

## **CLA succeeds in bid to change how the homeless are treated, legally**

A federal parliamentary committee has adopted entirely a section of a Civil Liberties Australia submission to help the homeless.

The federal and state/ territory governments should review public order offences, particularly those punishing homelessness people like rough sleepers, and drastically cut jail time and fines against them.

The governments should improve sentencing and bail conditions for such offences and integrate legal, social, health and other agencies to create pathways out of the justice system into the “help” infrastructure.

The committee agreed with those recommendations of CLA, as part of proposing a new, 10-year national strategy on homelessness, included in a report by the House of Reps Standing Committee on Social Policy and Legal Affairs released last month.

The achievement of securing these aims in the final report belongs to CLA Vice-President Rajan Venkataraman (photo), the prime author of the CLA submission to the inquiry.



The committee made 35 recommendation, including to:

- focus more on prevention and early intervention,
- more widely adopting a ‘Housing First’ immediate priority for the homeless, and
- more investing in social and affordable housing.

They propose more crisis, emergency and transitional accommodation, improving data collection and reporting, and ensuring that services go mostly to those most in need.

Committee Andrew Wallace said a coordinated national approach was needed to bring down the numbers experiencing or at risk of homelessness.

## **Sue Neill-Fraser case: dramatic new reports see state govt put head in the sand**

There have been dramatic new developments in the Sue Neill-Fraser case in Tasmania...but the state’s Attorney-General, the Court of Criminal Appeal and the Office of the Director of Public Prosecutions don’t want to know about them.

### **NOTE to CLA members: decision to un-incorporate**

The Board of Civil Liberties Australia (CLA) has decided to un-incorporate...and to continue the mainstream workload of CLA as vigorously as ever under a different operating structure.

Basically, this means ending CLA’s formal business registration and the administrative requirements that go with it: running a financial and membership database, board meetings, annual mandatory reporting to a registrar-general, and the like. Current individual Board Members will have responsibility for running specific project areas, and also control of the funding to achieve the project aims.

The Board believes this will free up people resources, and effectively make more time for the handful of people driving the organisation to do more hands-on, core work. The Board expects an injection of fresh energy into operations as a result, and hopes for more member involvement to result as well.

Fuller details are in the [Member’s section later](#). There will be a Special General Meeting (SGM) by electronic, phone (due to Covid-19) and paper voting 24 Sept – 8 Oct (provided Webmaster’s health improves), with the Board asking members to formally approve de-incorporation and allocating any “leftover” funds to like-minded organisations, such as other civil liberties groups, entities campaigning for Human Rights Acts in the states, the NT and ACT, and like bodies, as per the Constitution.

Because of the changed status, members will be able to ask for a refund of their membership fees and donations paid in 2021 if they wish, though the Board of CLA hopes they will not. Also, we will contact recent donors during that time to see if they would prefer some or all of their donation returned.

See Member’s Section, below, for further details.

*NOTE: We have turned off the ‘Renew’ option on the CLA website. If Members would like to donate to help the ongoing and future CLA work, in lieu of renewal fees, please contact the Secretary (email address above left). Same applies for anyone to join in and help CLA work for the first time.*

In fact, they don't want a bar of a detailed series of reports on the SNF case, by CLA member Barbara Etter APM and barrister Hugh Selby, that destroys any notion of the competence of the police and state legal structures during the original investigation, trial, appeal, High Court appeal, and 2021 appeal – which is still in train – involving the 65-year-old mother of two, wrongly convicted for murdering her husband on Australia Day night in 2009.

She is in the 12th year of a 23-year sentence for murdering her husband of 18 years, Bob Chappell, on the 16m cruising yacht they jointly owned, *Four Winds*, which was moored in Sandy Bay, just a few hundred metres from the home of the Royal Yacht Club of Tasmania.

He disappeared when alone on the yacht overnight; his body was never found. She was convicted on the most circumstantial evidence of killing him with a wrench or screwdriver (no weapon was ever found) and dumping his body – after manipulating it all by herself from the saloon into yacht's dinghy – in the middle of the Derwent River. No blood of Chappell was found in the dinghy.

Last month, the Establishment in Hobart was drip-fed a series of six reports and a detailed email.

Known collectively as the Etter/Selby series, the analytical papers dissect in the finest of evidentiary detail how Tasmanian Police (TasPol) stuffed up the investigation through incompetence, possibly withholding information deliberately (though that is not proven, yet), failure to disclose evidence to the defence which would have helped SNF, and deliberately misleading the jury in what they reported and how they reported it, and how evidence was presented in court.

One arm of TasPol is the Forensic Science Service Tasmania. It comes in for a lathering from the Etter-Selby series, including presenting to the court photographs that appear to have entirely misled the jury and the judge, and to have confounded the prosecutor. He was the then-state Director of Public Prosecutions, Tim Ellis, who has admitted in recent years he did not fully understand the forensic evidence.

The photo shown to the jury and judge shows staining under Luminol, an initial screening test for blood, which seems to indicate masses of blood present in the dinghy. There was none.

*Photo: Dinghy under blue light, during Luminol screening test for blood, which was shown to the judge and jury. But the test shows up other things as well, like bleach – there was no blood of the “victim” found in the dinghy (nor any blood of SNF or of anyone).*



Ellis himself misled the jury: he told them SNF's DNA was found in plastic gloves used to clean up what he claimed was a crime scene. The DNA belonged to Chappell's son, Tim. DPP Ellis eventually admitted his mistake and apologised, but only long after SNF was convicted and serving time in Risdon prison.

Neither the Court of Criminal Appeal of Tasmania or the High Court of Australia thought such a major misleading of the jury by the prosecutor was “significant” enough to order a retrial.

Frequently, years of a wrongfully-convicted person's life are served behind bars because of judicial interpretation of the legally-undefined “significantly”. Something may not be “significant” to a judge, but was it “significant” to one or more jury members? It might indeed be very “significant” to a person spending 12 years, so far, wrongly jailed because of ill-defined judicial language.

## **Etter/Selby series available to members**

CLA holds the full series of documents in the series (see above, and list at the end of the newsletter).

If you are closely interested in the Sue Neill-Fraser case, or you want to examine how a barrister-lecturer like Selby and a Masters lawyer and former Assistant Commissioner of Police (in WA) like Barbara Etter\* APM go about trying to right a huge wrong, please email the secretary of CLA for copies of the documents to be sent to you.

The documents were all sent to the media in Tasmania...*Hobart Mercury, ABC, etc.* At the time of writing, all have squibbed for weeks even mentioning the fact that the documents exist.

Tasmania is a strange, other world in relation to justice and media.

The Etter/Selby documents call for the Attorney-General Elise Archer to move to ensure the current appeal case is not finalised before the revelations in their series are examined by the court. To do otherwise would be to further entrench the appalling treatment by the state of its citizen, Sue Neill-Fraser, they say.

But AG Archer is claiming she cannot intervene due to the “separation of powers”. Selby says there is precedent in a recent Queensland case involving a death in police custody on Palm Island that puts paid to her claim.

\* Etter also has a Chemistry/Pharmacy/Science degree and is a Fellow of the Australasian College of Biomedical Scientists, so she knows her forensics as well.

## **Crikey! Here’s what the ravenous data fiends are really doing?**

Online news outlet *Crikey* has a new fortnightly offering *WebCam*, which featured an inaugural edition on 3 August 2021. Promoting it, *Crikey* said:

“Since coming into power in 2013, the Coalition’s *raison d’être* has been shutting borders, pushing tax cuts and the never-ending pursuit of “industrial relations reforms”. But quietly, a major through line of the Abbott-Turnbull-Morrison governments has been their ravenous hunger for more and more data about their citizens, while also expanding their power over what Australians and tech companies can do online.

“The introduction of [mandatory metadata retention](#), the [anti-encryption TOLA Act](#), the beefing up of the eSafety Commissioner through the [Online Safety Bill](#) and increased budgets, the [international productions](#) legislation, and the [ASIO Amendment Bill](#) — granting powers to use more tracking devices without a warrant — are just some of the reforms passed by Coalition governments in less than a decade.

“Then there are the reforms still on the cards, including the controversial [Identify and Disrupt Bill](#), the [digital identity legislation](#) and the [long-awaited review of the Privacy Act](#).

“If you broaden this out to all major technology reforms like the National Broadband Network rollout, the News Media Bargaining Code, and the Criminal Code Amendment (Abhorrent Violent Material) Act, all show the Coalition’s willingness to wield its power in deciding how Australians access the internet — and how tech companies act on it.

“This government has an undeniable pattern of expanding Australia’s surveillance state and giving increasingly broad powers over how Australians and tech companies can exist on the internet. And it shows no sign of stopping any time soon,” *Crikey* said.

## **PJCIS: ‘un-allegedly’ monitoring the police and spooks who run the nation covertly**

The Parliamentary Joint Committee on Intelligence and Security (PJCIS) endorsed three new warrant powers for police and spooks to pry into people’s lives, on suspicion.

On the *Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020*, PJCIS made 34 recommendations, including to boost secret intelligence-gathering methods by giving police and spooks:

- a data disruption warrant so the AFP and ACIC can secretly access data on any computers and disrupt their workings “for the purpose of frustrating the commission of criminal activity”;
- a network activity warrant so the AFP and ACIC can secretly “collect intelligence on criminal networks operating online”; and
- an account takeover warrant so AFP and ACIC can take over a person's online account to gather “evidence of criminal activity”.

Note that the formal notice from PJCIS did not have the word “alleged” in front of “criminal” anywhere. PJCS obviously believes that the police and security services never make a mistake, or identify the wrong person, or get the name wrong, or go to the wrong house, etc (all of which they are notorious for doing, with a number of examples in recent years).

The Senate passed the bill in late-August, with Labor supporting it, despite their MP, Andrew Giles saying that “tax offences, trademark infringements and a range of other offences” could now be targeted by police and security services, not just the offences of “child abuse and exploitation, and terrorism”. As usual, the government had used emotive, excessive claims to justify the bill, CLA notes.

## **Scrutiny committee keeps pressure up on government**

The Senate’s Scrutiny of Bill committee has roundly criticised a proposed extension to anti-terror law.

In relation to the *Counter-Terrorism Legislation Amendment (Sunsetting Review and Other Measures) Bill 2021*, the committee suggests it seriously infringes freedoms:

- [Trespass on personal rights and liberties](#): the committee leaves to the Senate the appropriateness of extending, by a further 1-3 years, the operation of broad coercive powers which raise significant concerns.

As well, the committee criticises the charities body for chilling the right to political communication:



Australian Charities & Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021:

- *Implied freedom of political communication*: the committee is seeking advice as to how the instrument as a whole, including provisions which restrict charities from promoting or supporting the unlawful actions of other entities, does not impermissibly restrict the implied freedom of political communication.

The Scrutiny of Delegated Legislation Committee has continued to list all delegated legislation made in response to COVID-19 on its [website](#). As of 5 August 2021, 541 legislative instruments have been made, of which 16.8% are exempt from disallowance and scrutiny by the committee.

In keeping with its severe criticism of delegated legislation, the committee says:

- *International Human Rights and Corruption (Magnitsky Sanctions) Bill 2021*: the committee leaves to the Senate the appropriateness of allowing sanctions and penalties, including custodial penalties, to be imposed by delegated legislation.

See the committees' Scrutiny Digests and Delegated Legislation Monitors. – [Scrutiny Digest 12 of 2021](#)

### **ODD SPOT: Here's laws your MP had no chance to vote for...or against**

The Scrutiny of Delegated Legislation Committee (SDLC) of the Australian Parliament lists all delegated legislation made in response to COVID-19 on its [website](#). As of 29 July 2021, 533 legislative instruments have been made, of which 16.9% are exempt from disallowance. That means that federal MPs basically don't get to approve them: they are made by public servants in agencies, including those in the AFP, ASIO and ASIS. – from SDLC's *Scrutiny News*, 6 August 2021

### **The ADF again demonstrates its lack of moral courage**

No senior ADF officers will be reprimanded, counselled, demoted or dismissed for a decade, or more, despite presiding over and enabling a culture that saw an alleged 39 murders by Australian soldiers in Afghanistan, according to an internal ADF inquiry.

There were 41 Australian defence people killed in Afghanistan, a number of strange near-equivalence.

The decade delay seems to be an ADF censure-avoidance decision to downplay current criticism.

It comes after senior officers presided for about 12 (2005-2016) years over cases where 25 current or former soldiers (allegedly) unlawfully killed 39 individuals and cruelly treated two others, as found likely by an official war crimes inquiry, the Brereton report – <https://tinyurl.com/2x7kwhjp> – which found “credible evidence” of murders and inhumane treatment by special forces soldiers in Afghanistan.

We must write “allegedly”, because no soldier has yet faced a criminal trial. But nobody believes Brereton (photo), a NSW Supreme Court judge and a major-general in the Army Reserve, was anything other than legally hyper-meticulous and super-thorough in presenting his findings. He took four years.

It seems no senior officer will face any action until prosecutions of the alleged perpetrators end.

With a defamation case (or two, or three) to precede criminal action, followed by criminal trials and appeals and further appeals to the High Court, it will be at least a decade before any senior officer is held to account.

“It is highly possible – even likely – that someone from the ADF might serve as a state governor or as governor-general of Australia, before their command incompetence in Afghanistan comes to light,” CLA CEO Bill Rowlings said.

“The only safe method of avoiding such an embarrassing problem is to ban retired ADF officers from any senior appointments to departments, agencies or official positions for the next 10-15 years.”

He said ADF troops and officers had demonstrated physical courage, but there was a clear lack of moral courage shown by senior ADF officers over the past 40-50 years. It was this lack of moral courage that allowed sexual abuse of child sailors, bullying and rape of women recruits and, ultimately, murder on official duty (allegedly, as we must say over the murders: the rest is proven in previous public inquiries).

“No senior officer has ever been held to account for their failings to the nation,” Rowlings said. “How many governors, or governors-general, should never have been appointed, if we had known what they had done...or remained silent about?”

The current proposal to defer any action against senior officers featured last month in a 26-page Afghanistan Inquiry Reform Plan that the ADF dribbled on to its [website](#) without a public announcement or press conference. <https://afghanistaninquiry.defence.gov.au/resources>



The plan confirms the chief of the ADF, General Angus Campbell, will consider whether there were failures in command accountability and, if so, what action is appropriate.

But the plan suggests delaying action to avoid affecting the ongoing work of the Office of the Special Investigator (OSI) or the Commonwealth Director of Public Prosecutions (CDPP) – the bodies that will prepare and consider briefs evidence for potential prosecution. <https://tinyurl.com/yca6v92m>

## **Scomo's 'national cabinet' more like Dr Caligari's than a real one**

The parliament's committee scrutinising the Morrison government's handling of the pandemic can now access "secret" documents after a ruling that "national cabinet" records are legally available under the freedom of information regime.

Senate cross-bencher Rex Patrick brought a case in the Administrative Appeals Tribunal. He claimed Prime Minister Scott 'Scomo' Morrison could not extend cabinet confidentiality to "national cabinet" meetings with state premiers and chief ministers.

Justice Richard White agreed, finding the national cabinet was not, as the PM claimed, a sub-committee of the federal Cabinet.

White ruled that none of the documents sought by Patrick under FOI were an "official record of a committee of Cabinet" and were, therefore, not covered by the Cabinet exemption. <https://tinyurl.com/2x8bt6c5>

Both the "national cabinet" and its PM John Howard-inspired predecessor, the Coalition of Australian Governments' are political inventions of no legitimate Constitutional substance, CLA says. Each was created by a sitting PM to try to force the states and territories into a "corporate" line.



## **Should Australia have one (or more) CCRCs?**

The NZ CCRC system started about a year ago, and the one in England/Wales/Northern Ireland is about 22 years old. There's one in Scotland, and one in Norway.

But Australia doesn't have a Criminal Cases Review Commission (CCRC), federally or anywhere else.

On 31 March 2021, it was announced that two senior, former judges have been appointed to lead public consultations on creating an independent CCRC in Canada.

A Criminal Cases Review Commission is an independent body, set up by law, that can review complaints by prisoners (and others, in exceptional cases) that they have been wrongfully convicted.

The longest operating Commission, the UK's CCRC, has achieved remarkable results by investigating alleged miscarriages of justice. From April 1997 to February 2021, the UK Commission has received a total of 27,235 applications (including about half that number being ineligible cases) and has completed 26,530 cases. Courts have heard 689 cases; 466 appeals were allowed and 210 were dismissed.

So, nearly 470 people who would still be in jail are now free. <https://tinyurl.com/5f4pt9rh>

CLA has been part of campaigning for one (or one for each jurisdiction) in Australia for years, to no avail.

## **Helping oldies**

NT has launched a seniors policy for 2021-26, and included people aged 50 now. Main points are:

- helping oldies stay in the work force;
- organising wide housing choices throughout all regions;
- helping people stay healthy and active with connections to family, friends and community;
- improving access to the NT Concession Scheme and NT Seniors Recognition Scheme;
- providing easy-to-understand financial information, including in language or with interpreters; and
- boosting, promoting and protecting preventative healthcare and wellbeing. [https://tfhc.nt.gov.au/data/assets/pdf\\_file/0006/1033359/nt-seniors-policy-2021-26.pdf](https://tfhc.nt.gov.au/data/assets/pdf_file/0006/1033359/nt-seniors-policy-2021-26.pdf)

## **Hacking-leaking police officer may now face sacking**

A court of appeal has reinstated a conviction and suspended sentence for computer hacking by a police officer who accessed police computer systems so he could leak the address of a domestic violence victim.

The decision means Queensland police can now sack the suspended senior constable, Neil Glen Punchard, after years of to-ing and fro-ing while he has been on full pay.

Punchard pleaded guilty in 2019 to nine counts of computer hacking in 2014. Brisbane magistrates court sentenced him to two months in prison, wholly suspended. The district court overturned the sentence in 2020, ordering instead that he do 140 hours of community service, and that no conviction be recorded.

Queensland police commissioner, Katarina Carroll, challenged the district court ruling in the court of appeal. Last month, that court set aside the district court judgement.

Punchard accessed two separate confidential computer systems to get the address of a woman and other details. He sent the details to her estranged husband, a childhood friend of his. <https://tinyurl.com/kav88spn>

## Genie escapes Pandora's Box: Qld likely to pass VAD law

Queensland's Health and Environment Committee of Parliament, after widespread consultations since May 2021 and in earlier inquiries, has recommended passing the Voluntary Assisted Dying Bill 2021.

The committee also wants the federal government to amend the Criminal Code Act 1994 so that "suicide" doesn't include legal VAD.

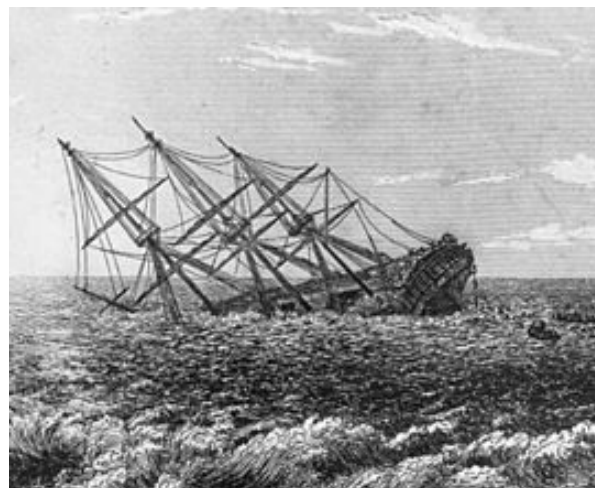
Chair Aaron Harper said the committee heard the views of more than 6000 people and organisations through submissions and five public hearings in regional and south-east Queensland. That was on top of more than 4700 submissions received and evidence heard from 502 invited witnesses at 34 public and private hearings in the inquiry into aged care, end-of-life and palliative care and voluntary assisted dying undertaken by the former committee.

In a dissenting report, the Member for Mirani, Stephen Andrew, said: "The experience of other jurisdictions which have legalised euthanasia and assisted suicide shows that it is likely that Queensland would experience an increase in the overall suicide rate of close to 60% over the next 10 years."

Another dissenting MP, the Member for Oodgeroo, Dr Mark Robinson, said: "Once the euthanasia genie is out of the bottle it doesn't go back in...Once you **lift the lid on Pandora's box**, there's no going back." (emphasis in the original).

Born in Traralgon, Victoria, Dr Robinson was originally a marine biologist, which may explain his Pandorean reference to the Great Barrier Reef shipwreck (illustration) of the Royal Navy vessel in August 1791 in which mutineers from the *Bounty*, who had been captured and locked in a box on deck, were left to face death by drowning, still manacled. It is not known whether Dr Robinson believes people facing terminal illness should be manacled by laws other than ones preventing them having free choice.

– <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2021/5721T994.pdf>



## Wootten dies

A giant of Australian liberties and rights, Hal Wootten (photo), died on 27 July 2021. When foundation Dean of UNSW Law, he set up the Aboriginal Legal Service to curtail police brutality in Redfern. In 1987, he was a Commissioner of the RC into Aboriginal Deaths in Custody.

He chaired the Australian Press Council, resigning in protest when the federal government allowed the American citizen, Rupert Murdoch, to gain control of 70% of Australia's media.

Wootten believed the Mabo decision on Aboriginal land rights was pusillanimous. "Rather than a giant leap forward, the High Court's Mabo decision was no more

than a first step towards righting a terrible wrong and does little to give Aborigines a right that is sacred to every other Australian," Wootten said.

He was at various times a judge of the NSW Supreme Court, chair of the state's Law Reform Commission, and a deputy president of the Native Title Tribunal. In 1990 he was made a Companion of the Order of Australia for services to human rights, conservation, legal education, and the law. – Bill Rowlings, with help from NSWCCCL. Pic: UNSW.



## **ODD SPOT: Police think one-way messaging is the answer to communicating**

A new Aboriginal app, called 'Yarning', is allowing WA Police to play an in-language message to Indigenous people they are about to arrest. Police officers can choose from eight Aboriginal languages: their mobile phones will play messages about police warnings and rights in custody. <https://tinyurl.com/4fh6wnr6>

## **Please sign a petition for better human rights laws in the ACT**

A petition, which CLA has helped to generate as a prelude to introducing better human rights laws nationally, is now up on the ACT Government website.

The ACTCOSS campaign to promote it is about to get under way.

To add your name to it, please go to: <https://epetitions.act.gov.au/CurrentEPetition.aspx?PetId=189&Index=-1>

500 signatures are needed to get proper and full consideration of the issue by a committee of the ACT Legislative Assembly.

## **Aborigines? No, they can't make their own decisions, says WA govt**

An Aboriginal human rights lawyer has rejected claims Aboriginal people don't have the capacity to support the statewide rollout of Aboriginal Family-Led Decision Making (AFLDM) in WA.

An amendment to the WA Children and Communities Act is passing through parliament without AFLDM enshrined in its provisions..

Human rights lawyer and Noongar woman Dr Hannah McGlade said leaving it out is failing to provide Aboriginal families with best practice care. AFLDM is used in Queensland and Victoria: extended families can work closely with authorities to decide the best placement for children where intervention is needed.

Though various models of the program exist, Aboriginal Community-Controlled Organisations (ACCOs) play a large role in all of them.

A two-year trial of AFLDM is due to begin in October 2021 in WA, but Dr McGlade said the system needs to be enshrined in law.

"In Western Australia, we have the highest rate of [child] removal in the country," she told Sarah Smit of the *National Indigenous Times*.

"The State Government did commit to two trial sites but will not agree to put the Aboriginal family decision making in the bill, which would mean it would become available to every Aboriginal child and family.

"This is really about the human rights of Aboriginal children and families and addressing the very shocking history of genocide that's ongoing today."

In an interview on *ABC Radio's* the Law Report this week, WA Child Protection Minister Simone McGurk said more capacity-building was required before enshrining AFLDM in law. <https://tinyurl.com/bc7hnwr6>

## **Barrister calls for judge to be removed from bench**

Serious misconduct allegations against NT Supreme Court judge Stephen Southwood (photo) should result in his "removal as a judge", according to a prominent Darwin barrister.

Alistair Wyvill has filed a formal complaint with the Attorney General, Selena Uibo, as reported by Christopher Walsh in the *NT Independent*.

Wyvill's complaint relies on a Legal Practitioners Disciplinary Tribunal decision handed down in December 2020, that called Justice Southwood's conduct into question. Southwood had earlier dismissed a 2015 lawsuit brought by former Labor leader Delia Lawrie against Stella Maris inquiry commissioner John Lawler\*\*\* (see item below).

Wyvill was referred to the Law Society NT in 2015 over alleged misconduct allegations relating to a previous complaint against judge Southwood, with the allegations dismissed by the tribunal five years later.

The tribunal, headed by independent, retired Tasmanian Supreme Court judge, Peter Evans, found that judge Southwood's decision to dismiss Lawrie's claims that she had been denied procedural fairness was "politically partisan", "suggestive of malice" and called "into question his Honour's fitness to be a judge".

Wyvill's complaint to AG Uibo, filed on 21 June, also raised other allegations against Southwood, including "repeated incidents of judicial bullying of lawyers over many years", an "extraordinary delay in deciding cases" and "other unacceptable conduct as a judge".



“I respectfully suggest that you are now obliged to take formal steps to investigate his fitness to sit as a judge and, if those concerns prove to be well-founded, to initiate the requisite steps for his removal under [existing legislation],” Wyvill said in his letter to the AG. (Note: Wyvill is a member of CLA). <https://tinyurl.com/2v6rddpu>

## Southwood’s slowness delays justice beyond targets, statistics show

Wyvill (see above) also pointed out that a list of 35 of Justice Southwood’s cases took between six months and five years to decide, with many being “of the most routine kind”.

The Victorian and Queensland Supreme Courts’ established goals are judgments within three months.

The Wyvill complaint seems certain to have to await the appointment of a Judicial Commission under newly-passed legislation. But that new law – criticised by Civil Liberties Australia in a detailed submission when an NT parliament committee was considering it – simply re-entrenches the old ‘establishment’ to make decisions on alleged, sometimes appalling behaviour by judges. <https://tinyurl.com/2v6rddpu>

CLA’s submission to the NT Parliament’s committee: <https://parliament.nt.gov.au/committees/previous/LSC/125-2020>

## \*\*\* Lawler actions resulted in massive costs to public purse, national reputation



John Lawler was appointed by the NT government in December 2013 to run the Stella Maris inquiry, which was into a rent-free deal between the NT government and Unions NT over the aged building of the same name, which needed much work.

Lawler was not a qualified lawyer (unusual for an inquiry commissioner appointment), and offered a CV of only a questionably successful career – as to cost effectiveness – as a federal police officer and CEO.

Lawler (photo\_ claimed credit in a newspaper puff piece in November 2013 on his retirement as head of the Australian Crime Commission for a couple of “successes”: locking up David Eastman as a murderer, and the Drugs in Sport revelations.

*“Helping lock up the killer of AFP assistant commissioner Colin Winchester was a highlight of Mr Lawler’s career as a federal agent. He spent four years building a case against public servant David Eastman. Eastman was charged and convicted of the 1989 murder. Firearms evidence uncovered by Mr Lawler and his AFP team played a big part in convincing the jury of Eastman’s guilt,”* Keith Moor wrote in the *Herald-Sun* on 3 October 2013. <https://tinyurl.com/3u3ajeuy>

After a full inquiry over two years, in 2014 judge Brian Ross Martin found, among other things: *“The issue of (Eastman’s) guilt was determined on the basis of deeply flawed forensic evidence...”* [https://en.wikipedia.org/wiki/David\\_Eastman](https://en.wikipedia.org/wiki/David_Eastman) The forensic evidence excoriated by Martin’s inquiry related to the firearms evidence.

On 22 November 2018, the jury in a retrial found Eastman not guilty of murder. Eastman, who had done 19 years in jail, was awarded \$7 million in compensation in October 2019. The cost to the ACT (before the compensation award) of the various Eastman trials, inquiries, retrial, etc, including lead-up proceedings, was estimated to exceed \$30m by some, \$35m by others.

*“The first trial was an absolute disgrace, it was a shambles, it was a miscarriage – the forensic evidence was almost certainly fabricated in some respects,”* said Terry O’Donnell, a former public defender who had represented Eastman in earlier proceedings – [https://en.wikipedia.org/wiki/David\\_Eastman](https://en.wikipedia.org/wiki/David_Eastman)

It was also Lawler (photo) who was involved in calling the media conference that revealed “The Blackest Day in Australian Sport”, when alleged drug use claimed by Lawler’s Australian Crime Commission cost Australia probably billions of dollars in reputational damage...with no solid proof and no “Mr Bigs” ever caught, charged or convicted.

*“I never saw any justification for that public announcement (‘the Blackest Day’). There’s no evidence that’s come out ... that suggests that was the right decision back then. We must be forgiven if we think it was political – I think we have good reason to think it probably was.”* – former world anti-doping boss John Fahey, a former Liberal Premier of NSW. <https://tinyurl.com/2r3cb379>

While Southwood is coming under public scrutiny, Lawler has never been asked to explain decisions – that he claims “credit” for – that cost the ACT and Australia so much in terms of reputation and millions in actual cash.



## People prefer health or education for drug users

More than 78% of NSW people are against criminal sanctions for possessing small amounts of drugs, according to new polling across five electorates including that of the Premier, Deputy Premier and Police Minister.

About two thirds (65%) of people prefer those caught to be cautioned or referred to treatment or a drug education program.

The polling results come as the government is expected to respond soon to the findings of its Special Commission of Inquiry into the Drug Ice and outline a new three strikes policy.

Even among Liberal/National voters, 73% were against custody for drug possession and 54% favoured no action, a caution or referral to education or treatment rather than a fine or community service order.

Uniting NSW & ACT, the body which commissioned the polling, said the government should be bolder in reforming the state's drug laws to be more modern, fair and compassionate. <https://tinyurl.com/ybe4k8f8>

## Queensland admits to massive parole problems

This is correspondence from the Qld Parole Board, sent on 20 April 2021, to a court case:

As at today the Board has around 2175 undecided new parole applications. Approximately three-quarters of new applications finalised this month will be decided outside the timeframes required by the Corrective Services Act. A prisoner lodging a parole application today is likely to have it decided in December 2021.

The court said that "...at the end of May 2021 there were 4399 'outstanding files' which included 2084 applications for parole. It was said that a prisoner who made an application on 21 June 2021 would not be likely to have it decided before February 2022.

CLA notes that is 10 months after making an application. But a prisoner is only allowed to apply for parole 6 months before his/her possible parole date.

Effectively, the Parole Board of Queensland is sentencing prisoners to an extra four months in jail.

– Correspondence taken from *R v Eru-Guthrie [2021] QDC 174*

## Australian briefs

### Prisoners drop

From 30 June 2019 to 30 June 2020, Australian prisoners decreased by 5% (1,968) to 41,060. This was the first national decrease since 2011. The imprisonment rate also decreased by 7% from 219 to 202 prisoners per 100,000 adult population. Various government restrictions implemented across states and territories as a result of COVID-19 since March 2020 may have had an impact on criminal activity and the justice system. Source: ABS <https://tinyurl.com/2z58fa39>

### Will Parliament lose control?

Eight people are now under control orders from the nation's anti-terrorism laws. But the restrictions will expire on 7 September unless the House of Representatives extends the sunset clause before then. – *Brisbane Times* <https://tinyurl.com/62yarp9>

### Religions don't like people being gay

LGBTQ people who work at religious schools have no protection from anti-discrimination legislation, and they fear the federal religious discrimination bill is about to make things worse. English teacher Steph Lentz's sacking, when she told her bosses she was gay, was perfectly legal under state and federal laws, which give religious organisations, including government-funded evangelical schools, exemption from anti-discrimination legislation. And, as the federal government prepares to introduce the third draft of its contentious Religious Discrimination Bill later this year, LGBTQ staff and students fear yet worse treatment. <https://tinyurl.com/trusf6k>

### Get someone to punch you: watch this through black eyes

SBS *On Demand* has some searing material available to watch about the most jailed people on earth:

- On Living Black, Karla Grant speaks with justice reformer Debbie Kilroy about how she is standing up for women behind bars, and pays unpaid fines for prisoners.
- The Point has a special feature interview with Dean Gibson, as well as extensive coverage of ongoing death in custody trials.
- On Living Black, Karla Grant speaks with youth justice advocate Keenan Mundine about how he turned his life around from an orphan to a life in crime to helping youth at risk of jail.

'*Incarceration Nation*' premiered on 29 August 2021.

## Rich-lister gives up fight against extradition to USA

Eugeni 'Zhenya' Tsvetnenko, 40, who spent years jailed in Perth has given up his fight against extradition to the USA, where he is accused of being part of a text message scam. NY authorities charged him and two others with telephone fraud and conspiracy to commit money laundering in mid-2016. Arrested by Australia in December 2018, he has been locked up at Hakea prison Three times he was refused ball, as authorities claimed he was a flight risk. In a surprise move in late August, he agreed to surrender to US authorities instead of going through a four-day appeal hearing in Perth Magistrates Court. CLA has been supporting his claim that Australian extradition law needs a thorough overhaul.

## Members' (and other) letters

### NFSA amnesia risk

Congratulations on the excellent article drawing attention to the plight of the National Film and Sound Archive ([Ray Edmondson, Inside Story, July 23](#)). Living corporate memory is an essential element to the operation and on-going success of cultural institutions. It is the responsibility of governments to honour and respect, and fund, these institutions for the benefit of future generations.

To demand "efficiency dividends" of these institutions is inappropriate and idiotic. How do you put a dollar value on appreciation of our history? The experience, expertise and corporate knowledge of past employees and stakeholders must be valued and used to better manage the collections. Education must remain a lynchpin of their existence. I sincerely urge decision makers to take the sound propositions of this article into account. – Dr Kristine Klugman OAM, Fisher

### Other goods than health

Where are all the mass casualties to justify such official intrusion? Zero risk bias and the precautionary principle are fantasies based on the illusion of control. The risk tolerance threshold has not been defined, nor has "success". Are we doomed to such ever changing diktats forever, without recourse or appeal? Health is not the only social good. – Mark Jarratt

## CLA's main activities for August 2021

### CLA in WA puts on show outside Parliament House

CLA Director in WA, Margaret Howkins, put on a magnificent silent vigil outside WA's Parliament house last month, helped by committed volunteers.

CLA members volunteered to stand silently for 30 minutes, highlighting signs which aim to draw attention to the fact no-one is holding police to account in WA.



Police-Investigating-Police is a disaster, and must end, in WA and across Australia, Howkins says.

"Police do not hold themselves properly accountable: they get off completely, or they are allowed to resign on full super benefits after two years suspended on full pay awaiting their case, or they get a mere rap on the knuckles.

"Also, hidden statistics show terrified police wives have no-one to turn to – who do you report your husband's domestic violence to when the local police boss is your police husband's mate?

"Seven police wives have come to CLA so far this year in that situation, they've got no-one to turn to.

“The Corruption and Crime Commission of WA was set up to monitor police, but only the tiniest sliver of its work, as shown in its annual report, even looks at police. The CCC and the government are failing the people of WA, particularly women and Aboriginal juveniles, It’s not good enough.

*Photo right: Director Margaret Howkins prepares for the vigil.*

“We need a state Human Rights Act, to which this Labor government has formally committed in its platform before being elected. But it has done nothing to bring one in. We also need a federal HRA, but this campaign is about the WA HRA and the failings of the WA CCC.”



## Board launches new campaign – WOSP, Watch On Security and Police

The August CLA Board meeting agreed to launch a new campaign to keep a closer and more formal monitoring and watching brief over how police and security services operate in Australia and in our name. CLA has access to experts – Dr Tony Murney and Mark Jarratt, who are current and past Board Members – who are able from personal knowledge to research and analyse how the 'security community', broadly defined, has come to dominate advice to governments over the past 20 years

The proof of that statement is the overwhelming number of Acts of Parliament since 2001 (well over 100, maybe 125, and they continue to roll out), which over-empower security, police and similar bodies.

Whenever new laws have that effect, they inevitably restrict the individual and collective rights of citizens.

In planning how to tackle this inappropriate domination of two decades, we are planning to:

1. Argue for the repeal or reform of national security legislation which reduces or undermines the rights and freedoms of Australian citizens.
2. Promote alternate, fact-based viewpoints and solutions to national security problems to minimise impacts on the rights and freedoms of Australian citizens. The aim is a counterbalance to the shifts in authority from citizens to government, and the excessive powers dispensed to police, intelligence and security agencies, including the ADF and Department of Home Affairs.
3. Reverse the “Presumption of Terrorism” as a major reason for imposing unnecessary restrictions on the rights and freedoms of Australian citizens. For two decades, terrorism has been the bogey man.
4. Support, and propose, laws to give people more liberties, rights and freedoms. Not fewer. We’ve had 20 years of terrorism and pandemic crackdowns, lockdowns and lockups. It’s time freedoms had a run.

### Board decides on new way to operate

At the August Board meeting, the Board Members decided to de-incorporate so as to be able to do more with fewer administrative burdens taking up a disproportionate amount of time for a small organisation.

The Board decided there were sufficient funds to run the operation for about five years, without asking members for an annual subscription. In future, people wanting to join CLA will be asked for a donation.

The annual subs – maintaining a database, sending out reminders, payments online, by bank transfer and by cheque, and the to-ing and fro-ing which accompanied that system, and its inevitable errors, was taking up time that could be more usefully spent working on actual civil liberties projects.

The board decided to “stick to its knitting”: to

- dispense with non-productive work wherever possible;
- concentrate on a number of distinct project areas;
- make individual Board Members/teams responsible for those areas;
- give them sufficient funds for five years to achieve the projects, and
- allocate any “leftover” funds to like bodies, as required by the Constitution.

In keeping with the Constitution (email the secretary for a copy if you would like one: also available on the website), there will be a special general meeting (SGM) to vote on the de-incorporation, and to approve final allocating of funds. Members will receive fuller details in material with SGM details.



Any members interested in helping to spot excesses, and to research and write counter-opinions, are welcome. Please contact Secretary(at)cla.asn.au areas of interest and expertise, and phone number.

In broad, the projects to be continued will be led by these Directors, and will include:

- ★ Margaret Howkins, in WA for increasing HRA activity in WA and nationally, the Police-Investigating-Police campaign locally and nationally, prisons reform/education/rehabilitation, Indigenous (particularly juvenile) matters, monitoring state government committees/reports and taking action in response, etc. For an example of her work in August on these issues, please see this video: <https://youtu.be/QfKGT9nlt6c>
- ★ Richard Griggs for extending long-running HRA campaign for Tasmania (to support the 20-organisation HRA group of which he is president)
- ★ Rajan Venkataraman, based in Tasmania, to run campaigns around prisons/censorship/voting rights, juveniles (especially Indigenous), Age of Criminal Responsibility, plus state/national work with state and federal MPs on various issues (eg QR codes, wiping homosexual convictions, protest laws, retirement age of judges), etc.
- ★ President Dr Kristine Klugman, based in Canberra, for national HRA campaign (plus ICAC / infrastructure promotion) including CLA's national Human Rights Act campaign manager Chris Stamford's work, plus political prisoners, wrongful convictions, parliamentary reform, and national representation as President, etc.
- ★ CLA will work with others, including Aboriginal groups, to mount campaigns in those jurisdictions without an HRA to adopt one. That includes Tasmania, WA and the NT – where CLA is THE civil liberties body – and NSW and SA where there are councils for civil liberties. The ACT, Victoria and Queensland already have HRAs.
- ★ Secretary Bill Rowlings, in Canberra, will lead campaigns for federal reform of national justice system (including a Criminal Cases Review Commission), Citizen Rights and Responsibilities (passport/consular), reform of Parliamentary committees, federation issues such as national cabinet, etc.
- ★ Director Dr Tony Murney, also in Canberra, for the new Security / Police monitoring and action campaign (see item, above, on WOSP). He is likely to be helped by private security consultant and VP of the major Australian security association, Mark Jarratt, who is a former Director of CLA.

As well, funds have been allocated to print copies of the current e-book, *The History of Civil Liberties in Australia*. (Members: contact secretary(at)cla.asn.au to be emailed a copy of each chapter; alternatively, you can download them from the CLA website at: <https://tinyurl.com/3ywrv5pw>)

## INTERNATIONAL

### US continues push for extradition

Lawyers for Huawei's chief financial officer are asking a Canadian court to reject a US extradition request, while China is increasing pressure on Canada by a series of rulings in criminal cases against Canadian nationals.

In a situation redolent of the Julian Assange extradition from Britain case, Meng Wanzhou's lawyers argued that allowing her to face fraud charges in New York would encourage improper demands by American authorities.

The US "is not in charge of policing the world," and halting the extradition was the only way to remedy alleged abuses by US and Canadian authorities, lawyer Tony Paisana told a judge in Vancouver last month.

"Misconduct of this sort cannot ever be tolerated, for to do so is to condone, perhaps even to invite, similar conduct," Paisana told Associate Chief Justice Heather Holmes in British Columbia Supreme Court.

Meng, 49, has been fighting extradition since her arrest in Vancouver at the request of the US two and a half years ago.

American prosecutors claim she lied to HSBC Holdings Plc about Huawei's operations in Iran as part of a scheme to violate US trade sanctions.

China's Communist Party views her case as a politically-motivated attack on one of its chief technology champions. The case has wrapped up, and the judge's decision is likely in October. <https://tinyurl.com/zpwetjbs>

## China plans new laws around public health and privacy

China plans new laws on national security, technological innovation and monopolies, as well as for culture and education.

The Chinese Communist Party and the Chinese State Council publicised the plans last month in a five-year plan for “building a law-based government”, *Al Jazeera* reported.

The blueprint, published by the state-run *Xinhua* news agency, signals that a crackdown on industry with regard to privacy, data management, antitrust, and other issues is likely to continue. President Xi Jinping has made “rule of law governance” a signature of his rule, which will be extended if, as expected, he seeks a third term next year.

*Reuters* news agency said the blueprint laid out plans to develop laws consistent with new sectors such as the digital economy, internet finance, artificial intelligence, big data and cloud computing.

The party and the government also pledged to improve the emergency response and revamp legislation around public health by amending the infectious disease law and the “frontier health and quarantine law”, the agency said. <https://tinyurl.com/34e3a22a>

## International briefs

### Scotland the rave

Scotland's had a record 1339 people killed last year in drug deaths. That was 5% up on drugs-related fatalities in 2019, and the seventh annual increase in a row. Scotland has Europe's highest per capita rate of drug deaths, at 25.2 fatalities per 100,000 people, more than three-and-a-half times higher than the rest of the UK. People in Scotland's poorest areas were 18 times more likely to die from drugs than those in the wealthiest. <https://tinyurl.com/3wrbjnw>

### Pro-democracy group disbands

Hong Kong's Civil Human Rights Front (CHRF), a pro-democracy group that galvanised millions to take part in street protests in 2019, has disbanded. In a statement on Sunday, the CHRF said it could no longer operate amid “unprecedented” challenges posed by China's crackdown on dissent in the semi-autonomous territory. The group, which also organised an annual protest march marking Hong Kong's handover to China in 1997, is the largest to disband since Beijing imposed a sweeping national security law. <https://tinyurl.com/28up4ebs>

### ODD SPOT: 0.8% conviction rate for alleged sexual assault

In the US Armed Forces, victims of sexual assault rarely see justice. Of the more than 6200 sexual-assault reports made by US service members in fiscal year 2020, only 50 — 0.8% — ended in sex-offence convictions under the Uniform Code of Military Justice, roughly one-third as many convictions as in 2019.

<https://tinyurl.com/vr2pzc37>

### Don't forget political prisoners next door

There's a chance to sign [this Amnesty petition](#), for the West Papuan non-violent activist Victor Yeimo, who is accused of treason. With Kabul and Covid, there's great danger that West Papua and places like it suffer under the radar. Papuan journalists as well as human rights advocates are targeted by the Indonesian military, and foreign journalists are largely prevented from entering...all on our doorstep, says Sister Susan Connelly, the locked-down-and-curfewed Catholic nun activist from Lakemba in Sydney, co-convenor of the Alliance Against Political Prosecutions.

### Canada introduces vaccine passport

The Canadian government will soon require all federal public servants to be vaccinated against COVID-19 and will also extend its vaccine requirement to travellers on commercial flights, interprovincial passenger trains and cruise ships. Minister of Intergovernmental Affairs Dominic LeBlanc said recently the vaccine requirement for public servants will be in place later this year and that he expects corporations owned by the federal government and other federally regulated employers to follow suit. <https://tinyurl.com/wvj5s7mc>

## DATES:

### 2021:

**11-12 Nov, COP26, Glasgow, Scotland:** The 26th UN Climate Change Conference of the Parties (COP26) in Glasgow, Scotland.



**Early Dec, Canberra:** Prof Megan Davis of UNSW will deliver the annual ANU Geoffrey Sawer Lecture. Info: <https://tinyurl.com/u99bbks> A major international conference, held electronically around the same time, will mark the 60th anniversary of ANU Law and 30th of the Centre for International and Public Law at ANU. Guest speakers are slated to include Prof Julie Suk of the City U. of New York and Prof Asmi Wood of ANU. <https://tinyurl.com/vfmsqaz>

**2022:**

**21-23 Feb,** Sunshine Coast Qld: 2022 National Indigenous Youth Justice conference. <https://www.icsconferences.org>

**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.

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## **Disagreeing with article on need to redress balance of human rights**

I must disagree with Bill Rowling's article in the August *CLAion*, which suggested that the current COVID emergency has become 'less intense' and that therefore we need to redress the balance on human rights. Clearly the emergency is not at present less intense in NSW, and the number of new cases worldwide increased by 8% in the week 19-25 July over the previous week [weekly-epidemiological-update-on-covid-19---27-july-2021](https://www.who.int/news-room/weekly-epidemiological-update-on-covid-19---27-july-2021). We have not yet seen the longer-term effects of the Delta variant, and moreover the evolution of other, possibly more infectious variants, seems likely. In the absence of an 80% vaccination level in this country, which now seems far off, it seems probable that a relaxation of restrictions may well lead to yet more infections, deaths and lockdowns. It is too soon to evaluate the effects of Britain's lifting of restrictions and mass mingling, where there is roughly a 60% vaccination rate.

While I am not suggesting that Bill shares their attitudes, certain economists and some media commentators have downplayed the effects of COVID because the majority of the 4 million deaths (so far) have occurred in the elderly. Such commentary implicitly discounts the value of years of life lost for this vulnerable group and also the value of the loss of quality of life for those who do survive. These values are not zero. These critics also discount the significant human and economic costs of further overloading already overtaxed health resources. We have seen on TV the tragic effects of the collapse of the public health systems in a number of countries. 'Long COVID', the longer-term health effects on surviving patients, which are not limited to the elderly, may well result in excess deaths, disability, reduced life expectancies and an enduring additional burden of mental illness, as I have seen from my own research into the after-effects of the 1918-1919 influenza pandemic.

I do not ignore the severe and often tragic economic and human costs of lockdowns in terms of mental illness, lost employment and loss of human rights. But I suggest that a premature lifting of restrictions might result in even greater costs in terms of mortality, long-term illness, exhausted medical staff and turned-away patients. I think that the current health restrictions will not open the floodgates of authoritarianism as Bill is suggesting. Australia survived strict public health controls during the 1918-1919 pandemic without lasting damage to its democracy. I can't think of any historic example where an authoritarian regime has seized power on the back of an epidemic.

– Dr David Roth (medical historian)

*We would not normally run such a long letter, as above, but do so here because a member has taken the trouble to write at length. Bill Rowlings' comments related not so much to the health emergency becoming less, but to the police/authoritarian response becoming less. Here is how the article began:*

### **Pandemic causes democracy ill health**

The pandemic is causing our civil liberties, human rights and democracy to suffer ill health, CLA says. "When the first worst of the pandemic emergency is over – likely two to three years from now – all public emergency laws federally and in states and territories need overhauling," Bill Rowlings said.

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*CLAion* is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLAion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLAion*, 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 August 2021.

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