

## Massive local hue and cry reveals tip of iceberg

There's a massive hue and cry in WA after the state's Department of Justice decided to transfer 17 teenagers into the ultra-secure section of the adult Casuarina Prison because of their allegedly destructive behaviour in the juvenile Banksia Hill prison.

CLA has been warning for about five years of potential catastrophes in all WA jails, The system of detention, and of justice in general, is flawed, cracked and explosive in WA and in the rest of Australia.

In Darwin, juvenile inmates are housed in a previously 'condemned' adult jail from which all adult prisoners had to be removed to a brand new facility. In Queensland, the state must spend billions of dollars over the next few years to create more prisons to house more prisoners, a major productivity inquiry showed.

To get an idea of how bad things are in WA, watch this 15-minute segment of the ABC's *The Drum* from July 2022: <https://www.abc.net.au/news/2022-07-19/the-drum-tuesday-19-july/13980026>

## ODD SPOT: Has Serco lost prison contract?

Prisoners have told CLA that Serco, the giant multi-national with an awful reputation around its management of prisons in the UK, has lost the contract to manage the Acacia prison in WA.

According to the reports – not official – Serco will have until the end of 2022 to close down its operations and hand over the job of running the Acacia jail.

If this news is true, it is a complete (and unexplained) turnaround from the position in December 2021, when the WA Dept of Justice made a Christmas Eve announcement of a five-year extension to the Serco contract, with options largely in Serco's favour for two lots of further five-year extensions.

The extension to the contract was a slap in the face for the WA prison officers' union...and went directly against published Labor Party policy of the government, which is in power with a record majority with the tiniest rump of opposition.

What has gone wrong? CLA asks. Time for the WA DoJ and the WA government to come clean.

## CLA warns national inquiry into justice needed

CLA has been warning, for many years, that the entire justice system in Australia – law-making, police, DPPs, courts and judges – is in dire straits.

We have been calling for a national inquiry into the Australian justice system. However, because of the federated nature of Australia, and nine jurisdictions (states, territories and federal) it has proved impossible so far to hold a national inquiry.

No national inquiry into justice in Australia has ever been held, not once in 120 years. The need is urgent.

## NZ to hold 'unprecedented inquiry' into justice

The case of a person being locked up for 19 years in NZ has been enough for the NZ government to establish a full independent inquiry into whether the police investigation and public prosecution processes – with the courts, comprising the legal infrastructure – are working as they should.

Despite dozens of similar legal system failures throughout Australia over decades, not one of the nine jurisdictions has held a full public inquiry into what is going wrong here. And,

unlike the UK and NZ, Australia does not have a Criminal Cases Review Commission process to right wrongs early.

The role of crown lawyers in the prosecution of Alan Hall, a New Zealander who spent 19 years in jail for a murder he did not commit, will be investigated by an independent inquiry, the country's solicitor-general announced last month.

The inquiry's terms of reference for an unprecedented investigation show the nation is trying to understand why crucial witness evidence was not given to the defence, Eva Corlett reported in the *Guardian*. <https://tinyurl.com/yckmw6ee>

## 'Government incompetence or deliberate, wrongful strategy'

In June 2022, the NZ's top court, the Supreme Court, quashed Hall's murder conviction.

Chief Justice Helen Winkelman (photo) said that the departure of the case from accepted standards must "either be the result of extreme incompetence or of a deliberate and wrongful strategy to secure conviction".



## Blowtorch on govt for first time

The inquiry, conducted by Nicolette Levy QC, is the first time the NZ Crown has turned independent investigators on itself, Corlett wrote, after it acknowledged the "unacceptable truth" that an "unanswerable cause of miscarriage" had taken place.

But those specialising in wrongful convictions in NZ say broader inquiries into the criminal justice system are needed, Corlett wrote.

Hear, hear – and here, here – say their Australian equivalents, like Prof Bob Moles of Adelaide, Estelle Blackburn of the ACT, and Bill Rowlands, CEO of Civil Liberties Australia.

## Australia prime territory for wholesale review

In Australia, there has been a string of cases dating back to the 1980s and the Lindy Chamberlain *'Dingo Took My Baby'* case in the NT.

Since then, Queensland has had the Stafford case, 17 years wrongfully convicted and released in 2009; there have been numerous cases in NSW including the overturned Gordon Wood "throwing fiancée off the cliff at The Gap" case of 2008) and the 2011 conviction and jailing (26 years) of Simon Gittany for throwing a woman off a balcony in Sydney, in which an appeal is likely in the near future.

In the ACT, there is the infamous David Eastman case over the still-unsolved murder of AFP Assistant Commissioner Colin Winchester. Eastman served nearly 19 years in jail, and eventually received \$7m compensation after police and the DPP failed to meet full disclosure rules.

SA has had dozens of questionable cases: Henry Keogh, 19 years wrongly jailed with \$3m compensation, in recent years. Derek Bromley is still in jail, 38 years on, seeking another High Court hearing.

WA suffered the notorious Mickelberg, Button, Beamish and Mallard cases, where police and the DPP were again found guilty of 'moulding' a confession to suit, manipulation and failure to disclose. Scott Austic is a current case where physical 'evidence' appeared mysteriously in photos where it had been absent some days earlier in a video taken on the same crime site.

And then there is Tasmania, and the Sue Neill-Fraser case. A supposed murder, allegedly by a weapon, or weapons,

postulated by the DPP and judge, where the fact that finding no body in a running river was proof the wife had dumped it there, and to this day supposed evidence remains unexamined forensically using the latest, more sophisticated techniques.

**STOP PRESS:** Sue Neill-Fraser's preliminary oral hearing in the High Court will take place on Friday 12 August. Two HC judges, having reviewed submitted arguments in writing, will quiz the appealing SNF barrister Robert Richter and the Tasmanian Crown DPP for about 20 minutes each. The judges will likely then make a relatively quick decision (maybe instantly) about whether to hold a full HC hearing involving all judges. SNF, jailed for 23 years of which she has served 13 on 20 August 2022, making her eligible to ask for parole, was convicted of murdering her husband Bob Chappell on their yacht Four Winds in Sandy Bay Hobart on Australia Day night in 2009. CLA – and many other legal experts from outside Tasmania – believe she is innocent and a victim of police and Crown errors, omissions and questionable practices.

## What went wrong in the Hall case in NZ

Alan Hall is autistic and pākehā, meaning of European descent. He was convicted in 1986 aged 23 of murdering Arthur Easton in his home in Papakura, Auckland, in 1985. But a description of a man leaving the crime scene as “definitely dark-skinned” was removed from later versions of a witness statement, without the witness being made aware. The Crown also acknowledged that police interviews with Hall were “unfair and oppressive”, Corlett reported. <https://tinyurl.com/yckmw6ee>

## Wider inquiry is needed, say experts

*Guardian* journalist Eva Corlett wrote that calls were growing for a royal commission, which would also investigate the role of police and the Ministry of Justice, into why the same themes keep appearing in wrongful convictions: misidentification, non-disclosure of evidence, and improperly obtained statements.

“We’re seeing the same series of issues arising again and again,” said Tim McKinnel, a former police officer and investigator who has worked on some of New Zealand’s most high-profile wrongful conviction cases, including Hall and Teina Pora, who was imprisoned for 21 years after being wrongfully convicted of murder, before his conviction was quashed by the Privy Council in 2015. He received \$3.5m compensation.

“There is a real lack of interest in learning what errors have contributed to a wrongful conviction,” according to McKinnel. After the Teina Pora case, McKinnel said the “culture” from the government was to resist a fight to prove a man’s innocence. “I have real issues with a justice system that sees justice as secondary to preserving what is already in place,” he said.

<https://tinyurl.com/5dnbya6e>

## Dreyfus signals to Liberals they are ‘safe’

Attorney-General Mark Dreyfus (photo) has sent two strong signals when he abandoned the trial of the ACT lawyer Bernard Collaery, an alleged whistleblower over the alleged Timor Leste Cabinet bugging by ASIS.

Here is what Dreyfus announced: “I have discontinued the prosecution of Mr Bernard Collaery under section 71 of the Judiciary Act 1903. My decision was informed by the Government’s commitment to Australia’s national security and our relations with our neighbours. This is an exceptional case.”

On the surface, the statement appears to be a clearing of Collaery.



Between the lines, it flags to John Howard, Alexander Downer and a host of other Liberal luminaries and former high-ranking Australian public servants that Dreyfus will not (repeat, will NOT) go after them for their maybe-legal but wholly-immoral actions in relation to the Timor Leste oil, gas and helium fields and official Australian bugging some 20 years ago that benefits private companies today.

Will some of the leading rogues be caught by a possible probe, by a new federal ICAC-with-teeth, into lucrative personal appointments to the same private companies after their public service?

Highly unlikely, given the Dreyfus semaphoring so far. – opinion by CLA CEO, Bill Rowlings.

## Does Dreyfus have too much on his plate?

According to legal experts, the agenda of new AG Mark Dreyfus in the first year comprises:

- reinvigorating the Australian Human Rights Commission (AHRC);
- implementing the Uluru Statement from the Heart;
- lowering rates of first nations people jailing;
- updating anti-discrimination law;
- implementing the recommendations of the “Respect at Work” report;
- implementing an Integrity Commission;
- strengthening transparency and merit processes for government appointments, in particular to the AHRC and the Administrative Affairs Tribunal (AAT); and
- strengthening privacy laws.

## AG should have two foci: ICAC and HRA – CLA

Australia’s newly re-minted Attorney-General Mark Dreyfus – he served in the role in a previous Labor national government – has two major issues on his plate: bring in a national Independent Commission Against Corruption “with teeth” AND be the man forever remembered as the Father of Human Rights in Australia for introducing a Human Rights Act (HRA).

Most of Australia has been advocating for the national ICAC, to rein in the excesses of the big end of town, the politicians, bureaucrats and big corporates. Public debate is about to begin on an Act to achieve it.

CLA and a host of both heavy and light hitters have been advocating for a HRA also, to empower the small end of town, the little people. Expect the draft legislation for a HRA to be out for public consultation later this year or early next.

We expect Dreyfus to deliver on a similar prepare-for-a-HRA public process once other key AG portfolio business is under way.

Delivering on a national ICAC and a federal HRA would honour Prime Minister Anthony Albanese’s promise on 21 May 2022 election night:

*“No one left behind because we should always look after the disadvantaged and the vulnerable... to make a positive difference each and every day” and to “unite around... our shared values of fairness and opportunity”.*

## ABC’s old boys and girls have own AG’s agenda

Meanwhile, others are putting pressure on Dreyfus for their own needs, including the public spokespeople for the ABC.

Here’s what the chair of their alumni group, Jonathan Holmes, said last month:

“So: establish a federal commission against corruption; ditch the Richard Boyle prosecution; provide real protection for public service whistleblowers; push for Assange to come home; ensure the ‘theft’ offence is not applied to the leaking of

information; push your department to complete its review of secrecy provisions; apply an exemption for public interest journalism to all, or at least, most of them; allow media organisations openly to contest applications for search warrants; and amend the Federal Court Act to allow participants in defamation actions to opt for trial by jury.

“Not too big a to-do list for a three-year term, surely?”

“It would push Australia back up the Press Freedom Index, and help restore some of the liberties that coalition governments have sacrificed in the name of keeping us ‘safe’. Stopping the Collaery prosecution was a good warm-up. But the real race starts now.

“On your Mark. Get set. Go.”

– Jonathan Holmes, Chair, ABC Alumni in ‘An open letter to Attorney-General Mark Dreyfus QC: <https://abc alumni.net/2022/07/11/pressing-for-freedom/>

### **ODD SPOT: Voice from the past: National ICAC only part of needed reform**

Here, a 1997 voice signals what’s wrong with Parliament.

*The real need for reform is not so much in the institutions of government as in the political parties. They have become narrowly based, factionalised, undemocratic oligarchies, apt to be controlled by too few people, closed to public view but open to manipulation and outright corruption. Reforming them would make the institutions of government work better without changing those institutions, but without reforming them the institutions cannot work very much better than they do at present.*

– Harry Evans, Clerk of the Senate, 1980 – 2009, ‘Federalism: an idea whose time has come?’, published in 1997, from the Samuel Griffith Society Conference, Canberra 7-9 March 1997 <https://tinyurl.com/m6ccdn7a>



### **Serving judge calls for ‘greater confidence’ in judiciary**

Australian Law Reform Commission President, and serving judge, Sarah Derrington (photo), explored whether the judicial oath of office –

to do right to all manner of people according to law, without fear, favour, affection or ill will – is sufficient for the modern judiciary to maintain the public’s confidence in the judicial process.

“Despite the importance placed on the judicial oath, judges are human, and litigants and the public know this — even some judges know it!” she said in concluding her address.

“Judges may be tempted (whether consciously or unconsciously) to ‘depart from the proper judicial decision-making methodology for a number of reasons.

“It is important to ensure that there are structures and practices to insulate judges from potential threats to impartiality — many of them, falling within the framework of guarantees of judicial independence.

“In this way, it might be possible to secure greater confidence of litigants and the public in the judiciary and the judicial system as a whole.”

– Judge Sarah Derrington of the Federal Court, ‘Without Fear or Favour’, the 2022 Fiat Justitia Lecture, Melbourne 7 June 2022 [Download RTF – 337 KB](#) The ALRC’s report on Judicial Impartiality is due to be tabled in parliament, having been given to the federal government on 6 December 2021.

### **National Ombudsman appointed**

Long-time public servant Iain Anderson is the new Commonwealth ombudsman.

AG Dreyfus last month confirmed that Anderson, then deputy secretary at the Attorney-General’s department, would take up the role from the start of this month (August 2022).

Anderson, who replaces Michael Manthorpe who retired in July 2021, will oversee probes into the National Disability Insurance Agency and Services Australia, and into alleged abuses in Defence. <https://tinyurl.com/3m7pkwps>

### **ODD SPOT: Who’s a ‘Dick’ then?**

When you search for ‘Dick’ in the ‘Find your Senators and Members’ section of the Australian Parliament’s website, two names come up: the new Speaker, Milton Dick, and Peter Dutton, new Opposition Leader.

### **High court pays for odd services**

The High Court of Australia’s (HC) annual report for 2020-21 (which is the latest published) has some fascinating information, but not nearly enough detail.

For example, here are four of a total 15 listed consultancy contracts valued at more than \$10,000:

- Australian Govt Solicitor: general legal advice: \$29,596
- Bill Campbell AO PSM QC: Management of certain employment related issues: \$85,052
- Gabrielle Trainor AO: Governance and public communication: \$42,488
- Dr Vivienne Thom AM: Workplace report: \$12,041.

Do these payments reveal a can or worms, or what? Are they related to the “Heydon affair”?

Why would the nation’s top lawyers, both sitting HC judges and their admin lawyers, be paying the AGS for legal advice?

Why would Bill Campbell, the retired former head of the Office of International Law in the federal Attorney-General’s Department from 1996-2018, and an honorary professor at the ANU, be called in at a cost of \$42,422 for “employment related issues”? His expertise is overwhelmingly in international law.

And what would Gabrielle Trainor, multi-talented no doubt but best known for her AFL connections, be helping the HC with? Mystery upon mystery.

And then there’s Vivienne Thom: the qualified chemist who turned spook as Inspector-General of Intelligence and Security (IGIS). On retirement, she found a new line of work in holding the secret, “independent” it is said, inquiry into the human rights-hating, retired Dyson Heydon’s behaviour, where she found alleged sexual harassment of six young, female HC lawyers while he was a judge of the court (Thom has gone on to do other, similar independent inquiry work). Surely Dr Thom received more than \$12,401 for a year’s investigation? Is the 20-21 year’s amount just a top-up? If so, for what?

Also fascinating in the accounts for 2020-21 is that the HC’s general insurance bill rose nearly 80% in one year, from \$146,407 in the 2020 accounts to \$261,397 in the 2021 version. Is that the Heydon effect at work? Or has the HC just become a much riskier place to practise law?

For example, workers compensation expenses jumped from roughly \$60K to \$159K over the same period. Who got compensated, for what, and how much each?

Can we trust the High Court? The insurance profession apparently thinks not. We look forward to the 2021-22 HC annual report with interest. – report by Bill Rowlings, CEO of CLA.



## Australia gets pill testing to cut drug death risk

Australia's first fixed-site pill and drug testing clinic has opened in Canberra ACT for a six-month trial.

The CanTEST Health and Drug Checking Service in the CBD will offer free, confidential testing of drugs.

The ACT government clinic is backed by Pill Testing Australia, Canberra Alliance for Harm Minimisation and Advocacy and lead partner Directions Health Services.

Potential drug users can get their drugs chemically analysed at the facility, which will also provide drop-in clinic amenities such as general, sexual and mental health consultations. Testing is available to people on Thursday between 10am and 1pm, and on Friday nights 6pm to 9pm each week.

The ACT has previously hosted temporary, pop-up testing for two music festivals. In 2019, the site tested 171 substances, finding seven contained n-ethylpentylone, which could have killed anyone taking them. In June 2022, the National Drug and Alcohol Research Centre data found ACT had the highest rate of drug-induced deaths per capita in the country. <https://tinyurl.com/dccvzbb8>

## SA may be up for massive insurance payouts

The AG of SA, Kyam Maher, has been given formal notice that the state will be up for big compensation payouts unless it "comes clean" to the High Court in an intriguing case of a man still in jail after 38 years.

Flinders Uni Law academic Dr Bob Moles has pointed out to Maher – and has previously advised other SA AGs – that "the principles which apply to the securing (or maintaining) of wrongful convictions on the basis of evidence known to be false and misleading" are "an unspeakable outrage".

"I trust that you have consulted with the insurers for the State of South Australia, as I have no doubt that this continuing conduct will have significant consequences for the future liabilities of the State in this and other cases in which Dr Manock was involved."

Dr Moles' major concern is the current case before the High Court, involving Derek Bromley, who was jailed for a "murder" in 1984. Eligible for parole in 2006, he has remained in jail because he continues to maintain his innocence. Without acknowledging guilt, he can't be released under SA parole law.

Dr Moles' warning relates to the SA DPP refusing to admit to the High Court in Bromley's current, new appeal that the forensic pathologist, Dr Colin Manock, who gave evidence for the Crown in the Bromley case was not qualified to do so. The fact that he was not qualified was known to the SA Crown at the relevant times, and is well known now.

Not only the Bromley outcome, but some 400 other criminal convictions in SA over the latter decades of the past century may be overturned when the SA government finally admits failures of mandatory disclosure. <http://netk.net.au/Manock/Manock43.pdf>

## ODD SPOT: States still prosecute & jail kids 10

A report last month by the SA Office of the Guardian for Children and Young People found children and teenagers were arrested and detained in police cells 2030 times in 2020-21.

SA Greens want the age of criminal responsibility raised from 10 to 14: the state Labor government saying it is considering the proposal.

In 2019, the UN Committee on the Rights of the Child recommended 14 years as the minimum age of criminal responsibility.

Despite copious reports and debating the issue for four years, Australia's Council of Attorneys-General failed to decide a national position, Only the ACT and Tasmania have committed to raise the age from 10 to 14. <https://tinyurl.com/yvfmh3wp>

## Lobbying tightened

The NSW government last month agreed to implement new lobbying rules, among them:

- new standards and obligations around receiving, considering and determining lobbying proposals;
- all third-party and in-house lobbyists must register with the lobbying regulator;
- mandatory diary disclosure for all MPs; and
- creating a dedicated NSW Lobbying Commissioner. <https://tinyurl.com/5dzep5zu>

## ODD SPOT: Police leave in droves

The WA Police Union has blamed an "exodus" from the WA police force on management and culture, with a record number of officers leaving, at an attrition rate of 4.6% over the past year, compared to the 10% for the NT police over a similar period.

According to the 2021 WA Police annual report, there were 7272 officers in the force. WA union president Kelly said there were 340 officers who had left – a rate of about 4.6% – with senior constables making up the biggest proportion of resignations.

Mr Kelly said 126 of those who had left had answered a union survey that showed 77.4% had said dissatisfaction with WA Police force management and culture was a reason they resigned. "Lack of support from management. Lack of interest from management. Lack of care of staff from WA Police Force. Looked elsewhere and secured better job with better pay, better conditions and better care from the company," he explained of the reasons his officers had resigned. <https://tinyurl.com/bddzujwk>

NT Police Commissioner Jamie Chalker told NT Budget Estimates there were 1669 sworn officers in the NT Police force, which was up from the figure of 1537 at 31 July 2021 cited in the NT Police annual report.

## Dogs get twice the funding of kids under grants

WA has just allocated \$300,000 under a brand new crime research grants program.

Evaluating a dog pilot program – *Kids, Courts and Canines program in Perth's Children's Court* – gets \$10,445 while *'Dropouts and Refusers: Why young sex offenders do not engage with treatment'* gets \$4,559. Go figure, as the Yanks say.

There are seven university-based research projects examining ways to improve the criminal justice system in WA sharing the \$300,000. The government gave nearly a third of the funding to a project headed by a person whose outstanding expertise appears to be – in her own words – attracting funding.

## Funding goes to a 'professional' fund raiser

The biggest grant, \$93,000, goes to Prof Patricia Dudgeon for 'Reducing Over-representation of Aboriginal and Torres Strait Islander People in the Justice System Through Enhancing Social and Emotional Wellbeing'.

The proposed project would appear to cover the same ground as a 2022 published article, shown under UWA's Research Output category, as *'Understanding Aboriginal Models of Selfhood: The National Empowerment Project's Cultural, Social, and Emotional Wellbeing Program in Western Australia'* by Pat Dudgeon, Kate L. Derry, Carolyn Mascall, Angela Ryder of the School of Indigenous Studies, published in the International Journal of Environmental Research and Public Health, April 2022 edition.

Prof Dudgeon is an expert at raising funds, who appears to be massively over-stretched in the projects she is undertaking (see item below).

The funding comes under the inaugural annual round of the WA Office of Crime Statistics and Research (WACSAR) Criminal Justice Research Grant Fund. WACSAR is part of the Department of Justice that conducts independent criminal justice-related research and analysis.

So far, the only noted achievements of DoJ, and therefore of WACSAR, are a failed juvenile detention system which has recently taken 17 kids (aged 14-17) who they can't control, out of juvenile detention at Banksia Hill and placed them in the isolation unit at the maximum security adult Casuarina jail, a failure to get rid of a privately-run WA prison and return it to government control (despite the promise to do so being formal Labor Party policy) and a shocking Aboriginal suicide rate, particularly of children.

The most future-useful project would appear to be a survey of women in prison in WA, run by Associate Prof Hilde Tubex of UWA and Dr Natalie Gately of Edith Cowan Uni. Full list: <https://tinyurl.com/4mw87527>

### Funding seems to double up existing research

It's a mystery why the WA government would give the largest slice of new research funding to a lead person and institution already rolling in money and doing virtually identical projects.

This is what the UWA's person profile says of Prof Pat Dudgeon, leader of the \$93,000 project:

"Professor Dudgeon has had outstanding success in attracting Category I competitive research funding to support her work on Indigenous mental health, suicide prevention and community empowerment. Currently (2018) she is currently (sic) Chief Investigator in three government-sponsored nationally significant collaborative research projects, funded to the value of over \$8 million.

"Since 2013, she has generated social research funds of around \$18.2 million. (That figure is probably above \$20m now, in 2022; presumably, she is running even more projects - Ed.)

"Foremost in Professor Dudgeon's list of achievements is the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP), funded by the Australian government. This ground-breaking evaluation clearly identified the key elements for best practice suicide prevention programs and strategies, and the central importance of Indigenous leadership at all levels of delivery."

Of the usual collaborators with Prof Dudgeon, it is most notable that the above suicide prevention program – for which much is claimed since 2016 – lists Gerry Georgatos as being a contributor as a member of the project. It seems academics benefit greatly when they have a hands-on person involved.



Photo: Active campaigners for the health and welfare of Indigenous people are Megan Krakouer and Gerry Georgatos, who, as members, advise Civil Liberties Australia's approach to Aboriginal jailing and suicide in particular issues in WA.

## Australian briefs

### Barbour heads Qld CCC

Bruce Barbour (photo) is the new permanent chair of the Qld Crime and Corruption Commission (CCC), for three years. He has been acting since January 2022. He was appointed as an ordinary commissioner in 2021. He was the NSW Ombudsman for 15 years, a senior member of the Administrative Appeals Tribunal, a member of the NSW Casino Control Authority, chair of the NSW Public Interest Disclosures Steering Committee, a member of the NSW Institute of Criminology Advisory Committee, regional vice-president of the International Ombudsman Institute and Convenor of the NSW Child Death Review team. – media release



### NT gets first Aboriginal judge

David Woodroffe was appointed the NT's first Aboriginal judge on 25 July, being sworn in as an acting judge of the Local Court in Darwin. Woodroffe was the principal legal officer of the North Australian Aboriginal Justice Agency for more than a decade. "Aboriginal people are so proud of him at the moment," NAAJA's chair, Colleen Rosas, told the ABC. "I know I had tears in my eyes because we've said this for so long – we've said we should have our own people judging us, people who know where we're coming from." <https://tinyurl.com/34tb7dnn>

## Members (and other relevant) letters:

### Apathy creates monsters

Who are the monsters in Western Australia? Us? or the mostly orphaned children incarcerated at Banksia Hill detention centre, born with Foetal Alcohol Disorder Syndrome (FADS), fighting for their freedom and a Fair Go?

Intelligence is about adaptation in extreme conditions and the ability to survive. It's illuminating to see that young mentally disabled Aboriginal children are demonstrating more guts and intelligence than WA's smug, comfortably housed public commentators and our highly paid Child Experts. (Experts questioned on 'The Drum' last month).

In this time of focus on child care and protection against abuse, what is clever or intelligent about locking deeply traumatised children into a small prison room by themselves for days? And why are severely disadvantaged children living in a prison instead of a secure hospice with a culturally familiar family member or/and trained rehabilitative health carers? Who are the monsters? – Margaret Howkins VP Civil Liberties Australia

### Timorese get scholarships to CDU, newly-converted to helping East Timor

I notice the newish Vice Chancellor of CDU, Prof Scott Bowman, has recently said:

"We have strong links to Timor-Leste, and we need to continue to build them. *CDU was a strong supporter of the country from the very beginning.* It is now the job of the present custodians of CDU to build a legacy for the future in Timor-Leste," Professor Bowman said.

I wonder when the strong support from CDU for Timor-Leste actually started? NOT for the first 20-plus years of its invasion and military occupation by the Indonesian military!! Please give an example of what CDU did during this period.

During my 25 years of support for East Timor (as it was known) up to 1999 I organised a meeting in a classroom at CDU with Jose Ramos Horta, the foreign affairs spokesperson and tireless advocate, and at the last moment we were denied the room by the then-Registrar with an untrue justification. As he

had worked for my dad at the Registrar's office at the University of Adelaide, I challenged the so-called reason, which he admitted had been bullshit (my word!!)

In 1995 we had a two-day conference entitled IRCR (Indonesia and Regional Conflict Resolution), with huge effort and organisation, accepted by CDU for using the main Mal Nairn auditorium, then with 1 or 2 days to go that agreement was cancelled, and we had to find an alternative (and more expensive) venue. No apologies, no compensation. We even had eight Indonesian supporters brought here for it!!

Then in 1998 I organised and chaired the lecture in January at NTU by Jose Ramos Horta\*\*\* which drew over 300 people on a Saturday afternoon. This was of course after he had won the Nobel peace prize. So CDU came good for East Timor after the Nobel prize victory and Suharto having to resign.

So I repeat my question: when was it CDU became a strong supporter of East Timor? And, if it was from the "very beginning", does the Vice Chancellor mean from when it became independent in May 2002?

Or was what he said just meaningless and untrue spouting?

– Rob Wesley Smith, CLA member



Rob was awarded the nation's top award, the *Ordre de Timor Leste*, in 2014, along with his twin brothers Martin and Peter (see photo, Rob is in the middle with then President Taur Matan Ruak, Martin on the left) for their services to the fledgling nation when it really was in need of help, like when it was under Indonesian control and suffering massacres.

\*\*\* Horta is now, for a second time, the President of East Timor.

## CLA's main activities for July 2022

### WA

Members Christina Marruffo and Simon Akkerman have provided even more help for WA CLA V-P Margaret Howkins with the major activity under way in that state, distributing and achieving impact from the CLA-produced documentary: *Trauma: Rights and Remedies*.

The 48-minute doco, finalised in May by Akkerman as cameraman, editor and also expert commentator, lays bare the problems in WA's prisons.

Its compilation pre-dated the outrage over transferring 17 children from the juvenile detention centre, Banksia Hill, to a special security section of the adult prison Casuarina because authorities had lost control over the young people.

The problem, of course, is that most if not all the children are wards of the state...and the state has never looked after them well enough to keep them out of detention in the first place.

One of the richest societies on earth, with some of Australia's richest billionaires, can't find a way to help children – almost exclusively Aboriginal youths – grow up in health and safety, educated and socially responsible.

The politicians, the big companies, the wealthy and the people of WA can no longer look the other way: it is well past time they showed greater responsibility for all the state's children.

### National

Main activity has been continuing the Human Rights Act (HRA) campaign lobbying and action federally and in the ACT.

In the ACT, we continue to work closely with other groups towards a 20-year rewrite of the first HRA in Australia by 2024 to include the concept of 'No Rights Without Remedies'. There is a recommendation before the ACT Legislative Assembly to adopt the proposed changes.

This would ensure people who believe their rights have been abused would be able to seek conciliation at the HR Commission level, or a legal ruling by the local Civil and Administrative Tribunal (or even, as now, by the Supreme Court on major matters). The CAT option is not currently available.

CLA and many other HR experts, legal and otherwise, believe it is vital to have access to a real remedy wherever and whenever a right is in question.

The ACT proposals would possibly help the Victorian and Queensland governments implement similar 'No Rights Without Remedy' clauses in their own legislation.

CLA continues to campaign to elevate the issue of legislating a federal HRA up the list of priorities of the Prime Minister Anthony Albanese and the Attorney-General Mark Dreyfus.

A federal HRA, alongside an ICAC with teeth, would form the cornerstone of ensuring the PM met his election night promise of fairness and equality for all Australians at the end of his first term in office.

### INTERNATIONAL

#### UK SAS soldiers accused of murder

Commandos in the UK's elite Special Air Service (SAS) corps killed at least 54 Afghans in suspicious circumstances during a six-month tour of Helmand province from November 2010 to May 2011, but the military chain of command concealed concerns, according to a BBC media network investigation by the *Panorama* program.

Echoing claims being litigated civilly in Australia at the moment, the BBC claimed after a four-year inquiry that unarmed Afghan men were routinely shot dead "in cold blood" by SAS troops during night-time raids in Afghanistan, and weapons were planted on them to justify the crimes.

Senior officers, including General Mark Carleton-Smith, who headed the UK Special Forces at the time, were aware of concerns within the SAS about the operations but failed to report them to military police, the BBC claimed last month.

Under UK law governing the armed forces, it is a criminal offence for a commanding officer to fail to inform the military police if they become aware of potential war crimes, the BBC noted. Carleton-Smith retired recently as head of the British army overall. <https://tinyurl.com/ycy33ff3>

#### Sex-driven police face no consequences

From the 1960s in Britain, undercover police officers infiltrated peaceful political organisations, including environmental, socialist and anti-racist groups; officers based their undercover identities on the birth certificates of dead children; many police were embedded in the groups for years; and it was common practice for officers to form sexual relationships with activists.

The *Observer* newspaper broke the secret story in 2010. In 2015, responding to the public outcry, then Prime Minister Theresa May, announced an inquiry into undercover policing.

Ever since, progress stopped. No big public reckoning, no truth or justice. The inquiry has racked up costs of about \$90 million,



but there is still no date set for even its interim report, Alice O’Keeffe reported in the *Observer* last month.

“Hearings will continue into 2024 and beyond. The inquiry has performed to perfection its dual function of creating the illusion of a political response, while firmly kicking the issue into the long grass. As a crime author friend observed wryly: ‘The best form of cover-up is a public inquiry.’” <https://tinyurl.com/2bvs44df>

## UN pushes for end to torture, refugee abuse

The UN has published a second, updated (2022) edition of the Istanbul Protocol, which empowers health professionals to help end torture and modern slavery.

The Office of the UN High Commissioner for Human Rights (OHCHR) published the new edition of the Istanbul Protocol in June, a quarter of a century after the first, in 1996.

“(The new edition) reflects advances in the global understanding of the practices and effects of torture and ill-treatment and includes updates on important legal issues,” the UN says. “It clarifies the definition and scope of torture, jurisprudence on torture prevention, accountability and redress, and outlines current legal investigation practices as well as new guidance for judges, prosecutors, and other actors.” PDF [320 KB]

## Phone surveillance ignores prisoners’ rights

Rights groups are demanding a crackdown on an artificial intelligence system used to eavesdrop on US prisoners’ phone calls, after a Thomson Reuters Foundation investigation highlighted violations.

Eight states prison and jail authorities are using surveillance software called Verus, which scans for key words and leverages Amazon’s voice-to-text transcription service to monitor prisoners’ phone calls.

California-based LEO Technologies, which operates Verus, says it has scanned close to 300 million minutes of calls going in and out of prisons and jails, claiming it helps to fight crime and keep inmates safe.

But civil and digital rights groups say the surveillance oversteps legal limits by targeting conversations unrelated to the safety and security of detention facilities, or possible criminal activity. It also targets remand prisoners – people held in jail but not yet convicted in a court.

Documents obtained by the Thomson Reuters Foundation from the pilot site in Suffolk County showed Verus was used to analyse more than 2.5 million calls between its launch in April 2019 and May 2020, leading to 96 “actionable intelligence reports.” <https://tinyurl.com/25hrfjzm>

## ‘They just seemed to fit the evidence around me’

In the UK, there’s a new probe into a rape case for which a man has spent 17 years in prison: an old DNA sample, re-tested, has linked another unknown male to the crime.

Andrew Malkinson was convicted of raping a 33-year-old woman in Manchester in 2003. There was never any DNA evidence against him and he always insisted he was innocent, spending a decade longer in prison as a result.

The Criminal Cases Review Commission, which investigates potential miscarriages of justice, has now commissioned its own forensic inquiries into the case after twice earlier refusing to investigate. The change of heart came after Malkinson’s legal team discovered evidence that there was another man’s DNA on key samples taken from the victim.

She remembered causing a “deep scratch” to her attacker’s right cheek but Malkinson – who was also taller than the woman’s description – was seen at work with no scratches on his face the next day.

Testing using new forensic techniques in 2020 showed traces of male DNA on fingernail scrapings, as well as on her clothing. This did not match her then boyfriend or Malkinson. There are 34 other suspects.

Malkinson, who had no previous convictions for violence, said: “I could never do anything like that. They (police and the DPP) just seemed to fit the evidence around me.” <https://tinyurl.com/3atzrvsp>

## Google can be full-time cop on the data beat

Google has grown into a nearly \$2.4 trillion company on the strength of its most valuable asset: data on billions of people.

Now that the US Supreme Court has overturned *Roe v. Wade*, privacy advocates fear Google will provide users’ data to authorities trying to target people seeking abortions.

When someone uses a Google service on their phone with location history enabled, Google logs that phone’s position about every two minutes. The company can estimate the location of a person’s device within 3 metres, court testimony from the company has shown.

Google retains people’s private data, sometimes drawing from a massive central database of users’ location history known as Sensorvault, which was first reported by the *New York Times* in 2019.

Police in the US can use Geofence warrants seeking information about every device that has crossed into a defined location in a specific period of time, say a robbed bank, a house that burned, or an abortion clinic following the Supreme Court ruling.

They use Keyword warrants to request information on everyone who has Googled specific search terms, a kind of digital dragnet that has long alarmed privacy advocates, and now abortion-rights advocates as well. <https://text.npr.org/1110391316>

## ODD SPOT: Putting issue well and truly to bed

Great Britain’s Lord High Chancellor and Secretary of State for Justice, Dominic Raab says the right to abortion does not need to be in bill of rights.

The man who is currently the Deputy PM says the matter is ‘settled in UK law’ and he would not want Britain to be in same situation as US.

CLA believes there is no reason the issue of decision making around abortion could not be put to bed – under a double blanket – by being included as a right of females in a Human Rights Act.

## UK warned against weakening human rights

The Council of Europe’s Commissioner for Human Rights has warned the UK government against weakening its Human Rights Act.

Dunja Mijatović said replacing the act with a British bill of rights would send the “wrong signal”. The current British Human Rights Act (HRA) directly incorporated into domestic law all the rights set out in the European convention on human rights (ECHR), which was ratified by all members of the Council of Europe, including the UK.

Mijatović said: “It is worrying that the proposed legal reforms might weaken human rights protections at this pivotal moment for the UK, and it sends the wrong signal beyond the country’s borders at a time when human rights are under pressure throughout Europe.” <https://tinyurl.com/npd9sk9k>

## ‘We’re police! Stay 2.4m away’

Arizona has passed a new law, effective in September, that makes it illegal for people to record videos within 2.4m (8 feet) of police activity.

Civil rights groups and news media have criticised the measure, which follows mobile phone cameras increasing public documentation of police activity, including in the high-profile police killing of George Floyd in Minneapolis when a police officer put his knee on the man's neck for more than nine minutes.

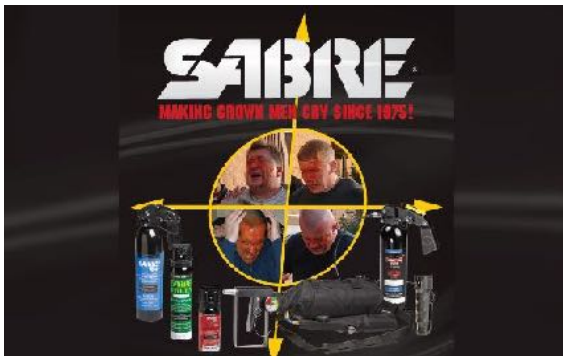
State representative, Republican John Kavanagh, the bill's sponsor, said that there was little reason for bystanders to be within 2.4m of an on-duty police officer and that the law would protect people from getting close to dangerous situations and prevent them from interfering with police work.

A violation is a misdemeanour offence, with a potential penalty of up to 30 days in jail and fines of up to \$725. <https://tinyurl.com/2p8fnsu6>

## Jails broke law by gassing prisoners

NZ Corrections broke the law from 2009 to 2021 by gassing prisoners in their cells with a potent pepper spray called the Cell Buster, Wellington High Court judge Rebecca Ellis ruled last month.

The Cell Buster, made by American company Sabre and marketed under the tagline Making Grown Men Cry Since 1975, involves hosing pepper spray into a closed cell to incapacitate the inmate.



The Cell Buster has been used 27 times in New Zealand prisons since 2016. In the US, people – particularly those with asthma – have died allegedly when sprayed with the gas.

The judge said that information put before ministers at times gave the impression that the pepper spray was the same as that used by police - a small canister, worn on the belt, which is drawn and aimed at the face.

But the Cell Buster is hosed into a closed cell using a canister similar to a fire extinguisher.

Justice Ellis said the regulations, changed in 2022 during the court case, were not put before her in the case "so I expressly make no formal findings about their lawfulness or otherwise". <https://tinyurl.com/yc29f5ty>

## International briefs

### Thai protestors under secret surveillance

Some 30-plus Thai pro-democracy protestors were found to have their phones under secret surveillance by Pegasus spyware during a government crackdown on dissent. Canadian group Citizen Lab and Thai NGOs iLaw and DigitalReach investigated after six Thai activists received notifications from Apple in November 2021 that they had been the victims of "state-sponsored attacks" intent on distributing malware. The individuals – who include academics, activists and civil society leaders – were monitored by an unnamed entity using the Israeli-made software during the past two years, according to the results of a forensic investigation released last month. Israeli security firm NSO developed the spyware Pegasus to

allow users to read text messages and track the calls and locations of targets. <https://tinyurl.com/yc8cmteh>

### Bee line for fairness

The *Sacramento Bee* newspaper accepts applications to review old articles online that have made it difficult for story subjects to move on with their lives. People who have committed minor criminal offences or who have had charges dropped can ask to have articles published about them reviewed. *Bee* journalists make the decision after investigating the circumstances. The *Bee* is one of many newsrooms across the USA rethinking its crime coverage, due to the long-term negative impacts for people trying to move on with their lives. Often, it's the top results from a quick internet search by recruiters or landlords that stops someone from getting even a foot in the door. <https://tinyurl.com/yp92m2ab>

### NY to restrict carrying concealed guns, allow abortions

The New York state legislature has passed measures to prohibit concealed weapons in many public places, as well as an amendment to start the process of enshrining the right to abortion in the state constitution. "We're playing legislative Whac-a-Mole with the Supreme Court," said Senator Brad Hoylman, a Manhattan Democrat. "Any time they come up with a bad idea we'll counter it with legislation at the state level. Civil liberties are hanging in the balance," he said. <http://tinyurl.com/44wjw4c> (NY Times, behind paywall)

### US state to kill one a month for two years...to catch up

A court in the US state of Oklahoma last month set execution dates for 25 death row prisoners, setting up a string of executions about once a month over the next two years. The executions are set to begin in late August 2022 and run through December 2024. The 25 men on death row have all exhausted their appeals, but they were temporarily spared in recent years as Oklahoma stopped administering the death penalty in 2015 because of botched executions and alleged failures of some drugs used. <http://tinyurl.com/mtr2zryp> (NY Times, paywall).

### ODD SPOT: Woman seeks advantage from half measure

A Texas woman is claiming that the recent US Supreme Court ruling in *Roe v Wade*, over abortion rights and wrongs, means she can drive in the high occupancy, two-or-more-in-the-car lane on freeways. The argument is interesting, but could of course end up with her paying for one-and-a-half tickets when going to a movie. – NYT 13 July 2022, behind paywall.

### 6m female health workers unpaid and/or underpaid

More than 6 million women worldwide are subsidising health systems with their unpaid or grossly underpaid labour, according to a new, July 2022 report by Women in Global Health. Most work in low-income and middle-income countries, mainly in community health roles. But the *Subsidizing Global Health* report also found examples of women working without pay in some professions, including nursing. Men also work unpaid in health systems, usually at the community level, but their numbers are smaller compared with women, *The Lancet* reported. <https://tinyurl.com/3bsxk5dx>

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