

AG Dreyfus keenly awaits human rights framing proposal

The next key event in the escalating campaign to secure a Human Rights Act for Australia will be a “framing paper” presented this month to the Attorney-General, Mark Dreyfus.

The AG indicated in a meeting with CLA in September that he is keenly anticipating the paper from the President of the Australian Human Rights Commission, Dr Rosalind Croucher.

Her framing paper is itself a prelude to the AHRC’s ‘Free and Equal’ project report scheduled for release later this year.

That report has been some years in the drafting by the AHRC, which has occurred alongside the active community campaign run by CLA and other non-government bodies over a similar period.

In the meeting with CLA, AG Dreyfus confirmed the government was “absolutely focused” for the rest of 2022 on implementing a National Anti-Corruption Commission, by succeeding in passing legislation in parliament, and on preparing for the Indigenous Voice to Parliament referendum.

He said other human rights priorities of the government in 2023 and later included:

- updating anti-discrimination law including for preventing faith-based discrimination;
- amending the Sex Discrimination Act;
- implementing the ‘Respect at Work’ report in full;
- recovering the role of the AHRC, including legislating for transparent and merit-based appointments to avoid downgrade of AHRC status internationally (which is well under way); and
- strengthening Australian privacy law.

Allied to this agenda was the commitment, in the Labor Party platform before the 2022 election, for a full review of the human rights ‘framework’ which has guided activity federally for the past decade.

‘No Rights Without Remedies’ is foundation for better rights systems

CLA explained to AG Dreyfus that the ‘No Rights Without Remedy’ (NRWR) initiative in the ACT would provide a foundational development in human rights law in Australia which could underpin future federal HR legislation as well.

After a public petition and a full Legislative Assembly public consultation process, Labor, Greens and Liberals in the ACT have endorsed the concept of NRWR.

The new system will ensure that anyone whose rights have been breached can quickly, easily and cheaply access conciliation followed by a tribunal-level decision if conciliation doesn’t work.

None of the three current HR Acts – in the ACT since 2004, Victoria since 2006 and Queensland since 2020 – have guaranteed access to a remedy at the moment.

Australia now has more than 35 years of combined experience operating HRAs.

There has not been a flood of HR cases anywhere, so that the next step logically is to make providing remedies quicker and easier without adding any significant cost to the system.

The legislation for the first NRWR commitment in Australia could be introduced in 2023 in the ACT, or possibly in 2024 as part of a 20-year review of the nation’s first HR law.



Austrian Turk appointed to key HR position

Volker Turk is the new the incoming UN High Commissioner for Human Rights.

UN Secretary-General António Guterres recently appointed the Austrian national, who is also an international lawyer, to one of the most politically sensitive and high-profile posts in the UN

system. Turk (photo) has more

than 30 years experience in the UN system—most in the office of the UN High Commissioner for Refugees (UNHCR).

Currently UN Under-Secretary-General for Policy in the executive office of Guterres, Turk starts in his new post in Geneva on 17 Oct 2022.

“He’s a very serious person who knows and breathes human rights and protection”, said Paul Spiegel, Director of the Center for Humanitarian Health at Johns Hopkins University. “He’s not someone new to human rights. This is at his core”, noted Spiegel, who worked closely with Turk when he was Director for Health at UNHCR. <https://tinyurl.com/8uw8nrc3>

Forensic science under major review

Molecular biologist Professor Frank Gannon has been rushed on board in Queensland to independently oversee urgent changes to forensic science reports arising from an inquiry into forensic DNA testing.

Health Minister Yvette D’Ath said the changes were needed after interim recommendations from the ongoing *Commission of Inquiry into Forensic DNA Testing in Queensland*.

The Commission of Inquiry, headed by former judge Walter Sofronoff, sparked concerns about DNA testing thresholds used by the state’s Forensic and Scientific Services body between 2018 and June 2022.

Basically, Sofronoff found FSS gave official reports to police, the DPP, defence barristers and therefore the courts that were wrong.

In lay terms, the reports said: ‘We can’t do any more work on this sample to give you a DNA result’. (The actual statements issued said “DNA insufficient for further processing” or “no DNA detected”).

The reality was, and is, that the FSS could do further work on the samples, but the likelihood of usable DNA results was too small to do the extra analysis, in the opinion of FSS. While police or others could request the extra analysis be done, the FSS wording tended to discourage people asking for it.

FSS provided ‘untrue or misleading’ reports

“The Commissioner found that between February 2018 and June 2022, FSS scientists provided untrue or misleading information regarding the detection of DNA in some sworn witness statements relating to samples with very small amounts of DNA,” Health Minister D’Ath said.

“He has recommended that the relevant statements be withdrawn, and corrective statements issued.”

Professor Gannon will oversee work already under way to:

- re-issue the statements of identified cases; and
- further test identified samples to provide those results to the Queensland Police Service.

While Commissioner Sofronoff did not find that previous DNA testing was inaccurate, he found that due to the possibility that additional processing of DNA samples could lead to

partial or full DNA being detected in some cases, that statements issued were not factually correct.

To rectify this potential injustice, Commissioner Sofronoff has recommended:

- that all witness statements issued by FSS since 2018 that stated “DNA insufficient for further processing” or “No DNA detected” have new statements issued stating that the original statement was incorrect as the DNA may have produced an interpretable profile if further processed; and
- that the government appropriately fund any bodies required to investigate, consider and resolve these issues.

“The government has already reverted to FFS’s previous practice of testing all samples, including those with low levels of DNA, as it did prior to February 2018,” the Minister said.

Forensic entities do not live up their hype

According to the website of Queensland’s forensic experts:

“Forensic and Scientific Services is Australia’s most comprehensive forensic and public and environmental health facility. We provide specialist scientific and medical analysis and independent expert advice to private and public sector clients locally, nationally and internationally.

“We use the latest technology and methods to investigate and respond to public health threats, epidemics, civil emergencies, criminal investigations and coronial matters. We play a critical role in the government’s response to epidemics, civil emergencies and public health threats. – <https://www.health.qld.gov.au/public-health/forensic-and-scientific-services>

Obviously, the Sofronoff Commission of Inquiry calls into question the “expert” advice of FSS. But at least FSS is independent of police, being run by the Health Department.

Elsewhere in Australia, the forensic science entity is a subset or branch of the state police force or of the Attorney-General’s Department, both with close ties to the Office of the Directors of Public Prosecutions.

Independent scientists being ignored

The Australian Academy of Science wants reform in how scientific evidence is used in courts.

Past president and molecular biology professor, John Shine, said the case of Kathleen Folbigg demonstrated courts were not taking note of totally independent scientists. She was jailed in 2003 after her four babies had died, despite claiming innocence then and now.

Recently more than 90 eminent scientists signed a petition calling for her to be freed, saying that new scientific and medical evidence is overwhelmingly in her favour.

The AAS wants Australia to create a criminal cases review commission, that has existed in England for 20 years. After reviewing 30,000 cases, 800 were referred back into the court system and more than 500 appeals have freed innocent people who had been languishing in jail, serving long sentences.

NZ established a CCRC in 2020, but Australia continues to lag the world in this area of justice. – news item developed with help from a report by Fiona Harari, *Weekend Australian*, 24 Sept 2022

Police, spook agencies ignore warrant rules

Surveillance and data mining by 19 government authorities with almost unbridled powers involves “serious compliance issues”, making supposed citizen protections almost useless, the Commonwealth ombudsman has reported.

Groups are calling for secret warrants to be scrapped entirely because not all in government obey them.

The Commonwealth ombudsman last month released its annual report on data access compliance under the Telecommunications (Interception and Access) Act, covering how 19 agencies comply with the law.

The simple answer is: they don’t. Much of their warrant activity ignores the law.

The ombudsman found they regularly obtain invalid warrants, fail to keep records, store data inadequately, don’t destroy data properly and access people’s communications without consent. Former Independent National Security Legislation Monitor who is Australia’s top barrister, Bret Walker, said the revelations in the report were “disturbing” and questioned whether the powers should remain, while Electronic Frontiers Australia called for them to be scrapped entirely, the Australian Computer Society reported.

The ombudsman has made 29 recommendations to the agencies, 386 suggestions and 116 better practice suggestions. They reflect “serious compliance issues” or issues on which an “agency has not made sufficient progress in implementation”. <https://tinyurl.com/2jcnf7y3>

The 19 agencies are: Australian Competition and Consumer Commission (ACCC); A. Criminal Intelligence Commission (ACIC); A. Commission for Law Enforcement Integrity (ACLEI); A. Federal Police (AFP); Crime and Corruption Commission (Queensland) (CCC QLD); Corruption and Crime Commission (Western Australia) (CCC WA); Department of Home Affairs; Independent Broad-based Anti-corruption Commission (IBAC); Independent Commission Against Corruption NSW (ICAC NSW); Independent Commissioner Against Corruption (SA) (ICAC SA); Law Enforcement Conduct Commission (LECC); NSW Crime Commission (NSW CC); and all state/territory police forces of Australia also.

Nothing changes: police seldom obey laws

Back in a 2018 report, an elevated level of criticism rained down on Tasmania Police for having four instances where it seemed TasPol broke the law. The following year, TasPol had two instances.

The Commonwealth ombudsman later said TasPol did not have a “well-developed compliance culture”.

“This was indicated by a large number of issues across several of its processes, including limited progress in addressing our previous inspection findings and significant variances in the level of awareness of requirements under the Act,” the report said. “We considered that the required improvements could not be implemented without fundamental changes to the way Tasmania Police approaches compliance.”

What’s changed? Nothing. Tasmanian Police culture is probably worse, if anything.

For example, TasPol was last month outed for running a surveillance device for more than 60 days inside the room in Risdon Prison where lawyers meet their prisoner clients for private conversations to prepare their case. It should have been turned off the day after the one conversation it was targeting was over.

Now the Commonwealth ombudsman has advised TasPol to “seek legal advice” about its stance, and its status, as reported by David Killick (photo) in *The Mercury* on 23 September 2022.

If a police force consistently breaks the law, should the police commissioner be charged with an offence? Yes, definitely,

CLA says. And it should be the commissioner at the time the offences were committed, plus relevant staff.

If the police force is found guilty of consistent law breaking, year after year, the police commissioner should go to jail. See: <https://www.cla.asn.au/News/tas-police-secret-illegal-keepers-of-the-dark-arts/> and <https://www.cla.asn.au/News/what-are-the-laws-about-police-warrants/>

On Tuesday 27 Sept, Meg Webb MLC have a hard-hitting, detailed speech in the Tasmanian Parliament, highlighting the repeated failures of TasPol. She called for a genuinely independent public inquiry.

Pollies waking up to 'un-justice' in Tasmania

"Revelations (that) Tasmania Police left secret recording devices in a confidential prison meeting room continually recording for two months are extremely disturbing," Tasmanian Greens Justice spokesperson Dr Rosalie Woodruff said in a media release last month.

"Police will have digitally captured many sensitive and privileged conversations between clients and their lawyers, and potentially other parties including psychiatrists, psychologists, and religious guides.

"Police Minister Felix Ellis must explain what occurred to enable this two month-long secret taping of privileged conversations. Secret, open-ended recordings have the potential to erode trust in police and the justice system.

"As a consequence of this bungled process, evidence in relation to serious allegations will not be admitted to court." This was a lose-lose situation for justice, Dr Woodruff said.

At last, CLA believes, the Greens, Labor and even some Liberals in Tasmania are starting to wake up to the monumental mess that comprises the police and justice system in the island state.

Let's hope that they have the courage to follow through and demand a full commission of inquiry into the Sue Neill-Fraser and associated cases. Detailed examination of those cases will be enough to rip apart the smugness of the current "justice" establishment to, at last, set Tasmania on a much-needed path to reform.

Will Australia fully implement UNDRIP?

The Senate has referred an inquiry into whether the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) should become implemented fully in Australia to the new Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSIA).

JSCATSIA will inquire into international experiences of implementing UNDRIP, and consider how to improve adherence to UNDRIP principles here. It will also how implementing the Uluru Statement from the Heart can support the application of UNDRIP.

Committee chair Senator Patrick Dodson said, "The committee looks forward to receiving evidence from individuals, organisations, land councils, academics, and think tanks across Australia and internationally."

Submissions are due by Wednesday 19 October 2022.

ODD SPOT: How the parliament ignores private members' bills

"Of the 653 private members' bills and private senators' bills introduced into the Australian Parliament since 1901, only 30 have been passed into law."

– Charlotte Fletcher and Anita Coles, 'Reflections on the 10th Anniversary of the Parliamentary Joint Committee on Human Rights', Note 53, *Senate Lecture Series*, August 2022.

That's a success rate of 0.46%, CLA observes.

Dibb warns NT may be nuclear target

Pine Gap in the NT could become a nuclear target, the retired defence strategist Paul Dibb (photo) has warned.

Pine Gap is shrouded in secrecy, but the US military base near Alice Springs is a key hub for US global intelligence and for satellite surveillance, the *NT Independent* reported.

It could be priority target for a missile strike if major conflict erupts, Dibb said. Now a retired ANU professor, he was once director of Australia's Joint Intelligence Organisation.

Dibb warned that Australia should not consider itself far removed from conflicts in Asia and Europe. "We need to plan on the basis that Pine Gap continues to be a nuclear target, and not only for Russia. If China attacks Taiwan, Pine Gap is likely to be heavily involved," he said.

The secretive US-Australian military installation is a ground station for early warning satellites in the Defence Support Program and space-based infra-red satellite system. It also serves as a command, control, downlink, and processing facility for the US signals intelligence satellites in geostationary orbit. <https://tinyurl.com/2p89mmy8>

'Lock'em up, throw away the key' is legal

The High Court ruled last month that it's OK to indefinitely jail an Aboriginal person for robbery of a small amount because he threatened to be violent and he "might" do it again.

Peter Robert Garlett, a Noongar man, had friends including his sister with him when he stole a necklace and \$20 cash from two victims at their Perth home while pretending to be armed and threatening violence.

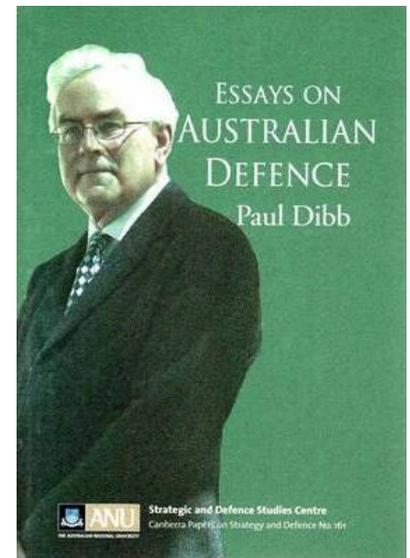
Garlett was convicted in 2019 and sentenced to three years and six months' jail, having been held in custody since his arrest in 2017. After getting some extra months on his sentence for mucking up in jail, the now-28-year-old was due for release in October 2021.

But in 2020, the Labor state government passed a High Risk Serious Offenders (HRSO) law. It targets offenders deemed likely to pose an unacceptable risk to the community.

WA judges can order ongoing jail or community supervision for violent offenders. When they kept Garlett locked up, he appealed to the High Court for relief, hoping for what most people would think was a common sense interpretation of what is undoubtedly, even by WA standards, a most draconian law.

But High Court head judge Susan Kiefel and judges Patrick Keane and Simon Steward believe it's OK for WA judges to "lock people up and throw away the key". The HRSO scheme dreamed up by Premier Mark McGowan and Attorney-General John Quigley was "protective", not punitive, they said.

Judge James Edelman thought the law was OK, but wouldn't be if its use in practice demonstrated that it was being abused. That is almost certain to happen, given WA's propensity for locking up Aboriginal people.



In a dissenting opinion, judge Michelle Gordon (photo) said the law should not include crimes like robbery, only ones like sexual offences or terrorism, for example.

Garlett has spent long periods of his life detained, mostly for offences committed as a juvenile. He was placed in foster care at the age of seven after being exposed to domestic violence and drug and alcohol abuse. <https://tinyurl.com/m29c3amt>



Why WA Indigenous people think they are discriminated against

The imprisonment rate for every 100,000 of the adult population in WA is 305.

The imprisonment rate per 100,000 adult population for Aboriginal and Torres Strait Islander people in WA is 3598. – released 9 July 2022 by ABS <https://tinyurl.com/ydqbg9p8>

Guess whether Noongar people or non-Noongar people are more likely to be locked up “preventatively” under this truly exemplary WA law (above).

ODD SPOT: Judges catch up with 18th century deadly solutions

In their Garlett judgement (above), judges formally quoted favourably a comment from 1769, before Australia was even spotted by later-Captain Cook. Then, Sir William Blackstone wrote:

“As to the end ... of human punishments. This is not by way of atonement or expiation for the crime committed ... but as a precaution against future offences of the same kind. This is effected three ways: either by the amendment of the offender himself; for which purpose all corporal punishments, fines, and temporary exile or imprisonment are inflicted: or, by deterring others by the dread of his example from offending in the like way, ... or, lastly, by depriving the party injuring of the power to do future mischief; which is effected by either putting him to death, or condemning him to perpetual confinement, slavery, or exile. The same one end, of preventing future crimes, is endeavoured to be answered by each of these three species of punishment.”

– Blackstone, Commentaries on the Laws of England (1769), bk 4, ch 1 at 11-12

Garlett can probably count himself fortunate that neither the WA Supreme Court nor the High Court of Australia chose slavery or exile as his punishment (nor did they choose putting him to death, which would obviously solve any possible future problem for good).

The High Court, in last last month’s ruling – possibly in lament or in a poor attempt at humour – said:

“None of the means of prevention of crime mentioned by Blackstone is now available in Australia...”

Park and hide will become the new normal

In Australia, police can use unqualified people to take out undisclosed warrants to put you under secret video and audio surveillance; they can take any image authorities have of you

and put them in a secret, centralised police ID database so your image is scanned whenever an unidentified person commits a crime; and now courts can lock you up if you might commit a crime.

As one leading national lawyer said:

“Seems the slippery slope of the expansion of executive detention powers has now hit full pace when the High Court can endorse a situation in which it is now OK for WA to legislate and then permanently surveil and/or detain a young man with a history of theft and drug offences.

“Judges Gageler and Gordon are the only two showing some degree of humanity and attachment to reality in their dissenting judgments.

“If this judicial thinking continues apace, the community will shortly be subject to executive surveillance and detention powers immediately upon receipt of a parking ticket.”

Police seek to raid, charge news outlet: claim

The NT Police secretly sought authorisation from a federal agency to press charges against the *NT Independent* that would have seen a raid on its office, computers seized and staff possibly arrested, because this publication reported on a heinous sex crime the police media team suppressed from the public.

So claims the *NT Independent* news outlet...and it is backed up by the journalists’ union.

The secret plot against the free press for reporting on matters in the public interest has been condemned by the union representing Australian journalists, the *NT Independent* says. The Media, Arts and Entertainment Alliance (MEAA) union called the police tactics “disturbing” and part of a “dangerous pattern of behaviour in the Northern Territory” against the newspaper’s journalists.

The MEAA also passed a motion last month officially condemning the police and the NT government for the failed scheme, as well as for the ongoing ban on this publication’s journalists from attending ministerial press conferences.

It is claimed the police hatched the plot to charge the *NT Independent* for running a March 2021 news article about a toddler who had been sexually assaulted in their front yard through a fence by a man in the street. The police had not notified the public about the horrendous incident.

That report sparked a special investigative series exposing the police media unit’s ongoing suppression of serious sex crimes being committed against Territorians, including another disturbing story about a registered sex offender being found outside a child’s bedroom with a ‘rape kit’, a woman being raped in the street and other serious sexual offences from Alice Springs to Darwin. <https://tinyurl.com/4jbzhuh>

Gooda warns of more ‘punitive’ treatment of child detainees

Mick Gooda, the co-commissioner of the NT’s youth detention royal commission (RC), has blasted the decision to build a new youth detention facility next to an existing adult prison, warning it will lead to more “punitive” treatment of juveniles in detention.

Almost five years after the RC recommended the government close the Don Dale youth detention centre in Darwin, Territory Families Minister Kate Worden has announced that the replacement centre would be complete by mid-2023.

It is a year behind the previous schedule.

The new \$70 million facility on Darwin’s outskirts will have space for 44 beds: Ms Worden said it would adopt a “more therapeutic” model of care.

But Gooda said the facility's new location went against the findings of his report, which recommended any new youth detention centre be located away from the adult prison. Following community backlash at its proposed location in Pinelands, the government backflipped and opted to build the facility in Willard Road, Holtze. <https://tinyurl.com/3e2vza39>

Holtze adult jail – known euphemistically and “more therapeutically” as the Darwin Correctional Precinct – has 1048 beds for women and men at all levels of security, and mental health, disability and behavioural support support needs...so it is claimed.

ODD SPOT: Refugees pay (or don't pay) through the nose

People claiming refugee status in Australia now have to repay the Australian government a total of \$490.69 for every day the government detains them. An updated legislative instrument has raised the daily amount for 1 July 2022 to 30 June 2024 by \$34.46 a day from the previous figure. CLA wonders if anyone has told the government it would have no detention costs if it stopped jailing refugees. It could also probably halve the costs of refugees by detaining them in Hilton hotels in mainland capitals, where the long-term-contract rate is likely to be less than \$245 a day. CLA would be very interested to see government figures for how many former refugees have paid the monstrous bills delivered to them on their release. – see Parliamentary Joint Committee on Human Rights scrutiny report 3 of 2022, 7 September 2022.

Australia asked for OPCAT 'please explain'

Australia ratified the Optional Protocol to the Convention Against Torture (OPCAT) in December 2017, and must establish or designate independent entities to oversight places of detention through a national preventative mechanism (NPM). <https://tinyurl.com/4yf84f22>

But Australia federally has squibbed on setting up an NPM with the states and territories.

In early 2022, the UN's CAT accepted an Australian government's request to extend postponing its obligations to establish an NPM until 20 January 2023.

Now the committee's 75th session, at the UN Geneva from 31 October to 25 November 2022, wants an explanation from “a representative invited to attend that meeting”.

OPCAT is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment or abuse.

As well as an NPM, OPCAT requires that signatories like Australia accept regular inspection visits from a UN subcommittee on the lookout for torture and other cruel, inhuman or degrading treatment or punishment.

The subcommittee could start with Banksia Hill kids jail in WA, visit Roeburne and its un-air-conditioned temperatures of 50C in the north of the state, inspect the still-not-replaced Don Dale kids jail in the NT and also what now passes as the Ashley children's jail in Tasmania, as well as major jails in the other states and the ACT. It might ask why it sees so many Indigenous faces in jail, about 10 times the number, relatively, in the Australian population. <https://tinyurl.com/2pjc6n28>

Another state introduces inspector of prisons

Queensland is introducing an “independent inspector of detention services” to provide oversight of the state's detention facilities.

To be introduced as an extra “arm” of the Qld ombudsman, the inspector will operate independently and be empowered to

regularly or randomly inspect places of detention and review their services at any time – including youth jails, prisons, and police watch-houses.

The inspector will report findings to Parliament and make recommendations to ensure places of detention are managed well, and services support the general care, treatment and well-being of detainees.

The position of the inspector will be held by the ombudsman, with extra staff recruited to support the functions, and its own resourcing.

AG Shannon Fentiman said a key responsibility of the inspectorate would be preventing harm by examining the systems and experiences of people in detention. <https://tinyurl.com/yn9zs8z3>

Dick to hold five-year review of crime laws

Retired district court judge, Julie Dick, will conduct a mandatory five-year review of Queensland's serious and organised crime laws.

The Qld government introduced a new serious and organised crime regime underpinned by the *Serious and Organised Crime Legislation Amendment Act 2016*.

It included laws designed to target criminal organisations that engage in serious crimes, including trafficking dangerous drugs, unlawfully supplying weapons, possessing child exploitation material and fraud as well as consorting laws intended to disrupt association between recognised offenders that facilitates and enables serious and organised criminal activity.

The 2016 legislation requires that key elements of the serious and organised crime regime be reviewed as soon as practicable five years after the provisions commenced.

Dick (photo) is due to deliver her report to AG Shannon Fentiman by 31 January 2023.



Innovative justice grants on offer

Technology trailblazers, legal professionals and community groups with innovative proposals to increase access to justice can apply for NSW Access to Justice Innovation Fund (AJIF) grants.

Grants totaling up to \$250,000 are available to fund projects that can help resolve common legal problems and reduce barriers to justice, particularly for communities experiencing disadvantage.

Projects can include those aiming to:

- explore new approaches to delivering legal assistance services and resolving legal problems;
- help people to navigate and access the justice system;
- promote collaborative approaches to reducing barriers to justice; and
- demonstrate how technology can improve access to, and user experience of, the justice system.

The AJIF was set up in 2018 as a four-year, \$1 million project to support the development of innovative access to justice ideas.

Previous grant winners include Justice Connect, the University of Sydney, the University of Newcastle and the Newcastle Women's Domestic Violence Advocacy Service.

Applications close at 11.59pm on 28 October 2022. <https://tinyurl.com/yz2va6en>

Billions spent, but no measure of positive impact

Victoria Police has been unable to adequately measure whether adding more than 3200 police officers since 2016 has reduced harm or improved the effectiveness of law enforcement in the state, according to a report by the public service financial watchdog.

The Victoria's Auditor-General's Office report last month outlined lax accountability standards when tracking staffing requirements, and has prompted questions about whether police can justify the billions of dollars the Andrews Labor government has poured into law enforcement.

The report found the police business case it provided to the government in 2016, which resulted in a \$2 billion investment and 2729 new officers, did not "provide adequate information to decision-makers for such a large investment".

"Without knowing its future staffing needs, Victoria Police (does not provide) evidence-based advice," Auditor-General Andrew Greaves wrote.

"Victoria Police also cannot assure itself or the community that the 2729 additional police officers it received as part of the \$2 billion Community Safety Statement program delivered community-safety outcomes."

The state's war on crime has resulted in spending on police, courts and prisons grow at double or triple the rate of other states and territories over the past decade, and Victoria now arrests and jails people at levels not seen since the 19th century, reports say.

Spending growth in the criminal justice system outstripped that of education and health since 2013.

In November last year, Victoria Police had 22,000 personnel and government funding worth \$4 billion a year, surpassing that of NSW Police even though NSW is three times the geographical size and has 1.4 million more people. <https://tinyurl.com/yn6dwbj>

Rolfe costs on the rise as coroner takes over inquiries

The investigation into the shooting death of Kumanjaya Walker, the failed prosecution of Constable Zach Rolfe for murder, as well as costs for the ongoing coronial inquest that has just started were \$4m to the end of March, according to official figures.

A Supreme Court jury in the NT found Constable Rolfe (photo) not guilty of the murder of Walker in his shooting death in Yuendumu in November 2019, during a failed arrest attempt.

The *NT Independent* also reported that Constable Rolfe's defence costs were more than \$1.5 million, which will also have to be paid by the government. <https://tinyurl.com/26ww5c2f>

The news outlet has also reported a NT Police report claimed he would not have been recruited into the NT if his full background had been disclosed on his application. The claim is disputed.

More grist to the secret. centralised database mill

Corrective Services NSW is using IT firm Unisys to create a new biometrics information system in prisons which will capture iris and facial recognition details at the same time.

The new system, which will be in place by about March 2023, will cost \$12.8m over four years, *Innovation Aus* reports.

Corrective Services believes it will save 12.2% in operational expenditure by using the new system. Existing biometrics systems networked across 16 jails photograph a visitor's face, scan irises and capture fingerprints.

Presumably, the prisons scans and data – and that of the private visitors and the lawyers who visit them – will be transferred automatically to the national photo database held by the Australian Criminal Intelligence Commission, ACIC.

The Office of the Australian Information Commissioner is already investigating the use of facial recognition by Bunnings, Kmart and the Good Guys for their use of the controversial technology. The OAIC should investigate where the NSW data will be used and/or housed also. <https://tinyurl.com/26372bcz>

Who is on the board of ACIC?

The board of ACIC is Commissioner Australian Federal Police (chair); Secretary, Attorney-General's Department; Commissioner Australian Border Force; Chairperson Australian Securities and Investments Commission; Director General of Security Australian Security Intelligence Organisation; Commissioner of Taxation Australian Taxation Office; Commissioner, NSW Police Force; Chief Commissioner, Victoria Police; Commissioner Queensland Police Service; Commissioner SA Police; Commissioner WA Police Force; Commissioner Tasmania Police; Commissioner NT Police; Chief Police Officer, ACT Police; Chief Executive Officer Australian Criminal Intelligence Commission (non-voting member); Chief Executive Officer AUSTRAC (non-voting observer).

The controller of the huge, central, main database of photos and "facts" on all Australians has not one public sector representative on it or a private citizen, only police and spooks and similar functionaries.

Australian briefs

When will police start abiding by the law?

Tasmanian Police illegally left a surveillance (bugging) device recording supposedly confidential lawyer-prisoner conversations for two months. A police-generated inquiry is under way, which will almost certainly produce a whitewash report. But harder to toss will be a request by the Commonwealth Ombudsman to explain two new instances of magistrates issuing warrants to access comms data without being authorised, on top of four such incidents in 2018. The ombudsman wants TasPol to get legal advice about what it learned, and how it used the information, from the invalid warrants. Seems only citizens have to abide by the law in Tassie: police apparently don't. See article above.

AG's Department spends very big on external services, very small on APS4

Of the 2015 employees of AGD, 68.7% are female, which is higher than the overall Australian Public Service average of 59.7%. The average age of AGD employee at 38.7 years is lower than the overall APS average age of 43.7 years. Despite – or maybe, because of, having 2000 staff, AGD paid a total of \$10,619,020 to two recruitment and personnel services firms (on average of about \$5300 per employee). One SES Band 3 employee received a performance pay bonus of \$46,214 while one lowly APS 4 employee received a bonus of \$806 only. (A correction to the 2018-19 figures shows that one Executive Level 1 employee received a bonus for that year of \$56, which equates to about \$1.07 a week) – Attorney-General's Department annual report 2020-202, pages 67-78 .



Popple brings broad experience to law role

Dr James Popple (photo) has become chief executive officer of the Law Council of Australia. He was official secretary to the Royal Commission into Defence and Veteran Suicide and to the Royal Commission into Aged Care Quality and Safety. He was also the inaugural Australian Freedom of Information (FOI) commissioner, a senior member of the Administrative Appeals Tribunal, and a member of the ACT Remuneration Tribunal. Earlier, he worked for 12 years in the attorney-general's department and in the High Court as a judge's associate and later deputy registrar. As well as degrees in law and arts, he is an honorary professor at the ANU in both the college of law and the college of engineering and computer science, where he did doctoral research in artificial intelligence and law. *Photo by Steve Keough.*



NSW Police get \$25m to protect their data

NSW Police Force e-systems are to be protected by a new \$25.3 million Cyber Security Operations Centre. NSW Police and Cyber Security NSW, will have 15 analysts and engineers working seven days a week. The centre will aim to identify and block threats in real time. "Police hold a significant amount of sensitive data relating to local, national and international criminal investigations, and we know there are criminals who want to get their hands on this information," Minister for Police Paul Toole said. <https://tinyurl.com/bde58bt8>

Class actions get simpler, easier system

WA now has a better scheme for people to mount class actions: the Civil Procedure (Representative Proceedings) Bill has passed parliament. Class actions provide wider access to justice by allowing people who have suffered a mass civil wrong to group their claims together and seek compensation. The new regime will give access to the courts to some in the community who have been effectively denied justice because of the cost of commencing a legal action. <https://tinyurl.com/4dw9hy6x>

Hawkins has advice from the past

If modern MPs want to know why 'tougher prisons' election campaigns are counter-productive, they might recall the words of one of Australia's former leading criminologists.

In his 1976 book, *The Prison: Policy and Practice*, Gordon Hawkins wrote: "... [some] would argue that the failure of prisons is due to their not having been sufficiently punitive. But both past and present experience clearly indicates that the only result to be expected from the implementation of a more punitive policy in prisons would be greatly intensified unrest, turbulence, riot and revolt, and a substantial increase in death and injury for both staff and prisoners." – from Gordon Joseph Hawkins 1919-2004, *Academic Who Swayed Minds and Hearts*, by Judge Greg Woods, QC.

Lundberg becomes first Aboriginal judge

Michael Lundberg will become a judge of the Supreme Court of WA on 28 November 2022. With a background as a senior international commercial litigator, he will become the court's first Aboriginal judge. Lundberg (photo) is a son of Dr Sue Gordon,



who was WA's first Aboriginal magistrate. In 2018, he helped achieve justice for a cognitively-impaired desert Aboriginal man, Gene Gibson, who has spent five years in jail wrongfully convicted on a manslaughter charge because of flawed WA Police interviews. Gibson received \$1.5m.

State to beef up discrimination law

The Queensland Human Rights Commission has made 122 recommendations to strengthen and enhance the *Anti-Discrimination Act* after the Palaszczuk Government commissioned a review. "It has been over 30 years since the Goss Government introduced Queensland's *Anti-Discrimination Act*. At the time, the legislation was groundbreaking, but three decades on our society is a different place with different values," AG Shannon Fentiman said. "The QHRC's *Building Belonging* report clearly shows it is essential our laws are protecting and promoting equality to the greatest extent possible." <https://tinyurl.com/bdz6jjd8>

MLAs want inquiry into police

Two NT MLAs, one an independent and one from the governing Labor party have been calling for the Federal Government to order a public inquiry into a "crisis" in NT Police and for Police Commissioner Jamie Chalker to quit, the *NT Independent* has reported. Independent Member for Araluen Robyn Lambley and Labor's Member for Blain Mark Turner have both called for a federal inquiry or royal commission into the police. Turner said he had written to the Prime Minister and the federal Attorney-General asking for the federal government to call a royal commission to get to the bottom of what he said were ongoing systemic issues and the root causes of low morale in the force. <https://tinyurl.com/4hhhrn4w>

Greens want to abandon failed drug laws

Greens senator and justice spokesman David Shoebridge wants to legalise cannabis (aka marijuana) federally by introducing a new law. Constitutional law expert, Australian Catholic University dean of law Patrick Keyzer, has said the 2000 case, *Grain Pool of WA v Commonwealth*, confirmed that the federal government can regulate plant variety rights: the Therapeutic Goods Administration already approves cannabis oil, so it could easily regulate other varieties. Shoebridge said everyone highlighted the failure of the war on drugs: "When state governments are captive to law and order agendas and endlessly increasing police budgets despite all the best evidence, it's time for the federal government to enforce sensible drug laws." <https://tinyurl.com/2p9dv77e>

CLA letters and other contributions

To *The Mercury*, Hobart:

It is with dismay that I read that Premier Rockliff is considering introduction of a no body, no parole law in Tasmania. This law exists in some states of Australia. I question how effective it is and it's potential for harm. If you do the crime you do the time. Fair enough. But what if you didn't do the crime?



Wrongful convictions do happen. In the case of murder, if you didn't do it chances are that you won't know where the body is. No hope for parole if the law says 'no body, no parole'. You're stuck. Maybe tempted to make a false confession. No comfort for the grieving, no justice for the convicted, no useful purpose served. No need to make a no body, no parole law. – Ruth Graham (photo), CLA member, Tarooma Tas.



CLA meets with AHRC President., Dr Rosalind Croucher

CLA President Dr Kristine Klugman, Human Rights Act campaign manger Chris Stamford and CEO Bill

Rowlings met last month with Australian Human Rights Commission President Dr Rosalind Croucher and other executives, as well as with the ACT HR Commissioner Dr Helen Watchirs and her senior staff.

Also present were community representatives and executives of legal bodies. The meeting discussed options for human rights progress in Australia in coming years, and possible timetables.

Photo above shows Dr Croucher (left) and Dr Klugman.

Some CLA activities for September 2022

TAS:

CLA V-P Rajan Venkataraman did a media interview last month with an outlet which wanted comment on the Tasmanian government’s plan to put mandatory limits on poker machine gambling. His comments – and CLA’s position – is that such limits may ensure the rights of family members and children to food and health. If so, on balance, they may be justified even though they limit freedom of gambling choices of an individual. As CLA was not opposed to the government, our comments didn’t get a run.

The recently formed Alliance for a Tasmanian Human Rights Act is planning a rally in November but the date or location are not yet confirmed.



Photo shows CLA’s V-Ps, Margaret Howkins of Perth and Rajan Venkataraman of Hobart together in Hobart in 2019. – Tony Howkins pic.

WA:

CLA member and doco director Simon Akkerman helped CLA WA Vice-President Margaret Howkins to mail out another 25 ‘Trauma: Rights & Remedies’ thumb drives with letters to investigative reporters, politicians, lawyers, judges and Perth city dignitaries. The recent mail-out has produced no major responses yet.

Ankle bracelet pain: VP Howkins visited a young male ex-prisoner on parole suffering ulcers and nerve damage from wearing an ankle bracelet for 10 months. His parole officer is still impervious to pleas for removal of the bracelet to allow an MRI scan. Instead, the ex-prisoner was given opioids this month to control his pain, then stopped for drunk-driving after two alcoholic drinks. He is appearing in court on 7 October. His mother now drives him to his steady full-time employment at 4.30am each morning. The distress and

exhaustion in this family is currently indescribable. We’ve been unable to find a WA lawyer to assist in this case.

Delay pain: The 22 Sept public holiday for an extra Elizabeth Windsor ceremony in Australia has meant a postponement of judgement for a CLA member ‘appeal’ prisoner suffering extreme anxiety. He is receiving sibling support in a regional town.

Farmer-refugee pain: We will shortly be better informed after meeting with a CLA member who counsels traumatised refugees and regional farmers in WA.



Note from Dr Brian Walker MLC of WA: (See photo above)

It is worth mentioning that I was subject to a "random" drug test on my way into Nimbin, just prior to the recent festival. Considering the vague and questionable manner in which drug testing for cannabis is handled across Australia, I have serious doubts about the randomness of this test – indeed, it was so random, I think everyone coming in and out of town, including locals going to do their weekly shopping, got the same heavy-handed treatment. – Dr Brian Walker MLC in WA, Member for East Metropolitan Region Sept 2022

INTERNATIONAL

Kiwis blow whistle on verbiage

The NZ government wants to curtail flowery, inverted, passive writing, with a new law demanding bureaucrats use simple, comprehensible language.

It’s the latest device to cut time wasting in the land where seconds matter and words count.

A bill to that effect has passed its second reading after colourful parliamentary debate. It faces a final vote before becoming law.

The Plain Language Bill makes it mandatory for bureaucrats to use “clear, concise, well-organised, and audience-appropriate” writing. The Kiwi anti-gibberish brigade is claiming a victory: they say clear language is a matter of social justice and a democratic right.

“People living in NZ have a right to understand what the government is asking them to do, and what their rights are, what they’re entitled to from government,” says MP Rachel Boyack, who presented the bill. <https://tinyurl.com/ycy59ttk>

Kiwis have a human rights act, which helps them know their rights. Australia doesn’t, CLA notes.

‘Sorry’ we wrongfully convicted and hanged your grandfather

The grandchildren of a man wrongly convicted have received a police apology for the “terrible suffering” the miscarriage of justice caused, 70 years after he was executed.

Mahmood Mattan, a British Somali aged 28 in September 1952, was hanged for killing Lily Volpert in a clothes store in Cardiff, Wales.

In 1998 after nearly half a century of campaigning by his family, his was the first Criminal Case Review Commission referral quashed at the court of appeal.

Jeremy Vaughan, chief constable of South Wales police, said: "This is a case very much of its time – racism, bias and prejudice would have been prevalent throughout society, including the criminal justice system. There is no doubt that Mahmood Mattan was the victim of a miscarriage of justice as a result of a flawed prosecution, of which policing was clearly a part."

In 2001 the Mattan family received compensation from the Home Office but had not received an apology from the police until now. <https://tinyurl.com/2p9e323y>

Call for end to secret facial recognition

Fourteen campaign groups have written an open letter to the new (London) Metropolitan Police Commissioner Sir Mark Rowley calling for him to stop using facial recognition technology.

Big Brother Watch, Liberty and Black Lives Matter UK, among others, on his first day in the job urged him to end the "privacy-eroding, inaccurate and wasteful technology".

They claim that 87% of the alerts generated by the force's systems are misidentifications, including a 14-year-old black schoolboy in uniform, and a French exchange student who had only been in the country for a few days.

Police calculate false alerts using the proportion of all people estimated to have walked past cameras, and claim that the percentage is dramatically lower, between 0% and 0.08%.

The groups maintain that the technology used by the Met is less accurate for women, and they say that it is being used more frequently in areas with a higher number of people from ethnic minorities.

Martha Spurrier, director of Liberty, said: "We all have the right to go about our lives without being surveilled by the police. But the Metropolitan Police's use of live facial recognition is violating our rights and threatening our liberties." <https://tinyurl.com/4jfdpxx5>

ODD SPOT: The legacy of Liz

"...she still has 25,000 migrants crossing the Channel this year alone. She has 60,000 court cases idle and overdue for a hearing. She has 6.8 million people waiting for hospital treatment, and a National Health Scheme the laughing stock of European healthcare," Simon Jenkins in *The Guardian* (UK), describing what faces the new British PM Liz Truss. <https://tinyurl.com/52x2kycu>

US state circuit court judge rules firing squad, electrocution are unconstitutional

A US state judge ruled last month that using a firing squad and an electric chair for executions was unconstitutional, deeming the methods cruel and unusual.

The decision, by South Carolina Circuit Court Judge Jocelyn Newman, is likely to be appealed to the state's Supreme Court, according to a newspaper report.

The state is unable to acquire the drugs necessary for lethal injection, because manufacturers have refused to supply them for executions. In 2021 South Carolina passed a law to force death row inmates to choose between the electric chair or a firing squad, with electrocution the default if they declined to choose.

Judge Newman sided with four death row inmates who appealed, ruling that the state had failed to prove that the execution methods would produce painless deaths. <https://tinyurl.com/mr3be358> (behind paywall, *NY Times*)

How the right courted America

Noted US legal observer Roger Fitch has written with a salutary warning of how the judicial system in the USA is being 'gamed'.

In many states, judges *are* elected (and later unelected, or rejected), and partisan lawyers are groomed for judicial elections where wildly-expensive advertising is funded by special interests, sometimes potential litigants.

32 states with elected supreme court judges will be voting on them this November. Many such states are ruled by Republicans striving to ideologically-stack their highest courts. The man behind these efforts is Federalist Society functionary Leonard Leo, who, more than anyone else, is responsible for pushing Republican party loyalists and ideologues into every level of the federal judiciary.

Leo's target is now state courts, and his "Freedom Trust" is funded by the largest political contribution in American history, \$1.6 billion in dark money from an until-recently undisclosed donor, Barre Seid (more in *Rolling Stone*). – from Roger Fitch Esq, who reports US doings for *Justinian* legal blog, used with permission.

Syed release highlights same issues as in Oz

Adnan Syed was released from jail last month after a Maryland USA judge overturned his 1999 conviction for murdering Hae Min Lee in a case given a high profile by the hit true-crime podcast, *Serial*.

Prosecutors had uncovered new evidence recently, including two new possible suspects. Earlier, Syed had gone down the state court appeal route, even to the Supreme Court...but without luck, as is common in such cases worldwide.

Circuit Court Judge Melissa Phinn ordered that Syed's conviction be vacated as she approved the release of the now-41-year-old who has spent more than two decades behind bars.

In words that echo loudly about similar wrongful convictions in Australia, assistant state's attorney Becky Feldman told the judge: "I understand how difficult this is, but we need to make sure we hold the correct person accountable." Feldman described errors and omissions in the case that undermined the decades-old conviction, including flawed cell phone data, unreliable witness testimony and a potentially biased detective. <https://tinyurl.com/2hydfkp3>

International briefs

Chile rejects wide-ranging new constitution

More than 60% of Chileans last month voted against legal abortion; universal public health care; gender parity in government; empowered labor unions; greater autonomy for Indigenous groups; rights for animals and nature; and constitutional rights to housing, education, retirement benefits, internet access, clean air, water, sanitation and care "from birth to death". The 204-year South American nation of 19m people could have won significant advances in a mandatory, nationwide plebiscite on a written-from-scratch constitution that, if adopted, would have been one of the world's most expansive and transformational national charters. <https://tinyurl.com/m24w2aus>

ODD SPOT: How to cook up a profit

The US Department of Justice has charged 48 people with fraud totalling about \$365m over not feeding 'ghost' children in Minnesota during the Covid-19 pandemic. The fraudsters lodged fake receipts for 125m meals, with one claimant allegedly feeding 5000 children a day in a second floor flat. <https://tinyurl.com/54jv5t7s>

Egypt releases one, three still in jail

The *Al Jazeera* journalist Ahmed al-Najdi has been released by Egyptian authorities after spending over two years in detention, without going on trial. Al-Najdi, who works with *Al Jazeera Mubasher*, the Arabic-language live television unit of the Qatar-based network, was released on Sunday. He had been detained since August 2020. He had originally been arrested while he was in Egypt on holiday, and was questioned about his work for Al Jazeera, according to rights groups. He was accused of membership in a “terrorist” group and spreading “false news”. Three of his colleagues have also been detained “without trial or charge” – Hisham Abdel Aziz, Bahauddin Ibrahim and Rabie el-Sheikh – but they remain in jail. <https://tinyurl.com/5n78fxnm>

Faith dictates how S-E Asia people shop, bank, love, live

One in three Muslims in south-east Asia consider themselves more religious than their parents were at their age: their faith informs decisions around personal spending, fashion, banking, travel and education. So said the New Muslim Consumer report, released last month. Just 21% of the region’s 250 million Muslims say they are less observant than their parents were, while 45% consider themselves just as devout, according to a report by Al Jazeera. A strong relationship with god is the most important thing in life for 91%, on par with health and just ahead of family. Only 34% consider wealth very important, with 28% rating their passions and 12% citing fame as priorities. The report was based on interviews with 1000 consumers in Indonesia and Malaysia. <https://tinyurl.com/259u5b95>

Royals veto TV coverage

The British ruling family were allowed to veto five pieces of footage from queen Elizabeth’s funeral. News broadcasters surrendered to the royal household the right to edit footage of the funeral services at Westminster abbey and Windsor castle. They also gave up the right to re-use the footage later. Royal staff sent messages to the *BBC*, *ITV News* and *Sky News* during the event with the timestamps of footage they wanted to exclude from future news broadcasts and social media clips: five short pieces of video featuring members of the royal family were removed from circulation as a result. <https://tinyurl.com/4wv4vauj>

DATES – 2022

07 Oct, Brisbane: Lord Sumption public lecture ‘Rule of Law in Time of Crisis’, Banco Court, 415 George St Brisbane.

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

29-30 Oct, Sydney: Australian Institute of Judicial Administration and the Law Society of NSW. Dr Kate Falconer k.falconer@law.uq.edu.au

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

17 Nov, Darwin: Dr Rosalind Croucher, Pres AHRC, 11th Austin Asche Oration in Law and Governance, CDU event at Hilton Darwin 5-7pm <https://tinyurl.com/4c67p2me>

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

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

9 Dec, Victoria: Law Library ‘Sneak Peek: Federal Register of Legislation’, 1.15-1.45pm <https://tinyurl.com/4rhs9x3w>

to 16 Dec, Adelaide: Exhibition ‘Revolutionaries and Reformers: the Fight for Gender Equity in Australia’ 9-5 weekdays, Kerry Packer Civic Gallery, Hawke Building Level 3, UniSA City West Campus, 55 North Terrace Adelaide

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 this issue was 29 Sept 2022.

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