

Learning liberty lessons for emergencies

Where to now with Covid-19?

The pandemic in Australia seems to be in a holding pattern, so we can take stock and plan ahead...better.

Since the virus hit Australia, officially on 22 January 2020, we've had about 27,000 cases, roughly 75% of them in Victoria.

In round figures, we have lost about 900 people due to C19. Some 780 of those deaths were in Victoria, or more accurately in Melbourne. 95% were in aged care homes, comprising people mostly aged 70 or more.

But the overall aged care death rate was actually down in Australia to 31 July 2020 by about 1000 people (32,398 dead compared with 33,383 at the same time in 2019). <https://tinyurl.com/y2e9c7hb>

The figures show why "balance" and "proportionality" are crucial to decision-making in emergencies. But those aspects were seriously missing from federal, state and territory deliberations and decisions.

The core problem with C19 response was that rights, liberties and freedoms never got a voice at the table, not at the rushed outset (which is understandable) or ever 1-2-6 months in.

The result is that about 20-30% of Australians believe that some of their rights and liberties were trampled on for no good reason. It's hard to argue against that viewpoint.

Go hard early, but with compassion

Australia got it right with its out-of-the blocks January response: crack down hard using draconian emergency laws passed decades earlier, and urgently beef up health and hospital response, capacity and equipment in a hurry.

Australia got it wrong when states chose a police-led enforcement regime.

In virtually all cases, a top police officer was made emergency suprema, with near-limitless powers. This inevitably activated the most restrictive laws and harsh, instant penalties of sizeable proportions down to junior police on the beat.

The result was a public health emergency which highlighted just how silly some junior police can be when given too much power, without responsibility. So far, no police officer anywhere in Australia appears to have been charged with excessivism... but some should be.

Examples abound: preventing a young man sitting by himself on a bench eating a kebab; interfering with siblings and families walking for exercise; dragging a woman out of a car with great force...generally reflecting poor training and even poorer specialist briefing for the new-found C19 role.

Freedoms restricted for no good reason

Australia got it wrong when it chose to restrict personal freedoms for no good reason.

The classic example was stopping people from flying overseas when other countries were perfectly happy to accept them. This was just senseless bureaucracy on steroids.

Freedom of movement should be guaranteed in the Australian Constitution, or in law. We thought it was.

Allowing state premiers to close their borders effectively made a nonsense of most citizens' notion that Australia is one county, federated. While it played out in populism in the home state, it did nothing for national cohesion in the future.



Above: Former CLA Director Anne Cahill-Lambert AM became spokesperson for the stranded on the Vic-NSW border when she and her doctor husband wanted to return home to the ACT after he completed weeks of locum service at Wangaratta.

No NSW Premier should ever be able to deny ACT residents the right to drive through NSW to return to their homes. This gross error must be corrected constitutionally, or in rights law.

In this case, about 100 people were stranded on the Albury-Wodonga border with NSW. But, it is not hard to imagine a situation where a NSW Premier forbids ACT vehicles from travelling on south coast roads so that she or he could preference NSW vehicles escaping ferocious bushfires by driving north towards Sydney.

That is a clear option open to a NSW Premier or Police Emergency Supremo after the Albury-Wodonga edict was allowed to operate for nearly a week before a temporary, non-mandated solution was found.

In passing, it should be noted that the supposed "National Cabinet" quickly disintegrated into blanc mange when pressure was applied to false goodwill and bonhomie. That's another structural problem that Prime Minister Scott Morrison has to solve, as he threw away the old COAG process before ensuring his thought-bubble replacement worked.

What we said

Throughout the pandemic emergency, Civil Liberties Australia has been publishing our position on the liberties and rights around the public health emergency.

If you would like to know what we said, when, please go to www.cla.asn.au and search for Covid articles.

We also answered dozens of questions from people about their rights and liberties. Mostly we pointed out to them that emergency pandemic law was so widely cast that it allowed premiers and police to do virtually whatever they wanted.

We urged people to contact their state and federal MPs, because they were the people restricting liberties and freedoms.

Many people were lashing out at civil liberties groups, claiming it was our fault for not speaking out more...but we had protested about excessive emergency laws when they were brought in, except nobody was listening then and none of the new-found freedom warriors had taken any notice.

The same situation is true of the terrorism laws about which civil liberties and human rights groups have been complaining for decades. And for many other losses of freedoms we have been working on for years.

What's the answer?

The answer is that if coercion of the community is needed, for whatever reason, it must be delivered with compassion.

There must be two new principles:

- a. the foundation of a national human rights, liberties and freedoms law against which coercion c.f. compassion can be measured, and tribunals, magistrates or judges can deliver individual case decisions, if necessary, to make sure authorities do not over-step the mark; and
- b. each emergency control group – such as premier, police chief, health boss, etc – must include two or more people with liberties, rights and freedoms backgrounds, so that counter arguments to repression can be mounted, and so that compassion, individual/family care and mental health issues are considered on behalf of the whole community.

We can't put a national rights law in place in the next few months (it will take a year or three), but premiers and chief ministers can immediately ensure better balance by including a wider range of people with different skills inputting to emergency decision-making.

They can fix that imbalance within weeks, if not days, so that the next round of the C19 fight, if there is one, is fairer and comes with maximum liberties and freedoms intact.

See 'Scrap the Covid Act, Liberty says' later in this newsletter under '**INTERNATIONAL**'

Background to rights in Australia:

Unlike any other Western democracy, Australia has no national Human Rights Act or Bill of Rights to protect human rights in a single document. Although Australia has signed up to all seven UN human rights treaties, this does not mean those rights are enforceable in our domestic legal system.

Some of our rights are protected in law, but many – if not most – human rights are not adequately protected under our current system. When human rights are not protected in law, they are always in danger of being eroded.

A HRA would provide a safeguard so that the government cannot simply overlook human rights considerations when making laws. Whether it was making laws regarding police accountability, workplace relations, privacy, freedom of speech, movement or assembly, education, censorship or property rights the federal parliament would have to take into consideration how the proposed laws would impact on people's human rights. – from a research paper by Owen Kipling, Law-International Relations final year student, Curtin University WA.

Be rid of arbitrary lines, bring in bill of rights

State borders are illogical, arbitrary lines on a map harking back to colonial times; they should be removed entirely, according to Dr Bede Harris.

Dr Harris believes we should reform the Australian Constitution...from scratch. His new book, *Constitutional Reform as a Remedy for Political Disenchantment in Australia: The Discussion We Need* (Springer 2020), was released last month.

The head of Law at Charles Sturt Uni's Albury-Wodonga campus, Harris said COVID-19 and state border closures had exposed how antiquated the three-tier government system under federation was.

"I think this COVID crisis has revealed how nonsensical it is," he said. "States don't have any basis in reality, in the sense they're just the accidents where colonial boundaries were drawn. If we were to sit down and draft a constitution all over again I doubt we'd lay down arbitrary lines across the country."

He says abolishing states would save Australia \$58 billion a year.

He advocates a national government and one set of laws for the country, with local governments administering local affairs.

The COVID-19 crisis had also emphasised that Australia needed its own bill of rights, Dr Harris said.

"(The current situation) certainly sharpens people's focus and makes them realise what they haven't before, that there is insufficient protection against excessive exercise of governmental power," he said. <https://tinyurl.com/y3lc39wx> Dr Harris is a member of CLA.

ODD SPOT: Bring on integrity, Aussies say!

Three-quarters of Australians want a national integrity commission. The Australia Institute's June survey shows support across all parties, and was 77% for both Coalition and Labor voters. Sample of 1012 people; margin of error 3.1%. CLA wants one too, provided it has real "teeth" to prosecute the baddies.

Is Australia a belligerent nation?

The Quakers say Oz needs to take a good hard look at itself.

"We believe that the expansion of expenditure on military defence by the Australian government is out of proportion to the basic security needs of Australia and its people," they say.

"The decision to embark on a substantial increase in spending on military equipment and to adopt a more aggressive approach to defence is alarming. It is especially of concern that, at a time of international instability, Australia should be giving priority to military rather than other solutions, adding to existing tensions.

"The critical issues facing the country are climate change, education, health and welfare, and building our capacity as a nation for peacemaking within our region and beyond. Yet the following facts reveal different priorities altogether:

- The Stockholm International Peace Research Institute estimates that global annual military spending is now at \$US1.8 trillion, and that Australia is 13th on the list of spenders, with our military spending set to pass 2% of GDP in 2020-21, a higher % than Canada, the UK, Germany, and China.
- Contracts for purchase of the joint strike fighter and a fleet of submarines at enormous expense have already raised serious questions as to their effectiveness. The planned addition of long-range anti-ship missile capacity adds a further dimension of threat to the security of our region.
- The annual budget for Defence is around \$26 billion, whereas the Department of Foreign Affairs Trade, which covers our diplomatic and trade programs, gets \$5.2b. Environment programs amount to \$880m. Our overseas aid funding has fallen to 0.23% of GDP (the UN target is 0.7%).
- Australia is becoming a significant contributor to the global arms trade. It is the second largest importer of weapons, and sells over \$2b of military exports each year (20th largest exporter). The government aims to raise our sales to within the top ten exporter nations.
- The bias of funding towards military-related programs tempts governments to rely on military solutions to such areas as disaster relief, rather than ensure proper funding for civilian response

https://www.quakersaustralia.info/sites/aym-members/files/pages/files/Military%20Expenditure_PM.pdf

Note: Quakers is shorthand name for the Religious Society of Friends.



Aussie NGOs, nations hold Australia to account

Organisations are gearing up to hold the Australian government to account when it undergoes the traditional Universal Periodic Review early in 2021.

The UN's Human Rights Council process allows other nations to identify human rights problems in Australia and recommend solutions.

The Human Rights Law Centre, the Kingsford Legal Centre, and the Castan Legal Centre have assembled questions supplied by 202 Australian NGOs (including Civil Liberties Australia), for the government to answer on the world stage, when UPR 37 begins. It is scheduled for early 2021.

Among the main initiatives this extraordinarily wide cross-section of Australia wants are for the nation to:

- hold a referendum to revise the Constitution to recognise Aboriginal and Torres Strait Islander Peoples' (ATSI) rights, remove racist elements and include an anti-discrimination clause.
- establish an ATSI-elected representative Voice to Parliament and a Makarrata and Truth and Justice Commission to develop a treaty with the First Peoples of Australia.
- develop an adequately funded mechanism that covers aged care and children's and disability specific facilities, and establish an advisory relationship with civil society including for designation and implementation stages.
- introduce a comprehensive, judicially enforceable national human rights and freedoms legislation that protects the whole community. Introduce similar charters for all states and territories.
- Incorporate the UN Declaration on the Rights of Indigenous Peoples into domestic law, establish an independent body to oversee its implementation in consultation with ATSI Peoples.
- compensate all members of the Stolen Generations, as recommended by the Bringing Them Home Report.
- correct Australia's failure to ratify key international human rights instruments, reservations to existing ratifications, and the lack of implementation of previous UPR and UN recommendations.
- within three years, ratify the Convention on Migrant Workers, along with key points of other international agreements.
- adequately fund social and community services to underpin the realisation of human rights.
<https://tinyurl.com/y6c6xz3r> and <https://www.hrlc.org.au/universal-periodic-review>

AFP and Home Affairs bosses deny liberties, rights and the rule of law

AFP Commissioner Reece Kershaw (photo) said it was not a mistake to raid the home of a journalist even though the authorising warrant was later ruled "invalid" and no criminal charges were laid against her.

Kershaw's extraordinary claim – effectively that the High Court ruling was wrong – came during a Senate inquiry into press freedom last month.

He said the raid on the home of News Corp journalist Annika Smethurst in 2020 was right, just the warrant was wrong. She had written about proposed new laws to spy on citizens, which the AFP claimed she was not entitled to do, continuing to believe they were right.



When will the High Court pull up senior AFP officers for contempt of court, CLA asks? Why do police in general think they don't have to acknowledge and abide by decisions of courts, such as in wrongful conviction cases?



Kershaw and Home Affairs Secretary, Michael Pezzullo (*photo, ABC Marco Catalano*) told the Senate that allowing media bodies to contest search warrants would be "detrimental to the workings" of the police.

Hullo, what about the workings of democracy, the rule of law, civil liberties and human rights, CLA asks?

The Senate launched the inquiry into press freedom after the raids on Smethurst's Canberra home and the ABC's Sydney newsroom last year. As a result of the raids, ABC journalist Dan Oakes still faces possible criminal charges for reporting on alleged war crimes by Australian soldiers in Afghanistan.

The DPP – and the Attorney-General – are sitting on a brief of evidence against Oakes. They should abandon any thought of prosecution, and the government should apologise to Oakes and to Smethurst, CLA says. <https://tinyurl.com/y45xevh9>

ODD SPOT: Should Dutton's department part-fund the High Court?

As of 25 September 2020, the High Court of Australia was considering 30 major matters. Twelve (12) of those were matters involving the Minister for Home Affairs and Border Force. Perhaps the Minister could be asked to contribute about 25% of the budget of the High Court as his department's practices are what is keeping the High Court so busy, CLA believes.

Court grants freedom, but Tudge won't budge

When a government minister won't obey the courts and the rule of law, is that Ministerial revolution or an Executive coup...or just plain stupidity?

Federal Court judge Geoffrey Flick last month said acting Immigration Minister Alan Tudge's conduct was "criminal" when he kept a man in immigration jail for five days after he had been granted a temporary protection visa.

Apparently the minister didn't like the judge's decisions, so his release from jail was delayed to give time for the government to mount an appeal. The minister claimed the man had failed the character test because he had been convicted of an offence involving a drunken fight.

Justice Flick countered by saying minister Tudge had been acting as if he was "above the law", and that he had "intentionally and without lawful authority been responsible for depriving a person of his liberty".

"In the absence of explanation, the Minister has engaged in conduct which can only be described as criminal," the judge said. <https://tinyurl.com/y4trwt2d>

What the stand-off highlights is a deteriorating culture within the Dept of Home Affairs which apparently believes it can ignore court orders and doesn't have to follow the rules. The last time this type of culture problem emerged in the department, the Cornelia Rau and Vivian Solon cases occurred. <https://tinyurl.com/y47hkuqw>

ACIC gets good at walking backwards

The Australian Criminal Intelligence Commission has apparently been forced to back out of a High Court case, and pay all the costs, where someone challenged its special powers which force people to incriminate themselves.

The backdown risks the overturning of many previous convictions, at least 18 special investigations or operations since September 2013, says Paul Karp's report in the *Guardian*. "Since 2014, the ACIC has issued 1,990 notices to produce, including 266 in 2018-19, and conducted 1,010 examinations, including 193 in 2018-19."

Lawyers say the "special powers" legislation is ripe for abuse. The ACIC board can approve special investigations if it considers they are "in the public interest". The board's decision validates activities even if no investigation had formally commenced before it was made, Karp reported. One major problem is the composition of the ACIC board itself (see next item).

In November 2018 the High Court ruled ACIC had acted unlawfully against six people under its coercive powers because no special investigation was being conducted when it tried to invoke the special powers. <https://tinyurl.com/y3y8s76j>

ACIC board is as intrinsically biased as can be

The power to decide if police and security forces can use draconian special powers, "after the event", rests with a board which is so unfit for the purpose of making an unbiased legal/criminal decision that its composition is a laughing stock.

Those who vote to dispense the secret powers – the ACIC board – are the commissioner of the AFP sitting with the chiefs of all state and territory police forces and of Border Force, and the Secretary of the Department of Home Affairs, as well as the Director-General of ASIO, the Tax Office supremo and the head of ASIC, the securities and investments regulator.

ACIC itself describes the board members formally as "members from partner agencies" to ACIC. So, no decision of the board can be called independent. And good luck finding anyone normally described as a champion of liberties and rights among that lot, who are chosen customarily for their ability to be "tough on crime", to "turn back the boats" or to "crack down on tax cheats and fraudsters".

And, of course, no-one possibly the subject of the board's ruling gets the chance to put a counter argument to the ACIC board before it makes a decision based on ACIC's submission. It's a Kangaroo board with added, inbuilt spring coils and a bonus whiplash generator.

The ACIC website says: "The board provides strategic direction to our agency, authorises our intelligence operations and investigations, and determines whether they are deemed 'special', which allows the use of our coercive powers". You bet!

Then the High Court rules against the ACIC board's decision (see item above). That's a woefully ineffective and incompetent way to design and run a criminal legal system. <https://tinyurl.com/y7sq2uu6>

CLA calls on the Australian Parliament to throw out the legislation surrounding ACIC, and to start again. A fair and balanced ACIC board would include many counter voices to the police-spook community.

Scrutiny cttee highlights draconian drafting

Parliament's Scrutiny of Bills Committee has once more called out the government, this time for over-the-top clauses in a bill to create a system for a National Commissioner for Defence and Veterans Suicide.

The committee says the government wants to give a single, permanent commission the extraordinary powers and reach of a royal commission. It also wants to impose penalties for not toeing the commissioner's line that are far in excess of similar sanctions in like legislation.

The bill would also do away with legal professional privilege, and with the customary privilege against self-incrimination. It

will also reverse the traditional burden of proof under the rule of law.

It's good that the Scrutiny Committee is trying to rein in the government's excesses in this case, as in others recently. But what is needed is an analysis of the deterioration of reasonable and balanced legislation drafting over the past decade or so in favour of a truly repressive approach to law and order.

If academics won't provide the analysis, perhaps the Scrutiny Committee should commission its own, CLA says. See *Scrutiny Digest*, 21 September 2020 <https://tinyurl.com/ya92gngn>

ODD SPOT: ASIO takes a step to the right... after earlier jump to the left

Deputy director-general Heather Cook revealed last month that up to 40% of ASIO's counter-terror efforts now concentrate on thwarting violent plots by right-wing groups or individuals. "Extreme right-wing violent extremism occupies approximately between 30 and 40% of ASIO's current case load in our counterterrorism work – an increase from approximately 10 and 15% prior to 2016," she told a hearing of federal parliament's SIC (security and intelligence) committee. <https://tinyurl.com/y3qzqkto> There might have been a sudden rise in right-wing activity, CLA notes, but far more likely is that ASIO's thrust was hopelessly warped to the left before 2016. ASIO needs reminding that time is fleeting when chasing terrorists, and threats are not one dimensional.

ASD signals displeasure with history process

The Australian Signals Directorate has reportedly cancelled a \$2m-plus contract with the ANU for the writing of a two-volume official history for the period from 1947 to about 2000.

Reports indicate ASD has severed its ties with Professor John Blaxland (photo), who has been working on the first volume of the history since about July 2019.



Apparently the history-writing project will go ahead when its new Director General Rachel Noble, appointed in February 2020, finds some historians more to her liking.

Former ASD chief Mike Burgess, who commissioned Prof Blaxland for the ASD history, now heads ASIO. ASIO's official history has been written already... about half of it by Blaxland. <https://tinyurl.com/yyayw95e> <https://tinyurl.com/yy9rts46>

Toohey says uni academics are wrong choice

Independent security guru Brian Toohey wrote last month: "It's never a good idea for universities to take money from intelligence agencies to write their official histories because the agencies never really lift the veil of secrecy. Take the current shemozzle in Canberra where, on August 21, the Australian Signals Directorate terminated its contract with the ANU, which had stood to reap more than \$2 million to produce a two-volume official history of the nation's electronic eavesdropping agency. Neither side will say why.

"When asked why John Blaxland was removed as the lead historian, ASD told me the contract had been 'terminated by mutual convenience', but didn't say why. An ANU spokesman said: 'While ultimately the decision was made by ASD, it's one the ANU respects and understands.'

"Respects and understands? Hardly a ringing endorsement of ANU academics writing the official history," Toohey commented.

'Secret' exposes ASD's historic secrets

Toohey is the author of *'Secret: The Making of Australia's Security State'*.

In his chapter on ASD, the US National Security Agency (NSA) and the the 'Five Eyes Club', he recounts some of ASD's history, both solo and with its international partners. Activities include:

- intercepting phone calls in Australia, apparently when ASIO was unable to obtain a warrant, to record the conversations of Denis Freney, at the time a leading left-wing campaigner for East Timor independence;
- failing to reveal the truth that Saddam Hussein's Iraq did not possess weapons of mass destruction; and
- installing interception equipment in Australian diplomatic premises in PNG, Indonesia, Thailand and other countries that allowed Australia to spy on the locals.

The chapter also reveals the reason that the US (and its Five Eye partners) don't want any Huawei equipment in their 5G networks: because they believe that China would be as unethical a partner as the USA was/is.

"In the mid-1970s the American Hughes Space Group built satellites and ground stations for a new Indonesian telecommunications system.

"It also built a near-identical ground station at Shoal Bay (Qld) to let (the now) ASD and the US National Security Agency intercept everything sent via the Indonesian satellites."

Toohy writes that Snowden's documents revealed that ASD had intercepted the mobile phones of Susilo Bambang Yudhoyono, his wife, and senior colleagues in 2009. "The Indonesians strongly objected to this deceitful behaviour by a neighbour who professed to be a friend."

'Secret', MUP, published 3 Sept 2019, ISBN 9780522872804 400pp <https://tinyurl.com/y4okoh87> Also available as e-book.

ODD SPOT: Our 'limping justice' lags other nations, says eminent ex-judge

"What is it about our country that always sees us limping behind [UK, NZ and Canada] where justice is at stake, whereas we can move with astonishing speed to diminish civil liberties, increase official powers and raise levels of incarceration, with no parliamentarian raising a murmur..."

– from an Editorial, by guest editor Michael Kirby* AC CMG, 43 Criminal Law Journal 2019, pp 299 – 305: 'A new right of appeal as a response to wrongful convictions: is it enough?'

*High Court of Australia judge(1996–2009); chair of the Editorial Board of the Criminal Law Journal (1977–2020).

'It would be radical to keep increasing police funding': criminologist

Uni of Western Sydney criminology lecturer Robyn Oxley last month called for re-orienting the increasing funds spent on state police to the social systems and structures that would cut crime and reduce the need for police.

"We have seen time and time again that police are not held accountable for their excessive use of force and violence towards people in society," she said. "What is radical is living in a society where acts of violence are accepted because a blue uniform is worn or where racist legislation exists.

"It is not so radical to say we need to defund police and pour much needed funds and resources into areas that improve social issues such as housing, health, education and employment. These, in turn, reduce the incarceration rates of Aboriginal people and reduces the over-reliance of degrading and dehumanising punitive measures such as prisons.

"We must address the issues at the beginning, not looking for services to respond and 'fix' issues created by the criminal justice system," she said. <https://tinyurl.com/y462x2qx>

Was Huawei a plaything of communist party?

In Turnbull's memoir, *A Bigger Picture*, he concedes there was no "smoking gun" to ban Huawei 5G on national security grounds, according to an article by Huawei lawyers Nick Xenophon and Mark Davis.

Lawyer Xenophon is the former federal and SA MP, and Davis is a noted Australian journalist and lawyer.

"According to Turnbull, there was no suspicious behaviour by Huawei in Australia at all. He says there was no 'smoking gun'," they write.

"The decision (to ban Huawei from tendering for major network equipment in Australia) was based on a hypothetical scenario and that 'our approach was a hedge against a future threat'. That future threat was based on nothing but the ethnic origin of the company. It was Chinese.

"In short, Huawei did nothing wrong in this country at all. Its reputation was trashed for a 'hedge'.

"These slurs were picked up and amplified by ideologically-driven think-tanks such as the Australian Strategic Policy Institute that escalated and amplified the innuendo," according to Xenophon and Davis.

"At one point, ASPI even suggested in an opinion piece in the *Australian Financial Review* June 17, 2019 that garbage trucks in Bendigo could be a risk to national security if fitted with wifi sensors supplied by Huawei. Garbage indeed.

"There are state-owned businesses in China that are highly likely to be heavily influenced and controlled by the government. Huawei is not one of those companies.

"Huawei isn't state owned or a plaything of the communist party. It is a phenomenally successful capitalist enterprise. Perhaps that is its true crime in the trade war that is unfolding around us," Xenophon and Davis say. <https://tinyurl.com/y7tuhvgu>

'Lofty assertions are not evidence'

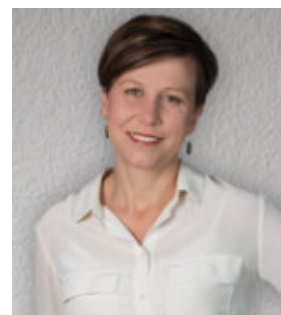
In a 'dissenting report' to a bill which gives Home Affairs Minister Peter Dutton sole and untrammled power to cancel someone's citizenship, Labor Party members of the SIC* group came down hard on the minister and the government.

They wrote:

- "the lofty assertions of the current Minister for Home Affairs and his Department are no substitute for, and should not be confused with, evidence
- "the current government appears to regard Australian citizenship as if it were akin to a visa. We are concerned that this betrays a worrying attitude by the current government about the nature and value of Australian citizenship."

– from the Advisory Report on the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 by the Parliamentary Joint Committee on Intelligence and Security (which CLA calls SIC – security and intelligence – committee)

The dissenting section was signed by the SIC deputy chair, Anthony Byrne, shadow AG Mark Dreyfus QC and Senators Jenny McAllister (photo) and Kristina Keneally .



Incidentally, in its formal recommendations, SIC continues the dangerous practice of correcting errors and uncertainties in bills by amending the explanatory memorandum. Errors in bills should be fixed in the 'black letter law', not in advisory documents, CLA says.

State rushes law to wind back huge discounts

A new law in SA will reduce the maximum possible discount for an early guilty plea to 25% from 40%.

Attorney-General Vickie Chapman said judges had regularly been giving a 40% discount for guilty pleas, rather than treating it as a maximum option in unusual cases.

Shadow AG Kyam Maher said Labor supported the legislation because 40% was "way too big a discount".

Parliament jumped into passing the bill with alacrity because of an early guilty plea by Pawel Klosowski, who shot dead his teenage son, Lukasz, and his son's girlfriend, Chelsea Ireland neat Millicent in SA's south-east in August. Even when the bill passes the Upper House, Kosowski – who has pleaded guilty – will remain eligible for the huge discount because his crime and pleading preceded the passage of the new law. <https://tinyurl.com/y44nu94u>

Supervisor stood down after police cell death

An assistant watch-house supervisor has been stood down – on full pay – after an Aboriginal woman died in a police cell in Brisbane last month.

Sherry Fisher-Tilberoo, 49, died of a suspected brain aneurism in the watch house in the early hours of 10 September. The allegation is that she and her cell were not monitored between midnight and 6am, despite police protocols laying down hourly physical inspections.

Assistant Police Commissioner Brian Codd said last month that an assistant watch-house supervisor had been suspended following an internal police investigation into the death. The woman, a civilian employee of the police service, was stood down on full pay for alleged failures of duty "in relation to the performance of physical checks" and "related record keeping". <https://tinyurl.com/yymcjh3u>

ACT gets active in pre-election mode

A flurry of activity secured progressive changes in Canberra as the ACT Legislative Assembly held final sessions pre-election.

A pill testing facility is likely to be piloted in Civic (the CBD) every weekend from December 2020. It would operate on weekends under expert health advice.

The agreement came after an amendment from the Greens to a motion on harm minimisation. Greens leader Shane Rattenbury said he was pleased to secure a commitment from the government to extend pill-testing from only music festivals to a more regular service.

All three major parties voted unanimously in favour of introducing laws that would make it harder for politicians to lie.

From July 2021, a person could pay up to \$8,000 and a corporation up to \$40,500 for false political advertising. But the laws will only apply to authorised political material, not to rogue actors on Facebook or Twitter.

The new laws will not be in place in time for the next territory election this month, on 17 October 2020.

Voting early is suddenly popular

The vast majority of Canberrans – probably more than 75% – are expected to vote early at electronic polling places from 28 September or by pre-poll postal voting.

Prisoners may vote in the ACT.

Twenty-five MPs will be elected, across five sub-divisions each returning five people.

The complicated Hare-Clark proportional voting system is used in the ACT. However, the overall results of the election could be known within about an hour of the polls closing because of electronic recording of early votes.

Age of criminal responsibility may rise to 14

The Greens recently secured a commitment for the ACT government to support raising the age of criminal responsibility from 10 to 14 years – an Australian first – but only if the current Labor-Greens coalition is returned to power on 17 October.

The Canberra Liberals moved an amendment to wait for a national agreement, but that amendment was not supported.

States and territories have been dithering over a national agreement for five years. CLA has written to all Premiers and Chief Ministers, asking them to intervene with the AGs to get the age raised ASAP.

<https://tinyurl.com/y2krsw8r> <https://tinyurl.com/yy5wvryf> <https://tinyurl.com/y4r5h5ac>

Poorly-chosen charges kicked out by court

Queensland District Court has overturned the conviction and sentencing of two climate activists charged with breaching controversial anti-protest laws passed last year.

The court found no evidence that using banned "locking" or "attachment" devices by the protesters posed any risk of injury to others or damage to property.

The court re-sentenced the activists and fined them \$1000, with no conviction recorded.

Human rights lawyers say the decision further highlights that claims about public safety used to justify the laws last year were "nonsense", and have renewed calls for them to be repealed.

In 2019, the state parliament rushed a new law banning "dangerous attachment devices", as used as a tactic to delay removal during protests. <https://tinyurl.com/y4kr3gy9>

But consultations a decade ago – including with Civil Liberties Australia – had clearly indicated the laws should operate only where grave risk to protesters, other people including emergency responders, machinery and the community applied.

Examples might include locking on to a moving coal loader, interfering with electricity transmission in the suburbs where people depended on at-home lifesaving devices, or instances of stopping trains. Climate protests are unlikely to fall into those categories.

'Trial program should become mandatory' – McGlade

The WA Government has announced a two-year trial of a family-led model to support Indigenous children at risk of being placed in protective custody.

Human rights lawyer Dr Hannah McGlade (photo) believes the program should immediately be made a legislative requirement.

Announced in August, \$715,000 will be invested into an Aboriginal Family Led Decision Making (AFLDM) pilot aimed at addressing the overrepresentation of Indigenous children in out-of-home care.

In WA, Indigenous children are nearly 18 times as likely to be placed in out-of-home care than their non-Indigenous counterparts – the highest rate nationally.

The AFLDM model allows extended families, along with an independent Aboriginal facilitator, to work with the Department for Child Protection to make decisions on the best placement for children in need of intervention.

The trial will focus on three cohorts in a number of metropolitan and regional areas in WA, with an initial emphasis on keeping infants placed with parents and family members. <https://tinyurl.com/y2zj2vtb>



Edwards guilty of two Claremont murders

WA judge Stephen Hall last month found Bradley Robert Edwards, now 51, guilty of murdering Jane Rimmer and Ciara Glennon, but not guilty of murdering Sarah Spiers, after one of Australia's biggest criminal trials.

He was described as the Claremont killer, after the nightlife suburb from which the three women disappeared in 1996 and 1997. Edwards will be sentenced in December.

The trial cost about \$11m, according to the WA Dept of Justice: \$3.5m of that amount was the cost to Legal Aid of defending Edwards. <https://tinyurl.com/y5kbnxve>

Vast quantities of evidence were obtained and witnesses interviewed. That has resulted in an unusually lengthy and detailed prosecution case.

Before the trial there were 14 pre-trial hearings over 19 sitting days. The prosecution brief consisted of 178 lever arch files in 44 boxes. The electronic version of the prosecution brief occupied multiple terabytes (2.1 terabytes, according to one report) of computer database space. There were 95 trial sitting days over seven months, 10,828 pages of transcript, 240 witnesses who were either called or had their evidence read and 2879 exhibits.

Judge Hall said he did not find Edwards guilty of the Spiers murder because "A possibility or even probability in that regard is not enough to support a conclusion beyond reasonable doubt." <https://tinyurl.com/y2u2qlg7>

Controversial forensic science at core of ruling

Edwards' convictions (see item above) hinged on a controversial forensic technique, Low Copy Number, so new it could only be done in the UK by their Forensic Science Service in 2009.

LCN allows a profile to be obtained through a greater amount of copying via polymerase chain reaction from a smaller amount of starting material.

A profile can emerge from only a few cells, which may be as small as a millionth the size of a grain of salt, and amount to just a few cells of skin or sweat left from a fingerprint, Wikipedia says.

As well, the greater sensitivity of LCN also increases the risks posed by contamination of samples in the laboratory. Since LCN aims to amplify levels of DNA as low as 100 picograms, even breathing on a sample may contaminate it. <https://tinyurl.com/y6h423ua>

The UK lab decided to combine two of the four samples taken from under Glennon's fingernails. One of the samples had been initially labelled "debris only, not suitable for analysis". <https://tinyurl.com/y2okd5dr>

This unusual double-up technique identified an unknown male.

According to an ABC report, "Details of this tiny DNA sample were entered into both the UK and Australian databases, but no match was found. But on January 16, 2009, the eureka moment came. Having returned from London, Laurie Webb entered the unknown man's DNA onto the WA database — and there was a match."

Webb was for many years the senior scientist at PathWest, the WA state pathology laboratory. He was sacked in 2016 for "cutting corners". PathWest said the DNA analyst was guilty of four serious charges around unethical behaviours, in failing to have DNA results verified by their required protocols.

PathWest wanted to keep the Webb professional misbehaviour secret, according to the WA Attorney-General John Quigley, but the Office of the DPP insisted the situation be made public. It isolated 27 cases between 2008 and 2014 that Webb had been

involved in, and notified the prisoners or their lawyers of Webb's breaches.

Webb's involvement in the Edwards' DNA matching came during that period. <https://tinyurl.com/yxctyba9> <https://tinyurl.com/yx8tzu4f>

Weygers recklessly named 'person of interest'

The WA Council for Civil Liberties was collateral damage to the WA Police's failure over nearly two decades to find the murderer.

WAPOL has an appalling culture and custom of "naming" suspects at the drop of a hat, without evidence or reason. That's what it did to WACCL President, Peter Weygers, a man who had been mayor of Claremont. <https://tinyurl.com/y65lj9sg>

The naming of him as a "person of interest" sullied his personal reputation to this day, and seriously affected the repute of the WACCL. Read the history of civil liberties in WA at: <https://tinyurl.com/y5pytoz2> Scroll down to WA.

in the mid-2000s, WAPOL did the same thing before TV news cameras by naming Lloyd Rayney as a "prime suspect". His wife had apparently been murdered after her body was found in a half-dug grave at Kings Park. Rayney sued the police and won \$2.6m in damages.

RC lawyers say police behaviour 'corrupt'

Lawyers assisting the Gobbo Royal Commission, Chris Winneke QC, Andrew Woods and Megan Tittensor found that there were "significant and repeated departures from acceptable conduct" when it came to the relationship between Ms Gobbo and Victoria Police., a report last month said.

The lawyers described the behaviour of police as "troubling" and found police tried to cover up the use of Ms Gobbo by not taking notes and not recording decisions in meeting minutes. "This appears to have been a deliberate decision."

The RC lawyers described this conduct as "noble cause corruption", which refers to a belief that the means justifies the ends. It is common behaviour among police forces in Australia.

"Whilst [police] members do not seek to serve themselves through the conduct, but rather seek the 'noble end' of 'putting away' criminals and prevent crime, it may be corruption nonetheless," the lawyers found.

Their submissions said more than 1000 criminal cases could have been affected by the use of Ms Gobbo as a source.

They said Ms Gobbo's evidence to the commission was deliberately evasive, and that she "had deliberately lied, or at best knowingly misled the Supreme Court" during the fight to keep her role a secret. <https://tinyurl.com/yykmt4y3>

1000 people and legal cases possibly affected

In Victoria, the Royal Commission into Management of Police Informants has been told that the legal cases of more than 1000 people could be affected by the police use of Nicola Gobbo as an informant.

About 124 cases may have been unfairly affected by the apparently illegal relationship between Victoria Police and 'Lawyer X'.

One former client of Gobbo's has been released from prison because a judge ruled her informing constituted a miscarriage of justice. Eight more former clients have appeals pending. <https://tinyurl.com/y3f7nmbv>

SA fails to address its widespread legal problem

In South Australia, the state is yet to come to grips with the fact that some 400 cases were possibly corrupted by the former SA chief forensic pathologist, Dr Colin Manock.

Manock's evidence was proven in error in the Henry Keogh case, which resulted in \$2.5m compensation for his spending 19 years in jail wrongly convicted. Manock's evidence and actions in many other cases and situations have been called into serious doubt.

Yet the state of SA will not hold the royal commission or judicial inquiry that is needed to establish the extent of the failures, and the reasons for them, in the SA legal system. – Bill Rowlings

For a detailed look at some major issues in SA, see: <https://www.cla.asn.au/News/shocking-scandal-nobody-wants-to-touch-mp/#>

Forensic evidence doubted by top judge

Senior Victorian judge Chris Maxwell believes innocent people may have been jailed because too much faith has been placed in forensic techniques that have been proved to be flawed.

Maxwell is President of the Victorian Court of Appeal. He has said previously there was little proof that forensic techniques including gunshot analysis, footprint analysis, hair comparison and bite mark comparison could reliably identify criminals.

He called on governments around Australia to urgently change the law, so that judges had to consider the reliability of forensic evidence before it was shown to juries. Others have called for a national public inquiry to re-assess the accuracy and reliability of forensic evidence in general. <https://tinyurl.com/yyxcpj48>

Priests face legal dilemma

Priests in Queensland will now be compelled to break the seal of confession to report child sexual abuse or possibly go to jail.

New laws passed through Queensland Parliament will force members of the clergy to report known or suspected cases of abuse to police.

The legislation means religious institutions and their members are no longer able to use the sanctity of confessional as a defence or excuse in child sex abuse matters.

Priests will be faced with breaking canon (church) law which dictates the secrecy and sanctity of the confessional, with the state law that says children must be protected. More legal battles loom, CLA says. <https://tinyurl.com/y5y5yeh5>

Police spend millions fighting bad behaviour

NSW Police spent \$24m defending about 300 civil legal claims brought against officers in 2019-20.

The amount includes settlements for serious misconduct claims including battery, false imprisonment and malicious prosecution.

Out of court settlements usually contain non-disclosure clauses and police deny access to the figures, so this revelation, sourced by the Greens' MLC David Shoebridge, is an eye-opener.

Shoebridge said the figures did not reveal how police deal with officers whose conduct causes a civil settlement.

"The outcomes of these cases are usually suppressed, meaning it's impossible to know whether the police whose misconduct has resulted in large payments to victims have faced any sanction at all," he said. "It's very likely that most or all the officers are still working in the police with no sanction, and often having been promoted." <https://tinyurl.com/y27e7fcn>

As a CLA member said: "It seems a bit tough to monster the public and then charge them for your legal bills!"

Students learn lessons in selective policing

Some 100 U Sydney staff have signed an open letter alleging NSW Police engaged in political censorship by breaking up on-campus protests against federal changes to higher education.

"Universities exist to foster the free and open debate of ideas," the letter said. "The University of Sydney campus should be a place where the right of students and staff to express their views is respected ... without fear of police intimidation or reprisal."

Police arrested students and staff and issued fines last month even though, organisers said, protesters wore masks, were never allowed to be in groups larger than 19 and were all spaced between 50 to 200m apart.

Polices said the small groups of fewer than 20 people were illegal because they were organised for "a common purpose".

"The quite absurd scene was of a large sergeant with a loudspeaker on the law building's lawns saying: 'If you are here to have lunch, you can stay, if you are here to protest, you have to move on,'" academic Dr Rob Boncardo said.

The open letter from staff said this "unambiguously constitutes political censorship" in how it targeted protesters. While lunchers were free to munch en masse, classes of 30-plus maskless people elsewhere around the uni, indoors where C-19 transmission was much more likely, went ahead un-poled. <https://tinyurl.com/y2pnyp04>

Border-hopper cops come a cropper

A NSW Police officer threatened to break a man's legs during an illegal arrest by himself and another NSW officer made at Hume, a Canberra suburb just inside the ACT-NSW border.

Magistrate Dr Bernadette Boss threw out charges against a 48-year-old, because she said the NSW officers had no authority to make the arrest in the ACT and had acted unlawfully.

Dr Boss described the conduct as "outrageous" and "unprofessional", and said she was amazed any interstate police officers could "think they can stride around this territory and act as vigilante enforcers", Michael Inman reported for the ABC.

"I'm horrified by the conduct of these officers. How dare they come to the ACT and act this way," she said.

The man was arrested and charged with driving while disqualified, possessing a knife, and a breach of good behaviour. He was in jail for two weeks before being granted bail.



His barrister, Jack Pappas (photo), argued his client had been threatened, spoken to roughly, and held against his will illegally because the officers were not from ACT Policing and had no jurisdiction.

Mr Pappas said a police body-worn camera showed his client wander away from officers and was told to stay where he was. The court heard

the man replied: "I'm not going to run", and an officer responded: "You're not going to run, because if I catch you, I'm going to break your legs." <https://tinyurl.com/y5op38v8>

Note: Barrister Pappas is a member of CLA; magistrate Boss was a member of CLA when she was a barrister.

NT pushes for right to decide on dying law

"It's long past time that Canberra relinquished its unjust control over Territorians' rights and allowed the NT's residents to decide they wish to legalise euthanasia here again" – so said an Editorial in Australia's most entertaining newspaper, the *NT News* last month.

Euthanasia, or the choice of "dying with dignity", was legal for a short time in 1996–1997 in the NT, until a federal private member's bill proposed by Liberal Catholic MHR Kevin Andrews overturned the territory law.

His federal *Euthanasia Laws Act 1997* (Cth) also made NT and ACT Territorians second-class citizens, as their parliaments' laws can be over-riden by the federal parliament, whereas state parliament laws can't.

Covid puts SNF appeal date start in doubt

Tasmanian Supreme Court judge Helen Wood brought forward a directions (administrative) hearing last month in the Sue Neill-Fraser (SNF) appeal case, saying said she had vacated two previous dates and did not want to vacate a third.

She pushed to have the case begin, heard by video links, on the allocated date of 2 November, but both the Tasmanian DPP Daryl Coates (photo) and SNF want the case heard "live", with all key players in court in person.



The stumbling block is lockdowns and the enforced 14-day quarantine period on flying to-from states.

Tasmania is formally locked down until 1 December by the edict of Premier Peter Gutwein, ruling out the allocated date.

SNF's pro bono lawyers are barrister Tom Percy from Perth, and WA is likely to be in lockdown until Christmas; it is not known when solicitors from Melbourne will be able to travel to Hobart. All face 14-day quarantine periods on return to their home state.

Miffed by the delay, judge Wood chastised DPP Coates for not having submissions ready that were due in mid-August.

She decided to adjourn the case to 7 October at 4.30pm to see whether interstate travel has opened by then. The November date to start the appeal remains a possibility.

PS: If you would like to watch Eve Ash's Undercurrent series on the SNF case, you can now do so here:

https://tubitv.com/series/300005259/undercurrent_real_murder_investigation

Australian briefs

ASD yet another agency to get new staffing/funding boost:

The federal government announced in June 2020 that ASD would gain 500 extra specialists at a cost of \$470 million. Under plans announced in August 2020, it will also work with the AFP to pro-actively target people allegedly engaged in serious criminal activity within Australia. Infrastructure agencies and some companies are being forced to give ASD access to information in real time to enable the Defence-based agency to expand its services to the security and police 'community' in Canberra and nationally...and therefore to ASD's international one-talks also.

Policeman to face murder charge in Perth: A serving police officer accused of murdering an Indigenous woman in Geraldton in September 2019 will face trial in Perth, a Supreme Court judge has decided. The officer, who is the first in WA in 100 years to be charged with murder, has pleaded not guilty and is on bail. The officer is alleged to have unlawfully shot the Indigenous woman "JC" in the Geraldton suburb of Karloo when she was surrounded by police and had refused to drop a knife she was allegedly carrying. The dead woman's family has said they believe there will be better justice in Perth, when the trial takes place over probably four weeks, late in 2021. <https://tinyurl.com/y2lg4zlm>

State fails to notify people subjected to cyber attack: Some 3.8 million documents, amounting to 736GB of data, were stolen from NSW government files by unknown attackers five months ago, but the people hacked have been kept in the dark. The documents contained the personal information of 186,000 people...but those affected were only being notified via

registered post in September, months after the event. The attack on 22 April saw the email accounts of 42 Service NSW staff compromised. A parliamentary inquiry will scrutinise the government's handling of cyber security incidents, as well as its measures to protect digital infrastructure more generally, following a spate of cyber attacks. <https://tinyurl.com/y38gjrsb>

Library lets the kids back in: Alice Springs Town Council has reversed course and will again allow unaccompanied young people in the town's public library. Unaccompanied youth 15 and under were barred from the library in May 2020 under coronavirus restrictions. Advocacy group Central Australian Youth Justice said that the policy was discriminatory, disproportionately affecting the many young Aboriginal people who regularly use the space. The Alice Library was the only public library in the NT to impose such a ban. <https://tinyurl.com/y6cqv9de>

Comments by CLA members (most letters to editors):

Is Covid-19 a pandemic, or panic with 'dem'ocracy removed from its middle?

The relevant emergency legislation requires "reasonable grounds". Would insular Premier Gutwein care to enlighten citizens, or more accurately serfs, upon those "reasonable grounds"? One TAS case since 11 August is "reasonable grounds"? Only to the fearful and innumerate. My flights from Canberra to Launceston have been cancelled three times since May due to ever changing government diktats, not seeing my wife since June, or "permitted" to help with the convalescence and rehabilitation of my elderly semi-invalid mother in law. CV19 is not the only health issue, and the tunnel vision of politicians means other aspects of this pan(dem)ic (social, economic, cultural, legal, financial) are ignored, with no evidence of an exit strategy, cost-effectiveness, or risk analysis. Not good enough. The burden of proof to justify yet more illiberal, excessive and probably illegal border closures and controls rests solely with the advocates. Make your case, or cease and desist immediately. – Mark Jarratt, ACT and Tas

Past inaction on Assange requires rapid action now

It is indeed disturbing that Julian Assange is still rotting in UK's notorious Belmarsh prison for exposing the US' war crimes and crimes against humanity in the Middle East. Successive Australian Labor and Liberal governments have done nothing for him. Australia's media are equally guilty of inaction in Assange's case. It is time for PM Scott Morrison and AG Christian Porter to go in person to London and negotiate with their British counterparts for his release. – Bill Mathew, Parkville Vic (Age 200909)

State power abused to make us quake

Australia has failed Julian Assange. Whether we like him or not, Julian is a brave and innovative journalist who has devoted much of his life to revealing illegal and immoral behaviour by powerful state actors. His years of isolation and imprisonment have left him physically frail and mentally ill. Unlike perpetrators of the crimes he uncovered, this fragile journalist has been persecuted by three powerful governments, betrayed by another and cast aside by his own country. His efforts to mount a defence against arguably spurious charges have been deliberately hampered by limiting his access to his legal team and to a viable computer. His treatment by the British court system has been highly questionable. Such cowardly and cruel abuse of state power against an individual is intended to have us all quaking in our boots. So much for democracy! – Pauline Westwood, Dickson ACT

Treading on army toes

Donald Trump's reported disparagement of US military members, may not end well for him, if history is any guide. The

experience of the 1950's powerful and virulently anti-Communist Republican Senator Joseph McCarthy, famous for his smear tactics, was telling. McCarthy met his match when he attempted to attack members of the US Army bureaucracy. Appalled, President Eisenhower invoked executive privilege in 1954, thereby destroying McCarthy's career. Trump should tread warily, lest voters similarly punish him. – Jon McMillan, Mount Eliza Vic (Age 200909)

Use tried and true sharing to share uni Covid pain

Long ago we had the razor gang. Later, obfuscating hypocrisy set in, and the idea was renamed "efficiency dividend". University departments were to lose members of staff. In some instances this was prevented because one or a few members of academic staff forwent part of their salary in order not to lose a colleague. This time the crisis is not created by the government, but by the virus. But the old remedy could be tried again. Highly paid staff could be allowed to make a salary saving of five per cent, say, and less well-paid ones a smaller percentage. Of course, some would find excuses and refuse to participate. But no doubt many would be willing to help; especially if the higher-paid non-academic staff set an example. – ANU Emeritus Professor Thomas Mautner, Griffith ACT (Canberra Times 200920)

Mata Hari surveillance...and my bank account

As a humble bank customer (reference the Westpac monster fine), I find it offensive that anyone might be looking at my bank account to check if I am a pedophile! Before anyone violates my privacy, I would like to see a judicially-issued warrant. I realise my views are those taken as normal in my youth but I am increasingly resentful of the intrusions of the Surveillance State. Like Greta Garbo, some of us would like to be left alone, especially by bureaucracies, whether public or private. – Dr Terry Dwyer, Canberra ACT on *Linked in*.

CLA report – main activities for September 2020

Physical meetings:

David Smith MP re Labor and a human rights act
CLA member Anne Cahill-Lambert re Covid-19 travel restrictions

CLA members Des Griffin, Roger Clarke and Linda Spinaze re privacy and Covid-19

SPRING UP gathering for ACT CLA members in ACT: planned for Sunday 25 October.

Video meetings:

WA director Margaret Howkins re current activities

Global Compact Network Australia, Kylie Porter, re a human rights act (President Kris Klugman, Chris Stamford, CEO Bill Rowlings)

Other activities

Circulation of specialist research papers by Uni Queensland law students on prisons

Continuing work on human rights act campaign, in states and nationally

Submissions

Tasmania: *Review of the Expungement of Historical Offences Act 2017* – submission to the Tasmanian Department of Justice (Venkataraman) 31 August.

To ANAO: Review of federal parliament expenditure on security infrastructure: (Murney): see three-part series on CLA website for background 28 September

NT: from Director Caitlin Perry

Stand by for some revelations from the the NT ICAC, Australia's newest anti-corruption body which got off the ground only in November 2018. Commissioner Ken Fleming has signalled it's likely there'll be surprises in November 2020.

On a *ABC Darwin* radio interview recently, he hinted at the upcoming release of a report into as-yet-undisclosed investigation. "There could well be a major report coming out by about November," he said. His office is reportedly continuing to investigate more than 50 allegations of improper conduct. Fleming has also suggested he may be looking into the dangers of postal voting in the unique circumstances of the NT. Basically he questioned whether Australia Post could be relied on to deliver postal votes in a timely fashion, and whether alternative arrangements – people driving hundreds of kilometres to lodge community-collected postal ballots at town post offices – was potentially open to vote manipulation.



NT has a new AG: Selena Uibo (photo) is the new NT Attorney-General and Minister for Justice. She is also Minister for Aboriginal Affairs, and Treaty and Local Decision Making, as well as Minister for Parks and Rangers. The Member for Arnhem is the first Indigenous AG. The 35-year-old Uibo has a BA and a BEd, but is not a qualified lawyer.

She told the *National Indigenous Times* that local decision-making and extensive consultation will be at the forefront of her approach to justice, with the draft Aboriginal Justice Agreement to be finalised by the end of 2020. The agreement aims to reduce reoffending and imprisonment rates with the reintroduction of community courts, plus a raft of alternatives to custodial sentencing.

Former AG Natasha Fyles, also from a teaching background and not a lawyer, keeps the Health portfolio and is Leader of Government Business.

WA: from Director Margaret Howkins

September has been a month of intense activism by CLA members in WA. I have had meetings, and reports from Sandra Nelson, Lacy Gow, Christina Marruffo, John Woodward and Kathryn Lance. They are engaged in:

- campaigning against federal spending of \$52million of public money on the gas industry;
- protesting secrecy and under-handedness in their local authorities by booking themselves on to meeting agendas;
- building support to stop widespread unprotected use of Glyphosate in the weed-killer 'Round Up' by circulating a petition;
- demanding an end to undemocratic executive decision-making by small groups of local councillors by writing letters and forming a pressure group; and
- requesting additional copies of 'CLArion' for circulation in Acacia prison

CLA has also written to the WA Greens' state MLCs enclosing evidence supporting the campaign against Police-Investigating-Police (PIP project) and the tabling of a CLA-generated petition on 24 September in the WA Legislative Council.

We also observed the on-line parliamentary hearings of the Joint Standing Committee investigating why the Corruption and Crime Commission was failing to use its powers to investigate WA Police corruption.

Senator Jordon Steele-John (Greens) offered CLA the use of his Perth office for a public meeting at the end of October, but we declined because the location was not ideal.

Designed, produced and mailed to members a snail-mail invitation to a CLA public meeting on 29 October, with assistance from Ms Marruffo. Emails will be sent to members also, just before the meeting.

WA Premier Mark McGowan wrote to CLA stating that action was being taken 'across departments' to prevent future incarceration of children between the ages 10-14 in WA prisons.

Margaret Coten dies

CLA's oldest member, Meg Coten of WA, died late last month. She would have turned 97 on 11 October. Here is the advisory from her grandson, law student Sam Coten, also a CLA member (introduced to CLA by his grandmother):

My grandmother has just passed away. She woke up a bit slowly on Thursday and needed to be put on oxygen, and realised it was time. We signed the palliative care forms and they began to administer morphine. I spoke with her Thursday evening on the phone (being in her nursing home still, we couldn't visit). She was as sharp as ever. "Good thing we campaigned so hard for dying with dignity," she joked.

After 96 years of activism, revolution and adventure, it was time to pass the baton and rest. I'm glad she got to leave on her terms, and I don't blame her – I bet she just wants to get up there and sit with Ruth Bader Ginsberg for an eternity, chatting about the greatest issues of the world. Sipping tea, and perhaps a small liqueur before bed. – Sam Coten.



INTERNATIONAL

UK's Covid-19 law: lessons for Australia?

There are many lessons for Australia in assessments of Covid-19 handling in the UK.

The Joint Committee on Human Rights of the UK Parliament has recently reported on its findings so far. Here are some highlights:

"Inevitably, attempts to save lives through government actions including the restriction of movements, gatherings, and school closures have engaged numerous other rights. Many have experienced the widest and deepest set of government interferences with their rights in their lifetimes.

"It is vital that the Government can justify the steps it has taken including the necessity and proportionality of interferences with rights through the measures taken. Assessments of the proportionality of measures must be up-to-date, based on the latest scientific evidence, and formulated as a result of a precautionary approach to minimising overall loss to life.

"Importantly, the Government must be transparent in justifying its decision-making, including in explaining how it has balanced competing interests and the evidence on which the balancing has been made.

"The lockdown regulations have had a huge impact on the rights of millions of people across the country. There has been confusion over the status and interpretation of guidance, and the relationship between guidance and the law.

"There have been additional questions about the type of policing that is most appropriate in a health crisis, and the disproportionate impact of policing decisions on young men from black, Asian and minority ethnic backgrounds.

"Lessons must be learnt urgently from this period of lockdown in order to avoid the worst elements of confusion and disproportionality before any second wave and any further lockdowns either at a local or national level.

"Parliament is the right place for the Government to announce its decisions, and this is particularly so where emergency powers are being used.

"Whilst the use of emergency procedures such as fast-tracked legislation and made affirmative statutory instruments may be justified in the exceptional circumstances in which the nation found itself in March, the use of emergency procedures must be limited to what is absolutely necessary. This is especially the case when human rights are at stake.

– Seventh Report: The Government's response to COVID-19: human rights implications by the Joint Committee on Human Rights of the UK Parliament: <https://tinyurl.com/y35w4p9q>

Scrap the Covid Act, Liberty says

Scrap the new Coronavirus Act, that's what civil liberties group, Liberty UK, is calling for.

"The act was rushed through Parliament in just one day, creating radical new policing, border control and data collection powers, and watering down fundamental human rights protections – hitting the most marginalised people hardest," Liberty's Martha Spurrier said last month.

She said new research shows:

- 76% of respondents want their human rights protected during a national crisis.
- 73% are concerned about homeless people being fined. Many rough sleepers received fines for being outside.
- 66% believe everyone should have access to state support during a pandemic – which contrasts with the government's response that cut off support for some people, even at the height of the outbreak.
- 64% are concerned about government data collection.
- 58% were concerned about the "heavy-handed" policing of lockdown.
- 38% trust the government and private companies with their medical data.

ODD SPOT: Barbados to trump the Queen

Barbados will achieve full sovereignty before it celebrates its 55th independence anniversary in November 2021. The country freed itself from colonial rule in 1966, but kept the Queen as constitutional monarch. "The time has come to fully leave our colonial past behind. Barbadians want a Barbadian head of state. This is the ultimate statement of confidence in who we are and what we are capable of achieving," Governor General Dame Sandra Mason read out in a speech prepared by the Prime Minister Mia Mottley. <https://tinyurl.com/yxq7lhr6>

...but are they entitled to travel allowances?

A Sri Lankan politician sentenced to death for murder was escorted from prison to parliament last month to take his seat and vote.

Premalal Jayasekara, 45, from the ruling Podujana Peramuna party, was convicted in August of murdering an opposition activist after opening fire at a 2015 election rally.

He was sentenced to death, but Sri Lanka doesn't carry out death sentences.

His conviction occurred after nominations for the 5 August 2020 election, so he could contest the election and take up his seat.

When the new parliament held its first session on 20 August, prison authorities refused to let him out.

He petitioned the Sri Lanka Court of Appeal, which ruled he should be escorted from prison to exercise his rights as an MP. He is escorted back to prison after each day's session.

Sivanesathurai Chandrakanthan, the former Eastern Province chief minister elected to parliament in the same election, is awaiting trial for an alleged murder.

He also is driven in for legislative sessions. <https://tinyurl.com/y4428dwh>

Myanmar soldiers: ‘Ordered to murder, rape’

Two Myanmar soldiers have detailed a campaign of blanket killings, rape and mass burials of Rohingya Muslims in Rakhine state in video testimony that could be used as evidence of crimes against humanity in the International Criminal Court.

The confessions, seen by the *New York Times* and the human rights organisation Fortify Rights, reportedly show Pte Myo Win Tun and Pte Zaw Naing speaking about what they say were orders for them to “kill all you see”, as well as destroying dozens of villages.

Myo Win Tun said: “We indiscriminately shot at everybody. We shot the Muslim men in the foreheads and kicked the bodies into the hole.” He said he had raped a woman, and buried eight women, seven children and 15 men in one mass grave.

Zaw Naing Tun described how he had been ordered by his commanding officer to “exterminate” Rohingya people. He said he had kept watch while more senior soldiers raped Rohingya women. <https://tinyurl.com/y6qms7no>

ODD SPOT: Can the 2021 President make America healthier again?

As the November 2020 Presidential election looms, one key issue American voters might care to concentrate on is life expectancy, which is in decline. The USA is less healthy than its peer high-income nations, with lower life expectancy and higher morbidity and mortality rates from a broad range of diseases. For example, life expectancy in the USA was 78.6 years in 2017, substantially lower than in OECD countries like Switzerland (83.6 years) or the OECD average (80.7). Australia’s figure is 82.6, NZ is 81.9 and Japan is 84.2. Access to healthcare is an important driver of national health, experts say. <https://tinyurl.com/y3bnw2yw> and <https://tinyurl.com/y3j27t39>

Man freed: wrongly jailed for 37 years

After 37 years behind bars, a Florida man was released from prison a free man last month of a 1983 rape and murder which DNA evidence ultimately proved he did not commit.

Robert DuBoise, then 18, was convicted on testimony from an unreliable jailhouse informant and faulty bite-mark analysis, a US Innocence Project proved.

Florida’s Hillsborough County judge Christopher Nash wiped the convictions and life sentence, and removed DuBoise from the state sex offender registry. “This court has failed you for 37 years,” Nash said during the remote hearing. “Today, it has finally succeeded.”

DuBoise, 55, was convicted in the 1983 murder of 19-year-old Barbara Grams, who was raped and beaten while walking home from her job at a Tampa mall. He was sentenced to death, then re-sentenced to life, but has always proclaimed his innocence. <https://tinyurl.com/yyjttf5e>

Note: Australia has its own case of a man wrongly jailed for 37 years, who is still in prison in Adelaide: see <https://www.cla.asn.au/News/shocking-scandal-nobody-wants-to-touch-mp/#>

International briefs

House/Senate slashed by one-third: Italians have voted to slash their parliament by a third. The 'Yes' vote, supported by the Government Coalition which includes the Democratic Party and the Five-Star Movement, confirmed a constitutional amendment already voted by the Parliament to cut Lower House representatives from 630 to 400 and those in the Senate from 315 to 200. About 63% of those who voted supported the move: some 54% of voters turned out to vote in the optional referendum, even in the face of Covid-19 concerns. <https://tinyurl.com/y4jcmr3h>

US exonerations run at nearly three a week: The US National Registry of Exonerations recorded 143 exonerations achieved in 2019. From 1989 until year-end 2019 there were 2556 exonerations. The 2019 year set a record for the average number of years wrongfully convicted people served for crimes they did not commit before being exonerated and released: on average 13.3 years. <https://tinyurl.com/y2oe6plk>

The UN at 75

Currently the UN is:

- Leading the global response to COVID-19
- Providing food and assistance to 86.7 million people in 83 countries
- Supplying vaccines to 50% of the world’s children, helping to save 3 million lives a year
- Assisting and protecting 82.5 million people fleeing war, famine and persecution
- Working with 196 countries to keep the global temperature rise below 2°C
- Keeping peace with 95,000 peacekeepers in 13 operations around the world
- Tackling the global water crisis affecting over 2.2 billion people
- Protecting and promoting human rights globally and through 80 treaties/declarations
- Coordinating \$41 billion appeal for the humanitarian needs of 108.8 million people
- Using diplomacy to prevent conflict and assist some 50 countries a year with their elections
- Helping over 2 million women a month overcome pregnancy and childbirth complications

– from *Quaker Peace and Legislation committee Watching Brief August 2020:*

DATES: PLEASE CHECK AGAINST CANCELLATIONS

13 Nov, Darwin: AGM of the Criminal Lawyers Assn of the NT (CLANT), 5.30pm, Murray Chambers, 3 Whitfield St, Darwin.

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/yx2dtjv> <https://tinyurl.com/sdue78q>

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 Sept 2020.

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