

## **CLA and friends set to achieve major improvement in human rights act**

CLA has succeeded – with the help of others – to secure the most significant development in human rights in Australia for many years.

The ACT government is being urged by its own Justice Committee to pass a new law so that anyone whose human rights are breached will have a formal remedy available. CLA describes the proposed change as ‘No Rights Without Remedies’, the name of our campaign

No such system operates under any of the existing three human rights acts in Australia: in the ACT, Victoria or Queensland.

But in the ACT, when passed as is expected, the law will mean that anyone can seek conciliation (say with a government department) through the ACT Human Rights Commission, or seek a legal ruling through a binding decision of the ACT Civil and Administrative Tribunal, ACAT, where they will also be able to achieve enforceable compensation.

(If the matter is major, or breaks new legal ground, it can be taken to the ACT Supreme Court, an opportunity that exists now but is usually prohibitively expensive and/or time consuming).

The new ACT law will likely guide the development of a future federal HR Act, as well as amendments in future to the existing state acts. It should also inform new acts for which CLA is campaigning in Tasmania, NSW, WA and the NT.

Details: [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/2023764/JCS-Report-7-Report-into-the-Inquiry-into-Petition-32-21-No-Rights-Without-Remedy.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/2023764/JCS-Report-7-Report-into-the-Inquiry-into-Petition-32-21-No-Rights-Without-Remedy.pdf)

### **Success comes early, due to lots of help**

Other groups, as well as CLA, were instrumental in achieving the “model act” success in the ACT.

They included the ACT Council of Social Service, Australian Lawyers for Human Rights, Canberra Community Lawyers, the ACT Law Society and ACT Bar Association, plus Legal Aid ACT and the Australian Lawyers Alliance.

From interstate, CLA’s efforts were supported by a submission from the Queensland Council for Civil Liberties, with Amnesty International coming in towards the end.



The success has come a little earlier than expected. Originally, CLA proposed that the ‘No Rights Without Remedies’ principle be incorporated into law in 2024. On 1 July of that year, it will be the 20th anniversary of the ACT Human Rights Act, which was the first in any Australian jurisdiction.

It is possible the new law may be in place in the ACT before the end of 2022.

### **First campaign target met: now for a federal HRA**

Creating a new, model human rights act – with remedies – was the prime aim of the first part of CLA’s national campaign.

CLA’s National Human Rights Manager Chris Stamford led the campaign which has achieved the recommended success, which the ACT government will legislate for, it is anticipated.

Stamford continues to lead the national CLA Human Rights Act campaign, which is now ramping up.

*Left: Chair of the ACT Legislative Assembly committee which recommended changing the Human Rights Act for the better, Peter Cain (left) discusses the concept of ‘No Rights Without Remedies’ with CLA’s project manager, Chris Stamford, early in the briefing/lobbying process before Mr Cain was appointed chair.*

A Labor government is usually more amenable to rights and social justice, as outlined by Prime Minister Anthony Albanese in his election night acceptance speech:

*“No one left behind because we should always look after the disadvantaged and the vulnerable... to make a positive difference each and every day”, said Anthony Albanese during his victory speech on 21 May 2022. And to “unite around... our shared values of fairness and opportunity”.*

A Human Rights Act would go a long way to achieving the PM's aims.

Many of the new 'teal' MPs and others such as ACT Senator David Pocock are believed to back the need for a HRA in Australia. Independent MHR Andrew Wilkie sponsored a HRA private member's bill in the previous parliament. The Greens support the idea. And the Labor Party's formal platform is to review the current HR framework with a view to improvement.

CLA is continuing its federal campaign, during which we have met with more than 100 key supporters, opponents, influencers and decision-makers. In June 2022, Chris Stamford (left) and CLA President Dr Kristine Klugman met by Zoom with former MHR and Australia icon, Dr Barry Jones (see photo) and a number of other people.



### **ODD SPOT: At last, someone is responsible for the AFP**

"The Attorney-General's portfolio will gain responsibility for criminal law enforcement and policy, including the Australian Federal Police", says an announcement from the office of the Prime Minister, Anthony Albanese. Yippee, says CLA. No-one on government has been truly 'responsible' for the AFP previously. To all intents, they are a law unto themselves. Examples: Bali 9 (two Australians executed); Haneef affair; Cyclopean ability to never find anything prosecutable when a matter fringing on the political is sent to them for investigation (High Court matters); overwhelmingly skewed focus on Muslim terror which left Australia dangerously exposed to right-wing 'terrorists'; absolute failure of their antediluvian approach to drug policy over decades; etc. <https://www.pm.gov.au/media/delivering-better-government>

### **Dreyfus: the time to act is now**

New Attorney-General Mark Dreyfus has four big issues on his plate, which he must resolve sooner rather than later. He is not a newcomer to the AG role: he was AG in a previous Labor government, so he has no excuses for not acting speedily on these matters:

1. Release draft legislation for "an ICAC with teeth", to be called a Commonwealth Integrity Commission, National Integrity Tribunal or something similar. This is his main priority.
2. End the persecution of Collaery, McBride and Boyle. This is clearly within his immediate power to act on. (See item below).
3. He must help other Ministers to bring Australian citizen Julian Assange home, free and unconvicted.
4. Fourthly, he must begin the process (by October 2022) of introducing a federal Human Rights Act to Australia.

### **\$6m wasted in prosecuting the wrong people**

The Morrison Coalition government spent almost \$6m prosecuting Bernard Collaery, David McBride and Richard Boyle, basically for whistleblowing which exposed government wrongdoing and misconduct.

The costs of the prosecutions almost doubled in the past two years, leaving taxpayers with an exorbitant legal bill...so far, the *Guardian's* Christopher Knaus has revealed.

None of the three core cases have come to trial yet despite being under way for half a decade or more.

Only the secret case of Witness K, a long-retired ASIS agent, has been "heard" in court: he received a slap on the wrist, at a cost to taxpayers of probably about \$1m.

Witness K and Collaery were helping to expose Australia's secret bugging of Timor-Leste Cabinet ministers during commercial negotiations over access to oil, gas and helium resources in the Timor Sea. Those who authorised the bugging should be on trial, CLA believes.

McBride is the Defence lawyer who exposed Australian's alleged war crimes in Afghanistan – 39 Afghan deaths (at least), 36 incidents (at least) with about the same number of special forces soldiers allegedly implicated. No-one else in Defence or government had the courage to reveal what had happened, which was common scuttlebutt among the troops in Afghanistan and in Australia.

The government's external costs in his case have reached \$1.3m. McBride's courage is worthy of a Victoria Cross, or at least a Star of Gallantry.

Boyle is a former tax official from Adelaide charged after helping an *ABC* investigation into "aggressive tactics" employed by the the Australian Taxation Office to recover debts. Lay people might describe the alleged ATO actions as bullying, even 'legalised extortion'.

It is time the new Albanese government Attorney-General, Mark Dreyfus, called off the persecutions of these innocent people, who should be praised for their honesty, integrity and courage instead of being charged and living in a legal limbo for the past seven or so years. <https://tinyurl.com/ycybf6hc>

## **The Force searches your IT devices ‘on suspicion’**

Australian Border Force conducted more than 41,00 warrantless searches of electronic devices at the country's borders between 2017 and 2021, *iNews* has revealed from FOI revelations.

"Travellers have no legal obligation to provide a password/passcode or provide assistance to access an electronic device at the border," the rules say...but the Force is unlikely to tell you that. The ABF said officials "may" advise travellers of their rights, but there is no policy requiring them to do so.

The searches are legal. They should not be legal, merely "on suspicion", CLA says.

The ABF's broad search powers enable the agency to conduct device searches for a variety of reasons, including on suspicion that a traveller has or intends to engage in work prohibited by their visa. "There are many instances under which we may examine a traveller's device, for example, visa-related issues, counter-terrorism and prohibited items," an ABF spokesperson said.

Searches are also made on behalf of, and copied data shared with, other federal agencies.

The FOI figures show device searches peaked at 14,927 in 2019. <https://tinyurl.com/wdd87shw>

## **ODD SPOT: INSLM should toss out a few dozen terror laws that are well past their use-by-date**

*"There is no reason to think that the pace of growth in Australia's national security and counter-terrorism legislation will slow. It is critical that what is a vast and expanding body of laws be subject to constant, adequately resourced review."* – excellent comment by Grant Donaldson (photo), Independent Security Legislation Monitor, INSLM Annual Report 2020-2021.

Donaldson SC was appointed, temporarily at first in mid-2020, to the INSLM role by his longtime Perth legal mate, the then Attorney General Christian Porter. The tail of Coalition "friend of" appointments will run for quite some years yet, with the Administrative Affairs Tribunal the obvious standout.

INSLM Donaldson held public hearings late in June 2022 (in a process begun a year ago): you can bet your bottom crypto currency that he does not recommend getting rid of any of the 'vast and expanding body of laws'.

Most of the 'emergency' laws weren't needed after the US Twin Towers aircraft attack panic of 21 years ago, and they are not needed now: let the criminal law deal with criminals, as a then-wise law lecturer, now-Law School Dean, said back in late 2001.

## **'It's Time' moment for comprehensive security review**

In a column agreeing totally with the long-held and oft-stated view of Civil Liberties Australia, noted close Canberra observer Jack Waterford has come out with a swingeing critique – and advice for the Albanese government – about Australia's security space:

"It is more than past time for a searching external review of anti-terrorism legislation, the use of new investigative powers given police and intelligence agencies, and the rapid creep of the use of such powers into ordinary law enforcement functions.

"A similar external inquiry should be investigating security agencies, including the AFP and the department of Home Affairs, and the effectiveness of intelligence agencies.

"They are not matters to be handed over to insiders, or left to tame and indoctrinated, and often blatantly partisan, politicians.

"There are other fertile fields of inquiry, such as the efficacy of a Border Force, the independence and competence of the AFP, the management of defence acquisitions, accountability for private sector appropriations for the Great Barrier Reef, and the value for money obtained from contracted-in boat people facilities, including security." – Jack Waterford, columnist and former editor-in-chief of the *Canberra Times*, 27 May 2022 <https://tinyurl.com/y393zy4s>

CLA comments that such reviews are not held under Coalition governments, which tend to consider the police and security services as an extension of their own influence. It is usually only Labor/Independent governments who have the courage to tackle the forces of secrecy and repression hiding in plain sight in our society.



## Johns falls on his own petard

The Assistant Minister for Competition, Charities and Treasury, Dr Andrew Leigh, appears to be glad Gary Johns has been flushed out by his own hand.

“I welcome the news that the Commissioner of the Australian Charities and Not-for-profits Commission, Gary Johns, has tendered his resignation,” newly-appointed Minister Leigh wrote last month. Leigh had been shadow minister for the sector for many years, and is probably Australia’s leading expert, given his academic and economic credentials.

“The Albanese Government will engage with the sector with respect and creativity, and work to fix fundraising, increase charitable giving and build a stronger charitable sector to support vulnerable Australians. We recognise that it accounts for 10% of employment and a significant amount of GDP, and that charitable advocacy plays a vital role in our democracy.”

A few days later Leigh encouraged charities and non-profits to speak out to criticise where they thought improvement was needed.

Johns, a former Labor MP, was appointed to the top ‘charities and non-profits’ role by the Coalition government because of his fierce dislike for some aspects of the sector. His tenure was marked by rancorous public haggling, negativity and ideological interference with the very people who do most to make Australia a fairer and more just society, CLA notes.

## SA spends big to prosecute: CLA awaits cost-benefit analysis

SA is spending nearly \$9m to upgrade three courtrooms and employ more court staff and judges’ associates to handle a series of large multi-defendant trials resulting from ‘operation Ironside’.

In SA, up to seven defendants at a time – plus legal representatives – will face court.

More than 80 South Australians have been arrested and charged in connection with one of the most complex law enforcement operations in Australia’s history.

Of the total, \$6 million will let the DPP hire extra prosecution staff staff. The remaining \$2.8 million will be spent on ancillary staff.

Nationally, some 383 alleged offenders have been charged with 2340 offences after international police set up and ran a falsely-secure comms network for criminals under the ‘operation Ironside’ banner, targeting mafia and like groups.

Operation Ironside sees people facing charges that include conspiracy to commit murder, participating in a criminal organisation, money laundering, trafficking in large commercial quantities of methylamphetamine, fantasy, MDMA, cocaine, heroin and cannabis, as well as firearms offences. <https://tinyurl.com/bdcv5f86>

It will be interesting, CLA says, to see how many of those charged get off. Big campaigns like ‘Ironside’ are never subjected to cost-benefit analyses. The same criticism applies to most police activity.

## Will the territories get their democratic rights back?

Now that independents are providing a lead for fair and equitable progress in Australia, the two territories – ACT and NT – are looking to David Pocock, the newly elected Senator for the ACT, to lead the push for territorians to vote on whether they want voluntary assisted dying laws (VAD).

At the time of the May 2021 election, territories were barred from even voting on the issue by a religiously-inspired private member’s Act introduced by the recently retired Liberal MP, Kevin Andrews.

Voluntary assisted dying (VAD) is a legal, ethical and social policy issue. In Australia, VAD laws have been passed in all States...but not even voted on in the ACT and NT, yet.

Victoria’s and Western Australia’s VAD laws have started. VAD begins in Tasmania on 23 October 2022, South Australia in early 2023, Queensland on 1 January 2023, and NSW on 28 November 2023. <https://end-of-life.qut.edu.au/assisteddying>

## WA Justice fails the state’s children as young as 10

WA juvenile jail system is in turmoil, facing more unrest with children smashing cells after their human rights have been violated by the government, they claim.

Banksia Hill held 51 kids aged 12 or younger, including one 10-year-old, at 30 April 2022. WA has so far refused to raise the age of criminal responsibility to the nationally-recommended 14.

Justice Department Director-General, Dr Adam Tomison, has told a parliamentary inquiry that about 100 cells at the 250-capacity Banksia Hill kids’ jail were out of action in mid-June 2022.

If Tomison can't fix the problem – he has been in the job since 2016 – who can? The WA govt website says: “Dr Adam Tomison is internationally recognised as an expert in the prevention of child abuse and family violence, and the development of child protection.” <https://tinyurl.com/59n6k869>

Tell that to the rioting children of Banksia Hill. They are smashing toilets, beds and communication gear and breaking apart the walls between cells because of the conditions in which Dr Tomison holds them.

WA's custodial services inspector Eamon Ryan revealed in April that there were 24 suicide attempts at the juvenile jail between January and November 2021, mostly by boys forming a suicide pact while held in an internal jail punishment system of cells.

Ryan found the human rights of four detainees had been breached across several days in November when they spent less than an hour outside their cells.

The McGowan government, in a panicked response to the suicide revelations, promised \$25 million to Banksia Hill, largely to fund infrastructure upgrades.

It costs \$1352 each day to jail a child at Banksia Hill. Most of them are on remand, awaiting their trials, and had not been found guilty and sentenced.

### **‘Justice’ system is not fit for purpose: WA**

The problem with Banksia Hill, all jails in WA and the state's police and legal system is that it is not fit for purpose.

Squillions of dollars have been wasted on polly perks, subsidising the big end of town and mining, and generally looking after mates across both Labor and Liberal/National/Country coalitions. One of the state's growth industries is tunnel vision by police leading to miscarriages of justice and increasing public compensation for wrongful convictions, CLA says.

WA needs a revolution in thinking, not patched-up brick, mortar and concrete cells contained by 19th century rhetoric, barbaric bars and clanging metal doors that are unfit for purpose for kids aged 10 and adults through to their 70s and 80s.

While WA is not alone in Australia with similar problems, it is undoubtedly one of the worst examples, CLA believes.



### **‘Justice’ system is not fit for purpose: Victoria**

Jailers use excessive force against Victorian prisoners in “persistent and endemic” manner in the state's remand centres, according to a report tabled in parliament last month by ombudsman, Deborah Glass (photo).

She says a culture of silence stops uncovering the full extent of the problem.

The report found officers were failing to use body-worn cameras as required and that incidents often occurred in “CCTV blind spots”, which raised suspicion about officers' actions and motives.

Glass analysed findings from eight separate investigations into allegations from prisoners who said they were subjected to unreasonable force such as punching or choking between 2018 and 2020 at the Metropolitan Remand Centre and Metropolitan Assessment Prison.

Her report made 12 recommendations, including that Corrections Victoria increase prison officer accountability and compliance regarding the use of body-worn cameras and improve CCTV coverage. She also recommended reviewing the effectiveness of training in de-escalation techniques. <https://tinyurl.com/3um8zd4x>

### **‘Justice’ system not fit for purpose: NT**

A major fraud case involving the alleged roting of more than \$220,000 of taxpayer funds by one company has been stalled in court for nearly three years due to a delay in a pre-trial decision by Justice Stephen Southwood of the NT Supreme Court.

According to an exclusive article by *NT Independent* editor Chris Walsh, judge Southwood is expected to hand down the relevant decision by the end of June, after the publication raised the issue with the NT Chief Justice, Michael Grant.

The Office of the Director of Public Prosecutions inexplicably failed to raise any issues about the massive delay in bringing the high-profile trial to court, Walsh reported.

“Alice Springs-based MPH Carpenters and Constructions and its operations manager were charged in April 2018 for allegedly defrauding the government's Indigenous Employment Provisional Sum (IEPS) scheme of more than \$220,000.

“In September 2019, lawyers for the accused sought a decision to have the charges quashed or, alternatively, for the DPP to provide ‘proper particulars of the charges’.

“The court also heard an application at that time by the Crown to have the trial moved from Alice Springs to Darwin, where prosecutors alleged the company’s manager deceived bureaucrats into paying money to the company it was not entitled to receive.

“However, a court spokesman told the *NT Independent* on 7 June 2002, in response to questions, that ‘the decision was reserved following a hearing and has yet to be delivered’.” <https://tinyurl.com/2p88yr6a>

The IEPS scheme reportedly saw local construction companies alleged to have rorted tens of millions of dollars, the NT Auditor General has found, according to Walsh.

## ‘Justice’ system is not fit for purpose: Qld

Queensland has announced a Commission of Inquiry into DNA testing at the state’s Forensic and Scientific Services (QFSS) facility, part of the Department of Health.

The former President of the Court of Appeal, retired judge Walter Sofronoff, will head it. Issues raised by Queensland police over the thresholds of DNA testing prompted the need for the Inquiry.

Terms of Reference of the Inquiry will include:

- whether the systems and processes in place for DNA testing are reliable, conducted to an acceptable standard and achieve quality reporting of DNA results and matching;
- whether testing adheres to contemporary best practice;
- whether adequate external quality assurance and accreditation is in place; and
- sample management. <https://tinyurl.com/mrxfeyp>

## Biologist says Qld lab is giving wrong forensic results/advice

A government review into DNA testing at a state-run forensics laboratory has been labelled “manifestly inadequate” by a former employee after Queensland police revealed they were re-examining cases dating back to the start of 2018.

Forensic biologist Dr Kirsty Wright (photo, Air Force) said there were potentially thousands of cases in question going back 10 years after anomalies were found in DNA results from QFSS.



“The Queensland police review demonstrates without a doubt that the lab isn’t working efficiently and they’re giving incorrect advice to the police which may be preventing them from identifying offenders of very serious crimes,” she said.

The issue came to light after Queensland police requested additional testing on samples that QHFSS had reported as “insufficient DNA for further processing”.

Further tests revealed a success rate of 30% on DNA samples in relation to “all crime classes” and a 66% success rate for DNA detection for sex offences.

<https://tinyurl.com/5bc93nam>

Why is there an inquiry into Qld forensic testing? Almost 600 crime scene samples were not tested by the lab in 2021 due to being judged to have “insufficient DNA for further processing”.

Police asked for 47 of these samples to be tested anyway, and 31 returned usable DNA profiles, the *Guardian* newspaper reported. <https://tinyurl.com/5n7xhx7h>

## Crime rates generally down, continuing trend

Most major property and violent crime rates in the state were stable in the two years to March 2022, according to the NSW Bureau of Crime Statistics and Research, BOCSAR.

This situation follows large reductions in offending during the COVID-19 pandemic. Between January and March 2022 NSW police recorded 24% fewer property offences than the same period two years ago (January to March 2020).

In Quarter 1 2022 theft and robbery offences were still significantly lower than before the pandemic due to sharp falls in crime from the first COVID-19 lockdown in March 2020 onward.

In the three years to March 2022, recorded incidents of domestic violence assault were stable in Greater Sydney but increased in various regional communities.

In the year to March 2022 recorded incidents of knife and firearm violence were low compared with historic levels. Murders, attempted murders, assaults and robberies involving knives or firearms were lower in the year to March 2022 than in almost any other year in the past two decades, BOCSAR’s executive director Jackie Fitzgerald reported. <https://tinyurl.com/2s3kreps>

## **ODD SPOT: Attitude change boosts DV figures**

A new report last month from BOCSAR shows that domestic violence-related stalking/intimidation incidents recorded by NSWPol more than doubled over the past 10 years to 2021, up 110% (8120 to 17,063). The incidents typically involved threats, intimidation and verbal abuse (not stalking). BOCSAR Executive Director Jackie Fitzgerald said: "The rise in stalking/intimidation charges appears to reflect a changing appreciation of the seriousness and breadth of domestic and family violence by law enforcement rather than changing behaviours in the community". [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_publication/Pub\\_Summary/BB/BB159-DV-related-stalking.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB159-DV-related-stalking.aspx)

## **Superficially, police in the ACT appear to be 'dodgy', barrister claims**

The guilty rate in the ACT Magistrates Court has dropped by about a third, the latest Productivity Commission data shows.

In the five years to 2019-20, 95% of defendants pleaded guilty or were found guilty. That dropped to 65% and 66% in the following two years.

ACT Bar Association vice-president Jack Pappas said one of the reasons was an AFP culture of police collecting evidence improperly: some officers regularly used "dodgy behaviour" to obtain evidence, which meant cases were thrown out of court.

"What you have is a culture within the AFP, which I don't think is being addressed, of police acting illegally or improperly," Pappas said. "I've seen some appalling instances of police misbehaviour, but I've yet to see a case where there's the slightest hint that the police will be hauled over the coals or taught to do things differently in circumstances where they've effectively mucked up or ruined a prosecution because of their behaviour."

But police leaders and the AFP union have dismissed these claims as baseless and argued the data used to determine the conviction rate could not be compared to previous years. ACT Policing, a "business unit of the AFP", has the contract to provide policing services to the ACT.

ACT Director of Public Prosecutions Shane Drumgold said the reasons charges were dismissed in the Magistrates Court were "extremely varied": similarly for whether a charge resulted in a conviction.

"The data in its present form does not provide any insight into the strength of police briefs, or true figures on successful prosecutions, and any such conclusion would be the result of superficial analysis," Drumgold said. <https://tinyurl.com/dcj77jzu>

## **ODD SPOT: Stunning police failure to use body-worn cameras**

A Victorian Auditor-General's Office report has found at least one of two attending officers did not comply with body-worn camera (BWC) rules in 16.4% of instances – 1 in 6 – that required recording in March 2022.

In about 10% of instances, neither of the two attending officers captured footage using a BWC, despite "fit-for-purpose policies and training materials" governing use of the devices.

The report recommended VicPol better monitor the use of its body-worn camera footage, finding the force had appropriate policies for the cameras but was failing to consistently track how all officers used them.

BWCs were trialled in Victoria in 2018 following a recommendation from the 2016 Royal Commission into Family Violence, Justin Hendry reported in *'itnews'*. After a six-week pilot of 134 devices in Epping and Ballarat, VicPol spent \$42.6m in the 2016-17 budget to equip all frontline officers across the state with BWCs.

Full rollout ended in November 2019 and on 1 April 2022, VicPol had 10,284 BWCs operating.

Who provides them? Axon, the same US company that makes the 'Taser' stun gun, under a \$53m BWC contract with VicPol that runs until 2023. <https://tinyurl.com/yjxx923x> <https://tinyurl.com/27jjyskz>

NB: Axon supplies them to most other police forces in Australia also.

## **WA passes 'Right To Appeal' law**

West Australians convicted of serious crimes will be able to pursue further appeals after the state parliament passed new laws.

The legislation, approved by the upper house on Wednesday, allows individuals to make a second or subsequent challenge against their convictions if fresh and compelling evidence emerges.

They previously had no further right to appeal even if new evidence arose that could potentially exonerate them or demonstrate a substantial miscarriage of justice had occurred.

Instead they were forced to ask the attorney-general to refer the case to the Court of Appeal, or petition the governor for mercy. <https://tinyurl.com/mrj8szuv>

## **Prison visitors to get the full scan treatment**

Visitors entering Perth prisons would undergo full-body X-rays to stop the flow of drugs and other contraband to inmates, Holly Thompson reported in *WAtoday* last month.

The \$1m security upgrade aims to “detect objects swallowed or hidden in body cavities and objects hidden under or within a person’s clothing”...but won’t include Acacia Prison, which is privately run.

In its 2020-21 annual report, the Department of Justice said 4520 searches by the drugs detection unit produced 163 illicit drugs and contraband items, indicating that the X-ray scans may be overkill.

Prisons already use anti-drone technology including sensors, radars and signal-jamming devices, installed in 2018, to stop drugs being air-dropped into prisons. Most people familiar with prisons suggest it is important to thoroughly screen guards regularly. <https://tinyurl.com/2wkmfdj4>

## **AUSTRALIAN BRIEFS**

### **Privacy, FOI to be reviewed**

A new consultation is asking people to have their say on a wide range of proposed reforms to information privacy and right to information legislation in Queensland. The product of it could be a model for other states and the federal government. <https://tinyurl.com/2zum3wwf>

### **GPs to safeguard data, alive or dead**

Australia’s general practitioner college has a data governance committee that will shortly release a major privacy policy statement on how GP data should be managed, whether the patient is living or dead, according to a college spokesperson. “The various research organisations that use this data already have very strong ethics approval that require good data governance. The main issue is that people have concerns when it gets into the wrong hands or it’s used for commercial purposes and that’s something the RACGP is very strong on and keen to try to avoid,” the spokesperson said. <https://tinyurl.com/26kep425>

### **First Indigenous Supreme Court judge appointed**

Australia's first Indigenous Supreme Court judge, Lincoln Crowley (photo), was sworn in in Queensland last month. Crowley, raised in North Queensland by his single father, a retired army officer, is a descendant of the Warramunga people from the NT. He graduated from James Cook University, then worked as a solicitor-advocate for the Aboriginal and Torres Strait Islander Legal Service. Crowley became a barrister in 2003 and has worked in Sydney and Brisbane, acting in several high-profile cases as a crown prosecutor, before making QC in 2018. <https://tinyurl.com/mrxc97s5>



### **New judge gets chance to raise brief quality from the bench**

WA’s AG John Quigley has just appointed a new Supreme Court judge from 1 July 2022, Amanda Forrester SC. She was the State’s Director of Public Prosecutions (the first female) since 2017, and had only just been reappointed to that role – by Quigley – for five years from 6 April 2022. <https://tinyurl.com/2s48fk2p> Looks like a case of the right hand not knowing what the right hand is doing. Forrester is on record in 2021 as saying there had been a “significant decline” in the quality of briefs provided by WA Police which had added to the workload of prosecutors (see criticism in the ACT: story above). The result, she said, was prosecutors forced to work long hours with unpaid overtime and little time for recuperation. Demands were only expected to grow, as the 2021 WA budget promised an extra 950 police. In 2020-2021, convictions were secured in 59% of trials, a figure that had declined for the third straight year.

### **Therapy for egomaniacs?**

“It may well be that the Bar and, for that matter, the Bench is a wonderful sanctuary for egomaniacs. I cannot think of better therapy or a more useful end to which this rampantly common human proclivity might be put.” – Kenneth Henry Marks, Victorian Supreme Court judge, speaking at his farewell on 28 January 1994. “Kenneth Marks Obituary” (PDF). Archived from the original (PDF) on 4 March 2016. [https://en.wikipedia.org/wiki/Kenneth\\_Marks\\_\(jurist\)](https://en.wikipedia.org/wiki/Kenneth_Marks_(jurist))

### **NT ICAC’s budget cut as 14 investigations under way**

It was revealed at the NT Parliament’s Estimates hearing last month that the territory’s ICAC funding had been cut by 20% – or \$1.7 million – and that the government had rejected a recent budget allocation submission Commissioner Michael Riches had made. Riches has not yet released a public report involving an investigation since taking office in July 2021. <https://tinyurl.com/3nnx9d3u>



## Spending up on HR Commission

The Queensland budget included an increase of \$6.9m over four years and \$1.3m per year ongoing for the Queensland Human Rights Commission because of “growing demand on its services during the pandemic”. In other Justice portfolio spending, there is \$6m over two years to establish a Criminal Justice Innovation Office to reduce the rate of imprisonment and deliver on the government’s response to the Queensland Productivity Commission’s report of the Inquiry into Imprisonment and Recidivism, plus \$5.4m over two years for the establishment and operation of the Commission of Inquiry into aspects of the Crime and Corruption Commission. More information: [budget.qld.gov.au](http://budget.qld.gov.au)

## Members (and other relevant) letters:

### Sign up to seek justice for Sue

An article in the *Sunday Tasmanian* in early June reported on a petition circulating which urges the State Government to stop subsidising the greyhound racing industry. The article highlighted that the petition, with 11,540 signatures, had almost broken the record for most signatures on an e-petition to the Tasmanian Parliament. The SNF Supporters Group petition at [Change.org](http://Change.org) calling for an independent judicial inquiry into Sue Neill-Fraser’s conviction currently has 32,600 signatures from 96 countries, but to date we have been unable to generate any media interest. – Rosie Crumpton-Crook, CLA member and President, SNF Supporters Group, Hobart Tas.

### How much has 90% expanded over 50 years?

Bill Bush (Letters, *Canberra Times*, 2 June) is right in saying that drugs are a health issue. In the early 1970s a very senior US official of the then Bureau of Narcotics and Dangerous Drugs (BNDD) told an Australian official in Singapore “we are interdicting approximately 10% of the world’s illicit drug trade and in 50 years time we will still be interdicting approximately 10% of the world’s illicit drug trade”. – Roger Terry, Kingston ACT (Bill Bush is President of Family and Friends for Drug Law Reform, and a member of CLA).

### Bar calls for release

It was wrong for Australia to spy on East Timor in relation to an upcoming contract. It was wrong to commence proceedings against (Canberra barrister) Bernard Collaery in the factual matrix as publicly understood. It is hoped that the new Anthony Albanese government will now discontinue the prosecution proceedings. – John Purnell SC, editor, ACT Bar Association *Bulletin* June 2022

**Guardian** report: ‘It’s frightening what happens to patients in Australia’s mental health units. Change is overdue’. Simon Katter! <https://tinyurl.com/58zmkm8t> – Reg Murray, Vic.

## CLA’s main activities for April 2022

As the lead item in this newsletter reports, CLA has authored a giant step on the path to a massive improvement in human rights in Australia. Our friends and allies have been quick with their thanks and praise:

### Praise from CLA’s interstate and networking bodies:

#### SA:

“This – the ACT human rights with remedies recommendation – is wonderful news, congratulations President Kris. A fantastic model for other jurisdictions including SA,” wrote Dr Sarah Moulds (photo), head of the Rights Resource Network of South Australia. “The RRSNA is still working hard on a Human Rights Act for SA. SACOSS and the Law Society of SA have also developed/ are developing policy positions in favour of an HRA.”

RRNSA has met with the AG’s advisor and are hoping for a meeting with the SA AG Kyam Maher soon, having already met with the cross bench. They are liaising with the SA Council for Civil Liberties, and its President Rick Sarre. Their next aim is an awareness-raising campaign with student volunteers to build partnerships with as many different groups as possible.

“One of my Honours students is doing qualitative research into the history of legislative attempts at a HRA in SA,” Dr Moulds wrote. “So lots happening. We are inspired by your leadership.”

**SACCL:** Well done Kristine. Good news indeed. – Prof Rick Sarre, President SA Council for CL.

#### WA:

Congratulations!! Absolutely deserved after your single-minded, focused, fearless and confident hard work. Chris (Stamford) and Kris (Klugman), you deserve ice-creams, crumpets, and two bags of Werther toffees. – Margaret Howkins, CLA V-P, Perth.



**Victoria:** Congratulations Kris, that's great news. Michael Stanton, President, Liberty Victoria.

**QLD:** That's good news, Kris.. Well done. Terry O'Gorman, VP, Qld Council of Civil Liberties.

#### **TAS:**

An excellent outcome from the committee! Well done. The Tasmanian Law Reform Institute's (very long-awaited - ed.) research report on a Tasmanian Human Rights Act will be released by September 2022. – Richard Griggs, CLA and head of the Tasmanian HR Campaign, representing some 20-plus community bodies.

#### **ODD SPOT: Winning on form filling-in**

With the Australian Privacy Foundation, CLA co-authored an advisory letter to the ACT Health Directorate calling on them to revise their mandatory categories in forms accompanying COVID-19 RAT and PCR tests. The forms were anti-privacy, collected information beyond what was needed, and comprised the start of “bracket-creep” in health forms generally. The letter is a warning to other jurisdictions also: collect the information you need, and nothing beyond that.

### **INTERNATIONAL**

#### **Voting apathy kills, democracy and schoolkids**

Ultimately, a big reason for this hard-right governing is and has been the base of Republican primary voters (in Texas). In a state of almost 30 million, roughly 17 million are registered to vote, but only about two million voted in the past two Republican primaries — and those who do vote dependably are older, white and far to the right. In this year's primary, a Republican candidate could have won the nomination with under 4 percent of voters. So the typical calculus for Republican politicians is this: Keep the far-right voter base happy, and you are a guaranteed winner in Republican-dominated Texas. – *'How Greg Abbott and Under 4 Percent of Texans Are Ruining the State for the Rest of Us'*, by Mimi Swartz, New York Times, 3 June 2022. <https://tinyurl.com/553exvza>

#### **It's a wise child...**

Ethics experts are urging caution around using ancestry websites, due to possible unintended consequences of tracing family DNA.

Cheap but accurate DNA testing sees ancestry tracing sites booming, with people finding long-lost family members for happy reunions and new relationships. But some results disclose family secrets that parents and grandparents took to the grave: some people even discover that they are not genetically related to the person they believed to be their biological parent.

Dr Calum MacKellar, director of research at the Scottish Council on Human Bioethics, told Scotland's *Sunday Post* that people who sign up to the websites should understand results might not always be positive. He has also called on DNA kit companies to ensure users are giving informed consent when using their products. <https://tinyurl.com/5xvs7vvd>

#### **Police challenged in court over vehicle 'arbitrary detention'**

A major constitutional challenge to arbitrary police detention powers has been running in the Superior Court of Quebec during June 2022.

Joseph-Christopher Luamba, a Black Montreal resident, and the Canadian Civil Liberties Association (as a intervenor), are challenging the power of the police to arbitrarily pull over and detain drivers without suspicion outside of the context of a “booze bus” checkpoint. They claim that this roving, arbitrary detention power enables racial profiling and is an unnecessary, and unconstitutional, police power.

“The racial profiling of Black people by the police in this country continues to interrupt lives and jeopardize futures,” said Dr. Akwasi Owusu-Bempah, the CCLA's Special Advisor on Anti-Black Racism. “The practice should have no place in a democratic nation.”

“Police in Canada should not have the authority to pull anyone over, at any time, without any suspicion of wrongdoing,” said Noa Mendelsohn Aviv, CCLA's executive director. “We are asking the court to declare that this police power is unconstitutional (and) an unnecessary arbitrary detention power that has resulted in decades of racial profiling and harassment.” <https://tinyurl.com/4bddxf7>

#### **ODD SPOT: Japan refuses to allow freedom of choice on sex**

A district court in Osaka has ruled that Japan's ban on same-sex marriage was not “unconstitutional” in a setback to LGBTQ rights activists. Only Japan among the big Western economies does not allow people of

the same gender to marry. Same-sex couples may not legally marry, cannot inherit their partner's assets – like a shared house – and have no parental rights over their partner's children. <https://tinyurl.com/4tbm6h38>

## **Prisoners locked up mentally ill, with ADHD**

One in four prisoners in Britain are believed to have attention deficit hyperactivity disorder (ADHD), according to a new report featured in the *Guardian UK*.

The figure, which has surprised experts, is five to 10 times higher than its prevalence of 2% to 4% in the general population.

Patient groups and doctors are now calling for offenders to be screened for ADHD when they arrive in prison. Routine examination of every new prisoner could reduce violent incidents behind bars and help sufferers avoid committing further crimes by helping them to manage the disorder, they say.

The extraordinary figure is highlighted in a new report drawn up by the ADHD Foundation, a panel of experts in the disorder and the drug company Takeda, which analyses the evidence about ADHD and the criminal justice system. <https://tinyurl.com/5666n3n9>

**And, from NZ:** <https://www.rnz.co.nz/news/in-depth/469434/mentally-ill-and-behind-bars-the-poor-guy-shouldn-t-be-in-jail>

## **Polly wants to enforce free speech with 'fines'**

A Canadian conservative leadership hopeful, Pierre Poilievre, would remove direct federal research and other grants from Canadian universities if they did not commit to protect academic freedom and free speech from "campus gatekeepers".

Poilievre promises to appoint a former judge as a "Free Speech Guardian" so universities respect the principles enshrined in the Canadian Charter of Rights and Freedoms, in particular section 2(b) which protects "freedom of thought, belief, opinion and expression."

The "Free Speech Guardian" would report to the federal government on universities' breaches and for recommending reductions in direct federal grants to those that do not uphold the principles in the Charter. Federal-provincial transfers would not be affected by the free speech requirements.

The former judge would be responsible for ensuring compliance by universities to these principles of academic freedom and free speech, but will also investigate claims of academic censorship. Examples could include having pro-life or pro-Israel student groups cancel events or lose resources because of their different viewpoints. <https://tinyurl.com/2vhjjj29>

## **Forensic 'certainty' starts to face a reality backlash**

A backlash is starting in America against the "infallibility" of forensic examination, particularly involving medical examiners (forensic pathologists and coroners in Aus-speak) and baby deaths but in a broader context as well.

"Disastrous errors by medical examiners have raised questions about whether they are influenced by prejudgments and a close relationship with the police," the New York Times said about this article: *'Failed Autopsies, False Arrests: A Risk of Bias in Death Examinations': New York Times*

<https://www.nytimes.com/2022/06/20/us/medical-examiners-autopsy-racism.html?> (NB: paywall).

The above article also references "a study published in 2021 by the *Journal of Forensic Sciences* (which) found evidence of cognitive bias when 133 forensic scientists were presented with identical medical evidence in hypothetical cases involving child deaths. The deaths were more likely to be ruled an accident if the child was white and the caregiver was a grandmother; they were more frequently ruled a homicide when the child was Black and being cared for by the mother's boyfriend." <https://onlinelibrary.wiley.com/doi/full/10.1111/1556-4029.14697>

The *Los Angeles Times* reports: 'An unreliable 400-year-old test is sending mothers to prison for killing their newborns'. This describes how whether dissected dead children's lungs float, or not, can determine whether someone faces a baby murder charge. The test is not fit for purpose. <https://tinyurl.com/59rwj4v3>

## **INTERNATIONAL BRIEFS**

### **Police know how to protect themselves**

Only 1 in 100 complaints against police officers result in misconduct proceedings in the UK. Home Office figures show that 14,393 complaints were made against officers in England and Wales in the year to 1 April

2021. Of those, 92% faced no action and only 1% were referred to a formal process to hear cases, initiated when an officer has a case to answer for misconduct or gross misconduct. <https://tinyurl.com/2af737jj>

### Face ‘farmer’ pays \$13m-plus for internet harvesting

Facial recognition firm Clearview AI has been fined more than \$13.6 million and ordered to delete all data gathered from people in the UK after an investigation into its practices. The fine and enforcement order comes after a joint investigation with the ICO’s Australian counterpart. UK Information Commissioner John Edwards said: “Clearview AI Inc has collected multiple images of people all over the world, including in the UK, from a variety of websites and social media platforms, creating a database with more than 20 billion images. <https://tinyurl.com/2p98fyuz>

### Fine! Making nuisance callers pay big time

Nuisance call firms face fines of up to \$30m, with internet users able to limit the appearance of pop-up cookie consent boxes, under a 2023 overhaul of the UK’s data rules. The financial punishment for cold callers will increase from the current maximum of \$870,000 and will be brought in line with the General Data Protection Regulation, which can issue a fine of up to 4% of a company’s global turnover. The Information Commissioner’s Office last year imposed an \$870,000 penalty for the first time last year against a Glasgow-based business that made more than 193m automated calls in one year.

### Zuckerberg to Face music?

The District of Columbia has sued Meta (formerly Facebook) chief Mark Zuckerberg personally for Cambridge Analytica use of some 87m Facebook user addresses to try to sway the 2016 US Presidential election. The lawsuit claims Zuckerberg took part directly in company decisions and was aware of the potential dangers of sharing users’ data. <https://tinyurl.com/2648xbdf>

### Zuckerberg to Face parliament

The UK Parliament’s Committee of Privileges wants a new law to compel witnesses to turn up to the House of Commons when summoned. Facebook chief executive Mark Zuckerberg refused when he was summoned to give evidence at a committee investigating the effects of fake news on UK democracy in 2018. The committee also wants the parliament to have the power to enforce that requested papers and records are provided. <https://tinyurl.com/2p99rh7v>

### Malaysia to end mandatory death penalty

Malaysia will abolish the mandatory death penalty, currently used for offences including murder and “terrorism”, and also let judges decide the appropriate punishment. There’s currently a moratorium on executions and more than 1300 people are stacked up on death row, most facing execution for drug offences. Law Minister Wan Junaidi Tuanku Jaffar said Malaysia will also consider use of the death penalty in 22 other offences, where execution is not mandatory. <https://tinyurl.com/ycxtudn5>



### Minor mistake can cost jobs, follow you to your grave

Thousands of British people are being unfairly locked out of jobs because of mistakes in their youth, 40-70 years earlier, it is claimed. Data shows childhood offences were disclosed in more than 11,000 criminal record checks in 2021. Politicians and justice campaigners say widespread release of minor historical offences does not protect the public and leaves people with no opportunity for a clean slate. More than a third of the childhood offences set out in Disclosure and Barring Service certificates in England and Wales in 2021 happened more than 40 years ago. The oldest was a 74-year-old conviction for simple larceny (petty theft without violence). <https://tinyurl.com/2787z3su>

### DATES: 2022

**20-22 October, Barossa Valley SA:** Australian Lawyers Alliance national conference <https://tinyurl.com/2dm2edch>

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

**18-21 Nov, Sydney:** 35th LAWASIA conference, Hilton Sydney CBD

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*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. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or any other originating source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au) Closing date for this issue was 27 June 2022.

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