...again

Judge Salvatore Vasta is under even closer scrutiny after yet another of his cases was overturned on appeal, this one with tentacles into the world of climate politics.

The Federal Court ruled that James Cook Uni did not act unlawfully when it sacked Professor of Physics Peter Ridd for serious misconduct. Vasta had earlier ruled that the sacking was a breach of workplace laws: he awarded Ridd \$1.2m in compensation.

The case has massive political overtones. Ridd is supported by the Institute of Public Affairs, which is closely identified with the Liberal Party, mining interests and questioning the veracity of climate change. Ridd and the IPA claim the legal dispute is about freedom of speech: the uni says it is about breaching employment terms.

His fellow judges were critical of Vasta, finding he had displayed “open hostility” to a witness, made threats to imprison parties in family law cases, denied litigants procedural fairness and made basic errors of law.

His actions have prompted criticism from the Australian legal community, and calls for a federal judicial commission to examine complaints against judges. <https://tinyurl.com/y5kgbmjj>

STATE OF RESIGNATION: Magistrate resigns...

SA magistrate Bob Harrap has resigned effective from 10 August 2020 after being charged with two counts of deception and with conspiracy to commit abuse of public office, and perverting the course of justice.

Some of the charges apparently relate to false claims over who was driving his government car when, allegedly, traffic offences were committed in May this year. The charges followed an investigation by the SA's Independent Commissioner Against Corruption, Bruce Lander.

SA Police prosecutor Senior Sergeant Abigail Foulkes has been charged with deception, as has another woman whose name has been suppressed.

Lawyer Catherine Moyse has been jointly charged with Harrap over a separate matter with two counts of deception and one count of conspiracy to commit abuse of public office. <https://tinyurl.com/ydaq4rqm>

...and Ministers do the same

In yet another apparent case of snouts in the trough, three SA Ministers no longer have jobs over accommodation allowance and staff timesheet rorts.

You would think that politicians throughout Australia would by now have learned lessons from the federal and Victorian parliaments' expenses scandals of recent years.

But no, it appears that – when first elected to parliament, and even more so when achieving ministerial office – a sense of entitlement descends on people nationally who are frequently time-serving party hacks.

Certainly, it would appear, that many MPs are elevated beyond the reach of moral codes of propriety. There's a book to be written on the scandals of Australian parliaments and on how MPs, on election, suddenly think the people's money paid in taxes is for their personal financial advancement.

The President of the SA Upper House also plans to retire from the role, as part of the same kerfuffle. <https://tinyurl.com/y5jlf2wz>

Work starts on new Don Dale youth jail

Work on a \$55m youth jail to replace the notorious Don Dale centre was due to begin late in July 2020.

Expected to take two years, it will be in Holtze, close to police, emergency services and health facilities. The Darwin Youth Justice Centre will take up 4ha of a densely-vegetated 14.5-hectare site.

Don Dale became notorious after featuring on *Four Corners* showing a youth in a spit hood tied to a chair.

The Alice Springs Youth Detention Centre is also to get a facelift, worth \$13.1m. There will be a new medical and health area, advanced security including perimeter monitoring through CCTV, a new recreation field and redeveloped accommodation areas, as well as classroom areas. – media release, Minister for Families Dale Wakefield 200716

New type of CAT for Tasmania

Tasmania is setting up a Civil and Administrative Tribunal (TasCAT) piece by piece.

Adopting a “build it and they will come philosophy”, Attorney-General Elise Archer officially opened the tribunal's new home in Barrack Street, Hobart, last month. It has 19 hearing and mediation rooms.

“Co-location is the first step in the establishment of TasCAT,” she said while noting that a new law must pass parliament before it can happen, probably in 2021.

Once the law passes, TasCAT will cover the Asbestos Compensation Tribunal, Anti-Discrimination Tribunal, Forest Practices Tribunal, Health Practitioners Tribunal, Guardianship and Administration Board, Motor Accidents Compensation Tribunal, Mental Health Tribunal, Resource Management and Planning Appeal Tribunal, and the Workers Rehabilitation and Compensation Tribunal. <https://tinyurl.com/y8qhyt2d>

NB: Tasmania is the home of Incat, builders to the world of super-fast, twin-hulled ferries that can do nearly 60 knots, or more than 160kph (100mph).

\$400m splurge on police in election lead-up

In the past three budgets, WA Police received an extra \$300m on top of their normal budget figure: in April 2020 they got another \$91m; and every police officer received a pay rise as well.

Imagine what some \$400m extra cash spending could have done for homelessness, or health, or to help WA citizens without jobs.

Maybe a fraction of it could have been spent on boosting liberties and rights of West Australians. Bringing in a scheme to stop police investigating police complaints would have been a good use of some of the bonus splurge..

Instead, the money's gone recently on:

- \$15m, for 100 new mobile surveillance cameras, auto-ID numberplates;
- \$3m, for extra electronic "chains", known as ankle bracelets;
- \$90m for chest cameras (police will get 4200 of them), drones, and other gear;
- \$20m for personal armour; and
- An extra \$8m, apparently on top of \$35m initially, to give an iPhone to "every frontline officer" (that's code for giving an iPhone individually, eventually, to each of about 3500 of the roughly 6000 police in WA).

Collectively, you could call them toys for the boys.

CLA notes that there is a WA election coming up on 13 March 2021, less than 12 months from now. Keeping the police onside is a prime target of the ruling Labor Party, and the Liberal Party, which will no doubt promise new, massive, other, extra spending on police in the lead-up to the election.

Splurging on police, and building prisons, is taking WA society in the wrong direction, CLA believes. It's time for a re-think of what society should aim to be after the Covid-19 threat diminishes.

<https://tinyurl.com/w53muv3> <https://tinyurl.com/y6ugzaze>

Australian briefs

More youth camps: The NT government is spending \$4.54 million over the next five years to develop new short and long term camps for children 10-17 to try to stop them offending or re-offending. The camps will take place at Seven Emu Station, an outback property near Borroloola. The government is partnering with Jarrdimba Bayamuku Aboriginal Corporation. <https://tinyurl.com/y3rlr8k6>

Porter picks Perth barrister as INSLM: Federal AG Christian Porter has picked Grant Donaldson (photo) as the the new INSLM (Independent National Security Legislation Monitor). When Porter was WA state AG, he appointed Donaldson in 2012 as Solicitor General of WA, which role he filled until 2016. Donaldson is a well-known legal establishment figure in WA. The INSLM independently reviews Australia's national security and counter terrorism laws. Donaldson replaces Dr James Renwick, whose appointment ran out on 30 June. <https://tinyurl.com/y8cpjj67>



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

Politicians leave principles at door of Parliament House

Comment on a CLA website article, *'Porter can lift us out of these sad times'*: The ALP is equally culpable. Although the Labor leadership has not had the courage to declare openly its support for Christian Porter, it is obvious that they have given a wink and a nod to indicate that they will not oppose the prosecution. Apart from Andrew Wilkie and Senators Rex Patrick and Nick McKim, MPs have left their principles at the door of Parliament House. – Dr Richie Gunn, former ALP MHR, Adelaide SA

Novel concept for MPs: Tell the truth

Real unemployment is much greater than the official numbers indicate. Politicians on both sides have publicly agreed that the official numbers cannot be trusted. Here is a bold (Sir Humphrey would say "courageous") proposal: make the real figures official. – Thomas Mautner, Griffith ACT

Decriminalise drugs

Wastewater data revealing an overall increase in drug use shows the government's illicit drug policies, based on law enforcement and dedicated to reducing/eliminating drug use, are not working. How about removing criminal sanctions for the use of all drugs? This would encourage those who need support to seek it. – Marion McConnell, Giralang ACT

By their fruits...

You can tell a lot about what a government values by what they choose to fund. \$500m to expand the War Memorial. Big cuts in funding to universities. Which one builds social capital? – Judy Aulich, Giralang ACT

More fruits: Odd bunch of banana benders

What a choice of contenders for the Queensland election! The Katters, the Natters, the Nutters, the Planters, the Flabbers or the Glibs. And nary a states-man or -woman amongst them! – A. Nonymous, Qld

Re latest government bureaucrat doctor (without patients) "abundance of caution" announcement:

An "abundance of caution" is not risk management, it is risk aversion. The ALARP (as low as reasonably practicable) principle of risk management is conspicuously absent from the various ever-expanding costly COVID-19 countermeasures of dubious legality and utility introduced by governments. ALARP holds that the costs of risk treatments should not outweigh the benefits. The only means of reducing risk to zero is not to perform the activity (e.g. banning driving would reduce the road toll to NIL, but would that be accepted?). What level of risk is acceptable, and how will "success" be defined? Without such parameters, the end point can't be specified. Population health is not the alpha and omega of liberal democracy. Freedom of association (including associating with loved ones dying of the virus) and economic activity are also valuable social goods. This situation is redolent of the memorable quote by a US Army Colonel in the Vietnam war: "We had to destroy the village to save it" – Mark Jarratt, Launceston, Tasmania

Exemplary (mis)conduct shown by (tor)mentors

In the past two years Australians have learnt of appalling abuses of power by senior figures in church hierarchies resulting in permanent damage to the very people they were supposed to lead and protect. The revelation of the alleged harassment of his associates by Dyson Heydon is a matter of abuse of young women to whom a judge should be a mentor and an example of correct conduct. Many women in the legal profession state that harassment is commonplace. The senior people in religious institutions and the courts should embody the moral and ethical qualities of the bodies they represent. Instead what we have seen in both areas is an egregious failure to do so that should greatly trouble us. Juliet Flesch, Kew VIC

Govt's ABC defunding is defence-less

If we need \$270 billion for defence "to secure our interests" ASAP in the Pacific then we should be clear about exactly what those interests are. Most Australians agree that they would include the guaranteed and ongoing reliable information and debate we get from the ABC. And yet we hear that \$780 million has been withdrawn from it by the Coalition since it came to power. Jill Sutton, Watson ACT

CLA report – main activities for July 2020

President and CEO meetings with CLA members and others

Prof John McMillan: Civil and Political Rights, governance, historical, current and future issues around the Australian Constitution.

Mark Jarratt and Dr Tony Murney re security: Parliament House; ASIO/etc; confusion of risk averse with risk management;

Elly McLean re her CLA Board position. Elly has resigned from the Board of CLA due to the combination of issues around university study, working several days a week as well and other leadership commitments.

Skype: Margaret Howkins, Director WA

Skype with an Aboriginal Land Council CEO re Civil and Political Rights (CPR) campaign.

Emails and phone call with Francis Bedford, SA MLA, re SACCL holding an AGM this year, and CLA's commitment to bring more and regular civil liberties activity such as submission writing on legislation and the like to the state.

Consultation of the Sue Neill-Fraser situation in Tasmania with film/doco producer-writer-editor Eve Ash.

Discussion with Barbara Etter re Covid-19 tracing issues in Australia.

Postponed: Zoom meeting with a foundation re CPR campaign.

Postponed due to abandonment of federal parliament sitting: meeting with Tim Wilson MHR for Goldstein, former member of IPA and a Commissioner of the Australian Human Rights Commission.

Media and public activities:

CEO Bill Rowlings spoke (photo right) at a protest rally outside ACT Courts re federal AG Porter prosecution of Bernard Collaery and Witness K. Other speakers included longtime Timor Leste advocate, Sister Susan Connelly, and Australian Humanist President Mary-Anne Cosgrove.

Zoom hosting: In an unusual development, CLA hosted* the Zoom AGM meeting of the Sue Neill-Fraser Supporters' Group, most of whom are based in Tasmania. However some members come from as far away as Alice Springs (Jerry Fitzsimmons, CLA member). CLA may be helping more with national and international media strategies in

future. * The Supporters' Group had free access only to Zoom, which limits online time for each session to 40 minutes maximum: CLA has a paid subscription, which allowed us to hold the meeting for an unlimited time (in fact, for about two hours). Office bearers for 2020-21 are: Jenny Herrera as president, Chris Edmonson as vice-president, Judy Benson as treasurer, and Rosie Crumpton-Crook secretary and media liaison



CLA criticises Melbourne City Council vaping ban: Daily Mail Online: <https://tinyurl.com/y55cwndm>

Submissions:

Tasmania: Anti-protest laws – submission to the Legislative Council (Griggs) 17 July

To Open Government Partnership Consultation on Model Litigant Principles (Klugman) 22 July

Tasmania: Draft Bill on the use of electronic monitoring in parole decisions – submission to the Department of Justice (Venkataraman) 25 July.

Other:

Several CLA members attended the most recent Sue Neill-Fraser Directions hearing in Hobart.

Campaigns:

Work progresses well under the national leadership of CLA member Chris Stamford, with Director in WA Margaret Howkins and uni Law student members Owen Kipling and Linda Diep doing excellent research work and writing.

The national campaign to raise the age of criminal responsibility for children from 10 to 14, long supported by CLA, appears likely to bear some fruit. However, the NT News has reported there is wide political resistance in the NT (see illustration from the *NT News* in July 2020). In a communique on 27 July, the Council of AGs said “more work is needed”...but didn't say who was to do the work. The project has been until now under the control of the WA Department of Justice. <https://tinyurl.com/y2ko64ow>

+ NT political parties reveal position on raising age of criminal responsibility



RAISE THE AGE None of the Territory's three major political parties will commit to keeping children as young as 10 out of prison by raising the age of criminal responsibility despite a heightened push from legal experts, doctors and justice groups.

Articles: See website.

Correspondence:

Sam Pandya, President, Law Institute of Victoria

WA: report from Director Margaret Howkins

- posted seven complimentary letters to authorities in the WA Police Force with an article from June's *Lancet medical journal*. The article gave research results on vital CoVid-19 protective gear and protocols necessary for guards and police supervising people. CLA received a letter of thanks from WA Police Commissioner Chris Dawson.

- Collected online and paper PIP* petitions to table in WA's Legislative Council. *Police-Investigating-Police: CLA is campaigning to end the practice of local police doing their own 'brain surgery'.
- Requested meeting with Tim Clifford MLC re his activities on homelessness and hunger, contributing 'on-the-ground' support.
- Lunch with Linda Diep (Law Intern for CLA) to discuss helpful research on the human rights submissions by groups and people who contributed in 2006.
- Emails with WA's ALHR Coalition spokesperson Chloe Wood (Aboriginal Legal Service) to compare notes on rights campaigns.



- Met with new CLA member Pasan Ganegama and young son, recent Australian citizens. Pasan is working voluntarily leading four ethnic support groups through hard times in WA. *(Photo: Pasan on left, Margaret on right)*
- Meetings with CLA member Christina Marruffo to share ongoing research on issues where CLA can offer support, and with CLA member Rika Asaoka to discuss her work training with 'Multi-cultural Futures', which promotes mental health in WA.
- Skypes/Zooms, phone calls and emails with CLA exec in Canberra, Director Caitlyn Perry in the NT and NT MP Sandra Nelson MLA as she prepared for relocating to Perth during July.

INTERNATIONAL

Bigger courts, smaller juries?

The UK is considering extended hours, smaller juries and bigger "courtroom" spaces to allow for social distancing, in the face of a huge 40,000 backlog in holding trials.

Officials fear it will take 10 years to catch up. Even so, it is believed jury trials will continue, rather than holding judge-only sittings. Juries may be cut from 12 to 7 as they were during World War 2.

"The standard of video technology continues to improve, with new tech being rolled out across all courts; and I am exploring means of getting jury trials moving at pace once more," Justice Secretary Robert Buckland said. <https://tinyurl.com/ybpymers> <https://tinyurl.com/y9h2cc39>

Drumming up business to free prisoners

Commissioners of NZ's new criminal review body are going jail to jail to drum up business.

The NZ Criminal Cases Review Commission, which began operations on 1 July 2020, was set up to investigate and review convictions and sentences, and decide whether to refer them to the appeal court.

The system replaces the royal prerogative of mercy process, by which a prisoner could get a pardon but their conviction still stood.

Colin Carruthers QC, was appointed chief commissioner and Paula Rose, a current member of the Parole Board, was appointed deputy chief commissioner.

The other five commissioners are criminal defence lawyer Kingi Snelgar, health scientist Dr Virginia Hope, deputy mayor of Palmerston North Tangi Utikere, lawyer Nigel Hampton and professor of indigenous studies Tracey McIntosh (photo).

Justice Minister Andrew Little said there could be 50 people sitting in NZ prisons who had not committed the crime they were in prison for. He said commissioners would go into prisons to speak directly with prisoners to explain what the NZ CCRC is, who they were and what they did. <https://tinyurl.com/yb3wxdpc>



Liberty UK is demanding repeal of the Covid-19 emergency law

The British Government has passed legislation – the Coronavirus Act – which creates the most drastic reimagining of our civil liberties ever seen, according to Liberty UK.

"Since the start of the coronavirus outbreak people everywhere have shown they are willing to adapt to protect one another.

“Liberty has always supported proportionate action to protect lives. But the Coronavirus Act – which was rushed through Parliament in just one day – has failed to uphold people’s rights while leaving the most marginalised worst affected.

“This law harms human rights and puts our civil liberties in danger because it has no firm end date,” Liberty UK says. “When this pandemic passes this law will still be on the statute books – and some of its powers can be triggered at any time. <https://tinyurl.com/y9zqcjk8>

The process is a warning for similar laws federally and in state/territory jurisdictions in Australia, CLA says.

ODD SPOT: Test and trace program is illegal

England's test and trace program has broken a key data protection law, and was therefore illegal. The Department of Health has conceded the initiative to trace contacts of people infected with Covid-19 was launched without carrying out an assessment of its impact on privacy. The Open Rights Group (ORG) says the admission means the initiative has been unlawful since it began on 28 May 2020.

The test and trace system involves people being asked to share sensitive personal information. This can include:

- their name, date of birth and postcode
- who they live with
- places they recently visited
- names and contact details of people they have recently been in close contact with, including sexual partners. <https://tinyurl.com/y4jq3pkf>

Police drop intrusive prying into rape victims

The Crown Prosecution Service and police in England and Wales have been forced to scrap controversial “digital strip searches” of rape complainants, the *Guardian* reported last month.

The about-turn follows a legal threat from two survivors of sexual abuse and sustained campaigning from privacy and human rights groups.

A year ago police brought in a new policy of mandatory disclosing of private information. Now the police and the CPS are withdrawing the intrusive digital data extraction consent forms from mid-August.

Funded by the Equality and Human Rights Commission, the Centre for Women’s Justice took on the case of two complainants who argued that the forms – which required them to divulge all their mobile phone data – were unlawful, discriminatory and intrusive.

The decision to scrap the national consent form comes after an 18-month investigation by the information commissioner’s office (ICO) on “digital data extraction” found that police forces were not giving enough consideration to “necessity, proportionality and collateral intrusion”. <https://tinyurl.com/y5qlpaqv>

A similar investigation should be made into police practices in Australia, CLA says.

MP wants review of secret court hearings

A minister responsible for introducing secret trial laws in England in 2012 says he was wrong to not listen to opponents of the process.

“Secret courts create a Kafkaesque procedure in which the government presents evidence which the individual can only challenge through a ‘special advocate’ with whom they are not even allowed to communicate,” Andrew Mitchell wrote last month.

“Open justice is a fundamental part of the UK’s constitution and its heritage,” the now-backbench MP said. “I am concerned that the proliferation of secret courts within the legal system threatens to undermine the foundations of British justice. The government was warned of the dangers of these courts...and I regret that I did not heed them at the time,” he said.

The issue is coming to a head over alleged human rights breaches during the height of the supposed “war” on terror . A secret MI6 review used weasel words in its report of what happened, meaning that it did not deny that British intelligence used torture and rendition (kidnapping).

Some MPs and human rights people want to challenge the government’s refusal to abandon a judge-led inquiry into the MI6 report and 15 potential cases of abuses. But a court ruled recently that any legal hearing about the matter would have to be held...in secret.

In 2018, over separate issues, Ministers applied to have a record 11 instances of hearing crucial evidence held in secret. <https://tinyurl.com/y982zzn2>

ODD SPOT: Governments collaborate to victimise the little people

Terror capitalism uses tools such as facial recognition to extract profits from marginalised people, and big tech and governments are collaborating, according to an article by two experts in the *Guardian* under the banner “Surveillance”. Dr Darren Byler is a postdoctoral researcher at the University of Colorado and author of a book on the effects of terror capitalism among Uighurs and one on technologies of re-education in China and around the world; Dr Carolina Sanchez Boe is a Danish Research Foundation postdoctoral fellow and author of a forthcoming book, *The Undeported: The Making of a Floating Population of Exiles in France and Europe*. <https://tinyurl.com/yymhp8ng>

International briefs

Prisoners get right to vote: About 2000 NZ prisoners serving sentences of fewer than three years may vote in the national election and two referendums on 19 September. Prisoners can vote for the first time since the 2008 election. The NZ Parliament restored prisoners’ voting rights in June 2020. In a series of court battles, now-paroled inmate Arthur Taylor won the restoration of voting rights, which were removed in 2010 (Taylor v Attorney General). <https://tinyurl.com/yyckwjza>

Poles apart on gender issues: Poland is planning to pull out of the Istanbul treaty promoting an end to violence against women. The far right government says the treaty “contains elements of an ideological nature, which we consider harmful”. Further, they say, the treaty violates the rights of parents because it requires schools to teach children about gender. Critics say the move will “legalise domestic violence”. <https://tinyurl.com/y2zexzws>

DATES: PLEASE CHECK AGAINST COVID-19 LOCKDOWN CANCELLATION

1 August, Hobart: Vigil for Sue Neill-Fraser around the central flower bed in front of Parliament House to raise awareness that 1 August marks SNF’s 4000th day in Risdon prison. During those 4000 days, three books have been published about the case, documentaries have been made, a six-part TV series aired, a play written and performed, and thousands of media articles have been written. An alleged eyewitness to an alleged crime, Meaghan Vass, has appeared on *Sixty Minutes* and spoken about what happened on the yacht the night that Bob Chappell died, over 20,000 people have signed a petition asking for an independent judicial inquiry, countless statements in support of SNF have been made by prominent legal figures, but the powers that be in Tasmania still refuse to admit that she was wrongly convicted. The Covid-19 virus pandemic has pushed back the date for her appeal from the original May 2020 to now November 2020...still with no guarantee it will go ahead that month. She is in the 11th year of a 23 year sentence with a 13-year period before parole can be granted.

10 Aug, Brisbane: Automated decision making and administrative law: ALRC with QUT and ARC Centre of Excellence. (Future of Law Reform series) Register: <https://tinyurl.com/y8r2wsla>

17 Aug, National (webinar): Reform of Legal Structures for Social Enterprises: Aust. Law Reform Comm, co-hosted with the University of Melbourne - online. Register: <https://tinyurl.com/y4towbeu>

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, major 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 (right) <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) Closing date for this issue was 27 July 2020.

ENDS ENDS ENDS

Reflection:

Good Friday Shooting at Manus Island Detention Centre, 2017.

By Dr Diana Cousens, a CLA member

I wasn't there when the refugees were kidnapped by Australia's Immigration Department.

I wasn't there when Australia built a detention centre beside a naval base squatting like colonists on Manus Island.

I wasn't there when the 'expert panel' decided that transportation to Pacific islands would be an effective way of 'stopping the boats'.

I wasn't there to watch the Manusians grow tired of the refugees see their vegetables become expensive their soccer pitch occupied by foreigners

I wasn't there when a man was killed in the night and two locals were charged and convicted and two white men who joined in the killing were sent back to Australia and not charged for their crimes.

I wasn't there when a local barmaid was gang raped by Australian staff who went home and escaped the jurisdiction. I wasn't there when the great tradition was invented that white men are not subject to black men's courts.

I wasn't there when Australia handed over dollars in brown paper bags to Papuan politicians who were paid to turn tricks.

I wasn't there on Good Friday when the refugees and PNG sailors got into a fight about soccer whose turn it was to play footy and the game was suddenly over.

But I was there on the phone in the night when drunken sailors came back with their guns stalking and shooting from outside the fence, the bullets going through walls and doors, men lying low on their beds or running in circles with nowhere to hide.

I was listening to the running the shouting Farsi and English the chaos and fear that this was the end.

I was there for the farewell from the war zone and though the sailors stopped shooting and no one was killed. I carry the moment I thought they would die. ENDS

Dr Diana Cousens is Secretary of the Buddhist Council of Victoria and is a member of the Vic govt Multifaith Advisory Group. She has a PhD in Himalayan Studies from Monash U and publishes on Engaged Buddhism and the Tibetan treasure tradition. She is founding President of Sakyadhita Australia (2016-17), representing Buddhist women, and an Honorary Fellow of the Australian Catholic Uni. She has been active in interfaith dialogue for several decades and most recently has advocated for the rights of refugees detained offshore. She works at Swinburne University as a Research Coordinator.