

Push for Human Rights Act ramps up

CLA has dramatically increased its push to achieve a Human Rights Act (HRA) for Australia, following the May federal election.

The expanded campaign follows two years of behind-the-scenes lobbying by CLA, during which CLA's team held nearly 100 meetings on the issue. Most were e-meetings. Four were with incoming Attorney-General Mark Dreyfus, held in 2021 and 2022, involving CLA HR campaign director Chris Stamford, CLA President Dr Kristine Klugman and CLA CEO Bill Rowlings.

In the past 10 days, we have activated a new push with old and new MPs, and with high-level influencers in fields such as the law, academe and among fellow liberties, rights, transparency and accountability campaigners.

The first emails and letters asking for support for a HRA from the new "teal" independents in federal parliament landed on their desks within days of their election.

'Teals' asked to back HRA

CLA has written to all the "teals" – the independent candidates who mostly defeated Liberal sitting members in inner-city seats.

"If a Commonwealth Integrity Commission ensures that Government acts for everyone when spending our money, then a Federal HRA gives individuals the chance to hold Government to account for its behaviour toward them, delivering on Mr Albanese's election night promise of fairness and opportunity and kindness to those in need," the letter said.

"A CIC and a FHRA together form the basis of the ethical infrastructure needed to make our society sustainable and fair. CLA strongly supports both."

The new Labor Government's national platform promises a review on whether Australia should upgrade its current Federal Human Rights Framework to a FHRA, CLA has pointed out.

"Labor did not commit to the review during the election campaign. We are keen to find out whether you are willing to join us in encouraging the Government to live up to its promise in your discussions with it," CLA's letter to the 'Teals' said.

Aim is first action within 100 days

The CLA campaign aims to help new AG Mark Dreyfus decide to start a process of review, hopefully leading to a HRA, within 100 days.

"We have already consulted to death on this issue. Australia held its biggest-ever consultation on it for a full year," CLA President Dr Kristine Klugman said.

The CLA campaign team has pointed out that the largest consultation in Australia's history, the Brennan Committee inquiry in 2009, came out clearly in favour of a HRA for Australia. Just 14% of Australians oppose the idea of a HRA for the nation.

The Committee chair, Father Frank Brennan, said "87.4% of those who presented submissions to the Committee and expressed a view on the question supported such an Act — 29,153 out of 33,356. In the national telephone survey of 1200 people, 57% expressed support for a Human Rights Act, 30% were neutral, and only 14% were opposed". <https://tinyurl.com/3x3626xb>

"We don't need more consultation: we just need to implement traditional Labor policy, and what the great majority of



Above: Father Frank Brennan speaks at the first of some 60-odd consultations Australia-wide, at Queanbeyan Town Hall in NSW in February 2009.

Australians want, what complements an integrity commission perfectly and what would underpin the developments for Indigenous Australians through the Uluru Statement from the Heart," CLA's campaign director Chris Stamford said.

"An integrity commission will restrain corrupt politicians, uncaring bureaucrats or others at the top end of town: a human rights act and an Indigenous treaty will provide a way to uphold liberties and rights for everyone, lifting the poorer and marginalised people at the other end of the social spectrum."

HRA is foundation for protection of vulnerable

In 2009, after the nationwide consultation, the then-Labor government did not produce an Act of Parliament, merely a "framework" which was, to all intents and purposes, useless, other than producing a HR committee of parliament.

Australia continues to be denied the foundational human rights protections that exist in the laws or constitutions of NZ, the UK, the US and Canada.

It's now time for Dreyfus and Labor to show leadership, and to give us the one law that best lays a foundation for the promises made by the new PM on election night, CLA says.

The new 2022 Labor PM Anthony Albanese promised:

"The two principles that will be part of a government that I lead. No one left behind because we should always look after the disadvantaged and the vulnerable. But also no one held back, because we should always support aspiration and opportunity."

And he promised: "...to make a positive difference each and every day" and to "unite around... our shared values of fairness and opportunity".

PM Albanese, as "a son of a single mum who was a disability pensioner, who grew up in public housing down the road in Camperdown," probably knows more than most people what a HRA would do for the disadvantaged and downtrodden of Australian society. <https://tinyurl.com/vespt5k9>

Government 'guilty', but Collaery pays the price

Australia is prosecuting Canberra barrister Bernard Collaery for allegedly revealing to the media government actions that were probably illegal.

It doesn't matter that what the government did – secret surveillance and spying on the Cabinet negotiating rooms of Timor Leste in 2004 it is said – according to a judge of the ACT Supreme Court. Even if the Australian government spying was illegal, Collaery can still be prosecuted, judge David Mossop ruled.

Even if 18 years ago the Australia government under PM John Howard and Foreign Minister Alex Downer had no moral compass, was motivated by greed to screw the world's poorest and newest nation over oil and gas, and wanted to boost the coffers of private companies, that was OK. No-one should know if the Australian government was acting corruptly or illegally.

Collaery had tried to stop his trial until the government comes clean, having never publicly admitted the 2004 spying in Timor Leste even occurred.

Collaery subpoenaed documents from the Australian Secret Intelligence Service (ASIS), the Office of National Intelligence, the Departments of Prime Minister and Cabinet, and Foreign Affairs and Trade, which he hoped would show the mission was unlawful and outside the proper functions of ASIS.



If it was illegal, how could Collaery be prosecuted for revealing it? Doesn't matter, says Mossop (photo). The Australian government can act as illegally as it likes, and people can be sent to jail for saying so.

Collaery knows all about the bugging, because he – lawfully – represented Witness K, one of the bugging ASIS agents, who was eventually fined with a minor rap over the knuckles for trying to achieve justice for himself and Timor Leste.

The Mossop ruling means the secret trial of Collaery was to continue as the new Labor government took power, with 99% of the "evidence" unable to be made public. So much for open and transparent Australian 'justice'.

"We need national reform of...the legal profession," CLA's CEO Bill Rowlings said last month.

No-one to watch over Australia's spooks

Senator Rex Patrick (then Ind, SA) said last month: "Never have I seen a judicial officer suggest the responsibility of judicial oversight be abandoned because a member of the executive (the Inspector-General of Intelligence and Security) has a measure of oversight and can report breaches of the law to the prime minister. In effect, Justice Mossop places no limits on executive power and leaves the responsibility for limited oversight exclusively to a statutory official, giving the court no role."

As Crikey's Bernard Keane points out, this leaves Australia's security agencies with "no effective parliamentary oversight and, if Mossop's absurd ruling stands, no court oversight either. And it has passed with minimal media coverage". <https://tinyurl.com/ys2nnecd>

CLA says the new government should end the 'deep government pockets' persecutions of many whistleblowers, like those of Collaery, David McBride (alleged Afghanistan war crimes whistleblower), and Robert Boyle (revealer of alleged serious Australian Tax Office abuses of its powers).

And it should speak up for Julian Assange, and demand his repatriation on a direct RAAF flight from London via secure British air bases to avoid any seizure by the USA, under their euphemistically-titled "rendition" approach to international justice, aka kidnapping.

Australia needs a whistleblower reward scheme, rather than a whistleblower punishment regime.

Dreyfus should act 'in the public interest'

The new Attorney-General, Mark Dreyfus, before the 21 May election and his appointment as first law officer of Australia, remarked:

"While I will not comment on the substance of the charges, the very manner in which the government has sought to conduct the prosecution appears to me to be an affront to the rule of law.

"There have been some 50 preliminary hearings to date, with well over \$4 million spent by the Commonwealth alone, and still there is no trial date for Mr Collaery. The Morrison government has also sought to have the trial conducted in secrecy but was rebuffed last year by the ACT Court of Appeal, which held that the trial should be held predominantly in open court to avoid damaging public confidence in the administration of justice. The Commonwealth has now appealed that decision to the High Court."

Dreyfus himself can now decide whether the prosecution continues or if he withdraws the approval provided by Porter in 2018. While not tipping his hand, he flagged his thinking in the following terms:

"Despite repeated questions in multiple hearings of Senate estimates, I have yet to hear a cogent explanation of how the public interest is served by the ongoing attempts to prosecute Mr Collaery, a former attorney-general of the ACT who is now well over 70, in relation to an allegation of disclosure of events alleged to have occurred almost 20 years ago."

Dreyfus, formerly a Melbourne barrister, was speaking at the Australian Bar Association conference. His speech was first reported by Bernard Keane in Crikey on 2 May 2022.

ODD SPOT: It's time for Labor to go extra mm

"Labor is at best a millimetre to the left of the Coalition on the drift to authoritarianism, the national security and national surveillance state and the massive extension of police powers, without circumstances or results justifying the crack-down." – columnist Jack Waterford Canberra Times 6 May 2022 <https://tinyurl.com/yckzzpjs>

Motivating 10% extra uplifting activity

Australia's charity and non-profit sector is 8% of the economy, 10% of the workforce, and mobilises 3m volunteers.

They're the first line of support for the most vulnerable in our communities, and have helped millions of Australians rebuild their lives after floods, fires and economic hits.

The future of the charity sector is too important to our economy and our communities to grow and develop without planning or strategic investment.

Even a 1% productivity increase would add \$1.4 billion to the resources available to the sector, creating more jobs and providing services to more Australians. – Andrew Leigh. MHR Fenner ACT (speaking before the 21 May election) as then-Shadow Charities and Non-Profits Minister <https://tinyurl.com/y6jyyuk2>

NT goes 'barbarian' in cutting compensation

The Labor government and its Country Liberal Party opposition has passed a cap on damages for false imprisonment and assault for anyone jailed in a NT prison, with just one dissenting vote.

Only one MLA called the measures a "disgrace" and "a green light to abusive behaviour against children and adults". Member for Mulka, Yingiya Mark Guyula said that the government should be more focused on preventing the abuse of children and adults in the correctional system, rather than enabling "government officials to mistreat young people without fear of consequences".

The new law caps the government's legal liability to \$15,300 for offences committed against anyone in correctional facilities, including for false imprisonment, battery (including unlawful restraints like shackles and spithoods) and assault.

Then-Attorney General Selena Uibo said the legislation was drafted to “address community concerns about large payouts of taxpayer funds to offenders ... while they are in custody”, referencing a \$35 million payout to hundreds of former juvenile detainees who had sued the government for mistreatment while incarcerated, according to Christopher Walsh, writing in the *NT Independent*.

Aboriginal justice, human rights and civil liberties groups say the new law contravenes the government’s own commitment to the Convention against Torture.

Mr Guyula said the law also breached its own recently established Aboriginal Justice Agreement and the intent of the recommendations of the Royal Commission into Youth Detention in the NT.

Darwin barrister John Lawrence said the new laws were “barbaric, racist and backward”. Mr Lawrence, a former president of the Criminal Lawyers Association of the NT and the NT Bar Association, and member of the Close Don Dale Now group, was threatened with expulsion from the parliament’s public viewing gallery by the Speaker for banging on the glass in support of Mr Guyula’s speech.

“The barbarians are in the Citadel,” Mr Lawrence said. “They are no longer at the gate.”

The bill, which was amended to include provisions for children who experience sexual abuse, passed and was supported by the CLP, who focused their concerns around the \$35 million paid to those children abused in Don Dale. <https://tinyurl.com/yj8pjpj>

There is another way to avoid compensation entirely, CLA says. Don’t physically and mentally abuse the people in NT prisons for whom the government is entirely responsible. No abuse, no compensation at all.

“This is yet another example of no-one in government being held properly responsible for appalling official human rights and civil liberties abuses,” CLA President Dr Kristine Klugman said. <https://tinyurl.com/mry44rz3>

New AG appointed in NT

Chansey Paech (pron. PAKE) became the new NT Attorney-General last month after former Chief Minister Michael Gunner stepped down suddenly “due to family reasons” and Natasha Fyles became Chief Minister and rearranged the cabinet.

Paech will also hold the Local Government, Arts, Culture and Heritage portfolios.

Aged 35, he is of Central Australian Aboriginal descent and Wikipedia says that “Paech is the only openly gay male MP in the NT Legislative Assembly; before entering politics, he was a prominent LGBT rights activist”.

In his maiden speech in 2019 he said: “I am young, I am gay, I am black; a true-blue Territorian. I am a proud face of the diversity and future of the great Australian Labor party. I look forward to the day when this country will recognise my rights as equal rights.”

CLA has written to AG Paech, asking him to introduce a Human Rights Act to the NT.

No rights without remedies campaign

CLA is developing a test approach in the ACT to ensure all future rights Acts, including a federal one, come with remedies attached that can be accessed quickly, easily, simply and cheaply.

We coordinated with Australian Lawyers for Human Rights (ALHR), Canberra Community Law (CCL) and the ACT Council of Social Services (ACTCOSS) to petition the ACT Legislative Assembly to consider a proposal to:

- extend the ACT Human Rights Commission (ACT HRC) complaints processes to cover all rights in the ACT HRA; and
- allow conciliation and/or mediation through the ACT Human Rights Commission, and, if needed, mandatory remedy through the ACT Civil & Administrative Tribunal (ACAT), which has the power to make binding orders which include compensation, and – as a last and expensive, time-consuming method – through the virtually limitless legal power of the ACT Supreme Court if necessary for any breach of an ACT HRA right.

This would resolve a number of inequities that have crept into the ACT human rights complaints process and form a model that makes remedies for all human rights breaches accessible and affordable. The same provisions could operate in the Victorian and Queensland HRAs, which also currently lack quick and simple remedies.

Some 20 of the 27 submissions to the subsequent review by the Legislative Assembly’s Justice and Community Safety Committee said that implementing the proposal will make justice available to people who are currently missing out. Those 20 submissions also agreed that the proposal will remove inequities in the current complaints process.

The committee raised issues around:

- legal novelty and whether ACAT needs to develop jurisdiction and expertise on human rights matters;
- whether there will be a substantial rise in complaints that will need increased resources for the HRC and ACAT;
- how the new jurisdiction would fit with the activities of existing agencies; and
- whether the government would be more vulnerable to substantial compensation claims.

CLA’s HRA campaign manager Chris Stamford said:

“The Committee did not feel the need to ask whether giving ACAT the power to mandate remedies for human rights breaches placed too much power in the hands of an unelected judiciary.

“While this has been a concern about human rights acts in jurisdictions that do not have one, after 18 years of human rights practice, the ACT has moved past the view that putting human rights cases before the courts threatens the authority of the Assembly.”

Australia now has 36 years experience of operating human rights Acts: 18 in the ACT, 16 in Victoria, and 2 in Queensland.

“There has not been a flood of cases, as people feared. But a lot of disadvantaged people have had their rights and liberties enforced,” CLA President Dr Kristine Klugman said.

South Australia: CLA has also approached the new SA AG, Kyam Maher, to introduce a HRA in that state. The local campaign is being run by Dr Sarah Moulds and Prof Rick Sarre, who heads the SA Council for Civil Liberties.

SA winds back ‘emergency’ Covid provisions

The new SA Labor government has incorporated cross-bench amendments from the Greens and SA Best in the Legislative Council to ensure upper house endorsement of a COVID-management bill that passed the lower house early in May.

The amendments include creating a COVID oversight committee for the next six months to assess any new restrictions put in place for people with the virus or close contacts.



Premier Peter Malinauskas said the changes will help end the Emergency Declaration at the end of June, as promised during the lead-up to the election. The new provision will operate under the Public Health Act, rather than an Emergency Act. <https://tinyurl.com/k7yd7b2s>

Judge to scrutinise police over DV

Judge Deborah Richards is heading the new Commission of Inquiry to examine Queensland Police Service responses to domestic and family violence, which has just opened its doors.

The terms of reference are:

- the extent and nature of any cultural issues within the QPS over investigating domestic and family violence, and whether they have contributed to over-representation of First Nations people in courts and jail;
- assess how well or otherwise the QPS is equipped to respond to domestic and family violence;
- examine current conduct and complaints handling processes against officers; and
- any other matter the Commission considers relevant.

Judge Richards is the President of the Childrens Court of Queensland and a judge of the District Court, and is also a former crown prosecutor and public defender. She was a member of the Taskforce on Women in the Criminal Code in 1998.

The \$3.4m Commission of Inquiry began on 30 May 2022 and is expected to take four months.

More information: www.qld.gov.au/womenstaskforceresponse

Qld magistrates modernise after 135 years

Attorney-General and Minister for Justice, Shannon Fentiman said current criminal procedure laws in the *Justices Act 1886* are being comprehensively reviewed for the first time since the Act started in 1887.

“Our Justices Act is used every day in Queensland,” AG Fentiman said. “The review of the Act is well overdue – it’s been more than a century since it was introduced in Queensland Parliament.

“This ground-breaking review, independently led by retired District Court judge Michael Shanahan, is tasked with making recommendations to create a new framework for contemporary and effective criminal procedure laws for Queensland’s busiest courts, the Magistrates Courts.”

For the consultation paper and information about how to make a submission: <https://statements.qld.gov.au/statements/95103>
Closing date for written submissions is 30 June 2022.

ODD SPOT: Police get DV wrong frequently

Evidence says police get domestic violence wrong way too often. Research by Australia’s National Research Organisation for Women’s Safety (Anrows) was prompted by figures from 2017 that of the 27 women murdered by an intimate partner in Queensland, 12 of the women had been previously identified by police as the perpetrator in a domestic dispute and issued with a restraining order or formal charge. <https://tinyurl.com/55n2vjcs>

Indigenous courts produce good outcomes

A Bureau of Crime Statistics and Research evaluation has found that participation in the NSW Youth Koori Court is associated with a reduction in incarceration, without any adverse impact on re-offending.

The study compared 151 Aboriginal young people referred to the Youth Koori Court with 2883 similar Aboriginal youth with a criminal matter finalised in the Children’s Court through the usual court process.

Youth Koori Court participants were 5.9 percentage points less likely to be sentenced to a juvenile control order than comparable Aboriginal young people through the Children’s Court (a 40% reduction).

The evaluation found no statistically significant reduction in reoffending rates among Youth Koori Court participants. However Youth Koori Court participants who did reoffend were 7.6 percentage points less likely to be sentenced to a juvenile control order at re-conviction (equivalent to an 84% reduction). <https://www.bocsar.nsw.gov.au/>

Govt at last puts money into helping children

WA plans to build a \$15m residential facility “on country” to house at-risk youth in the Kimberley.

It proposes to have the new-style, juvenile detention centre up and running by early 2023, which it claims “will be an alternative to detention for young offenders, giving them the opportunity to engage in structured work and learning”.

CLA thought that’s what existing detention centres were meant to be doing!

The government claims the Juvenile Jail Lite will be an alternative to detention, when a youth is charged or convicted, and also an option for post-sentence rehabilitation and reintegration into the community.

The sudden announcement last month follows huge controversy over conditions at WA’s Banksia Hill Juvenile Detention Centre, with critics saying Banksia Hill is not only failing to deliver rehabilitation and education, but is actively making kids’ mental and physical health worse (see CLArion May 2022) <https://tinyurl.com/y66xq8tj>

Police driver sentenced to jail for three years

Supreme Court judge Robert Pearce has sentenced former Tasmania Police officer Aaron Tasman Bonner to three years jail for killing a pedestrian and seriously injuring his wife, who was also a pedestrian.

He must serve at least 18 months of that time in jail before parole, and is disqualified from driving for two years after his release.

Anthony Robert Campbell was killed and his wife Bernice Campbell, of NSW, were hit by police car as they walked a footpath in central Launceston on 6 January 2020.

Policeman Bonner was responding to a non-urgent call when he sped through a red light and collided with another car, which sent his vehicle out of control and on to the footpath. He pleaded guilty to causing death and grievous bodily harm by dangerous driving, estimated at 89kph in a 50kph zone.

Judge Pearce said last month that Bonner had shown a terrible error of judgement and seriously breached his duty of care to members of the public. <https://tinyurl.com/59ffb4ts>

AUSTRALIAN BRIEFS

Health gets a bad prognosis over data

Health is the worst industry for data breaches, with providers notifying 83 data breaches July–Dec 2021, comprising 18% of the 464 total breaches, according to the Office of the Australian Information Commissioner’s Notifiable Data Breaches report. Health and the finance industry have consistently been the worst performers since the NDB scheme began in 2018. <https://tinyurl.com/5n6r3h73>

ODD SPOT: Become your own barrister

Wig and gown. 100% horsehair wig and gown. \$980. Wig fits an approximate Akubra size 57-58 head. Gown approx size 14 (female). Used once in a ceremonial setting. – advert in the 25 May 2022 ACT Bar Bulletin, with contact details included.

Media freedom on the decline in Oz

Australia's media freedom is "fragile" and less protected than in NZ and countries in Asia, an international journalism watchdog reports in its annual press freedom index. Australia dropped from 25 to 39 out of 180 countries in Reporters Without Borders' (RSF) World Press Freedom Index for 2022, ranking below NZ in 11th and Timor-Leste at 17. "Ultra-concentration of media ownership, combined with growing official pressure, endanger public-interest journalism" in Australia, RSF said. <https://tinyurl.com/32ab3cu3>

Members' (and other relevant) letters:

Apologise, please

I look forward to the new WA Governor Chris Dawson organising official exonerations, apologies and compensation for the families of Lance Williams (deceased), Steven Ross (deceased) and myself for lives ruined by being "outed" as prime suspects in the Claremont series killings. As Premier Mark McGowan said on the steps of Parliament just after the conviction: "I feel sorry for the victims who had to wait and suffer for nearly 25 years". A civil society will not just accept this injustice as mere "collateral damage". An apology from Mr Dawson in his new role as Governor would be an apology indeed. – Peter Weygers (photo), Claremont WA (*Post* newspaper, 23 April 2022).



Cheaper housing is the key priority

The new federal government's priority should be cheap, affordable housing. Too many good hardworking people with nowhere to live: lack of rentals means landlords succumb to greed, renting only to those with connections and a fat wallet. This, of course makes the rich richer. The divide between the haves and have nots has never been wider in this country. Why has the government allowed this to happen in a pandemic for God's sake. Inflation is over five percent when more people can't work. Price rises continue to increase unabated as large companies continue to make obscene profits. Government is about managing a country in a wise responsible way for the populace, not for making decisions that benefit you and your mates. It's clearly obvious that the political parties all offer different doors but to the same room. Politics in Australia is snake pit full of selfish narcissistic amoral totally inept people. If it was the private sector they would be sacked in a heartbeat. – Alan Craig (in response to the May 2022 CLArion call for priority setting).

When will a new Victorian Mental Health Act be legislated?

Dear Mr Merlino, Minister for Mental Health: Further to my email of 14 March 2022 (to which you have not replied) would you please confirm that the Andrews Government now has no intention of enacting a new Mental Health Act prior to the November 2022 elections. If that is the case, I shall be deeply disappointed. Your government should be capable of better. In my opinion, and that of the Mental Health Royal Commission, the 2014 Act is deeply flawed. In particular, as did the Act which it superseded, it treats mental illness more as a crime than an illness. The Royal Commission called for a more humane approach in a new Act. If a new Act is not to be enacted before the election would you please give your assurance that one will be

enacted as a matter of priority in the new Parliament (assuming that the Andrews government is re-elected). – Reg Murray, Glen Iris VIC.

More accountability, not more police

Victoria does not need more police. We need a system that a. holds the (too many) police we already have accountable for their actions, and b. (diverts) excessive police funding into front line community services.

– Monique Hurley, Human Rights Law Centre, VIC.

CLA's main activities for April 2022

We have reported in detail above about the major work under way in promoting human rights Acts, federally and in other states and the NT, as well as the fundamental improvement in existing ones that we are actively campaigning for in the ACT.

WA:

CLA doco – 'Trauma: Rights & Remedies' – launched to silence...and praise

More than 50 people reacted with pin-drop silence as CLA's one-hour documentary 'Trauma: Rights & Remedies' came to an end at its public launch in WA's State Theatre on 4 May 2022.

Then the questions came flooding out from the audience to a panel of experts: Megan Krakouer (Director, Nat. Suicide Prev. & Trauma Recovery Project), Margaret Howkins (VP CLA) Mervyn Eides (CEO Ngalla Maya Aboriginal Corp) and Simon Akkerman (cinematographer and director and himself with prison experience) comprised the panel. (See photo below).*

The documentary lays bare the injustice of "justice" in Australia, particularly in WA. It outlines what is wrong with the police, legal, courts and corrections system in a series of powerful camera-facing segments by people who have suffered its abuses.

There were comments and questions about people's powerlessness over resources or adequate support to traumatised members of the public even when formally employed to do so, forcing some caring workers to abandon their jobs.

Responses from the panel emphasised a Human Rights Act law in WA would underpin the campaign to correct injustices, and empower every person frustrated by blatant denial of funding and resources to the most marginalised people.

Throughout the documentary and during the questions, it was obvious that much-boosted mental health resources are critically needed to address individual suffering. Members of Parliament in Australia's richest state need to be asked when will they deliver for all the people...and not just the big end of town.

Reviews describing reactions to the film were positive, the most powerful included:

"The intergenerational nature of the participants' accounts (of experiences before, during and after incarceration) confirm the shocking disinterest of the WA comfortable and wealthy to



redress the system. The stats are horrifying. The voices are measured; there are no shock tactics undermining (the film's) power. A great achievement for a community TV company too – so professional.”

“...Impressive to have the range of voices witnessing across the full spectrum of people involved in the criminal justice system, from the victims to the law makers and politicians.”

Other comments repeated: “The measure of a civilised society can be judged by the degree of humanity within its largely hidden institutions including prisons, care homes, children’s homes...in which people are often disempowered.”

‘*Trauma: Rights & Remedies*’ has been viewed on CLA’s YouTube channel and has been rolling with WA Community TV Broadcasting around the clock for a fortnight. Facebook and other social media have exposed bits of the film highlighting specific contributions.

* Other arranged panelists were unable to attend at the last minute: they all feature in the doco. Dr Hannah McGlade had been urgently called to a UN meeting in New York. Senator Dorinda Cox, and Gerry Georgatos (Human Rights senate contender) sent apologies for being held up.

The film is available to CLA members on YouTube: <https://www.youtube.com/watch?v=5CWcmg9yypw>

CLA is making it available to the ABC’s *Four Corners* program. There is a detailed plan to market the doco to key politicians, bureaucrats and influencers in the WA “justice” system as well as to the civil society organisations who have to pick up the mess left by inadequate social funding and care.

- The CLA management team worked together to answer questions on the history of CLA for WA Uni student and / CLA member, Bianca Gimondo, who was writing an assignment on the history of civil liberties for her course.
- CLA V-P in WA, Margaret Howkins, worked with CLA CEO Bill Rowlings and President Dr Kris Klugman to provide a comprehensive submission to the WA Joint Standing Committee on the CCC (this was CLA’s third major submission in five years on the same subject to them).
- VP Howkins responded to a 36-page letter from a prisoner desperately seeking justice after being convicted in an oath-against-oath trial by jury. While CLA does not normally respond to such letters, as it does not take on individual cases, she advised that only brief, bullet-point facts about conviction might be actionable by anyone within the legal profession motivated to help.
- CLArions for May 2022 were posted to 10 prisoners in early May, and 10 made publicly available at the film launch.
- CLA in WA provided a character reference to cinematographer Simon Akkerman in preparation for his appeal against conviction, due in mid-year.
- CLA in WA received an email from an aspiring judge congratulating us on our hard work for social justice, especially towards Human Rights Acts.

TASMANIA:

In Tasmania, CLA is working to re-activate the local human rights campaign. This follows a change of Premier. The campaign has been in abeyance for 18-24 months while the Tasmanian Law Reform Institute worked on a new report. But that report is unlikely to see the light of day at all. Some 20 local organisations, led by CLA, actively support a HRA for the state.

NT:

CLA has written to the new Attorney-General, Chansey Paech, asking whether he will consider introducing a HRA for the Northern Territory. We await his reply. He has described himself

as young, gay and black and is a well-known supporter of rights for fringe people and groups.

There is major turmoil in the ‘establishment’ spheres in the NT. Politically, sudden resignations started at the top, when Chief Minister Michael Gunner stepped down, followed almost immediately by the public service head of the Premier’s Department. As with all matters in small, frontier jurisdictions like the NT, resignations invariably have flow-on effects, or raise questions, in relation to relatives of the resigners and those promoted.

The NT ICAC (Independent Commission Against Corruption) itself has been under investigation for possibly illegally tape-recording potential targets. It was forced to apologise for breaking terms of its own Act, denying procedural fairness. And the report of its inquiry into the building of a new grandstand by Darwin Turf Club has upset all sides to the debate, and then some.

In legal circles, it is being claimed ICAC cherry-picked one point of a three-pronged formal complaint about bias and incompetence to the NT’s new Judicial Commission, made by a barrister against a Supreme Court judge. Conveniently for the judge, ICAC produced a “nul” finding, meaning it couldn’t find anything wrong.

That’s an extremely surprising result, because the Legal Practitioners Disciplinary Tribunal found quite the opposite, and the barrister was awarded about \$0.5m in costs.

INTERNATIONAL

New chance to overturn yacht-based conviction

The NZ Court of Appeal ruled last month that Scott Watson can challenge whether the police photo montage-based identifying of him as the “mystery man” last seen with a disappeared couple in 1998 was properly obtained and therefore was appropriate to put before the jury during his trial.

The NZ “yachtie” case is often compared with the Sue Neill-Fraser case in Tasmania on Australia Day in 2009, where her husband, Bob Chappell’s, body was never found. Both cases have attracted significant community and legal support as miscarriages of justice.

Watson’s latest appeal comes after he has already been denied parole four times, basically due to his refusal to admit guilt. His new Court of Appeal hearing will take place on 31 August in Wellington: it is a flow-on for a formal appeal for pardon.

Watson was convicted of murdering Ben Smart, 21, and Olivia Hope, 17, whose bodies were never found, in Marlborough Sounds, at the top of NZ’s south island. The pair was last seen getting off a water taxi from a lodge on to a yacht in the early hours of 1 January 1998.

Watson, now 50, was sentenced to life in prison and has spent 24 years behind bars. He has always denied killing the pair.

Watson was identified as the mystery man last seen with Smart and Hope by a water taxi driver Guy Wallace, based on a photo montage shown to him by police. However, the montage pictured Watson mid-blink, matching other descriptions that said the mystery man had “hooded eyes”.

After the trial, taxi-man Wallace, who died in 2021, said he didn’t believe Watson was the man he saw with Smart and Hope, according to a report of the case in *Newshub*. <https://tinyurl.com/srvpyk7k>

‘Justice more important than procedural rules’

The Court of Appeal has ruled Watson (see above) can challenge the montage in his upcoming appeal.

“If there is one lesson from the history of miscarriage of justice in the context of criminal appeals, it is that no good is done by the procedural suppression of a tenable ground of appeal which

has not yet seen the light of day in an appellate court, while other grounds of appeal are nonetheless allowed to proceed," former Court of Appeal President Stephen Kos noted in the ruling.

Watson is also challenging the reliability of forensic evidence over two hairs found on his yacht. <https://tinyurl.com/srvpyk7k>

President Xi says China runs its own HR style

Chinese President Xi Jinping said last month that the nation's development of human rights "suits its own national conditions".

He was speaking during a video call with the UN human rights chief Michelle Bachelet who was on a six-day visit to China.

Among the various types of human rights, the rights to subsistence and development were primary for developing countries, he said. "Deviating from reality and copying wholesale the institutional model of other countries will not only fit badly with the local conditions but also bring disastrous consequences," the *Xinhua* state news agency quoted Xi as saying. "In the end, it is the broad masses of the people who will suffer," he said.

"Countries do not need patronising lecturers; still less should human rights issues be politicised and used as a tool to apply double standards, or as a pretext to interfere in the internal affairs of other countries," Xi said. <https://tinyurl.com/wsjrdefx>

Open slather is the 'privacy' rule in Ireland

The Irish Council for Civil Liberties (ICCL) has revealed that the Republic of Ireland's An Post and Ordnance Survey Ireland's GeoDirectory is selling incredibly personal information, such as social class and family status, about citizens to companies such as Experian and Aviva.

ICCL has been able to buy data about people living in Limerick and Dublin and whether they're "deprived", "struggling" or "affluent". Anyone can buy this data about any household in the republic, according to ICCL's Tech and Human Rights Officer, Olga Cronin.

Some 2.2 million Irish homes and their residents are profiled in this way, under headings such as "striving urban singles", "deprived urban families" or "struggling older families".

Aviva uses GeoDirectory data to set individual insurance prices and examine claims. Profiles of Irish people are also sold to Experian, one of the world's biggest data brokers, to feed into credit reports. GeoDirectory's data are supplied by An Post, Ordnance Survey Ireland, and the census, including income, labour market skills, age, cultural background, and family status. <https://tinyurl.com/36s3by2x>

Spy chief sacked for prying into pollies' phones

Spain's government has fired the director of its top intelligence agency amid two separate cases of hacking of the mobile phones of politicians.

The EFE news agency and other media reported last month that Spain's Cabinet agreed Paz Esteban would be relieved as head of Spain's National Intelligence Center, or CNI.

The decision comes after Ms Esteban (photo) admitted in a closed-door committee of Spain's parliament that her agency had legally hacked the phones of several Catalan separatists after receiving judicial permission.

Her agency is also under scrutiny for recent revelations by the government that the mobile phones of both Prime Minister Pedro Sanchez and the defence minister were infected with the Pegasus spyware by an "external" power. <https://tinyurl.com/4679j7p4>



ICE and HA...two spies in a pod

Immigration and Customs Enforcement (ICE) in the USA is a direct equivalent of Australia's Dept of Home Affairs (HA).

In Australia, this is what HA does, directly from its website: "Home Affairs brings together Australia's federal law enforcement, national and transport security, criminal justice, emergency management, multicultural affairs, settlement services and immigration and border-related functions, working together."

HA and ICE swap information on a daily basis, and details of surveillance techniques regularly.

Here is what a study by a Centre of Georgetown's Law Faculty in Washington DC has concluded about ICE (which, almost assuredly, holds 99% true for HA also) and its highly secretive bulk surveillance activities:

- ICE surveillance is broader than people realise. It is a dragnet.
- ICE built its surveillance dragnet by tapping data from private companies and public bureaucracies.
- ICE has scanned, and has access to, the driver's licence photos and data of 1 in 3 adults (HA has more than that, relatively, in Australia).
- ICE tracks the movements of drivers in cities home to 75% of the US population.
- ICE exploits people's vulnerability and trust in institutions to get its hands on more data.
- ICE leverages people's trust in state (motor vehicle departments) to target deportations.
- ICE leverages people's need for water, gas, electricity, phone and internet to target deportations.
- ICE used interviews with unaccompanied children to find and arrest their family members.
- ICE surveillance has evaded (parliamentary) oversight and laws.
- ICE surveillance deters people from accessing essential services. <https://tinyurl.com/ybxpsk82> (HA: <https://www.directory.gov.au/portfolios/home-affairs/department-home-affairs/national-office>)

ICE and HA both domestic surveillance agencies

"ICE has built its dragnet surveillance system by crossing legal and ethical lines, leveraging the trust that people place in state agencies and essential service providers, and exploiting the vulnerability of people who volunteer their information to reunite with their families," the above article says.

"Despite the incredible scope and evident civil rights implications of ICE's surveillance practices, the agency has managed to shroud those practices in near-total secrecy, evading enforcement of even the handful of laws and policies that could be invoked to impose limitations. Federal and state lawmakers, for the most part, have yet to confront this reality."

Amen for what HA does, and is.

'transformed into vast domestic spying agency'

"The pervasive and unaccountable ICE reach alarms the world's guru on surveillance, Bruce Schneier, who is a Fellow and Lecturer at Harvard Kennedy School: schneier@schneier.com <https://www.schneier.com>

"US Immigration and Customs Enforcement (ICE) has long been a magnet for controversy over its cruel treatment of migrants. But there's another, potentially more alarming reason to worry about it: ICE has slowly transformed into a vast domestic spying agency that could easily be turned on the American people, whether citizens, documented, or undocumented." Schneier says. <https://tinyurl.com/ybxpsk82>

Amen for HA in Australia. It's time the full range of HA's activities were revealed to the Australian people, and the department's and its agencies' excesses reined in, CLA says.

Court/legal system grinds towards halt

In a situation mirroring the courts and legal crisis in Australia, the wheels of justice for ordinary people now grind so slowly as to be visibly seizing up in England and Wales, reports Gaby Hinsliff in the *Guardian UK*.

For example, an unnamed MP arrested and then bailed last month on suspicion of rape and other offences faces allegations first made in January 2020. It has taken almost two and a half years even to reach this stage of investigation; if any trial is to follow, then it could still be many months away. The case of his former parliamentary colleague Charlie Elphicke, convicted in 2020 of sexual assault, took three years to reach court.

Countless ordinary people are now stacked in the same cruel holding pattern: by the end of last December, 25% of cases in England and Wales had been waiting a year or more to come to court, and the number waiting more than a year had more than trebled since March 2020, when Britain first locked down.

The courts are facing a mutiny among criminal lawyers that now threatens to bring the system to its knees.

Duty solicitors, who frequently must race to police stations in the middle of the night to take critical decisions on behalf of often difficult, occasionally violent, clients and then slog through the casework in return for fees that (according to a government-commissioned review) have fallen overall by up to 45% in real terms since 1996. <https://tinyurl.com/2p8nbfts>

Young doctors fail to gain consent

Medical students are encouraged to breach informed consent guidelines by their supervisors, the NZ Medical Association has reported after surveying 93 final-year students at the University of Auckland, about over a third of the class.

Most students admitted that did not always comply with consent guidelines.

Across sensitive procedures like breast, rectal, or genital examinations, except for one, most students admitted to not complying. Only in non-birth related pelvic examinations did 85% of respondents say they always performed with proper informed consent.

During breast exams, on the other hand, only 17% said they always sought consent. <https://tinyurl.com/2vuphxd7>

INTERNATIONAL BRIEFS

Shooting sprees on the rise in the USA

There were 61 "active shooter" incidents in the USA in 2021, according to FBI data – 52% up from the previous year and the highest on record. The attacks spread across 30 states, leaving 103 people dead and 140 wounded. In 2020, the FBI counted 40 active-shooter attacks in 19 states that killed 38 people and wounded 126. That year coincided with the height of restrictions on social and economic life due to Covid-19. The FBI had recorded 31 incidents in 2017, and 30 in both 2018 and 2019. <https://tinyurl.com/2p9bu9p8>

Cannabis legalised in US: why not in Oz?

Marijuana is legal for recreational use in 18 US states and legal for medical use in 37, a multibillion-dollar industry in states all over the political spectrum. Yet at the federal level, it is still classified as a Schedule I drug alongside heroin and LSD. Presidential administrations have sent memos about the priority of marijuana prosecutions only to have them rescinded by successors. While a bill to decriminalise marijuana recently passed in the House of Representatives, it faces long odds in the Senate. <https://tinyurl.com/6vrsauty>

Emergency operation leads to 30 years jail

A woman in El Salvador has been sentenced to 30 years jail for the death of her unborn child following an obstetric emergency, according to the Citizen Group for the Decriminalization of Abortion. They said last month that the 28-year-old woman, identified only as "Esme", had suffered a health emergency while pregnant in 2019 and sought assistance at a local hospital. She was later convicted of homicide and handed the lengthy sentence after serving two years of pre-trial detention. Abortion is illegal in El Salvador, even in cases of rape and when the woman's health is in danger. Rights observers say the law, which went into effect in 1998, is enforced to such an extent that women have been punished for having miscarriages, stillbirths, or other obstetric emergencies. <https://tinyurl.com/3knmkukv>

Police discover data can be two-edged

Police Scotland has been forced to disable aircraft-style black boxes after spending \$3.5 million since 2016 fitting them to patrol cars. Key functions of the recording devices supposed to monitor fuel consumption, speed and driver behaviour have been turned off because the apparatus had not been discussed with officers. The move to disable them is described as "shambolic" by the Scottish Police Federation, representing rank-and-file officers. Apparently, someone suddenly became aware that the data could be used in court following police car chases where people had been injured, or killed. <https://tinyurl.com/msz75k5p>

US Supreme Court judges paid peanuts, by comparison

From 1 January 2022, the salary of the chief judge of the US Supreme Court is \$Aust 395,380. Other judges on the court are paid \$Aust 387,140. <https://tinyurl.com/2x2raekx> Their law clerks do a lot better. After a year of service at the US Supreme Court, they are routinely offered sign-on bonuses of \$400,000 from law firms, on top of healthy salaries of more than \$200,000, the *NYT's* Supreme Court reporter, Adam Liptak, reported 18 months ago. For comparison, the chief judge of the High Court of Australia earns \$608,150; other HC judges are paid \$551,880.

Girl reporting rape allegedly raped by police officer

A police officer in the northern Indian state of Uttar Pradesh has been arrested for allegedly raping a 13-year-old girl who went to police to report she had been gang raped, after being sexually assaulted by four men for four days. <https://tinyurl.com/2s46zvkc>

DATES – 2022

3-4 June, Bankstown, Sydney: Muslim Agenda, Australia's first Muslim Women's Festival, by Muslim Women and for Muslim women. Arts Centre. Details <https://www.muslimagenda.com.au> OR Instagram page @muslimagenda

8-11 Nov, Gold Coast Qld: Asia Pacific Coroners Society conference, \$650 a day for non-members: <https://www.ivvy.com.au/event/APCSC2021/>

Next elections for Australia:

Victoria: 26 November 2022
NSW: 25 March 2023

CLArion is the regular e-newsletter of Civil Liberties Australia Box 3080 Weston Creek ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au) Closing date for this issue was 28 May 2022.

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