

## What's the state of justice in Australia?

Bill Rowlings, CEO of Civil Liberties Australia, has written an eye-opening, extended critique of the state of justice in Australia. At 11,500 words, it covers:

Courts, judges and juries;	Buildings;
Judges, qualifications, trials;	Juries;
Laws;	Police;
Criminals;	Prisons.

...and suggestions on what to do to improve things. For a PDF version to be sent to you, please email the secretary: [secretary\(at\)cla.asn.au](mailto:secretary(at)cla.asn.au)

## Federation fails Australia again: children suffer

In a classic case of Australia's federation failing, an outbreak of interstate squabbling and 'law and order' electioneering is preventing a national approach to a common age of criminal responsibility for children.

After years of study and analysis at ministerial council level, and a further two years of research by the WA Department of Justice in 2019 and 2020, Attorneys-General were counselled that the best way forward was to raise the AoCR (Age of Criminal Responsibility) to 14 in every state and territory.

The report told them that children at 10 had no proper understanding of the nuances of right from wrong, and that 14 was the appropriate age to impose "adult" legality on kids. All states and territories should make 14 the minimum AoCR, it recommended.

But Queensland reneged, facing a state election where the Labor government feared being accused as soft on crime. Recently, the ACT – fed up with procrastination by prevaricating states – announced it would go it alone, and introduce 14 as the minimum age in draft law before the end of 2021.

Once again, the opportunity for sensible national equality in law-making has been lost. A hotchpotch of minimum ages will probably be the result of a lack of national consensus.

And children will suffer, locked up in juvenile jails when they should be getting a proper education and learning to understand the errors of their past ways: that does not happen in jails.



## SA AG highlights the need for national action

South Australia's Attorney-General, Vickie Chapman (photo), criticised the Queensland government for making an election commitment to not change its AoCR (see above) laws ahead of its October 2020 poll, skewering any possibility of a consensus.

"My preference has always been that we pursue a nationally consistent approach to the minimum age of criminal responsibility, but after the Queensland government made a pre-election commitment not to change its current legislation, this opportunity was lost," she said. <https://tinyurl.com/yzlg6lyp>

## Wastrel ministers spend billions on yesterday's ideology

It costs Australian taxpayers more than \$10,000 every day for each one of the 115 people held on Nauru. That's a today daily cost of \$1,150,000...just for Nauru. If the same people were kept in Australian jails, the cost would be about 1/40th, or about \$250 day.

How does any federal minister justify such wastrel spending on a two-decade-old, anachronistic ideology?

The Australian government has paid the one company running Australia's offshore processing regime on Nauru more than \$1.4 billion over the past five years: they added an extra \$221m just a few months ago, the *Guardian's* Ben Doherty reported last month.

The company, Canstruct, won the business in a "limited" tender process. Usually, "limited" means the government picks say three firms, and only seeks bids from them, avoiding an open tender.

Doherty reports that the original contract awarded to Canstruct was worth just \$8m in October 2017 but was amended almost immediately, increased by 4500% to \$385m just a month after being signed.

Since then, Australian government figures show, six further amendments had escalated the cost to taxpayers to \$1.419 billion, a total increase of more than 17,600%.

No new asylum seekers have arrived on Nauru since 2014: only 115 remain on the island. <https://tinyurl.com/wk57zvnz>

## War powers: Labor promises inquiry if elected

Labor has promised, if elected to government, to hold a public inquiry into how Australia goes to war.

The ALP's national conference last month resolved to hold the inquiry and report its finding during the next Parliament.

CLA has been campaigning for more democratic war decision-making for nearly 20 years. "If you ask most Australians, they think parliament decides whether we go to war. They are shocked when we tell them a self-selected group from the government executive makes the decision," CLA President Dr Kristine Klugman said.

"This is a good step forward to a more democratic and transparent system," said Paul Barratt AO, the former Secretary of Defence and President of Australians for War Powers Reform. "The whole Parliament should decide if we join an overseas war, not just the Prime Minister and a few cabinet colleagues."

The ALP Conference resolution says:

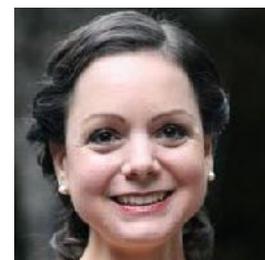
*National Conference resolves that an Albanese Labor Government will refer the issue of how Australia makes decisions to send service personnel into international armed conflict to an inquiry to be conducted by the Joint Standing Committee on Foreign Affairs, Defence, and Trade. This inquiry would take submissions, hold public hearings, and produce its findings during the term of the 47th Parliament.* <https://tinyurl.com/2555f5zd>

## Fate of Aboriginal people: bias, wanton neglect, violence: professor

"This year, four First Nations lives were taken in custody in almost one fortnight.

"There are more than 20 pending coronial inquests for First Nations deaths in custody across WA, Queensland, NSW, Victoria and SA.

"Bias runs deep in the penal system. It infiltrates the hyper-policing of First Nations people, the disproportionate rates of arrests, bail refusals and imprisonment and the conditions in custody, which can be characterised as wanton neglect and violence." – UTS law professor Thalia Anthony (photo) <https://tinyurl.com/587hazmj> (Since her comment, another Aboriginal person has died in jail).



## ODD SPOT: High Court to use its expertise on inappropriate relationships

The High Court is hearing an appeal over a judge and barrister who failed to declare their relationship when appearing in the same trial. They allegedly continued private contact while the case was being heard. The party who lost the Family Court case says in a legal submission that the relationship was inappropriate, and strikes at the foundation of the justice system. <https://tinyurl.com/yseamfaw>

## Problems with Defence wider than veteran suicides, CLA says

A new Royal Commission to examine suicides by veterans – about 25 a year, estimates say – has been added to federal police probing some 39 alleged murders of civilians by 25 or more special forces soldiers. Prime Minister Scott Morrison announced the new Suicide RC last month after heavy lobbying from MPs, and parents and spouses of veterans, including by CLA's Kay Danes.

Last year, the PM appointed a National Commissioner for Defence and Veteran Suicide Prevention to inquire into, and support the prevention of, deaths by suicide of serving and former ADF members. <https://tinyurl.com/59ctzftu> He announced the multi-talented, well-qualified Reservist Brigadier Dr Bernadette Boss would fill the role. <https://tinyurl.com/5xambabu> (a former member of CLA).

Also last year, the Australian National Audit Office revealed massive cost over-runs, as well as projects delayed by handfuls of years, on the equipment side of the ADF. For the 25 major projects, costs are up more than 30% on "second-pass" estimates, with schedule slippage at 21%, which is 507 months or about 4 1/2 years. <https://tinyurl.com/t2d8ds32>

Separately – but joined at the hip in terms of former ADF people's suicide – the Department of Veterans Affairs has been dysfunctional, distracted and incompetent for at least two decades, according to many veterans who have suffered under an apparently little care and a compassion-challenged regime.

Any groups – like the ADF and DVA – whose behaviour may be responsible for deaths of their employees, which can't operate within cooe of budget discipline, and which actively frustrate their clientele should be the ones subjected to RC inquiry.

The tragic suicide deaths are just indicators of wider failures in the military and government's operating structure, CLA says. The focus of the RC's investigation into veteran suicide is far too narrow.

## Defence complaint policies make trauma worse, says Danes

Defence's workplace complaints policies have not kept pace with community expectations and are causing "moral trauma" and increasing risk of suicide and self-harm, a symposium on veteran suicide has heard.



CLA member Dr Kay Danes (photo), a researcher, policy analyst and wife of a long-serving soldier, says poor and mismanaged complaints processes have added to the non-combat trauma Defence members experience in their careers before leaving the service, and should be reformed.

"There is evidence that a growing number of complainants have faced some form of retribution, despite the protections and immunities afforded by the Defence Act," Dr Danes told a forum last month hosted by the Interim Nation Commissioner for Defence and Veteran Suicide Prevention, Dr Bernadette Boss.

"(This is) typically, because a complaint is likely to be about someone within that member's direct chain of command. Repeatedly ADF members have claimed to be subjected to administration processes that set the conditions to justify an unexpected or premature termination."

Dr Danes cited cases of impromptu psychological assessments against complainants that diminished their credibility and was seen as a way of justifying a medical or involuntary discharge or management-initiated early retirement notification.

A David-and-Goliath battle could see Defence using significant taxpayer-funded legal resources to minimise liability to the organisation, while the employee has far fewer resources, status and power to defend their complaint, Dr Danes said, "even though it may be evidence-based and compelling."

Dr Danes said this moral trauma, where a person feels their most closely held moral beliefs and values were betrayed, was separate to post-traumatic stress disorder, depression or anxiety.

<https://www.canberratimes.com.au/story/7224164/complaint-policies-have-added-to-non-combat-trauma-researcher/> Note: Behind a paywall

## ODD SPOT: Jail is the new mental health 'asylum'

Newcastle and Hunter Region general practitioner Adrian Plaskitt succinctly summed up mental health in prisons in an article last month:

"The jails are de facto mental health hospitals – almost everyone in jail has some form of diagnosable disorder and they don't get treated." <https://tinyurl.com/eac8bzwn>

## WAR CRIMES alleged: this month marks 5-year anniversary

In May 2016, the Inspector General of the Australian Defence Force began an investigation into allegations of war crimes against Australian forces in Afghanistan between 2005 and 2016.

NSW Court of Appeal Justice Paul Brereton (photo), who is also a Major General in the Army Reserves, was appointed by the IGADF to head the inquiry.

There were 55 separate allegations. More than 330 people have given evidence. Justice Brereton travelled to Afghanistan along with investigators to interview witnesses and gather evidence. He reported over six months ago.



## Judges' reputations suffer as public interest goes unweighed

Noted journalist-commentator, and qualified lawyer, Jack Waterford has weighed in on the inequity displayed over prosecution of whistleblowers by comparison with the decade or more it will take for special forces soldiers to be tried...if they ever are.

"In Canberra courts in recent times, the Commonwealth DPP (CDPP) has shown enormous zeal for the prosecutions of Bernard Collaery, and some former intelligence officers who have disclosed information showing disgraceful conduct by Australian ministers and intelligence officials, as well as war crimes in Afghanistan.

"The prosecutions were approved by the former Attorney-General, Christian Porter. Thanks in part to the intervention of counsel for the AG seeking, mostly, to have almost all evidence suppressed and the court entirely closed on national security grounds, it is difficult to guess at the ardour being manifested by the prosecution as opposed to the intervenor – although they are supposed to be quite separate.

“Certainly, there is very little material about to suggest how either the DPP, or the AG, have weighed the public interest in open justice or, indeed, the public interest in holding ministers and officials accountable to the law.

*‘...the tenor of some of the submissions being made by counsel for the Attorney-General has been that a right to a fair trial does not necessarily trump the demands of national security and that in some cases an accused person would simply not be able to refer to material, in open or closed court, that he thought was exculpatory. That ought to shock the conscience of the ordinary Australian but is a measure of the complete overreach of the modern national security state...’*

“For many Australians the accused men are heroes, not villains.

“That proceedings are in closed courts, with judges seemingly acquiescent to suppression of the evidence and arguments, suggests that efforts to explain the unfair treatment will not only be unconvincing but will affect the general reputation of the judiciary,” Waterford writes. <https://tinyurl.com/47cdmhb3>

## **Defence inquiry set up to fail: claims**

Waterford (see item above) agrees with CLA’s assessment that the entire Defence inquiry into alleged murders in Afghanistan by special forces soldiers was set up, from the beginning, to fail.

“The longer the investigation is drawn out – and it will be long – the less likely that anyone guilty of a war crime will ever face the music,” Waterford writes.

The investigative team is to be led by former secretary of the Attorney-General’s Department Chris Moraitis (photo). Despite the material gathered by the four-year, internal Defence investigation conducted by Justice Brereton, the new investigation started again from scratch, finding and re-interviewing witnesses, and preparing indictments capable of satisfying very picky, and not very accountable, officers of the CDPP that conviction is likely and prosecution in the public interest.



“If a prosecution does not eventuate, it is unlikely that the DPP will explain why,” Waterford wrote.

“Delay–diffuse–dismiss is the usual preferred tactic of Australian authorities,” CLA CEO Bill Rowlings observes. “We are in the unique position of watching this tactic in action, in ultra slow-motion.” <https://tinyurl.com/47cdmhb3> (behind a paywall). SEE LATER ANALYSIS.

## **Justice takes school holidays, perhaps to learn about public interest?**

Former Defence lawyer and officer, David McBride, who is alleged to have revealed the Afghan special forces’ alleged murders as a conscience issue, has had his next court appearance moved from 3 May to 20 September at the request of government prosecutors.

An earlier proposed date for the hearing of 4 July was opposed by a Commonwealth barrister on the grounds that it was school holidays! Since when did justice take school holidays? CLA asks.

On Monday 17 May lawyer Bernard Collaery will be in the ACT Supreme Court for an appeal hearing against the secrecy provisions in his case, which involves matters surrounding the bugging by the Attorney-General’s Department and the Department of Foreign Affairs and Trade of the Timor Leste cabinet room during oil and gas negotiations.

Collaery’s substantive hearing is scheduled for Tuesday 18 May. Witness K is also due back in court.

Meanwhile the Independent National Security Legislation Monitor, Grant Donaldson, is conducting a review into the secret ‘Witness J’ prosecution and secret jailing of him. There will be a public hearing in Canberra on 9 June. Details: <https://www.inslm.gov.au/current-review-work>

– report from the Alliance Against Political Prosecutions, of which CLA is a member organisation

## **Commonwealth DPP may itself need to be investigated**

The office of the Commonwealth Director of Public Prosecutions has had two formal briefs of evidence since April 2020 which detail how an Australian Victoria Cross winner, Ben Roberts-Smith, is allegedly implicated in executing Afghan prisoners of war as far back as 2009, 12 years ago.

The CDPP has chosen not to lay charges. It is not known why.

In particular, the police evidence covers an Afghani who was kicked off a small cliff in 2012 and allegedly shot by an SAS soldier soon after.

Evidence apparently was also contained in the contents of USB flash drives, allegedly secretly buried – against military orders – in his own backyard by the VC winner and secretly recovered by “federal agents”. The AFP is apparently also investigating further allegations against Roberts-Smith of intimidating potential witnesses.

Details of alleged illegal activities in recent years, after being awarded the VC, were contained in explosive newspaper and video revelations last month. In extraordinary articles and TV coverage, *The Age*, the *SMH* and *60 Minutes* have claimed Roberts-Smith:

- defied orders and hid data, including photos, videos and classified documents relating to possible murders in Afghanistan, by burying material in his own backyard;
- intimidated witnesses to stop them giving evidence in an inquiry, by organising threats by mail and email; and
- attempted to prevent one alleged witness giving evidence by claiming to the AFP, a federal MP and a newspaper that the man was at grave risk of gunning people down in public in Perth.

The result, it is claimed, was a full-on raid on the home and family of the potential SAS witness against Roberts-Smith. <https://tinyurl.com/fw42xftp>

Forget the alleged murder(s) charges in Afghanistan for a moment.

If what the news media outlets allege about recent behaviour have the substance they claim, the CDPP should have charged Roberts-Smith with those non-murder-related charges months ago. Why haven't they?

Roberts-Smith has repeatedly denied committing war crimes or any other wrongdoing and is suing *The Age* and *Herald* for defamation. He claims he cooperated fully with the Brereton Inquiry and AFP inquiries.

## **Why no charges? Why is David McBride the only soldier before a court?**

From CLA's perspective, the situation again raises two vital questions:

1. why has the CDPP not acted to charge one or more SAS and allied people more than a decade after alleged war crimes? and
2. why is the CDPP still pursuing David McBride, the principled Australian Defence Force lawyer whose personal integrity made the alleged special forces crimes public?

What is it about “public interest” that the CDPP people do not understand? If their understanding of public interest is so poor, how can they be qualified to hold CDPP positions? CLA says that they cannot, and they should be sacked.

Unless they have been forced into their seemingly emasculated position by political instructions emanating from the Attorney-General's area?

There is no integrity in government, and the legal system is an ass, if the person who exposed what may be murders is the only one charged with a crime...and the ones who allegedly did the murdering remain uncharged for any offence some 12 years later.

## **High Stakes in the military murder allegations business**

Media proprietor Kerry Stokes' personal and/or companies' financial backing appears to be heavily supporting Ben Roberts-Smith in his legal cases.

Stokes – as chair of the Australian War Memorial – invested heavily in the reputation of Roberts-Smith immediately after his VC award.

The soldier became the ‘face’ of the AWM, starting a promotional program which culminated in the AWM receiving an extra \$500m for a building expansion much criticised by historians as turning what was created as a solemn sepulchre into a theme park.

Stokes has also personally employed Roberts-Smith on big money in a very senior position in his media business. The senior management role in Stokes' Queensland TV operations is one for which many media people thought Roberts-Smith – on the basis of education and work and life experience – was not very well qualified.

The four-year Australian Defence Force inquiry, by the NSW Supreme Court judge Paul Brereton, who is also a senior military officer, has formally decided Roberts-Smith and some 25 other people in ADF special forces command have cases to answer over allegations of 39 deaths in Afghanistan.

The unhappy optics of the Stokes/AWM axis appearing to be acting contrary to the spirit and values professed by the ADF, which is supporting prosecutions as a result of the Brereton report, has many people calling for the resignation of Stokes from the AWM chairing role.

Stokes' chairman's support and money might be better spent helping to create a new exhibition at the AWM with full coverage – including photos and video – of the alleged crimes by special forces soldiers, (In late-breaking news, Roberts-Smith has stood down from his TV management job for about six months).

## Scary Stokes puts the frighteners on, VC winner alleges

Recent media revelations report alleged frank comments by Roberts-Smith which cast fresh light on the extraordinary relationship between him and Stokes .

Roberts-Smith was allegedly recorded saying that the billionaire is happy to run sections of his media empire at a loss in return for political power. Roberts-Smith allegedly says the media is such “a powerful tool” that its owners say, “I’ll take that [financial] loss if it means I have political influence ... Politicians are scared of guys that own media networks.”

Roberts-Smith also allegedly describes how the influence of Mr Stokes has forced those who supported scrutiny of him, as an accused war criminal, to back down.

## Tests could prevent savage drug deaths

A Victorian coroner investigating the deaths of five young men who consumed a potent psychoactive substance has called on the state government to introduce illicit drug testing and a warning program.

The coroner, Paresa Spanos (photo), said the men – aged 17 to 32 – died over six months from mid-2016.

Four died from mixed drug toxicity following seizures and respiratory distress. In the fifth case, the man leapt from a 10th-floor balcony and died from injuries combined with mixed drug toxicity.

The men had taken drugs they thought were MDMA or magic mushrooms before they died but the substance was actually a combination of two highly potent novel psychoactive substances: 25C-NBOMe and 4-Fluoroamphetamine.

In Victoria, the Greens and the Reason party have repeatedly pushed for drug testing, and a parliamentary committee in 2018 recommended a testing trial and a warning system. <https://tinyurl.com/sdnyjdx>



## Pastoralist to be sentenced for years of remote sex offending

A noted WA Indigenous pastoralist will be sentenced on 5 May after admitting to horrific child sex offences believed to have taken place at the Kimberley station his family has run for two decades.

“Lamboos Station former manager Robin Yeeda, 45, looks set to join his older brother Laurie in jail after pleading guilty to four charges, including three counts of indecent dealing with a child younger than 13, and one count of indecent dealing with a child aged between 13 and 16,” the *Kalgoorlie Miner* last month.

“Laurie, 53, was jailed for 9½ years after pleading guilty to 16 charges of ‘extraordinarily serious’ sex offences against four victims aged between 10 and 15 between 1994 and 2017. The pair’s other brother Darryl — a station worker at Lamboos — was found not guilty of similar offences in August after pleading not guilty to two indecent dealing charges.

“Both Laurie and Robin’s offences are believed to have occurred at the 360,000ha station run by the family 50km west of Halls Creek,” she reported.

The Yeeda family has run Lamboos Station for about 25 years. <https://tinyurl.com/3wfunew6>

## ODD SPOT: DPP goes to the dogs

WA’s Office of the Director of Public Prosecutions has gone to the dogs...literally, for succour. The office is spending \$162,000 on a dog for its Perth office full-time in a new staff welfare program. The three-year Guide Dogs WA contract – worth more than \$1000 a week – started last month when a professionally trained dog arrived to provide emotional support and comfort to employees. DPP Amanda Forrester (photo) said the costs covered vet bills, food and ongoing training and support from Guide Dogs WA. “[The dog] is available for use in regular therapy sessions with staff ... as well as being available to the wide group of staff on a daily basis,” she said. <https://tinyurl.com/5d9k5d34>



## Govt looking to beef up sentencing? Cost escalation hits prisons

The Queensland government has directed the state’s Sentencing Advisory Council to undertake a review and produce recommendations about the sentencing of serious offenders in Queensland.



The Serious Violent Offence (SVO) scheme operates under the *Penalties and Sentences Act 1992*. It applies to a range of serious offences. If someone is declared convicted of an SVO, they are not eligible for parole until they have served either 80% of their sentence or 15 years in jail.

Attorney-General and Minister for Justice, Shannon Fentiman (photo), said it was a government priority to assess how the SVO scheme was impacting court sentencing.

The parole board last month warned it had about 2100 undecided new parole applications. About three-quarters of new applications were already outside the required decision-making timeframes of between 120 and 150 days under the Corrective Services Act.

In fact, many inmates are waiting up to 250 days for a decision – about eight months – due to an increasing prison population, according to the Prisoners Legal Service. Prisoners are allowed to apply for parole six months before their eligibility date.

Sisters Inside has reported comforting women who have missed Christmas, their children's birthdays and first days of school. Parole delays have resulted in prisoners losing their homes and the removal of children by the Child Safety Department.

Keeping people in prison also costs taxpayers \$285.67 per prisoner daily, compared with the \$14.61 it costs Queensland Corrective Services to administer a non-custodial order. Prisoners Legal Service has estimated the total cost of the delays at \$3.9 million each month.

Greens MP Michael Berkman described the backlog as a "major human rights crisis", accusing the government of "kicking the can down the road". "This won't end until the government ditches its 'tough on crime' mentality and looks at real solutions like building more public housing, raising the [age of criminal responsibility](https://tinyurl.com/y5mejuzy), and shifting to drug harm reduction rather than criminalisation," he said. <https://tinyurl.com/y5mejuzy>

## **Ban police from remote communities?**

How to keep law and order in remote NT communities is causing a philosophical and financial stoush involving the NT and federal governments, police and Aboriginal communities.

The police 'union' says police stations in remote communities will have to "close overnight" if the federal government doesn't continue special funding. But the feds want the NT government to kick in money for improving the police stations and accommodation for officers.

Meanwhile NT independent MP Yingiya Mark Guyula (photo) wrote an op-ed last month calling for police to exit remote communities. He said Indigenous, remote, community "peacekeepers" should address ongoing youth crime issues. <https://tinyurl.com/3jarxd5y>



## **SA is a hotbed of legal, police, firey and polly sexual harassment, AG admits**

Sexual and discriminatory harassment is widespread among SA lawyers, a government report has found.

Equal Opportunity Commissioner Steph Halliday surveyed 600 people currently or previously working in the legal profession, and also conducted interviews, finding 42% had experienced sexual harassment at work, a third of them more than once. Nearly 70% of people reported sexually suggestive comments or jokes, nearly 50% intrusive questions and about 20% inappropriate touching.

SA Attorney-General Vickie Chapman said the review was "an unpleasant read, but a crucially important document". She said she was "not at all surprised" to read the findings, and said they were similar to findings from other recent inquiries into the police force, fire service and members of parliament.

The review made 16 recommendations, including all legal workplaces to consider implementing workplace equality and respect standards, increasing time limits for reporting misconduct and anti-harassment training be provided. It urged the AG to beef up the Equal Opportunity Act. <https://tinyurl.com/ntxye6rk>

**In late-breaking news, SA's Chief Justice Chris Kourakis** has said he will personally oversee sexual harassment complaints from members of the legal profession after it was revealed one of the claims in the above report is against a sitting judicial officer, who has not been named. <https://tinyurl.com/hedynapv>

## **Innocent people end up on police 'bad dude' database...forever**

Redfern Legal Centre has discovered that between 2018 and 2020, more than 5500 people had their details recorded in the state's central intelligence database used by police following a strip search in cases where nothing illegal was found.

Some 61% of strip searches recorded in the Computerised Operational Policing System, COPS, during the period did not discover anything illegal. The Cops system holds more than 40m records accessible by the state's police, and acts as the force's central intelligence database.

Under new protocols, such state data holdings can be shared with all other Australian police, security and government agencies under the same system designed to hold copies of all drivers' licences.

Sam Lee, a solicitor at the RLC currently considering a class action lawsuit against police over the use of strip searches, said thousands of people were being "left with a permanent police record for no reason".

"Once a person's identity has been logged in the police system, it is there for life," he said. <https://tinyurl.com/6b5ma5dd>

Revelations last year showed Indigenous Australians represented 12% of NSW police strip searches over a two year period despite their being 3.4% of population. Police powers to strip search throughout Australian should be severely reined in, Civil Liberties Australia says.

## **Criminals get \$122,000 support a year from the state: victims get nothing**

In the decade since 2010, the number of prisoners in Tasmania has risen 40%, according to barrister and prison reform patron Greg Barns.

"Almost 6 in 10 young people released from prison return there less than a year later," he says in an op-ed article in *The Mercury*, Hobart, in late April 2021.

"Taxpayers are getting poor value for money with the cost of housing each prisoner (in Tasmania) the highest in Australia outside of the ACT, at \$122,143.60 a year."

He says the slogan 'Jailing is Failing', adopted by the Justice Reform Initiative Australia-wide, is spot on. – *Mercury* 26 April 2021.

Photo shows Barns and an article from 2019 in the same paper.



## **Prison's 'shocking' lack of rehab and support**

**CONDITIONS SLAMMED** Prisoner advocate Greg Barns has warned conditions at Risdon Prison are at their worst-ever due to an anti-rehabilitation philosophy under the current state government.

## **Ex-Labor CM swipes at current Labor-led administration**

In an extraordinary outburst, the Chief Minister of the ACT most responsible for building and promoting a "human rights friendly" prison, Jon Stanhope, has lambasted the jail.

He criticised the ACT's Barr Labor-Greens government and particularly the "failure" of the Alexander Maconochie Centre, the ACT's \$130m jail which opened in 2008 under Stanhope's Labor leadership.

The Canberra prison population has continued to rise, from 268 detainees in 2012 to 429 in 2019. It climbed to as high as 507 detainees in 2018. "These numbers are staggering," Stanhope said. "The rate of imprisonment of Aboriginal people in the ACT has grown by 279% in the last 10 years against the national average of 48%."

The current ACT Attorney-General, Shane Rattenbury of the Greens, said he spent his past eight years as corrections minister trying to fix the jail.

"The fact is, the ACT Government has faced significant challenges stemming from the AMC's original design," Rattenbury said.

"For example, the AMC was built without enough accommodation space, it did not support prison industries, it did not have facilities for recreation or worship, and it did not have a defined human rights framework. It was opened without a needle and syringe program or a dedicated Aboriginal health service.

"As corrections minister, I spent my entire tenure trying to turn this around. We now have an expanded range of employment opportunities, including the AMC Bakery providing hospitality training for detainees to help them gain skills and experience.

"We have expanded accommodation to meet growing demand and planned a Reintegration Centre to help ease detainees transition back to life on the outside. Winnunga Nimmityjah (Aboriginal health service) operates inside the AMC, the only jail in Australia that has such a model," Rattenbury said. <https://tinyurl.com/ypv8twek>

Stanhope, 70, was Chief Minister of the ACT from 2001 to 2011.

After stepping down, he took over as Administrator of Christmas Island in the Indian Ocean from 2012 to 2014. The story of his involvement as President of the ACT Council for Civil Liberties is told in <https://www.cla.asn.au/News/history-of-civil-liberties-in-australia/> Download *Chapter 11 ACT*: see pages 16 and 17.

## Australian briefs

### More want to know

There was an 8.4% increase in people wanting more information from the Queensland government under Right To Information and Information Privacy rules in 2019-2020, AG Shannon Fentiman reported. The total number of applications received rose to 16,118, up from 14,863 in the previous year. – Annual report, <https://www.justice.qld.gov.au>

### 'Swindlers' prosecute the good guys

In Senate Estimates recently, the government revealed that the prosecution of Witness K and Bernard Collaery – over Australia planting bugs inside the Timor Leste Cabinet room during oil and gas negotiations 20 years ago – had cost taxpayers about \$4 million by mid-March 2021, which has risen since because of new hearings. Sister Susan Connelly of the Sisters of St Joseph, convenor of the Timor Sea Justice Forum, told protesters outside the Canberra courts complex that in 1942 the Timorese died “in the tens of thousands” after helping Australian soldiers in World War Two. “We didn’t know in 2004 what the den of thieves was doing in Canberra. For months, if not years, they had planned to swindle the Timorese people,” she said. “I feel totally betrayed by this government.” <https://tinyurl.com/86mewwdj>

**Vacancy for a home-grown ACT head judge:** The ACT's two most senior judges are retiring. Chief judge Helen Murrell leaves in March 2022, after more than 25 years as a judge mostly in NSW since appointment to the District Court in that state in 1995. She has been ACT CJ since 2013, but was never considered an “ACT appointment”. Judge John Burns, will step down in August 2021, by which time he will have spent more than 30 years as a magistrate or judge in the ACT. <https://tinyurl.com/ataahe4f>

## Members' letters (and others, if relevant)

### Follow the science

Kathleen Folbigg’s appeal rejection should be of concern to all Australians. She maintains her children died from natural causes. The prosecution relied on a false “law”: one sudden infant death is a tragedy, two is suspicious and three is murder, until proven otherwise. The jury and judges who sat on the case believe that Folbigg is guilty. The eminent scientists who studied the case believe genetic reasons led to the children’s deaths. Who do you believe? I believe the scientists. – Bill Mathew, Parkville, Vic

### Double standard

If a young woman leaves a casual job to escape sexual harassment she does not get sick leave to recover, and remains without income. When she applies for JobSeeker she must prove the job was unsuitable or that she really needed to leave. If the Centrelink officer chooses not to believe her she may have to wait eight weeks for a payment that will barely cover rent, let alone food, transport, medical bills and utilities, or repay any loans she has used to cover expenses. All through no fault of her own. A parliamentarian, even if accused of misconduct, on the other hand will apparently retain his or her job, get fully paid sick leave and have counselling, all at our expense. Is this what our politicians mean by "a fair go?" – Pauline Westwood, Dickson ACT

### Zealotry and petty bickering to be avoided

Parnell Palme McGuinness rightly warns against zealotry that may put off the political middle ground when it comes to the advancement of women ('[Beware working with the zealots](#)', 4 April *SMH*). On the other hand we need to maintain the rage if women are to be treated with the respect and dignity they deserve. The revelations of the past month are an opportunity for progress that must not be squandered by petty bickering. – Andrew Macintosh, Cromer NSW

### Killing machines reminiscent of children-as-food

I refer to Daniel McCulloch's article "Australia launches \$1 billion missile plan" ([canberratimes.com.au](http://canberratimes.com.au), 31 March). The proposal to rely on the manufacture of guided missiles as a means of fostering Australian economic development is reminiscent of Jonathan Swift's [satirical] "modest proposal" for the alleviation of famine in Ireland by raising children as a food source for the tables of the rich. The enthusiastic embrace of an economy driven by killing machines is no less reprehensible than one based on child sex tourism.– Peter Grabosky, Forrest

### No place for politics

Political stoushes should not have any part in determining the fate of much-needed and vital projects ('Social housing row exposes tensions', *The Age*, 10 April). When so many people are being evicted from their rental properties by landlords without a conscience, social housing should be a No.1 priority for every

council. Those out on the street do not have the luxury of waiting to find decent accommodation: they need immediate help now. – Helen Scheller, Benalla Vic

### **Protecting the privacy of ghostly housing non-occupants**

Governments routinely hide behind privacy legislation to avoid answering reasonable questions. However we have reached a point that is absolutely surreal: '(400 empty {ACT} public housing properties'. Canberra Times 5 April 2021). Apparently, questions about vacant government houses are not being answered for "privacy reasons". – Gordon Fyfe, Kambah ACT.

## **CLA's main activities for March 2021**

### **National human rights act:**

The publishing of the federal ALP's futures platform on an Australian human rights act (see report above) followed a year's discussions, with all major political parties, which were initiated by CLA.

Coalition parties remain unlikely, for the moment, to support such an act, but CLA is in ongoing discussions with the federal Greens in relation to their possible pivotal position after the next federal election.

The Australian Human Rights Commission has approached CLA to discuss AHRC plans to develop a national human rights act. CLA believes the work CLA is doing with the ACT government, about the ability to get a matter before mediation or a tribunal, should form a core principle of the AHRC's approach.

### **ACT human rights:**

CLA has opened discussion with the ACT government about the possibility of structural reform to rights and remedies under the ACT Human Rights Act as a commemorative upgrade in 2024. That will be the 20th anniversary of the ACT's HRA, which was the first in Australia when it became operative on 1 July 2004. We see the ACT government work as a model for CLA in Victoria and Queensland, who already have acts, and in other states such as Tasmania and WA in drafting their future laws.

CLA is responding to a request for a formal proposal of improvements by ACT government Ministers (AG Shane Rattenbury and Emma Davidson of the Greens, and Tara Cheyne of Labor, who is Australia's first minister in any government with 'Human Rights' as one of her formal responsibilities). We are providing a paper which will examine how the current law could be better worded and contain improvements in how well it works for individuals.

**University mentoring:** Final meeting with ANU students of the Law Reform and Social Justice group. We decided not to proceed with projects in future as there was no close and ongoing engagement with CLA.

**WA:** Extended report by Director Margaret Howkins:

- **ELECTION:** April was spent investigating which WA MPs had retained their electoral seats after the March state election, which Labor MPs had been given ministerial portfolios, and what the massive election win means for CLA.

Labor won in a landslide, with 53 of the 59 seats in the Legislative Assembly, up 13 on the 40 seats it held before the election. The Liberals collapsed from 13 seats to just 2. The Opposition is being led by the National Party's Mia Davies, with 4 seats, down 2 from the 6 it held before the election."

In the WA Legislative Council, Labor holds 22 (up 8) of the seats; the Liberals have 7 (down 2), the Nationals 3 (down 1), Greens 1 (down 3) and there are 2 Legalise Cannabis WA reps and 1 rep of the Daylight Saving Party.

*Relevant new appointments:* Paul Papalia (photo, 26 years in military, Navy clearance diver, ex-SAS) has become police minister; Bill Johnston (ex-Shoppies Union and ALP apparatchik) is in charge of corrective services; and John Quigley (ex-criminal barrister) remains Attorney-General...and also is responsible for 'Electoral Affairs', probably signalling a new push to change the state's voting rules.

Quigley's current government bio says: "Future reforms which John will be pursuing include amending the Criminal Law (Mentally Impaired Accused) Act 1996, reducing the unacceptable long standing over representation of Aboriginal people in WA's criminal justice system (sic). John is also pursuing reforms to the Royal Prerogative of Mercy and the introduction of a new statutory right of appeal in WA that is independent of the Attorney General."

- **PROGRESS THWARTED:** All the legislation and Inquiries that CLA was supporting through the WA Parliament in 2020 have been stopped in their tracks, because there is a new parliament:



- ▶ Right to Appeal ('Criminal Appeal Amendment Bill'): lapsed in Upper House
  - ▶ Criminal asset confiscation legislation re-write: response to former CJ Wayne Martin review recommendations from two years ago
  - ▶ Indigenous incarceration reduction targets & Raising the Age of Criminal Responsibility
  - ▶ Independent Oversight of the Police Complaints process: 'If Not the CCC... then Where?'
  - ▶ Rewriting the Corruption, Crime & Misconduct Act 2003: the basis of police operations & culture & the CCC operations
  - ▶ Amendments to Criminal Law (Unlawful Consorting) Bill 2020
  - ▶ Implementation of the Office of the Inspector of Custodial Services recommendations (there are dozens)
  - ▶ Review into censorship of mail in WA prisons, particularly of interference with prisoners' 'legal' mail at Acacia (WA's biggest prison, run by private contractor Serco).
- **SUMMARY:** the March WA state election wiped out all but one of the Greens (meaning an awful loss of focus on integrity in parliament, and a dearth of opportunities to put alternative viewpoints to those of the mainstream parties), most of the Liberal Party (no surprise there) and delivered one shock: Nick Goiran MLC (44 year old Liberal) *held* his seat...and is now the *shadow Attorney-General*.
- Goiran is a devotee of the 'Victory of Life Church' and believes '*The Church has run the world and always will... The Bible has the answers*'. His Inaugural speech (2009) states that conservative values are the guiding principles of life-long governance, including birthing and dying. In four more years, if there is a resurgence of the Liberals, he may be running the state of WA as Liberal leader.

#### OTHER GOVERNMENT/ETC ACTIVITIES:

Shunted through WA Labor's Estimates Committees in late October and early December were:

- a. New contract for private sector firm Serco to continue to run Perth's 1525-person Acacia Prison starting 16 May 2021. Two five-year extension options under this new contact could extend the private, behind-closed-door rule out to 2036. (This is despite Labor's 2019 election commitment stating that: '*prisoners should be under supervision and control of officers and employees of the Govt. of WA. WA Labor opposes the outsourcing and privatisation of corrective services*')
- b. Increased size of the police budget by \$750 million and commitment to an unprecedented 1100 additional officers. Labor gave the police a 'redress scheme' of payments of up to \$150,000 for past officers and a police compensation scheme (end of service payment, in addition to police keeping all current in-service and post-service entitlements). The Police Act has been amended to include these new arrangements. None of this has ever been offered by any former WA government.

#### OTHER CLA ACTIVITIES:

I wrote a letter of thanks to ex-Hon Alison Xamon MLC (Greens) congratulating her on behalf of CLA for the massive amount of support she has given me and us over the past eight years, and inviting her to become a member of CLA.

Three new applicants with relatives in Acacia prison joined CLA and I received letters and phone calls from prisoners throughout the month. One former prisoner fighting an appeal, Simon Akkerman (photo, with Margaret Howkins) has become an activist for prison reform and has written accounts of his experiences.

CLA member Christina Marruffo has carried out significant research for CLA during the month.

#### Tasmania:

For the 1 May Tasmanian election, the CLA-founded and funded state Human Rights Act Campaign, led by CLA Director Richard Griggs, surveyed most political parties and independents about their attitude towards introducing an HR act for the state – at least those who could be reached.

Labor and the Greens promised support: the Liberals failed to answer.

Independent candidates George Lane in Lyons and three in Clark – Jax Ewin, Kristie Johnston, and Sue Hickey – all indicated their support for an act.



The Tasmanian Law Reform Institute is due to report imminently on a research project titled “*Re-examination of the case for a Tasmanian Human Rights Act*”.

TLRI is reviewing developments in Australian human rights law and practice that bear on the Institute’s recommendations from their 2007 finding that there should be such an act in Tasmania. Among its new research, it is examining:

- the experience in other Australian jurisdictions with human rights statutes;
- whether developments since 2007 make a state Human Rights Act more or less necessary;
- what draft legislation would best give effect to the 2007 model; and
- the attitude of legal experts, government representatives and key stakeholders.

**Submissions** made recently by CLA:

March 2021

Federal: Adult literacy – to the Standing Committee on Employment, Education and Training (Dr Des Griffin), 3 March

Tasmania: Bail Bill 2021 – to the Department of Justice (Venkataraman), 19 March

NT: Youth penal policy – joint letter to the NT Government (Venkataraman), 26 March

for May 2021

ACT: Child Sex Offenders Act – to Justice and Community Safety Directorate (Klugman), lodged 30 March

**Alliance Against Political Prosecutions**, of which CLA is a member: Zoom meetings held to discuss 17 May rally in Canberra with possible speakers Mary Kostakidis, Bishop George Browning and human rights lawyer Kieran Pender. Rallies likely elsewhere in Australia on same day. Letter sent to Foreign Minister and AG urging them to drop prosecutions of whistleblowers and like patriots.

Meeting with Dr Sarah Moulds (CLA member, from SA visiting ACT to deliver a Senate lecture on the Australian parliamentary committee system, on which she is the Australian expert). Discussed current activities of her **SA Rights Resources Network** and how CLA could continue to support her.

## INTERNATIONAL

### Saudis execute three for high treason

Saudi Arabia has executed three soldiers for “high treason” and “cooperating with the enemy” after they were sentenced to death by a specialist court.

The state’s Saudi Press Agency identified the men as soldiers working in the Defence ministry, but did not say how the men aided the kingdom’s enemies, or who the enemies are.

The three were Mohammed bin Ahmed, Shaher bin Issa and Hamoud bin Ibrahim. The ministry said the soldiers were executed in the military’s southern command, near the border with Yemen, where Saudi Arabia is leading a six-year campaign against Iran-aligned Houthi rebels. <https://tinyurl.com/bb43vrhf>

### Police unions on the back foot

“Police unions in the United States are pretty much playing defence at the moment,” said Brian Marvel, a San Diego officer and the president of California’s largest law enforcement labor organisation. “You have groups of people that are looking for change — and some groups are looking for radical change.”

Over 30 states have passed more than 140 new police oversight and reform laws, according to a *New York Times* analysis of data from the National Conference of State Legislatures. <https://tinyurl.com/yvixj2a2>

### ODD SPOT: Nobody in government has seen hide nor hair of integrity...

“...public life isn’t what it was. Nobody at the top seems to see it as anything much more than a game to which any number of moral failings have been ‘priced in’. Nobody resigns any more, nobody says sorry any more, and nobody really needs to take anyone’s calls any more. You can see why people have learned not to expect better. It saves time.” – Marina Hyde writing in the Guardian UK <https://tinyurl.com/fcxvceax>

### French police given broad powers to target people: Aux armes, citoyens!

The French Parliament has passed contentious security legislation extending police powers under fierce criticism from civil rights activists who will challenge the new law before France’s Constitutional Council.

The law broadens the powers of municipal police forces, expands police ability to use drones to monitor citizens in public and toughens sentences for people found guilty of assaulting officers.

It also criminalises helping to identify officers publicly “with intent to harm them”.

President Emmanuel Macron’s government has argued that the bill provides a necessary boost to embattled police forces and protects them from increasingly violent protesters and malicious attempts to identify them or their families, off and online.

But the French journalist unions, civil liberties groups and France’s own human rights ombudsman say the legislation is too broad. “In the hands of an authoritarian government, such a law would become a dangerous weapon of surveillance and repression of the population,” Cécile Coudriou, the head of Amnesty International France, said. <https://tinyurl.com/xavf3wuu>

## **We’re free...to follow police directions**

We are free when the state determines we are free, says ‘spiked’ columnist Tim Black.

“Civil liberties are being transformed into state permits. Freedom from the state is being transformed into the permission of the state. After all, what are ‘vaccine passports’ if not permission slips?

“This is how we lose our freedom. Not because it’s taken from us by tyrants. But because too many are willing to give it away.” <https://tinyurl.com/49peews6>

## **Ageism in the sights of world human rights and health bodies**

Combating ageism is one of the four action areas of the Decade of Healthy Ageing (2021–2030), according to four authors writing in *The Lancet* on 10 April 2021.

Their comments followed the launch of the Global Report on Ageism by the UN High Commissioner for Human Rights, WHO and other UN bodies a month earlier.

The authors write that: “Changing how we think, feel, and act towards age and ageing is a prerequisite for successful action on healthy ageing and for progress on the three other action areas of the Decade of Healthy Ageing:

- developing communities that foster older people's abilities,
- delivering person-centred integrated care and primary health services responsive to older people's needs, and
- providing long-term care for older people who need it.

“Globally, ageism affects billions of people: at least one in two people hold ageist attitudes against older adults, with rates much higher in lower-income countries.

“Ageism impacts all aspects of older people's health. For instance, it shortens their lifespan, worsens their physical and mental health, hinders recovery from disability, and accelerates cognitive decline. Ageism also exacerbates social isolation and loneliness and reduces access to employment, education, and health care, all of which impact health.”

The Global Report on Ageism makes three recommendations for concrete actions:

First, invest in effective strategies to prevent and respond to ageism.

Second, fund and improve data and research to better understand ageism and how to address it.

Third, build a movement to change the narrative around age and ageing. <https://tinyurl.com/5fb34kn3>

## **International briefs**



### **Drug reclassified to increase penalties**

The British government is to reclassify the drug GHB from class C to class B following its use in “truly sickening” rape cases, Home Secretary Priti Patel (photo) said recently. Unlawful possession of GHB and related drugs will mean much tougher penalties. There had been a “concerning increase” in the harm the drugs cause, she said. For example, Reynhard Sinaga was jailed for 30 years in 2020 for drugging and raping or sexually assaulting more than 40 men in his flat in Manchester. <https://tinyurl.com/sdpwhyt7>

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