

High Court runs special hearing of dubious legality

The High Court (HC) of Australia held a special hearing last month which may well have been illegal under the laws of Tasmania, where the original case was based.

The HC special hearing refused Sue Neill-Fraser (SNF) special leave to appeal the 2-1 verdict against her in the Court of Criminal Appeal in Tasmania in November 2021.

In the special hearing, the three HC judges* allowed Tasmania's Director of Public Prosecutions Daryl Coates to address the judges, the court building in Canberra and the SNF barrister team – all of whom were on video link – without being "seen".

That is illegal in Tasmanian courts, where the law says, paraphrased, "you must not make a submission unless people at the courtroom or other place (are able) to see and hear the person making the submission".

Technicians tested the video link with Coates seated, where he appeared mid-frame. But, when invited to speak, he stood up to address the judges, court and SNF barristers...and disappeared from full view (apart from his torso). His head, visage and facial expressions could not be seen.

They are the important factors in judging the veracity of submissions or evidence to a court: it is those elements that lie behind the law in Tasmania demanding that people be "seen" to give their evidence.

It is doubtful whether the manner in which Coates addressed the HC was legal. As "an officer of the court", he may have a legal obligation to advise the HC of the uncertainty involved, and ask for the appeal to be reheard. The HC judges who ran the case may also have an obligation to order a new hearing.

Does the HC need a conference on wrongful convictions?

The entire HC proceedings were a farce, according to CLA's President, Dr Kristine Klugman, and CEO, Bill Rowlings, who attended the hearing.

There were no judges in Court No 2 in Canberra, which was presided over by a court crier only.

The judges appeared separately on a TV screen, each occupying about 5cm square as seen from the court's public gallery on the 80cm TV set which the HC chief judge and crew seem to think is adequate for justice to be seen to be done.

Similarly, the SNF barrister Robert Richter and Tasmanian DPP Coates were figures in miniature to the observing public in the back stalls.

"If this was justice open and transparent, it was on a Lilliputian scale," Dr Klugman said.

"The High Court is a public institution. It needs to get up to date with the times.

"Surely it can't be too difficult to buy or hire a big TV set for any occasions when it might be needed, inside a courtroom or even to an overflow audience in its forecourt for a big case.

"If chief judge Susan Kiefel can't fund a big TV set from the court's huge budget allocation, we'd be happy to run a fund-raiser at the court for them. Maybe a CLA-organised conference on wrongful convictions, with eminent judges helping to comprise the audience rather than being among the leading actors?"



TASMANIA SPECIAL

Last 'witch-hunt' case dropped: police abuse illegal warrant to tape secretly

Last month, solicitor Jeff Thompson had the charges against him dropped, after being harassed through the Tasmanian courts for five years on inadmissible evidence recorded illegally by police.

Tasmanian Police had secretly recorded their handful of targets, using an invalid warrant, but as well they recorded the conversations of all lawyers and their jailed clients in the "professional meeting room" at Hobart's Risdon Prison for more than two months.

Recording just one private lawyer-client meeting by police is wrong, without judicial approval. Recording hundreds of them shows disregard for the the law and contempt for lawyers and prisoners, CLA believes. Recording was continuous from 15 June to 17 August 2017, about 9 weeks, or 45 working days.

The privileged legal discussions were transmitted in real time back to police HQ, where they could be listened to 'live' or downloaded for later sifting/monitoring and follow-up if police chose to do so.

The secret, illegal taping was "a grave contravention of the law by police," judge Michael Brett said. But it was just "carelessness", not deliberate, he said. Either way, it looked like a witch hunt, CLA believes.

Other people judge the police behaviour, and that of establishment authorities, less kindly than the judge does. They also comment that there is no valid reason police should automatically be given any benefit of doubt. Police throughout Australia have an appalling record of breaking the law, including doing so regularly over the "careless" and non-compliant warrants they originally submit for judicial approval.

Judge Brett said: "I have no difficulty inferring that during this time there would have been many sensitive and privileged conversations between lawyers and their clients, and perhaps other private conversations which were completely irrelevant to this investigation and not authorised for recording by the warrant.

"The persons concerned would have had absolutely no idea that their conversations were being recorded and were capable of being monitored, in real time, by police and other authorities."

What comprises a conspiracy?

If police, a magistrate and prosecutors are jointly part of an enterprise to illegally record conversations between lawyers and prisoners to secure convictions, against the law, is that not a conspiracy?

Why are the authorities not charging themselves with the very crime they claim others were committing?

Surely it should be up to a jury to decide whether they believe the illegal warrant was issued incompetently and illegally, based on muddled police claims, which were themselves possibly deliberately muddled?

If one judge says he believes the police warrant errors were not "deliberate", and the magistrate who issued the warrant may not have been at fault, is that sufficient? After all, the judge is an integral part of the police-prosecutor-judicial-legal milieu which always seems to give itself the grossest benefit of the doubt.

Why is the Law Society dumb over abuse of clients' legal privilege?

TasPol framed their illegal warrant to target at least six people for surveillance in Risdon Prison.

The overall surveillance, including elsewhere in Australia, included telephone taps, raiding of premises interstate and secretly taking copies of bank documents and other paperwork, and lord knows what else.

The surveillance achieved not one extra prisoner: overwhelmingly, those targeted were not charged.

All were connected with the Sue Neill-Fraser case. New prisoners, after successful prosecution by the DPP, would have undermined SNF's legal bids for freedom in Tasmanian courts and Australia's High Court.

Was the police and prosecution activity legitimate, or excessive and beyond reasonable use of legal powers? Was it targeting SNF supporters for a reason? Was it part of several attempts to influence the course of justice, dating back to before SNF was charged and continuing through an Honours award in 2002 made and publicly reported when the SNF case was before the High Court?

For once, the Tasmanian legal establishment should see clearly that the police and associated activity was beyond the pale and directly against the interests of lawyers.

How could lawyers not stand up against secret police recording of their private client discussions?

Yet there has been barely a peep heard from the Law Society, since judge Brett's decision was made public. The society has, instead, chosen so far to continue to attack the supporters of SNF rather than the police abusers – contrary to their members' interests – of legal privilege.

Strange place, Tasmania,

Inquiry needed across the board over SNF case ramifications

The failed witch hunts by police are a clear indication that the conduct of Tasmania Police and the Office of the Director of Public Prosecutions needs detailed scrutiny by a formal inquiry or Royal Commission.

The collateral damage surrounding the SNF case is considerable because authorities have abused their powers, it would appear from the illegal prison recording of lawyers-clients and other emerging evidence.

For example, in handing down his ruling on the non-prosecution of Thompson, judge Brett said: "...both (police) officers were aware, and the magistrate must have been aware, that the professional meeting rooms in question would in the usual course be utilised by lawyers and clients to conduct conversations protected by legal professional privilege. There was a high probability of many such meetings over the

proposed life of the warrant, 90 days.” – State of Tasmania v Jeffrey Ian Thompson <https://jade.io/article/943436?at.hl=jeffrey+ian+thompson>

Any inquiry must consider all organs of possible repression in the state and their role in the sad affairs.

Vindicated, or vindictive?

The *Weekend Australian* of 13-14 August 2022 claimed that Tasmanian police officers hailed the High Court decision to not grant Sue Neill-Fraser a full appeal “...as a *vindication of detectives, forensic experts and prosecutors*”.

But the SNF Support Group points out the HC case did not turn on the behaviour of police, forensic scientists or prosecutors. It was narrowly decided on whether or not to admit a prosecutor-invented claim without any proof of it being other than the remotest of possibilities (in a way that will come back to haunt the HC when villains utilise the court’s decision to get off murder, rape and robbery charges, CLA believes).

“This is not a vindication because the High Court was not asked to rule on the work of detectives, forensic experts, and prosecutors,” according to Rosie Crumpton-Crook, SNF Support Group President.

“Until that has occurred the conduct of those involved in this case will not have been properly scrutinised.

“Sue has always maintained that she is innocent, and the number of her supporters around the world has continued to grow. Many of those supporters have sent messages of support for Sue, which were read out at a rally outside Parliament House, Hobart, on 20 August, 13 years to the day after Sue was locked up.

“About 35,000 people have signed a petition calling for an inquiry,” the President said.

Will TasPol ultimately be vindicated, or will some of its people be found to have been vindictive?

ODD SPOT: ‘Toothless body seeks gutless chief’

The Tasmanian government has just advertised for a new “Chief Commissioner of the Integrity Commission”. The *Vigilante News* of Hobart Town reported the advert as: *‘Toothless Tiger looking for new Gutless Wonder to take over doing absolutely nothing’*. CLA does not agree with that sentiment about “doing nothing”. There is an awful amount of angst involved in sourcing spurious reasons for not doing anything, and it takes dedicated and lengthy scribing processes to compose twisted, devious letters as to why the Integrity Commission can’t do anything about complaints involving matters of substance.

Tasmanian justice appears to rot from an early age

Australia's National Children's Commissioner has called for immediate closure of the Ashley Youth Detention Centre in Tasmania.

Anne Hollonds (photo) said she was horrified by media reports of evidence given by former Ashley detainees to Tasmania's Commission of Inquiry into Child Sexual Abuse in Institutional Settings. Day after day, a Tasmanian inquiry last month heard evidence of children being sexually and physically abused.

"I'm heartbroken and speechless really about how could we in Australia be treating children in this fashion," she said. "It sounds like it was a place of torture and horror and these are children we're talking about."

Ms Hollonds compared the Tasmanian facility to the notorious Don Dale youth jail in the NT and the Banksia Hill juvenile jail in WA.

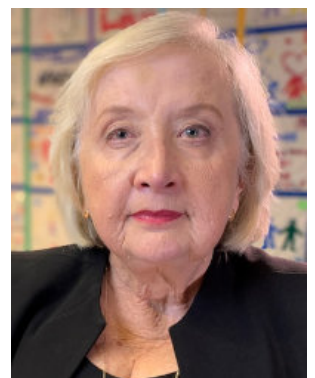
"What's happened at Ashley is horrific but it's not isolated; what we see around Australia is we basically have a crisis in youth justice," she said. <https://tinyurl.com/4mpw6sxp>

CLA agrees...but the crisis is Australia-wide throughout the entire justice system, from police through DPPs to courts and prisons. Putting Band-aids on children’s issues is not enough: the entire Australia adult ‘justice’ body requires major surgery, including to the High Court.

ODD SPOT: ‘Tired conservatism’ marks Tas judiciary, says former DPP

“The same tired conservatism which continues to think of no better way to mark the return to work of the Court after a six week vacation than by trudging along fully robed and bewigged to one of four Hobart Christian Churches to sing hymns and be regaled by a reading and sermon from the Pulpit ought not to be further entrenched by extending the retiring age. The State ought to aspire to present as modern and inclusive, and its law administered in a secular way. Extending the retiring age for Judges is no way to achieve that.

– Yours faithfully, T.J.Ellis S.C. 18 Feb 2021”, submission to the inquiry into extending the retiring age of Tasmanian judges. Ellis, who prosecuted Sue Neill-Fraser in her original trial, did not win the



argument this time. Tassie judges won their public PR campaign for longer tenures and therefore more money into their super account because they were “talented”. No younger, newly-appointed judges would be as talented, was the argument of chief judge Alan Blow (who, of course, benefited personally from the government decision to endorse his public lobbying stance). In Tasmania, the next legal generation is apparently, officially, less talented. Strange place.

ENDS Tasmania Special

Have your say on online defamation

You can have your say on modernising national defamation law for search engines and social media sites. Proposed reforms, led by NSW but to operate Australia-wide, focus on how much internet intermediaries should be liable for reputation-damaging material published by third party users online.

“Technology has advanced in leaps and bounds since Australia’s uniform defamation laws were drafted 18 years ago,” NSW Attorney-General Mark Speakman said. “Almost anyone can post their views on a wide range of platforms at the touch of a screen or a button.

“The real question is when search engines like Google, social media platforms like Meta and a whole range of other internet intermediaries should be liable for content posted by users. It is critical that we balance protecting free speech with the right of individuals to seek redress in appropriate circumstances for harm caused to their reputation.”

Australia has had uniform defamation laws since 2005. Proposed amendments to uniform laws follow a discussion paper in April 2021. Written submissions on the exposure draft amendments can be made here: <https://tinyurl.com/mrytbvwm> Submissions close on Friday 9 September 2022.

Hoist with their own app-ard?

Operation Ironside involved the FBI in the USA taking over a real company selling “secure” phones with an installed secrecy app, ANOM, which FBI tampered with so that all messages were copied to police.

It is claimed that, because privacy and entrapment laws are weak in Australia, the AFP became the lead world agency for a massively successful ‘sting’, which saw 1000 arrests worldwide and 383 people in Australia charged with 2340 offences involving 6.4 tonnes of drugs and 147 weapons as well as the seizing of \$55 million, according to associate editor, Cam Wilson, writing in *Crikey* last month.

Now defence barristers are challenging cases in an SA court. They question whether it is legal to use messages obtained through ANOM to convict people, because the “evidence” was obtained without a warrant and the message reliability may not be able to be guaranteed. – 3 Aug 2022, *Crikey*

Secrecy pervades Australian ‘justice’ system, judge permitted

"Alan Johns (also known as the Witness J case) shows how [the law] can be used to conduct a federal criminal prosecution in 'secret', from start to finish, and to maintain this secrecy, seemingly, indefinitely," a report by the Independent National Security Legislation Monitor, Grant Donaldson, commented recently.

"This should not have happened in [the] Alan Johns [case] and it should never happen again."

Mr Donaldson criticised how the ACT Supreme Court had agreed to closed hearings in the case, without even hearing any formal submissions from the parties involved, describing that decision as "extremely unusual".

Johns (a pseudonym) was charged, tried, convicted and jailed in the ACT’s only prison without the ACT Attorney-General being aware of any of those activities. He was sentenced to two years seven months, but released after nine months.

Locked up in high security and in a special sex offender area, Johns’ jailing was revealed only via a human rights claim in the ACT related to writing a memoir while in jail. The AFP had raided his jail cell the day before his sentencing.

Without the territory’s Human Rights Act, nobody would ever have known of Johns’ secret plight.

Newish AG Mark Dreyfus has asked INSLM Donaldson to review the National Security Information Act. A decade ago, the Australian Law Reform Commission identified 506 secrecy provisions in 176 pieces of Commonwealth legislation, including 358 criminal secrecy offences. That number is sure to have grown.

<https://tinyurl.com/2rxdcay>

Drug court saves \$14m, report says

The ACT’s Drug and Alcohol Court (DAC) reduces re-offending, helps offenders get their lives on track, and saves the community money, according to an independent evaluation by the ANU.

DAC provides an alternative to jail by imposing a Drug and Alcohol Treatment Order (DATO) under which a team of justice and health professionals support participants through the program to graduation.

It began in the ACT in December 2019, since when 106 people have been referred for a Drug and Alcohol Treatment Order. At 31 March 2022, the court has imposed 56 DATOs on people with alcohol and drug substance use issues, beginning at an early age, often in the teenage years, but occasionally even younger.

“The Drug and Alcohol Court is an excellent example of building communities instead of prisons and getting better results for everyone,” ACT AG Shane Rattenbury said. “DAC is having a positive impact on the lives, relationships and health of participants, reducing reoffending and keeping the community safe; as well as saving money,” he said.

The report estimates \$14 million has been saved due to avoided prison time – this is more than the cost of running the court. <https://tinyurl.com/2p8m6fuc>



NT faces ‘no confidence’ move against police chief

NT Police Commissioner Jamie Chalker (photo) is under siege from his own police officers after a poll found 80% of respondents had no faith in him.

The poll, put to the membership with some reluctance by the police association, follows turmoil in the force over the Kumanjaji Walker shooting death at Yuendumu, 330 km north-west of Alice Springs.

Chalker announced a review into the force’s Professional Standards Command, as well as a review of unspecified policies, in the lead-up to the coronial inquiry into the death of Walker, that will investigate disciplinary procedures within the force.

Constable Zach Rolfe was found not guilty of the murder of Walker in March 2022 by a Supreme Court jury. Walker was shot during a failed arrest in Yuendumu on 19 November 2019.

Chalker sent a message to all officers stating that part of his 10-year strategy was to “develop, guide and value members, and live by a culture of ethics and integrity, focused on commitment to do what is right.

This includes a culture focused on fairness, responsibility, accountability, early intervention, self-reflection, and better governance to improve our standards,” he wrote.

The *NT Independent* reported people saying it was clear the review was to front-foot potential criticism by Coroner Elisabeth Armitage as part of the inquiry into the police’s response and handling of the shooting.

Chalker said the external review into the Professional Standards would be led by Victoria Police Commander Mark Galliot, and would focus on, but not be limited to, the structure of the PSC, complaint and internal processes and investigations, policy and governance practices, and disciplinary framework.

Commissioner Chalker said Part IV (Discipline) of the Police Administration Act 1978 was being reviewed at the same time. <https://tinyurl.com/4rfb5jwr>

Senior Sergeant charged with 31 criminal offences

An acting NT Senior Sergeant, Neil Mellon, is facing 31 criminal charges laid in late August, including destroying evidence and conspiracy to pervert the course of justice, according to the *Weekend Australian*.

Kristin Shorten writes that the charges relate to a helicopter crash and the death of a TV show presented in February 2022.

Mellon was arrested and handcuffed as he arrived for work at Darwin police station. The former long-time head of the Territory Response Group has been suspended without pay. He is on bail to appear in Darwin Local Court on 22 September.

Deputy Commissioner Michael White said police would allege that Mellon’s actions undermined the integrity of the NT Police and the community of the NT. – *Weekend Australian* 27-28 Aug 2022

Jails chaos continues in WA

Word from WA is that the 15 juveniles moved from youth jail at Banksia Hill to adult prison in Casuarina high security jail are so traumatised mentally that their neural pathways may be incapable of recovering to normality, even with full-time medical support.

The children may be unable to control their impulses, the first of which is destruction of their environment and inflicting hurt on the people around them and themselves.

Unless their guardian – the state of WA – finds a way to solve this dilemma, there are real questions about whether they can be released back into their communities or the community generally.

Their move to Casuarina has seen violence and destructive incidents drop at Banksia Hill to single figures from being in the hundreds on a regular basis.

While the concentration is on the “Banksia Hill Kids”, the rest of the state’s jails are not necessarily in much better shape.

Possible criminality involving staff of Serco, the private prison provider whose contract is up in the air, is being investigated, it is believed, while at Yongah immigration detention centre, at Northam, other investigations are under way, according to Dr Brian Walker, the Legalise Cannabis MLC of the WA Parliament, who visited jails recently.

Teenage boy locked in solitary 20 hours a day, average of one day a week

WA Supreme Court judge Paul Tottle found a teenage boy had unlawfully spent 20 hours or more of each day locked in his cell more than 25 times between January and July 2022.

“Confining children to their sleeping quarters in a detention centre for long hours, thus effectively confining them in isolation, can only be characterised as an extraordinary measure that should only be implemented in rare or exceptional circumstances,” the judge said.

The boy was 14 when first jailed, turning 15 while on remand.

“The conditions at Banksia Hill breach international human rights standards and amount to unlawful solitary confinement,” Aboriginal Legal Service of WA chief executive Dennis Eggington said.

“These children deserve to be treated with respect and dignity, not locked in a cell all day with only 10 minutes out, or none at all. They need fresh air, human connection, education and adults to mentor them. If they are provided with these basic things, they will not act out.”

ALSWA, who brought the case, is also acting for more than 20 other children who have submitted individual complaints about the lockdowns, lack of mental health services, education and recreation over the past six months. <https://tinyurl.com/yc7hkm48>

ANOTHER SUICIDE: An Indigenous prisoner has taken his own life in his cell at Casuarina Prison. The 32-year-old man, a father of two young children, was found unconscious in his cell at about 1.30pm on a Sunday. It is understood the man had been in and out of Banksia Hill Detention Centre from a young age.

The *West Australian* was told he had been held in the SHU — the special handling unit, which has been described as a “prison within a prison” — in the lead-up to his death.

National Suicide Prevention and Trauma Recovery Project director Megan Krakouer said the McGowan Government “has to ask itself why this state has the nation’s highest prison suicide rate of First Nations people”. <https://tinyurl.com/3k7uwm72>

Pollies boost police again

Questioned whether regional police stations were adequately staffed, WA Premier Mark McGowan said WA had “the best resourcing of police in history”, and that 1100 more officers were being recruited to the WA Police Force. 1100 additional police officers is about a 15 to 20% increase in the police numbers across the state.” The Premier was responding to criticism when a police officer shot an Aboriginal man in his 20s recently in Pingelly, 150km SE of Perth. <https://tinyurl.com/ympz3crv>

Citizens want responsibility age raised to 14

More than 60,000 people have signed a petition urging the NSW government to raise the age of criminal responsibility to 14, and to stop allowing children as young as 10 to be arrested, handcuffed and strip-searched.

The petition is part of a national campaign to raise the age, which last year saw the AGs of all Australian states and territories agree to move toward raising the age of criminal responsibility from 10 to 12. That step has been criticised as too small by justice advocates, who say raising the age to 12 will have a minimal impact on youth imprisonment rates.

Figures released by the NSW Bureau of Crime Statistics and Research in April showed that 43% of children in detention in the state were Indigenous.

Similar petitions are expected to be handed to the AGs of South Australia, Queensland and Victoria in the coming weeks. The ACT is the only jurisdiction to have confirmed it will increase the age of criminal responsibility, but so far no legislation has been introduced.

The Aboriginal Legal Service NSW is using the campaign to raise the age of legal responsibility to urgently ban the strip-searching, handcuffing and arrest of young children. <https://tinyurl.com/ype9w3np>

ABORIGINAL DEATHS DOUBLE: The number of Aboriginal Australians who died in custody or as a result of police operations in NSW in 2021 doubled the previous high set 25 years ago, prompting furious calls for reform to the state's justice system. Amid rising incarceration rates and a series of legislative changes making it harder for alleged offenders to be released on bail, data provided by the state's coroner's court revealed 16 Aboriginal people died while caught up with the justice system last year. The previous record – 8 – was set in 1997. <https://tinyurl.com/2bnpknbk>

DNA test comes with two-edged results

A pilot program, led by Monash University, is enrolling 10,000 Australians aged 18–40 for DNA screening of three hereditary conditions.

Free saliva kits will go out to people across Australia to test for 10 known gene variants that can lead to hereditary ovarian and breast cancer, Lynch syndrome and familial hypercholesterolaemia.

About one in 75 people carries one of the gene variants that can lead to early death and morbidity.

The pilot program aims to show that widespread DNA screening is an option for future Australia's screening programs. However, privacy experts caution there are ramifications to knowing your DNA profile, such as whether you can get insurance, what obligations you have to inform your employer, and whether you need to let relatives know if your DNA suggests that they may be prone to particular health problems. <https://tinyurl.com/4u6uv6nu>

More alleged DNA failures add to national concern

Hundreds – maybe thousands – of DNA samples from crime scenes such as murder and rape have not been as fully tested in Queensland as they could have been.

The surprising news emerged in an ongoing inquiry by former top judge Walter Sofronoff (photo) into the state-run Forensics and Scientific Services facility, part of Queensland Health.

Any problems at the Qld state lab are the “tip of an iceberg” for state-run labs, and possibly private ones, Australia wide, CLA believes.

CLA has been warning for years that forensics depicted on TV are nowhere near the reality of some poorly funded labs, sometimes inadequately supervised and with plain shoddy performances of both the laboratories and of their staff when appearing and providing evidence as “expert” witnesses.

When federal Attorney-General Mark Dreyfus gets through his huge workload at the moment, he should turn his mind to a Royal Commission into Justice in Australia, with a clear sub-set of the RC tasked to analyse forensic science processing and “evidence” giving.

“Forensic and Scientific Services is Australia's most comprehensive forensic and public and environmental health facility,” according to Queensland's Health's website at 9am on 29 Aug 2022: <https://www.health.qld.gov.au/public-health/forensic-and-scientific-services>

The problem is, despite the major inquiry into it at the moment, that statement may well be true. If it is, the it doesn't say much about the quality of other forensics services, the current Sofronoff inquiry indicates.

Australian brief

Religious belief is declining: should continue to be protected

When Australia opted for an entirely secular Constitution in the 1890s, most Australians were Christians. That fact shows how relatively important the founding fathers thought it was that religion should not interfere with democracy and government in Australia. In the 1911 Census, just 0.2% of people said they had no religion. In the 2021 Census, about 39% of respondents said they had no religion, up from 30% in 2016. In Tasmania, about 50% of people have no religion, while in NSW the figure is about 33%. The recent statistics indicate how important it is that we follow the founding fathers' wisdom, and keep religion out of politics and out of our Constitution and basic laws, except for protecting the right to have a religion if people choose to. – source: ABS, Religious affiliation in Australia: <https://tinyurl.com/2p8xbszx>

Survey cops large discontent vote

Some 80% of rank-and-file police members of the NT Police Association who were eligible to participate in a recent survey have no confidence in the leadership of Police Commissioner Jamie Chalker. Analysed in closer detail, that means more than 820 officers of the 1044 who participated (out of 1608 eligible) don't have confidence in Commissioner Chalker's ability to continue to lead the police force. <https://tinyurl.com/2p9a5sys>



Members (and other relevant) letters:

Letter to CLA:

To: Margaret Howkins VP CLA in WA 22 August 2022

Thank you very much for providing me with the CLA produced documentary 'Trauma: Rights & Remedies' completed in May 2022. I applaud CLA's interest in the matters that you have raised. Best wishes,

– Malcolm McCusker AC CVO QC. (McCusker, probably WA's leading barrister, is a former Governor of WA).

CLA's main activities for July 2022

WA:

CLA's WA Director, Vice-President Margaret Howkins, held two meetings with CLA members Gerry Georgatos (Georgatos Foundation) and Megan Krakouer (National Suicide Prevention & Trauma Recovery Project) to share information about the alarming escalation of reports about children and adult prison conditions.

CLA discussed the serious injuries caused by an ankle bracelet on a former prisoner on parole, who is prevented from working his paid job due to ulcers and leg/spine nerve damage. Corrective Services are responding with intransigent, generic letters. An MP will raise this case in parliamentary Question time.

Trauma documentary:

Four letters of response to CLA's documentary: 'Trauma: Rights & Remedies' have been received so far, from: WA's Governor and former-Governor, Minister of Aboriginal Affairs and Commissioner for Children and Young People. Two say they have forwarded CLA's info to the Corrective Services Minister....who should have a stack by now.

Tracking the CCC

CLA member and doco cinematographer Simon Akkerman and VP Howkins met Legalise Cannabis MLC, Dr Brian Walker, to discuss jail and prisoner issues.

Dr Walker will continue tracking the fate and positive outcomes (if any) from the latest report of the Joint Standing Committee on Corruption and Crime Commission, Report 2, and the government response which is expected in November.

Right: Walker MLC with Howkins and Akkerman.



The report of the 15 August Joint Standing Committee on the CCC's Public Hearings was posted online after the event: 'What Happens Next? Beyond a Finding of Serious Misconduct.'

"The transcript of evidence from WA's Aboriginal Legal Service is the most shocking indictment of the CCC's toothless and uncaring failure I have ever read," VP Howkins said.

"WA's Corruption and Crime Commission are macho-focused entirely on bikies, organised crime, unexplained wealth and corrupt heads of departments.

"Oversight of police misconduct is non-existent...despite curbing police misbehaviour being the original raison d'être of the CCC," she said.

Rewriting of WA's 2003 Corruption & Crime Act may well happen but hopes of reforming WA's Police culture (of racist targeting and aggressive, unethical, misogynist behaviours) appears a pipe dream, she says. "Or is WA Labor planning a separate, external, independent Police Complaints Commission?"

FEDERAL

Formal groups briefings to begin

The CLA Human Rights Committee last month met David Smith, government whip and the Member for Bean in the ACT.

Discussed was a briefing for caucus members (Labor MPs) on developments with human rights Acts in Australia, including the initiative in the ACT to introduce a 'No Rights Without Remedies' system.

None of the HR legislation in the ACT (2004), Victoria (2006) or Queensland (2020) has such a clause yet, but the ACT is likely to provide remedies for all rights wronged in time for the 20th anniversary of Australia's first Human Rights Act (HRA), in 2024.

Right: CLA's campaign manager Chris Stamford, President Dr Kristine Klugman and MHR David Smith discussing the caucus briefing.



CLA is continuing to brief other MPs, such as the independent MHR for Clark in Tasmania, Andrew Wilkie (a long-time CLA member), the Greens spokesperson David Shoebridge and new 'teal' MPs. We are also exploring a briefing across all MPs in Parliament in early 2023,

So far CLA has held more than 100 briefings on developments in HR law and the need for a HR Act for Australia, and the fundamental need for all HRAs to abide by the 'No Rights Without Remedies' principle.

TAS:

The "Tasmanian Human Rights Act Campaign Committee", which is convened by Civil Liberties Australia's Richard Griggs, has been invited to join the recently established "Alliance for a Tasmanian Human Rights Act" which is convened by the State's Anti-Discrimination Commissioner.

After a meeting between the two groups to discuss what is behind this encouraging development, CLA will re-activate the website for the Tasmanian Human Rights Act Campaign as it has a lot of information and recent Tasmanian history on it. – Richard Griggs

SA:

Two sets of meetings in SA during August and September will be focusing new attention on the need for a Human Rights Act in that state.

State MLC Roberts Simms and federal Senator David Shoebridge, both Greens, were due to hold a public forum on 'A Human Rights Act for SA' on 31 August at 6.30pm.

Dr Sarah Moulds, leader of the Rights Resource Network, is holding a community briefing and advocacy workshop on 23 September between Noon and 2pm.

ACT:

A roundtable to support maintaining the Australian HR Commission's 'A' status, and to restore its funding relativity, was due to be held on 31 August from 12.30-2pm. The AHRC's status internationally is under threat from a formal UN review because of appointments made to it, and funding cuts, by the former federal government under Scott Morrison.

INTERNATIONAL

Republicans move to change the ruling hierarchy

Roger Fitch Esq reports from the Land of the T Rump:

With the US Supreme Court having effectively repealed most of the *Voting Rights Act 1965*, Republican jurisdictions are introducing a variety of racist voting restrictions, for example Georgia eliminated 75% of drop boxes in places where blacks live and attempt to vote.

In the run-up to the November "mid-term" elections, Republican-ruled states have enacted over 100 new laws to penalise and shape voting. Sixty of them are *felonies*, according to the Wisconsin Uni here.

There is one last strand in the Republicans' plot for permanent minority government: the spurious theory of "the independent state legislature". The US Supreme Court will consider ISL in an October term case.

It's the astonishing, newly-invented, notion that a state legislature's electoral decisions take precedence over the state's executive government and its highest court's interpretation of the state constitution. – Fitch is *Justinian's* Washington reports correspondents: some of his items are reported here with permission.

Canada's police 'pre-crime' intervention targets Indigenous girls

Police interventions in partnership with schools and social workers have violated privacy rights of minors, omitted race data, and led to at least one death in the province of Ontario, critics claim.

Police, schools, health providers and social workers create informal but regular links to identify people believed to be “at risk” of becoming criminals or victims of crime. The scheme violates young people’s privacy and may have contributed to several deaths, it is claimed.

First created in 2011, ‘Situation Tables’ have been rolled out in cities across Canada, assessing thousands of people and launching hundreds of interventions led or assisted by police every year. There are around 150 Tables currently active in Canada with funding from provinces or cities, and no provincial or federal oversight.

Laura Huey, a criminologist at Western University, said that the evidence proving beneficial outcomes of Situation Tables is “virtually non-existent.” “There has not been one single, independent, peer-reviewed evaluation of any version of a Canadian...table published in a credible research journal,” she said.

Situation Tables operate as informal coordinating bodies, with no permanent address. Despite usually being administered by police, their activities are considered outside of police responsibility.

“This is about expanding the footprint of public policing, without any indication it is helping anyone at all,” said Kevin Walby, associate professor of criminal justice at the University of Winnipeg, after seeing recently released documents. “They allow police to insinuate themselves in schools and elsewhere, without representing the harm done by the system.”

Experts in privacy and surveillance say Situation Tables are a form of predictive policing, when police use data and insights to predict who may commit a crime in the future. Their stated goal is to prevent crime and “social disorder”.

A *VICE News* investigation in 2021 found that, between 2015 and 2020, 40% of all interventions targeting women launched by the Situation Table in Surrey, British Columbia, involved Indigenous women, despite Indigenous people making up just 2.6% of the city’s population. <https://tinyurl.com/mwt4cj5d>

Parents stunned when trying to protect children in school

Police fired a stun gun at two Arizona parents as they tried to force their way into a school that police had locked down after an armed man was seen trying to get on campus.

The parents were arrested, along with another person, as they tried to get to their children to protect them, authorities said. Officers in the Phoenix suburb of El Mirage used a stun gun to stop two of them as they tried to help a man whose own handgun fell to the ground while he was being taken into custody.

It came nearly three months after hundreds of law enforcement officers in the small Texas city of Uvalde failed to act for more than an hour as a gunman killed two teachers and 19 students.

No shots were fired in the incident at Thompson Ranch elementary school, the school was not breached and no one was hurt, other than a woman taken to a hospital with stun gun injuries from officers who claim they were trying to stop her from attacking them. <https://tinyurl.com/muwze9ez>

Judges – as well as juries – sneak a peak at *Wikipedia*

Judges use *Wikipedia* to research legal issues and allow it to influence their reasoning, research shows.

A team at the Massachusetts Institute of Technology who had researched the impact of articles on chemistry posted on *Wikipedia*, was asked by Brian McKenzie, an associate professor at Maynooth University in Ireland, about analysing Irish Supreme Court cases.

Law students wrote more than 150 articles on Irish Supreme Court decisions; half were randomly chosen to be uploaded to *Wikipedia*, with the other half kept offline.

Researchers found that judicial citations of the cases on *Wikipedia* as precedents increased by a statistically significant 22%, saying that randomisation meant the effect was causation and not just correlation. There was also a statistically significant textual similarity. This showed “that the contextualisation of the case by law students on *Wikipedia* is itself influencing judicial reasoning”.

The *Wikipedia* articles were generally used by judges of first instance to bolster their conclusions. Researchers said this suggested that they were used more by judges or clerks who have a heavier workload, “for whom the convenience of *Wikipedia* offers a greater attraction”.

Their paper said: “Taken together, these results indicate that, sometimes, judges are deferring to *Wikipedia* rather than applying their own legal expertise as they craft decisions.” <https://tinyurl.com/2ywazfm9>

Ankle bracelets become the new jails

In Los Angeles County, the number of people ordered to wear electronic ankle monitors as a condition of pretrial release went up 5250% in the past six years, according to a report by the UCLA Criminal Justice Program.

The figure rose from just 24 individuals in 2015 to more than 1200 in 2021.

This type of carceral surveillance is becoming the “new normal” across the U.S. It is defended as “better than jail,” but being “better than jail” does not make a criminal justice policy sound — much less humane or legal.

As Michelle Alexander, the author of *‘The New Jim Crow’*, has observed, “Digital prisons are to mass incarceration what Jim Crow was to slavery.”

It’s deceptive to even compare jail and ankle monitors as though they are the only two options. There is a third option: freedom.

In 2015 and before, L.A. judges were unlikely to order electronic monitoring as a condition of release before trial. Judges either set bail, released people on their own recognisance or ordered that people be detained in jail until trial.

Now, judges seem to be defaulting to electronic monitoring, perhaps for people who would — or should — otherwise be free. <https://tinyurl.com/2mnd8c2p>

International briefs

Channel refugees nearly double

People crossing the English Channel to the UK from northern France in small boats hit a new high one day last month, the UK’s defence ministry said. They counted 1295 people, beating the previous single-day record of 1185 on 11 November 2021. So far this year, there have been about 22,670 crossings, nearly double the number at the same point in 2021. Last year, the UK authorities intercepted and brought ashore a total of 28,526 people as they tried to cross the busy shipping lane. <https://tinyurl.com/3auayeyh>

PM to serve 12 years, pay \$65m fine

Malaysia’s top court has upheld former Prime Minister Najib Razak’s conviction and 12-year jail sentence for corruption in the 1MDB financial scandal, in which about \$6.5 billion was stolen from 1MDB state fund, which was co-founded in 2009 when Najib was the prime minister. “We find the conviction and sentence to be safe,” Chief Justice Maimun Tuan Mat said last month on behalf of a five-judge panel. He will now serve his sentence of 12 years, and pay a fine of about \$65m. The former prime minister has been on bail since 2018, pending the appeal. <https://tinyurl.com/8hajvj7p>



Two police use pepper spray and stun gun to handcuff wheelchair-bound 93-year-old, one-legged man who dies 21 days later

Two UK police officers involved in firing a stun gun at a 93-year-old man in a wheelchair are being investigated for manslaughter. Donald Burgess had one leg and dementia: he died without leaving hospital, three weeks after being taken there, in handcuffs, after being pepper-sprayed and stunned. <https://tinyurl.com/e5f9b39s>

Greek spook boss resigns over Predator use

The head of Greece’s intelligence service, EYP chief Panagiotis Kontoleon, has resigned amid a scandal over the alleged usage of surveillance malware. The announcement came a week after the leader of the opposition PASOK party, Nikos Androulakis, filed a complaint with the supreme court over “attempted” spying on his mobile phone with Predator malware. <https://tinyurl.com/mucyudpu>

Mums are second-class

Malaysia’s appeal court has overturned a landmark decision that women can pass on their citizenship to children born overseas the same way as Malaysian men can. Judges ruled 2-1 in favour of a government appeal, thereby rejecting the September 2021 ruling by the High Court that Malaysian women had the same right as men to confer citizenship on their children. Article 14(1)(b) of Malaysia’s constitution expressly gives fathers the automatic right to confer citizenship on their children born abroad, but omits any mention of mothers. <https://tinyurl.com/2mxvaheh>

Stun gun used on 10-year-old girl

In February, the Independent Office for Police Conduct ruled that a Metropolitan Police officer who shot a 10-year-old girl with a stun gun should face gross misconduct proceedings. The officer fired the stun gun at the girl in south-west London after reports that she had been threatening a woman with garden shears and a hammer. The following month, an officer was charged with grievous bodily harm after Jordan Walker-Brown was shot with a stun gun and left paralysed from the chest down. <https://tinyurl.com/e5f9b39s>

DATES:

2022

23 Sept, Adelaide: Dr Sarah Moulds, leader of the Rights Resource Network, is holding a community briefing and advocacy workshop on 23 September between Noon and 2pm. <https://www.rightsnetworksa.com>

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

26 Nov, Victoria: Election – Victoria goes to the polls

Election cycle for Australia:

2022:

Victoria: 26 November 2022

2023:

NSW: 25 March 2023

2024:

Northern Territory: 24 August 2024

ACT: 19 October 2024

Queensland: 26 October 2024

Tasmania: late 2024 or early 2025 most likely

2025:

WA: 8 March 2025

Federal: May 2025

2026

South Australia: 21 March 2026

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 29 August 2022.

ENDS ENDS ENDS