

SNF appeal verdict: Appeal dismissed 2-1

Sue Neill-Fraser's second appeal against her conviction for murdering her husband Bob Chappell was dismissed 2-1 on 30 Nov 2021 by a three-judge bench of the Tasmanian Court of Criminal Appeal.

Judges Helen Wood and Robert Pearce rejected her appeal, in part on the most illogical of grounds. They believed a young woman, whose DNA was found in large volume on the yacht Four Winds, when she said she had not been on board in Sandy Bay, but were prepared to disbelieve her when she said she had not been on the yacht when it was on the slips at Goodwood.

By contrast, judge Stephen Estcourt ruled SNF had been wrongfully convicted by the State of Tasmania in 2010, and should at the very least be entitled to a re-trial (with a re-trial decision up to the DPP).

It took nine (9) months for the judges to produce their findings. They heard the appeal in early March 2021.

BREAKING DOWN: CLA is receiving reports from throughout Australia that society is breaking down for younger people, in particular among those aged about 18-35.

They can't afford places of their own to rent, have no prospects of ever buying a home, in many cases cannot find other than menial work even when they are well qualified, are suffering mentally from tough health and lockdown measures of the past two years which have disproportionately affected the young, and feel ignored and forgotten by state and federal members of parliaments. Alarm bells are growing louder by the month.

Law agencies becoming more corrupt than ever before

Australia's law enforcement agencies are becoming more corrupt, particularly those in the Home Affairs portfolio and the Australian Federal Police, which are hotbeds of official corruption, the figures reveal.

Together, they account for 94% of a record number of referrals of corruptly passing information to criminals, accepting bribes, and tipping off companies.

The Australian Commission for Law Enforcement Integrity (ACLEI) annual report says that in 2020-21 it "had the busiest year in our 15-year history," according to the Commissioner, Jaala Hinchcliffe (photo).

Corruption among the relevant government law agencies was up 62%. There were 478 notifications and referrals of alleged corrupt conduct involving ACLEI in 2020-21, with 353 raising a corruption issue. ACLEI investigated 108 and referred 306 back to enforcement agencies for investigation and action.

In other words, CLA notes, ACLEI did not investigate 64% of the corruption allegations made to it – the closest thing we have to a corruption body allowed the agencies to self-investigate, in the same way that police investigate police misbehaviour complaints throughout Australia. Police rarely find a complainant justified: when they do, action against a serving police officer is almost never taken. So it is with ACLEI.



ACLEI finalised 35 corruption investigations during the year, finding 10 cases of corruption, while agencies finalised 104 investigations. After sending 11 investigation reports to the Attorney-General, only six were published.

In other words, CLA notes, just 6 of 478 cases of alleged misconduct among Australia's federal law enforcers saw the light of day. That's about 1.25%. If you are a corrupt federal law enforcement employee, your chances of getting away with corruption have never been better: it's about 98.5% certain you won't face public scrutiny..

Corruption issues raised ranged from unauthorised access to "significant allegations relating to the supply of operational information to assist criminal activities, making operational decisions to benefit associates and receiving bribes". Government employees disclosed information to companies seeking commercial advantages, and to help criminal syndicates undertake illegal conduct or evade justice.

The Home Affairs portfolio accounted for 71% of total matters, and the AFP 23%. <https://tinyurl.com/96rp87k9>

Spook-boosting committee gives agencies an unwarranted tick

Australia's intelligence agencies are operating at their best, despite "rapidly evolving threats", according to the Parliamentary Joint Committee on Intelligence and Security, which CLA calls the Security and Intelligence Committee, or SIC for short.

But, as usual, the SIC luminaries do not specify what these mysterious hobgoblins of fear – the threats – are. And the PJCIS wouldn't know what they are, because it does not oversee the operational decisions or the actual activities of the 'The Community' of some 6000 security operatives in Australia.

It only looks at the admin and spending of the main agencies, as SIC's November report acknowledges.

"Today (SIC) tabled its report of the reviews No 18 and No 19 of the administration and expenditure of Australian intelligence agencies for the 2018-19 and 2019-20 financial years, fulfilling one of its key statutory oversight responsibilities, and bringing to a close a review of shifting intelligence agency priorities and capability during the COVID-19 pandemic." the tabling media release says.

"(SIC) found that the Office of National Intelligence, the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Australian Signals Directorate, the Australian Geospatial-Intelligence Organisation and the Defence Intelligence Organisation are managing their administration and expenditure appropriately."

SIC chair Senator James Paterson (Lib, Vic – photo) noted that the National Intelligence Community (NIC) "continues to mature and develop after its formalisation in 2018". There is now more shared capability so outcomes can be achieved, he said.

In other words, Big Brother activity is getting bigger and wider.

Since its embryonic formation in the early 1950s and throughout massive expansion, until recently, the NIC targeted virtually exclusively only the left side of extremism and political thought.

At last – starting about five years ago – it decided to also target the nutters and radicals and rage-routers on the right. Let's hope that one day it gets the balance correct. <https://tinyurl.com/yy245y36>



MAG Report

The national body that is failing to improve justice in Australia

MAG is the worst-so-far example of minimal national justice overview in a nation of 26m people and nine legal jurisdictions. The only – and indescribably unfit for purpose – national overview of the justice system in Australia is provided by non-formal meetings of Attorneys-General. To CLA's knowledge, such meetings have become less frequent, more impotent, and a bigger disappointment over the past 15 years.

The meetings are so informal that they don't keep minutes. Instead, they issue "communiqués". Delivering uniform justice throughout Australia is based on a communiqué-led system.

Once called the Standing Committee of AGs (SCAG), which met physically 2-3 times a year for one or two days and did have some standing and clout, the body has morphed through successive governments into entities called the Standing Committee on Law and Justice (SCLJ), and then into the Law, Crime and Community Safety Council (LCCSC), with mainly police ministers only.

At each change of name it met less frequently for fewer hours and lightened its own load further. Recently, it was called CAG, for Council of Attorneys-General. Now it is apparently called MAG, the Meeting of Attorneys-General (The NZ Minister of Justice also Zooms in).

MAG squibs it...again

MAG (see above) met on 12 November 2021 by video.

For years, the previous MAG entity has been examining, in excruciating detail inexorably slowly and at great length under the aegis of the WA Department of Justice, what the minimum age of criminal responsibility for children should be in Australia. It is now 10. Every credible international and national body believes it should be 14.

MAG has now recommended that all jurisdictions should "develop a proposal" to change to the age to 12. Note, they don't plan to actually change the age, just "develop a proposal".

MAG has totally squibbed it. It has rejected the findings and recommendations of the report its predecessor bodies commissioned about five years ago. Here is what the 12 November 2021 "communiqué" says.

State Attorneys-General supported development of a proposal to increase the minimum age from 10 to 12, including with regard to any carve outs, timing and discussion of implementation requirements. The NT has committed to raising the age to 12, and will continue to work on reforms including adequate and effective diversion programs and services. The ACT has also committed to raising the age, and is working on its own reforms.

Note particularly the opening words: "State Attorneys-General". Those words mean that the federal government does not – repeat, it does not – support the raising of the age from 10 at all, even to a miserly 12.

This is despite international treaties Australia has signed that call for the age to be higher. This is despite Australia being roundly criticised by many countries in our tri-annual world Human Rights report card, marked by the UN, as being grossly deficient in keeping the age at 10.

"There was a time when Australia was a world leader in morality and equality and a 'fair go'," CLA President Dr Kristine Klugman said. "Sadly, we have become one of the world's great pariahs in terms of justice and across many other matters of international concern."

Age of criminal responsibility should be 14, no less, CLA says.

MAG chooses a light workload

The MAG communiqué describes its work priorities for 2022 as: "Participants agreed that the work program priorities for 2022 will comprise the following:

- a. Enduring Powers of Attorney (Cth);
- b. Model defamation provisions (NSW); and
- c. Access scheme for digital records after death or incapacity (NSW)."

Specifically, on 'Enduring Power of Attorney Law Reform', it said:

"Participants noted feedback received during public consultation that law reform is needed to effectively reduce financial elder abuse involving enduring powers of attorney, and tasked officials to develop recommendations and a timetable for a more nationally consistent approach, for consideration by Attorneys-General by the end of 2022."

In other words, elder abuse will go on for at least one more year, and probably three-to-five judged by how slowly MAG has handled the criminal responsibility age issue, before there is any action to "develop a proposal". This is a glacial pace of reform in an area where urgent action is needed.

On 'Protecting Older Australians – National Register of Enduring Powers of Attorney', it said:

"Participants tasked officials to consider alternative models for the National Register of Enduring Powers of Attorney, informed by stakeholder consultation, for Attorneys-General consideration and agreement by the end of 2022."

That probably means another five or so years before someone is tasked to "develop a proposal".

Protecting their own bums

On the 'Model Defamation Review', the AGs don't want to be caught with their pants down...they aim to protect themselves by changing the law so they have "absolute privilege".

Their communiqué says:

"Participants discussed the progress of the Stage 2 Review of the Model Defamation Provisions. Part A of the Stage 2 Review addresses the question of internet intermediary liability in defamation for the publication of third-party content. This includes the matters raised in the recent High Court decision in Fairfax Media Publications Pty Ltd & Ors v Voller [2021] HCA 27.

"Part B considers whether defamation law impacts reports of alleged unlawful conduct to certain entities including police, statutory investigative bodies and professional disciplinary bodies. A key question is whether it is necessary and appropriate to extend absolute privilege to these circumstances.

"There is significant stakeholder and public interest in the project. Attorneys-General agreed it is appropriate for the Stage 2 Review of the Model Defamation Provisions to remain a MAG priority in 2022.

"Attorneys-General also noted that the Stage 1 amendments to the Model Defamation Provisions commenced in NSW, Victoria, South Australia, Queensland and the Australian Capital Territory on 1 July 2021. Tasmania noted that Stage 1 of the amendments to its Act commenced on 12 November 2021."

UN says age should be 14

The UN Committee on the Rights of the Child has called for all countries to raise their minimum age to at least 14, taking note of recent scientific findings.

Australia is a signatory to the Convention on the Rights of the Child.

ENDS MAG

ODD SPOT: Cttee votes 'no' to ID law

Federal parliament's Joint Human Rights Committee has clearly signalled to the parliament that the Coalition government's Voter ID law is inappropriate.

Here's what the committee says: "The committee considers there is a risk that the imposition of additional requirements before a person can cast their vote would impermissibly limit the rights to take part in public affairs and equality and non-discrimination, and draws this to the attention of the minister and Parliament."

Keane: Behind Collaery 'persecution'

"Three years on and the Morrison government continues to drag out its unconscionable prosecution of the Canberra lawyer, Bernard Collaery," according to *Crikey's* top political correspondent, Bernard Keane.

"There is little doubt about what the secret judge-only evidence is that (former AG) Porter and (current AG) Cash have tried to use against Collaery without him even being allowed to see it.

"(It's) an admission that (then PM) John Howard and (then Foreign Minister) Alexander Downer ordered ASIS, then under the direction of David Irvine, to spy on the Timor-Leste cabinet, potentially in breach of Australian law given the purpose of the spying was entirely unrelated to Australia's national interest, and purely about accommodating fossil-fuel giant Woodside,"

Keane wrote. "Downer and the-then secretary of Foreign Affairs and Trade, Ashton Calvert, both later took positions with Woodside.

"Throughout this persistent abuse of both due process and the requirement that the attorney-general ensures that the Commonwealth is a model litigant, the Commonwealth Director of Public Prosecutions (CDPP) Sarah McNaughton — hand-picked by the Coalition after her role at the ill-fated Dyson Heydon royal commission — has stood silent while the trial has been stretched out by McNaughton's employer first by 12 months, then two years, and now three, while never saying anything about the abuse of process or delays to the trial.

"After three years and the short, suspended sentence given to K when he pleaded guilty, it is nonsensical that the CDPP still believes the prosecution is in the public interest." — *Crikey*, 9 Nov 2021 <https://www.crikey.com.au/2021/11/09/bernard-collaery-coalition-still-hounding/>

Two decades too late with cyber concern

Australia's spies want to be told — after the event — about major cyber attacks across a wide range of essential services.

Federal parliament has just passed a law dictating that companies and organisations must tell the government's super-secret Australian Signals Directorate about any cyber attacks on Australia's critical infrastructure, including energy, communications, financial services, defence industry and higher education.

The government will be able to step in to "protect assets immediately prior, during or following a significant cyber attack", it claims. Not, it should be noted, in advance, which is where real protection matters, and where the spook agencies should be operating.

Australia has been wide open to local action since the 11 Sept 2001 (9/11) terror attacks, but all Australia's spies have overlooked almost entirely the threat to infrastructure, physical or electronically-linked.

It's not as if the danger wasn't known about: before "9/11" we very nearly had our own domestic cyber attack on water resources for which a person was jailed for years. <https://tinyurl.com/sjsf6esa>

ODD SPOT: Cosset the rich, crucify poor

The Parliamentary Budget Office has revealed the federal government paid out a total of \$38 billion in Jobkeeper wage support payments to businesses that did not (repeat, did NOT) suffer sustained downturns during the Covid-19 pandemic. The government has refused to demand the entities repay money they received wrongly.

By contrast, you will remember that the government did demand about \$50m from 16,000 welfare recipients who were overpaid due to an overlap with Jobkeeper payments. <https://tinyurl.com/yypb2jh7> <https://tinyurl.com/52n5f23z>

From CLA's website: prison system is becoming taxpayer-unaffordable

The federal Productivity Commission (federal PC) has just released a significant new paper, *Australia's Prison Dilemma*, which demonstrates our current prison system is becoming unaffordable...as well as being wholly unjust. <https://www.pc.gov.au/research/completed/prison-dilemma>

The federal PC follows closely on the heels of the then-Queensland PC's report in 2019 on Imprisonment, and the Queensland government's response to it released in 2020.

Both financially-orientated reports said the nation cannot afford to pay for the current Australian prison system into the future. For CLA, these reports are a major victory.

Just over a decade ago, the Board of CLA took a hard-nosed decision to NOT concentrate on human rights failings in prisons, but to emphasise how taxpayers in future would not be able to pay for the prison system.

It has taken 10 years to bear fruit, but at last politicians will have to face the fact that they cannot continue to impose tougher sentences on a whim, with no evidence they "work"; continue with mandatory detention policies that are ideologically based, but stupid; or lock up Aboriginal people hugely disproportionately, particularly juveniles, because racist police pick on them.

Here are some snippets from the federal PC's report, by Prof Stephen King (photo):

- Rising imprisonment rates have increased the fiscal costs of running the criminal justice system. Real government expenditure on corrective services grew by 40% over the seven years to 2019-20. Between 2011-12 and 2019-20, government expenditure on prisons as a percentage of total government expenditure grew in all jurisdictions except NSW (chapter 3).
- Prison is an expensive sentencing option, with expenditure per prisoner per day ranging from \$294 to \$559 across Australian jurisdictions in 2019-20. The average daily cost of keeping an offender in prison is about 10 times the cost of a place in a community corrections program (chapter 3). — page 12
- A third of the prison population is on remand, awaiting trial or sentencing. This proportion has almost doubled since 2000. The average time spent on remand has increased to 5.8 months in 2020 from 4.5 months in 2001. — page 19

The Conversation article: <https://www.cla.asn.au/News/jailing-up-crime-down-system-is-unjust-by-design/>

New pandemic bill needs close watching

Victoria is becoming the first jurisdiction to react to the obvious excesses of the Covid-19 pandemic by writing new law covering health emergencies in future.



For that reason, progress of the draft bill needs close watching: it may become the model for all Australian jurisdictions, and for the federal sphere.

Under the bill, the executive government could exploit enormous powers, including jailing someone for two years for not complying with an order. The Health Minister would be the supremo, rather than the chief health officers who were effectively in charge in all jurisdictions during C19.

One provision of the Victorian bill – including human rights experts as full members of an oversight committee, which CLA has called for from as early as 2019 – is welcome. <https://tinyurl.com/5c78jcv>

One aspect of emergency and health pandemic response that must be fixed is how easily governments could simply close down parliaments, dictating that they would not sit for many months. Any new law should include a mandatory requirement that parliamentary sittings must not be abandoned for longer than one month beyond normal sitting periods, CLA says.

ODD SPOT: Legal heavies fear Executive govt will run out of control

Fourteen legal heavies in Victoria have penned an open letter, run in *The Age* in late-October 2021, warning against over-reaching provisions in the state's proposed new emergency/pandemic law. "The overriding concern is that the Bill, if passed, may allow the Victorian government effectively to rule the state of Victoria by decree for the foreseeable future, without proper parliamentary oversight or the usual checks and balances on executive power." the legal 14 write. <https://tinyurl.com/zhtwfkzk> Of course, their concerns merely describe what parliaments throughout Australia did: shutting down democracy, and ruling by Executive fiat, at the first whiff of the Covid-19 issue, CLA says. See also: <https://tinyurl.com/dmx2xv37>

Qld AG hoes into proposed voter ID law

Queensland's Attorney-General and Minister for Justice, Shannon Fentiman, has slammed new federal voter identification laws introduced in the Federal Parliament today as attacking the foundation of Australia's democracy.

"This new proposal to force voters to show identification at the federal polling both, be it a drivers license, Medicare card or passport, will exclude our most marginalised members of our society," Ms Fentiman said.

"I am particularly concerned about elderly and young voters, people in remote rural regions, Aboriginal and Torres Strait Islander people, people with a disability, immigrants and the homeless. The Federal Government seems to have forgotten these Australians."

She pointed out that the feral right-wing Qld Liberal government under Campbell Newman introduced similar laws for that state in 2014.

The incoming Labor government – after one-term Newman was tossed out, including personally, in a landslide – threw them out. <https://tinyurl.com/yvbtwrew>

PS: Newman has resigned from the Liberals and joined the Liberal Democrats: he is their No 1 Senate candidate for the next federal election in Qld.

Report is seriously deficient

There's a Queensland parliament committee which is responsible for monitoring oversight of the state's Crime and Corruption Commission, the CCC.

During 2020-21, people lodged complaints about CCC behaviour at the rate of one a week (there were 53 complaints for the year). But you won't find out much about what the complaints were, or how the parliamentary committee or the

CCC dealt with them, in the parliamentary committee's annual report.

Instead of an analysis of complaint types, comparison with previous years, sackings/corrections over CCC staff behaviour, or proposals for improvement, the parliamentary committee is as silent as a church mouse.

The parliamentary committee's annual report says: "It is through the committee that the CCC is accountable to the Parliament and to the people of Queensland." No, it isn't, CLA says.

It doesn't provide any proper annual report to the people of Queensland, merely a sham list that ticks a few boxes, like "Business travel \$54" and Miscellaneous Expenses \$199" as part of the committee's \$371,354 annual cost. – Annual Report 2020-21, Parliamentary Crime and Corruption Committee, Qld Parliament.

Did police pre-leak arrest for publicity?

Queensland detective Bryan Anthony Swift is before a court, accused of leaking the address of a murder and counter-terrorism suspect to a Channel Nine TV jurno, the *Brisbane Times* reports.

He is charged with two counts of misconduct in public office and one count of prohibition on communication or publication of protected information, namely the address of the suspect, who was later charged with terrorism offences and one count of murder as part of a separate investigation.

Brisbane Magistrates Court is deciding whether he should stand trial on the three offences in the Supreme or District Court.

A counter-terrorism operation was targeting the same suspect, and FP Detective Christopher Crawford told Brisbane Magistrates Court last month that investigators knew a media presence at the suspect's home "was likely". (*Wonder why he thought that? CLA ponders*).

Detective Crawford told the court AFP officers being confronted by a TV news crew as they were bringing the suspect out of the house was not planned, neither was the discovery that night that the TV news crew had filmed officers arriving at the house to make the arrest, unknown to police.

The cases involving the suspect charged with terrorism and murder offences, as well as the Nine journalist at the centre of the allegedly leaked information, are ongoing in the courts. <https://tinyurl.com/2tvu92uk>

Prosecutions based on race?

Statistics from the NSW Bureau of Crime Statistics and Research (BOCSAR) show from July 2011 to June 2021, 405 charges were finalised against Indigenous people under the *Fisheries Management Act 1994*, and 19 people received custodial penalties.

During this same period, 817 charges were finalised against non-Indigenous people, and four received custodial penalties.

It is estimated Indigenous Australians comprised only 3.4% of NSW's population in 2016, but BOCSAR's statistics suggests about 33 % of the total fishing-related charges from 2011 to 2021 were laid against Indigenous people.

Aboriginal Affairs NSW says in 2019 Aboriginal people in the state were 9.3 times more likely than non-Aboriginal people to be imprisoned. <https://tinyurl.com/2s85wsk>

Surveillance on hold, awaiting legislation

Adelaide is putting on hold a \$3m upgrade to its surveillance cameras until the state government passes laws to protect people's privacy.

The holdup comes because city councillor Phil Martin insisted that the choice of which intrusive new facilities could be used should not be left to SA Police to decide.

The new, 360-degree cameras can recognise faces and number plates, operate in low-light performance and trace “objects” including people.

Police claim they only check images captured on CCTV against photos from their own SA criminal photo database, but that disingenuously omits to mention they have access to the national photo ID database (which includes drivers’ licence photos) kept by the Australian Criminal Intelligence Commission. <https://tinyurl.com/3aeec525>

New Indigenous option for courts

The NSW Walama List pilot will start in February 2022 at Sydney Downing Centre District Court, with offenders drawn from Sydney, Parramatta, Campbelltown and Penrith District Courts as well.

“The Walama List pilot aims to bring more community involvement into the judge’s sentencing process, building trust in the justice system and improving the diversion of Aboriginal and Torres Strait Islander offenders into critical support services that tackle the causes of offending behaviour,” NSW AG Mark Speakman said. “This program harnesses the wisdom of Aboriginal Elders and respected community members in sentencing discussions, along with providing wraparound support services and intensive monitoring before sentencing. We’re working hand-in-hand with Aboriginal communities to address the disproportionate rates of Aboriginal incarceration.”

The Walama List pilot will operate one week a month, and will be able to deal with up to 50 participants at a time. Offenders who plead guilty can participate in a tailor-made program that includes drug and alcohol treatment, counselling and other therapeutic supports before being sentenced. <https://tinyurl.com/5x4j8etj>

Signatures take to the ether

In NSW, remote witnessing of wills, statutory declaration and affidavits – a temporary response to the C19 pandemic – has become permanent. The [Electronic Transactions Amendment \(Remote Witnessing\) Bill 2021](#) passed the state parliament last month after an 18-month trial. <https://tinyurl.com/7j6nssec> In Queensland, Attorney-General Shannon Fentiman said the new [Justice and Other Legislation Amendment Bill 2021](#) allowing witnessing and signing electronically and by video link of documents will apply to affidavits, statutory declarations, general powers of attorney, deeds and particular mortgages. The list includes general powers of attorney for individuals. <https://tinyurl.com/5ffm8x6d>

Man allegedly sets wife on fire in toilet

NT Police are seeking to establish the truth, or otherwise, of a case last month where a man allegedly poured petrol under the door of a toilet after his wife had locked herself in during a domestic dispute.

He is alleged to have set the petrol alight, causing burns which killed her, according to the *NT Independent*.

NT Police Detective Senior Sergeant Michael Schumacher said the woman died on a Sunday before 3.45pm, after the house fire in the Hidden Valley town camp in Alice Springs about 11pm on Friday night, which they described as a domestic violence incident. He said the alleged offender was being treated for burns from the fire.

“This woman’s death was a needless tragedy. Detectives are now treating this domestic violence case as a homicide,” he said.

Police were alerted to the fire after a neighbour saw two people outside of the house, lying on the ground. <https://tinyurl.com/7bs5xwds>

Mayor steals \$3m of native title money

Former Geraldton deputy mayor Thomas Grahame Greenaway has been sentenced to prison for six years after he “abused a position of trust” and stole almost \$3million from a Native Title fund.

Greenaway was sentenced in Geraldton District Court on November 4. He will serve 6 years and 4 months for 33 counts of stealing and one count of fraud reported *The Geraldton Guardian*.

In August, the prosecution said that Greenaway had “abused a position of trust” by using the Yugunga-Nya People’s Trust as his “own personal ATM machine” between June 2013 and March 2017. The \$2.9m Greenaway funnelled from the trust was alleged to be used to prop up his struggling business, The Freemasons Hotel.

Greenaway was ordered to pay \$2.1 million to the Yugunga’s Peoples’ Trust as compensation. <https://tinyurl.com/2vjzn9ae>

Children locked up “inhumanely”

WA’s child jail, Banksia Hill, is a “tinderbox ready to ignite”, a law firm has warned the WA Government.

The WA Minister for Corrective Services Bill Johnston was warned recently by Levitt Robinson Solicitors that the children’s prison was on the brink of upheavals like those in 2013 and 2017, due again to “inhumane treatment and lack of services”.

“Detainees are... being locked in their cells for up to 8 hours a day [during the day] – with no access to services including: education, programs, or psycho-social support. Meals are served through a grille on the door and eaten alone in the cell,” the lawyers’ letter read.

“One detainee recorded the number of lockdowns over the last 2 weeks (before the letter was written): October 7th, 8th, 11th, 12th, 13th, 14th 2021, stating ‘lockdown means we can’t leave the cell, no school, and meals in cell’,” the letter states.

Kids as young as 10 – the minimum age of criminal responsibility in Australia – are among those locked up, the [National Indigenous Times](#) reported.

2020 data has confirmed that 73.6% of juveniles detained in WA were Indigenous, compared to 48% on average nationwide.

Levitt Robinson alleged there had been “at least seven attempted suicides” over the few weeks leading up to the letter, and “countless incidents of serious self-harm”, including a child self-harming while under observation. The firm stated that roughly two thirds of the guard staff at Banksia Hill “are absent from work on extended stress-related leave, or have resigned, citing intolerable conditions”.

Most of those imprisoned at Banksia Hill are “disadvantaged Indigenous children, many, if not most, with a disability”, the lawyers say.

The law firm is regularly involved with and in Banksia Hill because Gerry Georgatos and Megan Krakouer of the National Suicide Prevention & Trauma Recovery Project started to build a class action in 2020, after two months of outreach work in Banksia Hill. Some 500 claimants have joined the class action so far. <https://tinyurl.com/5xc8kd6y>

WAPOL plans to create lepers in WA

WA Police plan to create new lepers: “If you end up with a firearms prohibition order, you will be a leper in WA,” Deputy Police Commissioner Col Blanch said last month.

He was launching proposed new laws to be debated in parliament in 2022. The laws will allow police to raid the home of anyone they have issued a prohibition order to. The raid can happen at any time, day or night, with no need for police to get a warrant.

The “lepers’ can go to jail for 14 years and/or be fined up to \$75,000 if they have broken the new laws.

Designated bikie gang members can be stopped and searched at any time. Not only those whom police officially call “outlaw”, but anyone walking with them at the time can also be searched. <https://tinyurl.com/y53oyofz>

The proposed WA laws mirror those in NSW, Victoria and Queensland. Nobody supports bikie drive-by shoot-em-ups, CLA says, but people certainly don’t want the creation of police states in Australia.

Given police propensity to mix up files, get a name wrong, or go to the wrong address, there will be innocent people traumatised when woken at 3am by door-battering and barging and WA Police dressed to terrify.

Consorting laws are notorious for police abuse, usually being visited on Aboriginal people more than others. Here’s what CLA has said about such laws in the past: <https://www.cla.asn.au/News/search-results/#gsc.tab=0&gsc.q=consorting%20laws&gsc.sort=>

Australian briefs

Defence faces massive payout for failures

Claims seeking up to \$50,000 compensation each for historical physical and sexual abuse in Australia’s defence forces have jumped to almost 1000 in the past year. A total of 2554 claims of abuse have been made to the scheme to June 2021. Defence at that date had accepted 1006 recommendations for payouts, totalling \$42 million. Former Defence people can lodge claims until June 2022. <https://tinyurl.com/yypda58m>

Privacy proposals outlined and analysed

Prof Graham Greenleaf and senior lecturer Katharine Kemp (both members of CLA’s sister organisation, the Australian Privacy Foundation) have spelt out for *The Conversation* what the proposed new privacy code might mean for Australia. There’s lots of detail, too much to report here. For info: <https://tinyurl.com/5c78jcvva>

ACT willing to test pill lifesaver for youth

The ACT Government is expected early in 2002 to pilot Australia’s first ever fixed-site pill testing service. Money was allocated in its 2021-22 budget. There will be a six-month pilot of the service to “determine service demand and community support” for a future permanent fixed-site service.

Dili massacre film hero to be buried in same cemetery

After a funeral for Max Stahl (photo) at St Stephen’s Cathedral in Brisbane in mid-November, a ceremony will be held in mid-December in Dili, Timor Leste, where his ashes will be interred at Santa Cruz cemetery, his wife Dr Ingrid Brucens and son Barnaby report. Stahl was known as Christopher Wenner when he was a presenter on the BBC’s children’s series *Blue Peter* in the late 1970s. It was Stahl who shot the evocative footage of the shooting massacre by Indonesian troops of about 250 East Timorese at the same cemetery on 12 November 1991, sparking worldwide revulsion against the Indonesia regime and leading to TL’s eventual independence. In November 2019, Stahl/Wenner was awarded the young nation’s highest honour, the Order of Timor-Leste, by President Francisco Guterres. <https://tinyurl.com/ctjwkwk> (Photo by Del Abcede of Asia Pacific Report).



ODD SPOT: Stabbing causes party ‘nasty turn’

The *Canberra Times* reported last month that “A birthday party in Canberra’s south took a nasty turn (in 2020) when a man trapped one of his friends on a couch and stabbed him in the throat.” Well, being stabbed in the throat might be enough to make someone a bit tetchy, you would think. The report continued: “He spent 69 days in custody before being granted bail, and avoided further time behind bars when he was sentenced in the ACT Supreme Court (by acting chief judge Michael Elkaim) to a two-year intensive correction order.” Apparently, the man had lived a very difficult life, and the judge gave him maximum consideration in not imposing a further jail sentence. <https://tinyurl.com/3mra5tm7>

Noble signals no need for expansion of 5-Eyes

In a rebuff to overtures from Japan, the Australia’s Signals Directorate (ASD) director-general said last month that the ‘Five Eyes’ security alliance could collaborate with other democracies on a needs-basis, rather than expanding its membership. “We can partner with other countries when it is in our mutual interests to do so,” Rachel Noble told the National Press Club last month. ASD leads Australia’s cyber-security defence/attack capability. Other countries comprising the ‘Famous Five’ are the USA, Britain, NZ and Canada. Noble believe Australia’s 80-year membership of the group has built up a significant advantage against adversaries when involved with cyber attacks. Increasingly, CLA notes, the heads of Australia’s security military and police community are utilising the Press Club in Canberra – and its access to primetime ABC coverage – to set their public agendas in the spook space. <https://tinyurl.com/4ba3vnrs>

O’Gorman recognised for civil liberties service

The Law Council of Australia has awarded its 2021 President’s Award to riminal law specialist, Terry O’Gorman AM of Queensland. The award is for his tireless work to protect civil liberties in Australia over a career spanning more than four decades.

The President’s Award honours an individual who has been an “outstanding example to the Australian legal profession”.

CLA’s main activities for November 2021

In WA, CLA is engaged in a major project to produce about 20 interviews pointing out how bad the justice and prison structure is in the state...and in Australia.

Director Margaret Howkins is leading the recording of personal interviews. They will form the foundation of a made-for-TV documentary planned for mid-2022. Here are some examples: <https://tinyurl.com/4h8c9r9n> <https://tinyurl.com/f9eh34zx> <https://tinyurl.com/yc4rd28s>

PS: Here’s the link directly to the CLA YouTube channel. You can ‘Subscribe’ (for free) by hitting the button on the YouTube page: you will automatically be alerted to new clips. You can also share the clips and expand the audience. <https://www.youtube.com/channel/UCg-lcxqo9tCwkqbAE6YUQdA>

Nationally, we are engaged in finalising the transition to a non-incorporated body. There is much admin work to be done, with various authorities, to achieve our simplified purpose: the more simple you want to be, the more paperwork you have to fill in.

Human Rights Act campaign manager **Chris Stamford** has produced a comprehensive newsletter outlining the status of progress so far to the 70 people and organisations that he, CEO Bill Rowlings and President Kristine Klugman have interviewed over the past year (mostly by Zoom, as a trio). Called *‘Rights In Sight’*, please email if you would like a copy of his wide-reaching report.

President Dr **Kristine Klugman** is leading discussions with other civil liberties groups with a view to better exchange of

more up-to-date and relevant information on a more regular basis. CLA is encouraging the other bodies to keep up a flow of information the way we have been doing for some years... without reciprocation.

She also met recently with Dr Bernadette Boss (photo, left) to discuss the current Royal Commission into military suicide. On 15 Sept 2021, as the the interim National Commissioner for Defence and Veteran Suicide Prevention, Dr Boss handed her report to the government with findings of her 'Independent Review of Past Defence and Veteran Suicides'. The report has been tabled in parliament. <https://tinyurl.com/32x3vfr8>



Preparation is under way for some major publications: the annual report of CLA for 2021, plus creating a template for communicating with politicians, and the preliminary stages of producing a hardcopy book on the history of civil liberties in Australia.



In the ACT, **Tony Murney** (photo) has just delivered a hard-hitting speech to a security conference about the less-than-fit-for-purpose – and hugely costly – security upgrades to

Parliament House over recent years. A summary of his presentation said:

Dr Tony Murney – this presentation effectively demonstrated that the physical and response force security measures introduced at the Commonwealth Parliament are disproportionate to the Australian threat environment, supported by meticulously compiled global crime and terrorism incident statistics, before and after images of Capital Hill, and graphics showing how the steel ram-resistant fences fail to protect the precinct, deny access to members of the public, and impede emergency response and evacuation, with the associated hazard of permitting firearms within the building, and fomenting discord by distancing protestors from elected representatives.

Photo: CLA member Mark Jarratt.

Rajan Venkataraman is following up opportunities to inform states and the NT about issues around the age of criminal responsibility for children. He is also working on prisoner voting rights, and CLA is helping federal MHR for Fenner, Dr Andrew Leigh, with checked facts for a new article on prison reform that he is preparing.

In the NT, CLA member **Rob Wesley-Smith** is preparing for the 12 Dec 2021 final church service for Max Stahl, the man who filmed the Dili massacre from inside the cemetery being attacked by Indonesian troops. Stahl died in late October. Another NT CLA member, barrister **Alistair Wyvill**, is preparing to take a case to the newly-created NT Judicial Commission. It will likely test the independence of that body, which CLA recommended should be a. chaired by a retired judge external to the NT, and b. mandatorily have an Aboriginal person as a member...which it does not.

Holiday greetings from the CLA team. If the mood takes you, please write an article for the CLA website, or a brief note for the CLArion newsletter, while enjoying some relaxing time between now and New Year 2022.

INTERNATIONAL

Police abusing power for sex is rife

During the Covid-19 pandemic, police officers and staff abusing their position for sexual gain has become the largest form of police corruption in the UK, according to the Independent Office for Police Conduct.

The IOPC said cases in England and Wales had “risen sharply” in the past three years. Between April 2018 and March 2021, 66 officers and police staff faced misconduct proceedings after been investigated for abusing their position for a sexual purpose, including 42 in the past year alone.

Misconduct was proven in 63 cases, with 52 police officers or staff facing gross misconduct proceedings for the worst offences. More than half – 38 – were sacked or retired, as well as barred from working for the police again, the IOPC said.

Seven people were also prosecuted for criminal offences, leading to six convictions. Three were given immediate prison sentences.

The IOPC investigated 70 people over allegations of abuse of position for a sexual purpose in the past year, compared with just 10 in 2016. <https://tinyurl.com/46pky7yv>
(No equivalent figures are available for Australia).

Facial recognition controls Palestinians

The Israeli military conducts broad surveillance in the occupied West Bank to monitor Palestinians by integrating facial recognition with a growing network of cameras and smartphones, according to revelations about the program by recent Israeli soldiers.

The surveillance, rolled out over the past two years, includes smartphone technology called Blue Wolf that captures photos of Palestinians’ faces and matches them to a database of images so extensive that one former soldier described it as the army’s secret “Facebook for Palestinians.”

The phone app flashes in different colours to alert soldiers if a person is to be detained, arrested or left alone.

To build the Blue Wolf database, Israeli soldiers competed last year in photographing Palestinians, including children and the elderly, with prizes for the most pictures collected by each unit.

Blue Wolf initiative combines a smartphone app with a database of personal information accessible via mobile devices, according to six former soldiers who were interviewed by the *Washington Post* and an activist organisation, Breaking the Silence, made up of former Israeli soldiers.

The former soldiers say that a separate smartphone app, called White Wolf, is used by Jewish settlers in the West Bank.

It is a pared-down version of another vast database, called Wolf Pack, which contains profiles of virtually every Palestinian in the West Bank, including photographs of the individuals, their family histories, education and a security rating for each person.

And in the divided city of Hebron, the Israeli military has installed face-scanning cameras so soldiers at checkpoints can identify Palestinians even before they present their ID cards.

A wider network of closed-circuit television cameras, dubbed “Hebron Smart City,” provides real-time monitoring of the city’s population.

One former soldier said the system can sometimes see into private homes. <https://tinyurl.com/3dt5zftd>

ODD SPOT: Monitor women for safety?

Lincoln City Council in the UK is spending about \$750,000 to develop a new phone app so women can ask CCTV operators in the city to monitor them as they walk home. Other measures will include expanding the city's CCTV coverage and a training scheme for bar and door staff. Police and the council think the idea is wonderful. Local civil liberty experts think it is dreadful, because CCTV is notoriously poor at preventing crime, and some surveys have shown it only catches about 3% of criminals after a crime has been committed. <https://tinyurl.com/srn6njn4>

2000 children killed/maimed each year

"10,000 children have been killed or maimed since fighting started in March 2015," James Elder, UNICEF spokesperson, told reporters recently after a field mission to Yemen.

The child casualties in the war between the Iran-backed Ansar Allah (known as Houthi) rebels and Yemeni Government forces fighting together with a Saudi-led coalition, included 3455 children killed and 6617 injured: 3639 have been recruited as child soldiers.

The UN estimates that 233,000 people have died in Yemen's civil war, including 131,000 from indirect causes such as lack of food, health services, and infrastructure. More than 20 million people – including 11 million children – are dependent on humanitarian assistance. This number includes 16.2m people who are food insecure and 20.1m who need health assistance (including 10.2m children).

Fabrizio Carboni, the International Committee of the Red Cross's Near and Middle East regional director, told *The Lancet*, "The size of the needs is overwhelming, and it's getting worse by the day."

Continent-wide surveillance on increase

African governments are using new technology and laws to increase surveillance of opposition figures, researchers have warned, as they called for restricting the sale of tracking tools and tougher privacy protections.

Existing laws have largely failed to stop state surveillance, from monitoring academics in Egypt to tracking journalists in South Africa, an African Digital Rights Network (ADRN) think-tank report said.

Government impunity, weak civil society, laws that protect state spying and a lack of solid privacy safeguards are the main reasons surveillance is increasing on the continent, ADRN said. The risk of "digital authoritarianism" – internet control, surveillance and censorship – is on the rise in Africa, where an earlier ADRN report found the number of internet shutdowns rose to 25 in 2020 from 21 a year earlier.

The report compared laws in Egypt, Kenya, Nigeria, Senegal, South Africa and Sudan to represent a variety of geographical regions and language groups.

"Citizens need to be more aware of their privacy rights and of the surveillance activities undertaken by their governments," said Tony Roberts, a research fellow at the Institute of Development Studies (IDS) think-tank, who edited the report.

The report's authors said the threat is more severe in fragile democracies with weak legal oversight and low levels of public awareness. They called for legal reforms, stiff penalties for illegal surveillance, a ban on the sale of surveillance technology to states proven to be violating privacy rights and greater public awareness to hold government to account.

"My concern is that we are drifting into digital authoritarianism where it is considered normal for our privacy to be violated and somehow the fact that it is happening digitally lets governments off the hook," Roberts said. – Thomson Reuters Foundation: <https://tinyurl.com/pynvvhkw>

International briefs

Criminal justice system 'criminally underfunded'

In the UK, the police and prosecution are failing to disclose key evidence to charged defendants. To 30 June 2021, 1648 cases collapsed over disclosure failures – more than double the number in 2015/16, according to Crown Prosecution Service figures. Ed Johnston, co-editor of *The Law of Disclosure: A Perennial Problem in Criminal Justice*, said he suspected the official figures were the tip of the iceberg because disclosure failures were not always correctly recorded. "Chronic underfunding of the criminal justice system has led to understaffed and overworked police and prosecutors," he said. Experts say the official figure may be the tip of the iceberg because of concerns that disclosure failures are not always properly recorded. <https://tinyurl.com/y7vc57ht> Figures for Australia appear not to be collated.

Pry-oritising customer 'service'

NZ Accident Compensation Commission hosts voyeurs and vicarious thrill seekers...as staff: *Radio NZ* report 27 October: <https://www.rnz.co.nz/news/in-depth/454320/acc-staff-posted-clients-details-to-snapchat-group>

US blacklists spying suppliers: what is Australia's position?

The US government has blacklisted Israel's NSO Group for knowingly supplying spyware used by governments to "maliciously target" the phones of dissidents, human rights activists, journalists and others. The firm, and another Israeli company, Candiru, acted "contrary to the national security or foreign policy interests of the United States," the US Commerce Department said, in a direct accusation against a business operating under the direct supervision of the Israeli government in selling its Pegasus software. <https://tinyurl.com/puc8jf> The Australian government has been silent on the issue, and on whether any local police or security agencies are using spyware provided by the firms.

'Guess what? Later we're going to hang you.'

Two death row inmates in Japan are suing the state in protest against same-day executions, saying short notice was "extremely inhumane". Prisoners on death row are only notified hours before they are to be executed, by hanging. About 100 prisoners are on death row in Japan: no-one has been executed for two years. <https://tinyurl.com/3jps5b4s>

Privacy 'crash' for accident commission

Senior NZ lawyer Linda Clark (photo) will independently review the access and use of client information within the nation's Accident Compensation Commission, after ACC staff were caught out allegedly sharing and laughing at client details on Snapchat and inappropriately accessing sexual abuse claims. ACC management has suspended 14 employees over the alleged inappropriate access and use of client information. Internal investigations led by the acting chief executive are ongoing. The terms of reference, released by the Treasury and the ACC board, show the review will look at two key areas: the number of staff who have access to client information and the alleged inappropriate access and use of client information among staff. <https://tinyurl.com/d7umnbd3>



Drug deaths top car & gun toll

Americans died of drug overdoses in record numbers as the pandemic spread across the country due to lost access to treatment, rising mental health problems and wider availability of dangerously potent street drugs. In the 12-months that ended

in April 2021, more than 100,000 Americans died of overdoses, up almost 30% from the 78,000 deaths in the year before, provisional figures from the National Center for Health Statistics show. It is the first time overdose deaths in the USA has topped 100,000 a year, more than the toll of car crashes and gun fatalities combined. Overdose deaths have more than doubled since 2015. Administration officials say that they will expand access to medications like naloxone, which can reverse an opioid overdose, by encouraging states to pass laws that will make it more widely available and promoting its use by Americans. <https://www.nytimes.com/2021/11/17/health/drug-overdoses-fentanyl-deaths.html?>

DATES:

2021:

10 Dec, World: International Human Rights Day. Release of new push for update of ACT Human Rights Act to apply from 2024, the 20th anniversary of the HRA in Australia, which came into effect on 1 July 2004.

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.

Member letter:

On nuclear material storage:

I was disappointed by the use of the term “huge nuclear waste dump” in the Nov 2021 *CLArion*, page 1. It is both pejorative and inaccurate. The Commonwealth has for decades been trying to establish a central storage place for low grade radioactive waste – luminous watch dials, laboratory stoves and equipment, spent isotopes from medical treatment, and so forth. This would not be a “dump” in the sense of rubbish tip but, like an Army ammunition “dump”, highly secure. The contents would be far better held in one central location than at hundreds of less secure sites around the country. It is a completely different proposition from the treatment and storage of actual nuclear waste, such as spent fuel rods from reactors. Suggestions have been made that Australia should take such material from other countries, but is not a goer. – Stephen Brown, ACT

CLARIFICATIONS:

Several points can be made about the proposed nuclear dump...because “nuclear waste dump” it clearly is in everyday language. Is the new dump, at Kimba in SA, to be “huge”? It will take all Australia’s main low and intermediate level nuclear waste, which has been accumulating in 100s of separate facilities around the nation for decades, and continues to do so every day.

It will also store the reprocessed waste from spent fuel rods out of a reactor...two lots, in fact.

1. The nuclear dump is designed for “low-level and medium level radioactive waste” (See Act No 59, assent 29 June 2021, which approved the Kimba facility).
2. By 2035 (just 13 years from now) an Australian government may well decide that, to meet COP26 Glasgow emission reduction targets by 2050, Australia will need to urgently build four or more nuclear power stations. Guess where the high grade waste would go, temporarily at least?
3. A second shipment of reprocessed Australian spent fuel rod radioactive waste, classified as “intermediate” level but actually

requiring deep underground storage by 2070, will arrive in Sydney in 2022.

“The TN-81 from the UK will be co-located with the one which arrived back from France in 2015. The two casks will remain at ANSTO (at Lucas Heights, Sydney) until a National Radioactive Waste Management Facility is established at around the end of this decade, at which point the plans are to send it to that specialised facility. The Federal Government has identified a volunteered piece of land near Kimba on the South Australian Eyre Peninsula, for the facility.” <https://tinyurl.com/jurwv4kk>



(Photo: The 2015 cask being transported: ANSTO)

However, even Kimba – which will not be ready to accept properly-stored waste for many years according to ANSTO, the Australian Science and Technology Organisation – will NOT be sufficient for long-term storage of these reprocessed spent fuel rod casks. The geographic location and the actual land for another, secure-for-centuries storage facility, in Australia, almost certainly deep underground, has to be found and the facility built by 2070. No-one in government or the nuclear fuel industry can tell you where that might be.

4. Proposals which resulted in the Kimba “secure”, “low and intermediate level” waste dump never considered putting the facility at one end of Cronulla beach, or in Tamworth where there is plenty of spare land. If it is so safe, why does it have to be in remote Kimba?

Somehow, once again, when push comes to shove, it is the Aboriginal people of Australia who get bumped out of the way, or shafted, with the Kimba “volunteered” farm property being 5km from Barngarla native title land.

5. The federal parliament’s Joint Committee on Human Rights said in a report: “The report also echoed Barngarla native title holders’ claims they were not included in a community poll in which more than 60% of people voted in favour of the proposal.” <https://tinyurl.com/yy3394oe> “While more than 60% (actually 61% – ed.) of voters in the Kimba local government ballot supported the facility, 100% of Barngarla voters rejected the proposal.” <https://tinyurl.com/y3yocgyy> The overwhelming Aboriginal rejection of the site was ignored – Bill Rowlings, editor.

CLArion is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA’s Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au) Closing date for this issue was 30 November 2021.

ENDS ENDS ENDS