

## Australia will learn how best to be 'Free & Equal'

Current plans are for Australians to learn how to be "Free & Equal" on 7 March 2023.

That's the latest due date for release of a major report, involving hundreds of pages, after four years of inquiry by the Australian Human Rights Commission into justice in Australia.

While precise details are not yet revealed publicly, it is expected the AHRC President, Prof Rosalind Croucher (photo), will call for Australia to legislate a Federal Human Rights Act for equality's sake.

We are the only developed western nation without such an Act. NZ, Canada, the UK and the USA each have such legislated protection for their citizens.

In Australia, only the ACT (in 2004), Victoria (2006) and Queensland (2020) have HRAs covering state law.

None of them currently guarantee a citizen can seek a negotiated or legally-endorsed remedy across all their rights, if breached, though the ACT has promised to legislate in that direction within the next few months and in 2024.

## Secrecy laws being reviewed

The federal government is reviewing all Commonwealth secrecy offences, internally.

The review will assess "whether existing laws adequately protect public interest journalism", according to Attorney-General Mark Dreyfus. It will examine all 11 general secrecy offences, 487 specific secrecy offences and more than 200 non-disclosure duties in federal law.

The AG's department is to provide an interim report by 31 January, and a final report by 30 June 2023.

The previous Coalition government agreed to undertake secrecy reviews in June 2018 and December 2020, but neither review happened. – AG media release <https://tinyurl.com/572zmhbf> Terms of review: <https://tinyurl.com/5n7ze7r4>

## Dreyfus ticks off more items on his 'to do' list



AG Dreyfus is also holding out the promise of enacting the right to be forgotten and a right to sue for privacy breaches this year.

In January, he proposed European-style privacy reforms after his bill increasing penalties for failure to protect customer data passed in 2022.

The AG's department has reviewed the Privacy Act.

Dreyfus claims that the former

Coalition government had left it "out of date and not fit-for-purpose in our digital age".

Under the European Union's general data protection regulation (GDPR), people can have their data erased if it is no longer needed for the reason it was collected or if someone withdraws their consent.



The GDPR contains other personal rights including the right to data portability; to object to data processing in some circumstances, including where it is used for direct marketing purposes; and not to be subject to automated decision-making and profiling. <https://tinyurl.com/33c42r78>

Of course, Europeans are also protected by human rights law... protection Australians currently don't have.

## Feds claim the credit

The Australian Federal Police claim the credit for running an app called ANOM, along with the US FBI, as a "plant" which infiltrated the communications devices of crooks worldwide.

The "AFP-led operation has charged more than 100 organised crime members after developing a world-leading capability to see encrypted communications used exclusively by organised crime...(it) has led to the arrest of 224 offenders on 526 charges in every mainland Australian state."

The AFP said in June 2021 that "3.7 tonnes of drugs, 104 weapons, \$44,934,457 million cash, and assets expected to run into the millions of dollars, have been seized under Operation Ironside since 2018". <https://tinyurl.com/ycky9zb>

## CLA Australia Day letter 2023

### Proposing a Forensic Science Regulatory body

In 2023, CLA's No 1 Australia Day letter has formally asked the Attorney-General, Mark Dreyfus, to introduce a federal regulator of forensic science in relation to education, the courts and the justice system.

We have proposed a model based on the existing England & Wales regulator. <https://www.gov.uk/government/organisations/forensic-science-regulator/about>

In the letter, we warned that "trust and confidence in forensic science and Australia's criminal justice system is essential.

"The use, misuse, abuse and failures of the forensic 'justice' system in Australia have been highlighted for decades. Cases such as Farah Jama in Victoria, Mallard in WA, Keogh in SA and of course the disturbing findings of the Sofronoff inquiry into forensic services in Queensland handed down in December 2022 illustrate some of the issues.

CLA believes the broader implications of the Sofronoff Inquiry call for your immediate attention and that of your colleagues in the States and Territories to deal with issues/problems that are national, and not confined to just one State." CLA said in writing to the AG.

### Qld forensics mess has cash thrown at it

Queensland has announced more than \$95m to reform state DNA and forensic services after a six-month Commission of Inquiry into Forensic DNA Testing in Queensland headed by former judge Walter Sofronoff.

Premier Annastacia Palaszczuk said it was imperative Queensland's faith in the state's forensic and scientific services was restored.

Health Minister Yvette D'Ath announced Professor Linzi Wilson-

Wilde OAM (photo) as interim CEO of Forensic Science Queensland. There would also be an independent Board of Management and a Forensic DNA Science Advisory Sub-Committee later.

Sofronoff's report revealed the state's forensic science laboratory was in an administrative and practical mess. Its own laboratory was



pumping out misleading information and a “dangerous lack of scientific integrity was systemic”. He found serious problems had existed for many years, “some amounting to grave maladministration involving dishonesty”. He praised whistleblowers for their courage, particularly Dr Kirsty Wright, and acknowledged that it was a distraught mother of a dead child and a journalist who first made the problems public in the media..

### **Problems are widespread and mushrooming**

Anyone who thinks that the problems in forensic science and legal cases are confined to Queensland are dead wrong. The same indications of problems are mushrooming in other states and territories.

SA has a traditional 30-year disaster which its legal establishment refuses to correct.

Tasmania – where the forensic science body reports to, is subject to the orders of, and gets rum and rations from the Police Commissioner by another name – has been responsible for at least one wrongful conviction, CLA believes.

Victoria appears to be exhibiting emerging problems, if evidence in a current double murder case, as reported in the media, is accurate.

There is an urgent need for national attention to the forensic sector and its interaction with the law and justice, as CLA pointed out to federal AG Dreyfus on Australia Day 2023.

### **Failure to disclose:**

#### **Kiwis face same problems as in Australia**

NZ: 25 years ago, Olivia Hope and Ben Smart disappeared. In 2023, Scott Watson is still in jail for their murders.

*Let me be quite clear ... I don't know if Scott Watson is a double murderer or not.*

*But that's the whole point. I should know he's guilty and so should you.*

*I do know that Watson is not guilty as charged. His guilt has been far from proven “beyond all reasonable doubt”. In my view, there is nothing reasonable about the way the case against him was constructed or executed.*

*Watson should not be behind bars for one more moment.*

*As it played out, he should never have been convicted at all.*

*The outcome, in my opinion, was a shameful police operation supported by shameful media coverage and a public hungry for the next instalment.*

*These factors convicted Scott Watson, long before the eyes of the jury first met his in the courtroom.*

*Fair justice and Watson didn't stand a chance back then and I fear nothing much has changed today.*

– Paul Henry, noted NZ broadcaster and commentator, 1 Jan 2023 <https://tinyurl.com/27aej5sw>

### **‘Wide appeal grounds should be allowed’: appeal court president**

"If there is one lesson from the history of miscarriage of justice in the context of criminal appeals, it is that no good is done by the procedural suppression of a tenable ground of appeal which has not yet seen the light of day in an appellate court, while other grounds of appeal are nonetheless allowed to proceed," said former NZ Court of Appeal president, Stephen Kos.

"As Lord Atkin once wisely observed, “finality is a good thing, but justice is a better’.” <https://tinyurl.com/bdd3b8a2>

– the Scott Watson case has remarkable similarities to the Sue Neill-Fraser wrongful conviction in Tasmania over a 2009 missing person, also from a yacht.

## **Statement on Australian yacht-based wrongful conviction, and hunt for real killers**

*CLA was asked for a statement to be read out at a rally in Hobart on 28 January 2023 seeking to push Tasmanian authorities to find the killer or killers of Bob Chappell. The CLA statement seeks to have the State fully obey their obligation to disclose all relevant evidence, and to reverse the wrongful conviction injustice of his wife, Sue Neill-Fraser, after his disappearance from their yacht in Sandy Bay on Australia Day night in 2009. She has served 13 of 23 years, and has been recently paroled.*

*Here is the CLA statement:*

### **Officials must disclose evidence they hold which may absolve Sue-Neill Fraser of guilt**

“Sue Neill-Fraser is forced today to wear a shackling bracelet even though the Tasmanian Attorney-General – AND the Office of the DPP – AND Forensic Science Service Tasmania – AND Tasmania Police know facts that could help her conviction be overturned.

“Collectively known as “The Crown”, they Failed To Disclose relevant evidence they knew of at her original trial and in appeals, facts which are likely to have secured her acquittal, and helped convict the real killers of Bob Chappell.

“It is treachery – by the government itself – to refuse to follow the well-known rules of evidence disclosure...treachery for them to fail to obey how our courts and justice system are meant to work.

“Some of these hard facts are revealed in the Etter-Selby papers – tabled in the Upper House of Tasmania's Parliament – in August 2021. In the 18 months since then, even more examples of the Crown's failure to disclose relevant evidence have emerged.

“Because officials still, today, refuse to disclose relevant evidence they hold, they are still today misleading the court processes, thwarting justice. Their duty to disclose all relevant evidence is to the court, not to Sue Neill-Fraser. That duty never ends.

“If the State's own officers and officials will not abide by the law...if they will not reveal the evidence they hold so as to help absolve Sue Neill-Fraser of a crime...then the Parliament must order a Commission of Inquiry – independent of Tasmanian appointees – as soon as possible.”

– Bill Rowlings, CEO of CLA

### **Police: Bending the truth breaks justice**

This is a classic FTD – Failure To Disclose – murder case from the USA with three people wrongly jailed for 15 years each before the convictions were overturned..

It has just about all the elements of what can go wrong, or be made to go wrong, by police and prosecution.

To think that some similar failures or misbehaviours by police and prosecutors don't occur in Australia is naive in the extreme: there are proven cases where similar FTDs have occurred.

- Police handed over to the defence false and misleading evidence, and suppressed a transcript (the absence of which was endorsed by the Michigan Court of Appeals as “not likely to change” the conviction).
- Ready acceptance of a 15-year-old “witness” who turned up at a police station three days after a murder with detailed descriptions of four people written down (although he had had a “glance” only of them, while he was “running away” from the sound of gunshots).
- Female police officer as the apparent major culprit (unusual gender involvement in warped outcome).

- Police immunity granted to a key witness, under threat of being charged by police if he failed to cooperate.
- Another key witness and police officer, together, “concocted a story”.
- Failure to follow up and interview possible witnesses, including failure to find a named person (“Pooh Bear” was his nickname).
- Failure to check the DNA of two people possibly involved (of the four people actually convicted – one died before he could be sent to jail, leaving three convicted and sentenced – no evidence whatsoever of their DNA on the murder weapons or associated with the victim).
- Failure by a firearms expert to give precise evidence: instead, just bald “yes” and “no” answers.
- A jailhouse snitch given relevant reports to read overnight before recording his “evidence”. He was given a favourable interstate prison transfer as reward.

The original court and an appeal court both rejected appeals, even though some of the above failures were pointed out. Correction occurred only 15 years later, at the State Supreme Court level, when the earlier rulings were overturned.

It was remedied only because FOI in America gives people the right to demand information held by police and prosecutors. In 2014, Joshun Edward’s family filed a request under the Michigan Freedom of Information Act seeking documents in the case. (*Australians have no such right, per se*).

Among the documents they received was a transcript of the first interview with a man called Murphy. This transcript had not been provided to the defence prior to the trial—only a police summary of it had been turned over. The full interview revealed a miscarriage of justice had occurred.

<https://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=6525>

### **ODD SPOT: How should the nation declare war?**

A federal parliament committee is reviewing the way Australia decides to go to war, what role the Australian Parliament plays, and how well or otherwise the Australian people are informed. Here’s some info:

The war in Afghanistan from 2001 to 2021 cost Australia \$10 billion. Australian involvement in Iraq, projected at \$700m in 2003, rose to more than \$5 billion in 2021. In September 2020 a Roy Morgan poll found that 83% of respondents believed parliamentary approval should be required (before Australia gets involved in war or warlike activities). However, the major political parties are refusing to budge on the issue. – Alison Broinowski, writing in *Michael West Media*: <https://tinyurl.com/3kv9jyax>

### **State invests big, may turn profit on cases**

The SA government has pumped \$22m into the legal and forensic system to prosecute hundreds of drug-related cases but may make a big profit in the end.

SA Police have restrained (that is, “frozen”) more than \$38 million worth of assets in relation to hundreds of alleged offences, so the government “investment” could become a good earner.

Under just one operational name, SA police seized 49 firearms as part of raiding three allegedly clandestine laboratories, and finding:

- 69kg of methylamphetamine
- 20 litres of methylamphetamine oil
- 45 litres of fantasy
- 10,000 ecstasy tablets
- 350kg of cannabis

The government’s \$22m has gone to the Office of the Director of Public Prosecutions (ODPP) and the Courts Administration Authority. Another \$300,000 went to Forensic Science SA to cover its anticipated increased workload.

SAPOL has provided ODPP with 70 prosecution briefs involving 104 accused, 13 for conspiracy to murder as well as for drug offences, money laundering and firearms offences. <https://tinyurl.com/237hednk>

### **Qld keeps more kids locked up, health says**

According to the Australian Institute of Health and Welfare, Queensland has had the highest youth detention population in the nation since September 2020.

In the June quarter of 2022, an average of 278.6 people aged 10-17 were in detention on any given night, of which 89% were not sentenced – meaning they had been denied bail. Nationally, about 78% of young people in detention are not sentenced.

The Queensland Labor government has also voted against laws to raise the age of criminal responsibility from 10 to 14, a reform being investigated by the national council of attorneys general at the urging of the UN, and long a public campaign of CLA. <https://tinyurl.com/yfcffpbm>

### **‘One state clearly kids’ lockup champion’**

Queensland locks up more young offenders than any other state or territory, with an average nightly detention centre population of 274.9 across the 2021-22 financial year.

Qld’s juvenile jail capacity was only 288 permanently funded beds, the Productivity Commission said, resulting in a centre utilisation rate of 95.%, up from 84.8% in the previous financial year.

It was the highest since 2018-19 when 17-year-olds were shifted from the adult to youth justice system.

In NSW and Victoria, with average nightly youth detention populations of about 186 and 120, a total of 370 and 276 beds were permanently funded in the 2021-22 financial year.

The Productivity Commission report confirmed Qld spent almost \$219 million across 2021-22 on youth detention services, almost double what it spent in 2018-19.

### **Qld fails kids on mental health, court says**

Recently Qld Children’s Court’s annual report has warned of a “chronically” understaffed Forensic Child Youth Mental Health Service, which assesses young people for the court and treats them while in detention, on bail, or on other orders. <https://tinyurl.com/36ddsehr>

### **Banksia Hill welcomes year with fires, riot**

Banksia Hill Detention Centre in WA was sent into an eight-hour lockdown on New Year’s Eve 2023 after juvenile inmates set fires, scaled roofs and armed themselves with riot gear.

The “riot” incident was retaliation for the treatment of youths at the notorious facility, with supporters claiming the adolescents were “provoked” into action following officer abuse.

About 22 detainees threatened staff and caused hundreds of thousands of dollars worth of property damage between 5pm and almost 1am the following day.

The children allegedly armed themselves with riot gear while guards barricaded themselves in rooms as two education centre buildings were set alight. – *WAtoday* report 2 Jan 2023

### **Experts call for changed approach**

Detainees at Banksia Hill are locked in “shocking and horrific” conditions that are further damaging already vulnerable children, justice campaigner Gerry Georgatos told a press conference last month.

He was announcing a class action against the WA government over their treatment of some 500 inmates.

Georgatos, a member of Civil Liberties Australia, said the detained children were denied access to rehabilitation or adequate medical care. He said he had witnessed “abominable and abhorrent behaviour” towards inmates: a statement by the government that there was access to therapeutic services was untrue.

“It’s actually an outright lie and outrageous by the government,” he said.



*Georgatos shown at left, with Perth Citizen of the Year Megan Krakouer – see later: ‘CLA activities’: Noongar Radio pic*

Lawyer Stewart Levitt said many of the children were often victims of intergenerational trauma, who needed support and education so they could become contributing members of society.

“It’s not accepted in Australia, we just want to bash and hurt and punish and pretend that we can just consign these children to dungeons effectively, or treat them as vermin or pests,” he said. “That is a totally inhumane approach.”

Former Australian of the Year Fiona Stanley said the WA government was ignoring evidence about the children that showed the current punitive approach at Banksia Hill would not work.

“They should understand that children are being born with brain damage (and they) should not be locked up in these circumstances,” she said. <https://tinyurl.com/2eyjtrms>

### **Nudge, nudge, wink, wink: nothing much ever changes for the better**

“A nudge in the right direction; some landmark cases and the development of the law.”

This was an address by Susan Kiefel, head judge of Australia’s High Court, in the Hal Wootten Lecture series, for 2022, UNSW Faculty of Law and Justice, on 24 November 2022.

She was speaking favourably of “nudging” law development: many critics of Kiefel personally and of the High Court earnestly wish they would nudge with a bulldozer in many directions, CLA believes.

“This philosophy was introduced in 2008, when Hal Wootten himself delivered a lecture as part of this series. He said that every person has opportunities to give the world a ‘little nudge’ in the right direction,” Kiefel said.

She referred to a missed opportunity 180 years ago to start to right the wrongs against Aboriginal people in Australia:

In 1841, in *R v Bonjon*, a very different approach was taken. Willis J, of the Supreme Court of NSW sitting in Melbourne, did not agree with *Murrell* and did not regard himself as bound by it. He undertook an extensive historical and legal examination of other jurisdictions such as NZ and the USA.

Willis J rejected the proposition that either of Blackstone’s categories applied to Australia for it was neither unoccupied nor was gained by conquest or ceded under treaty.

He found that Aboriginal peoples had “laws and usages of their own” and quoted with approval from the 1837 Aborigines Report of the British Select Committee relating to the various British colonies which recognised that native inhabitants have an “incontrovertible right to their own soil”.

He compared the rights of Aboriginal indigenous people with native people of other colonies.

It has been suggested that *Bonjon* is analogous, if not equivalent, to the *Mabo* decision but “reached 150 years earlier by an irascible judge in the bush town of Melbourne”. It was not followed.

– Detail from Kercher, *An Unruly Child: A History of Law in Australia* (1995) at 11. Reference is to the *Mabo No 2* decision June 1992. Read the Kiefel speech: <https://www.hcourt.gov.au/publications/speeches/current/speeches-by-chief-justice-kiefel-ac>

### **Voice comes out croaky**

CLA was intrigued to see a photo of the main Invasion Day rally on 26 January in Canberra being led by a group of men on motorbikes, followed by a majority of Indigenous people and/or Indigenous clothing-wearing crowd of some hundreds.

Lidia Thorpe, the Victorian Senator with a predilection for bikie partners, was apparently not present but her influence appears to be pervasive across jurisdictions when Indigenous people march.



*Left: Senator Thorpe in an Instagram shot she posted in December 2022*

There has been no formal declaration from the bikie hierarchy as to whether they will support The Voice referendum.

You could expect bikies to want The Voice to be loud, reverberating and with holes in the muffler.

Senator Thorpe, who is Indigenous, is reported to be demanding a rewrite of Australia’s Constitution, a

\$12.50 weekly ‘rent’ fee for home-owners and 10 Indigenous-only seats in Parliament under her ‘treaty’ agenda before she would vote for The Voice.

She claimed at a Melbourne rally governments were waging war on Indigenous communities: “This is a war. They are still killing us. They are still killing our babies,” she said while waving a “battle stick” about the size and thickness of a cut-down cricket stump. <https://tinyurl.com/yc8pbt2t>

### **ODD SPOT: Hear ! Hear ! How to remain dumb and deaf to The Voice**

“Howard’s intervention boils down to a traditional referendum strategy for the ‘No’ case, namely, obfuscate, push endlessly for more detail, and in the end advocate a ‘No’ vote, on the grounds that ‘if you don’t understand it, don’t vote for it’.”

– former Liberal leader John Hewson writing on former PM John Howard’s opposition to The Voice to Parliament referendum in *The Saturday Paper* (28 Nov – 2 Dec 2022 issue)

## Rampant crime is trigger for more democracy

Crime, including domestic violence, which some say has run rampant in Alice Springs, may bring greater democracy to other NT residents in remoter communities.

Central Australian Indigenous communities may be asked to vote on whether they opt into NT alcohol bans recently re-introduced to the Alice. Federal alcohol bans in NT communities ended in July 2022. Some communities at the time opted to continue the bans through new laws passed by the territory's government.

NT's Chief Minister Natasha Fyles said the NT electoral commission could now poll extra communities to ask if they want to restore alcohol bans.

Major new restrictions on takeaway booze were imposed unilaterally in Alice Springs last month as a three-month circuit-breaker.

The core question is not (repeat, not) removing the rights and liberties of all people or most Aboriginal people based on the excesses of the few. How that eventually pans out involves many minefields of competing rights and responsibilities, CLA believes. <https://tinyurl.com/5n8myx9f>

## Australian briefs

### Police leave in record numbers

WA Police Union boss Paul Gale said 465 sworn police officers resigned in 2022 and 97 retired. The year's numbers were the highest in the force's 189-year history. He said the total number of sworn officers was down from 7112 in 2021 to 6893 in 2022. Poor pay and conditions, rigid leadership and a lack of opportunity to share opinions and progress careers mean officers no longer consider policing a job for life, he said. <https://tinyurl.com/mr3sm7h9>

### No justice when state treats you maliciously

Ben Smee reported in the *Guardian* in January 2023 that Queenslander Terry Irving spent 1671 days in jail for a crime he didn't commit and 25 more years seeking justice, which he has still not received. Smee highlights that Australia is the world's only democracy that fails to offer statutory legal remedy for those wrongfully imprisoned. Irving, who is Indigenous and now aged 67, says: "I've been alive for about 23,000 days. And 11,000 of those days have been spent involved in this" ... referring to seeking wrong overturned and compensation he still has not received, despite the Qld Court of Appeal ruling he had been maliciously prosecuted and a further High Court decision in his favour. The article praised now-retired lawyer Michael O'Keeffe who had stuck with Irving's case for decades, pro bono. <https://tinyurl.com/5nyabtrp>

## CLA letter

### Aged Dom Perrottet

Does Premier (Dominic) Perrottet's explanation for wearing a fascist uniform to his 21<sup>st</sup> birthday party mean that his government will now raise the age of criminal responsibility from 10 years to 22? – letter to *SMH*, from Humphrey McQueen, Griffith ACT.

## Some CLA activities for January 2023

In the somnolent month, we used the opportunity to follow up on contacts and to network. CLA's Human Rights campaign team met with Anglicare Australia in person regarding their support for a federal HRA.

We also met, by Zoom, with medical Dr Mike Freeland MHR who was supportive and gave us the names of some other MP contacts who might also support a federal HR campaign, including some who might cross the floor to vote in favour.

CLA continues to liaise with the office of David Smith, government whip and the MHR for Bean electorate, regarding a date for a briefing of the Labor caucus on a federal HRA. This is likely in two months or so.

The likely date for the launch of the Australian Human Rights Commission report, *Fair and Equal*, is now Tuesday 7 March at UNSW in Sydney. This date is pertinent to the caucus briefing.

HRA campaign director Chris Stamford in January competed an important paper on the link between a Wellbeing Budget and a federal HRA. This will be available on the CLA website soon, along with *Rights In Sight* newsletter No 4, Feb 2023, which updates recent developments in the campaign.

The CEO Bill Rowlings wrote one of CLA's traditional Australia Day letters, this time to the Attorney-General Mark Dreyfus, on the need for much better regulation and oversight of forensic services in Australia, including in education, the legal processes and the courts.

CLA has also taken up the matter of "Failure to Disclose", notably by police and prosecutors, as being a root cause of problems, delays, costs and wrongful convictions in Australian legal jurisdictions. Details: <https://www.cla.asn.au/News/dpp-and-police-failure-to-disclose-ftd-warps-justice/>

The CEO was extensively quoted on the need for a federal Human Rights Act on the website of *Sydney Criminal Lawyers*: <https://www.sydneycriminallawyers.com.au/blog/movement-on-a-federal-human-rights-act-with-ability-to-seek-remedy/>

### Tasmania:

A rally for Sue Neill-Fraser and for justice for her husband, Bob Chappell, was held on 28 January outside Parliament House in Hobart.

Ruth Graham reports the speeches were very good (recorded, they will be on the SNF Supporters website soon). SNF Supporters Group leader Rosie Crumpton-Crook spoke. Former Premier-AG Lara Giddings and barrister-prison reform group leader Greg Barns also spoke, proposing that people on parole should not be restricted from speaking to the media, and that UTAS should start an innocence project to chase down local wrongful convictions.

A message from Andrew Wilkie, the federal member for the Hobart-based seat of Clark, was read: he supports a criminal cases review commission. Among the local MLCs, Meg Webb was to have spoken but was unwell and Mike Gaffney sent apologies.

CLA CEO Bill Rowlings' supportive message was included in Rosie's address, and used in a media release. His statement pointed to failures of the State of Tasmania, including its AG (*see photo left, from the 28 Jan 2023 rally: Mukta Summers holds the sign in this photo by Ruth Graham*). It seems that, if thousands upon thousands of Neill-Fraser supporters – in Tasmania, in Australia and worldwide – are



correct, then at least one but probably two or three people complicit in Chappell's homicide are still walking free on the streets of Hobart never arrested, never charged, possibly because they were not properly investigated by a myopic police

also suffering from tunnel vision, defined as “the reluctance to consider alternatives to one’s preferred line of thought”.

Rallies will continue to demand a full inquiry to clear SNF’s name of the miscarriage of justice she has suffered, having served 13 years in jail and with another 10 to go on parole. She did not attend the rally, being restricted from media appearances, which the rally might have been turned into by the media if she had been present.

In other work emanating from Tasmania, CLA member Barbara Etter has been instrumental in helping to drive forward two projects: one being the letter to the federal AG on the need for forensics regulatory reform, and the other on providing national mechanisms to correct failures to disclose by police, prosecutors, forensic scientists and the like.

She points out that law publisher Lexis Nexis has written recently:

*“...the well-documented role of science in wrongful convictions, both in Australia and around the world, is alarming. Unvalidated or improper forensic science has been a factor in nearly half of wrongful convictions in the US, according to the US Innocence Project. In Australia, researchers suggest that proportion is 31%.”* <https://tinyurl.com/mwme4an8>

#### **SA:**

Similarly from SA, one of CLA’s longest-standing and strongest partners, legal academic and world wrongful convictions guru, Dr Bob Moles, has assisted greatly on the same two projects.

As well – with CLA’s backing – over the next two months he will be urging Queensland to adopt the Right To Appeal (R2A for short) law with which he was originally successful in SA and which CLA and he jointly succeeded in getting up in Tasmania. Victoria now has a similar law, and the ACT and WA are expected to follow suit in 2023.

Meanwhile, SA Rights Resource Network leader and CLA member, legal academic Dr Sarah Moulds, is continuing to push initiatives to further the prospects of a state HRA.

#### **ACT:**

CLA made a submission to the Standing Committee on Justice and Community Safety’s inquiry into the Corrections and Sentencing Legislation Amendment Bill 2022. A section of the bill is designed to ban the swastika sign. CLA pointed out it was not the sign/symbol that was the problem, but the way it and other signs or symbols could be misused to create unacceptable impressions and perceptions. Banning misuse was the issue.

#### **WA:**

A family friend of Cassius Turvey, the 15-year-old boy allegedly murdered on his way home from school, has been named Perth Citizen of the Year.

Megan Krakouer, who is the National Suicide Prevention and Trauma Recovery Project Director and a member of Civil Liberties Australia, was honoured after coordinating 38 vigils across the country in the teen’s honour. (*Her photo, with Gerry Georgatos, is shown earlier in this newsletter.*)

She called for harsher penalties and prison terms for vigilantes after the tragedy. “It’s unacceptable what’s happened with young Cassius,” she said at the time. “Vigilante groups are becoming more and more common, whether reported or not reported, I’ve heard it too often in the community.”

Perth Lord Mayor Basil Zempilas acknowledged the important role community members like Krakouer played in the city. “We wouldn’t have the wonderful community we do if it wasn’t for the contribution of passionate citizens and neighbourhood community groups,” he said. – *WAToday* evening news 26 Jan 2023

## **INTERNATIONAL**

### **HR ‘overhaul’ would skew a fair go**

British Prime Minister Rishi Sunak has been warned his proposal to “overhaul” human rights law would tilt a fair go in favour of the state and seriously interfere with people’s ability to enforce their rights.

The bill would replace the Human Rights Act which enshrines the European convention on human rights into UK law.

The cross-party parliamentary joint committee on human rights said it would create fresh barriers, making it harder for people to enforce their rights inside and outside courts.

“The government should not proceed with this bill,” the committee said. “It weakens rights protections, it undermines the universality of rights, it shows disregard for our international legal obligations; it creates legal uncertainty and hinders effective enforcement; it will lead to an increased caseload in Strasbourg, and will damage our international reputation as guardians of human rights.” <https://tinyurl.com/37fc4ff2>

### **Removing bars: protecting the freed**

Atlanta City Council USA voted unanimously late last year to make formerly jailed people a protected class.

They amended city law to prevent discrimination against individuals for criminal convictions, just as it protected citizens from racial, age-based and other forms of discrimination.

It’s the result of three months of concerted organising and advocacy by the nonprofit Barred Business – and the years of difficulty finding a job and getting business loans that its founder, Bridgette Simpson, experienced after her release from 10 years in prison.

When she came home in 2018, Simpson faced numerous barriers that made it feel like the excommunication wouldn’t end: “It felt like I was serving an open-ended sentence that goes on and on.”

The council’s unanimous vote, Simpson says, is “the first step in recognising that we all are human beings.” Barred Business’ goal is to harness the local win into a national campaign targeting federal civil rights legislation.

An entrepreneur from a young age, Simpson had started her own clothing company back in 1995. After her release, the employment barriers she faced pushed Simpson to continue her path of entrepreneurship. “Let’s face it, being an entrepreneur is more appealing when you compare making minimum wage,” she says. “You’re barred from different opportunities so you have to figure out different ways to earn ... A lot of formerly-incarcerated people are entrepreneurs because they don’t have a choice.” <https://tinyurl.com/yeyr2abt>

### **Artificial lawyer pleads case**

A defendant will be represented in court by an artificial intelligence this month for the first time ever.

The DoNotPay smartphone app will tell a defendant what to say during a court case challenging a speeding ticket.

The app’s developers have not disclosed the exact date or location of the case in the USA, [New Scientist](#) reports.

Should the robot lawyer lose the case, the company has promised to cover the cost of the fine for the defendant.

DoNotPay is billed on its website as the “world’s first robot lawyer”. Joshua Browder, founder and CEO, said: “The goal of this company is to make the \$200 billion legal profession free for consumers.” <https://tinyurl.com/4n5peyaz>

### **ODD SPOT: It’s costly, being cruel**

Since 1989, New York State has had the third most exonerees in the USA at 319, behind Illinois at 556 and Texas at 437. It

pays out about \$70m a year in compensation, the *New York Times* has reported.

In 2022, a record 367 cases were added to the [National Registry of Exonerations](#), which usually records some 200 each year. A total of \$US2.65 billion nationwide has been paid to people on the registry who have brought civil rights suits, according to Jeffrey Gutman, a law professor at George Washington Uni. The average payout is \$US3.7 million for the 716 exonerees who collected compensation, or \$US318,000 per year in prison, he said. <https://tinyurl.com/fjr56cyy>

### Data stealing war heats up

Private spook firm NSO Group, which runs and markets Pegasus spy software used secretly by repressive governments against journalists, activists and human rights proponents, is not entitled to claim immunity from prosecution because it is associated with the Israeli government, the US Supreme Court has ruled.

WhatsApp (owned by Meta-Facebook's Mark Zuckerberg) claims NSO targeted 1400 users of the encrypted messaging service with highly sophisticated spyware. WhatsApp is trying to block NSO from Facebook platforms and servers and recover unspecified damages.

Pegasus allows covertly infiltrating a target's mobile phone, gaining access to messages and contacts, the camera and microphone and location history. <https://tinyurl.com/4rzaes3m> and *Press Association*.

### UK abandons Scots' right to legislate

The UK government's blocking of Scotland's proposed gender law reform last month is the first use of an S35 order which allows the Westminster parliament to prevent something the Scottish Parliament has voted for becoming law.

Scotland wants to make it easier for Scots to obtain a gender recognition certificate. This document changes someone's legal sex on their birth certificate, and also means marriage certificates and death certificates will carry the gender a person 16 and older identifies as.

This would put Scotland on a different path to the rest of the UK.

The parent parliament in Westminster says this could have a "serious adverse impact" on existing laws in the rest of the UK. Scotland's First Minister has accused Westminster of a "direct attack" on devolution. <https://tinyurl.com/mtreeyy4>

### International briefs



#### Biden a good judge of women

The US Senate confirmed 97 federal judges during President Joe Biden's first two years in office, setting records for numbers and diversity. White House lawyer Paige Herwig says the effort is a "sea change" designed to make the courts look like the rest of America. "We've confirmed 74 women as federal judges so far," he

said. "That's more than confirmed during the four years of President Trump or during the eight years of President George W. Bush." Biden's first promoted Ketanji Brown Jackson (photo) to the federal appeals court in Washington, DC. She is now judge Jackson, the first Black woman on the Supreme Court and the first who worked as a public defender. <https://tinyurl.com/5f6hmx6u>

### Heads you win, heads you lose...literally, maybe

Iran is turning women's own head-baring against them by using facial recognition technology and a national database to identify, punish and prosecute them.

Women can lose access to banks, public transport and public facilities, as well as being fined and finally jailed for not wearing a hijab in public, or even not wearing it "properly". The new regime harshness follows Ebrahim Raisi being elected President of Iran in late-2021: he was one of a four-man death committee which decided the fate of between 5000 and 30,000 (the number is unclear) opponents of the regime executed in mass hangings from July 1988. <https://tinyurl.com/ykavyp48> (pic credit unknown)



### Murderer freed a second time, publicly

Russell Causley, who has never revealed where he hid his wife's body, can be freed from jail, the Parole Board said. In 2022, he became the first UK prisoner to face a public parole hearing. He was handed a life sentence for killing Carole Packman, who disappeared in 1985, a year after he moved his lover into the family home in Bournemouth. Causley was paroled in 2020 after serving more than 23 years for the murder but was sent back to jail the following year after breaching his licence conditions. Now he can be freed again. <https://tinyurl.com/38naw4dx>

### ODD SPOT: Student starts new trend: shoot and tell

A six-year-old student shot and wounded a female teacher in Virginia USA during an altercation inside a first-grade classroom, police and school officials in the city of Newport News said last month. No students were injured in the shooting in early January at Richneck Elementary School, police said. The teacher – a woman in her 30s – suffered life-threatening injuries, but was recovering. <https://tinyurl.com/yc64fzx7>

### Nobody dobbs in court leaker: witch-hunt aborted

The US Supreme Court can't identify if any employee (or judge) was responsible for advance leaking of the draft opinion on the Dobbs case last year, and has stopped looking. This was the decision which overturned *Roe v. Wade*, or the constitutional right to an abortion in the USA, advance news of which *Politico* published in a scoop in May 2022. The court conducted more than 100 interviews as part of the investigation into "one of the worst breaches in its history" (the Supreme Court's own words). At least 90 people had access to the opinion before it was publicly released. IT systems failed to record any useful information, court employees didn't understand the 'rules' (including whether they could tell their spouses what was in drafts), and in general the US Supreme Court is a creaky anachronism, not least when it comes to security, the report indicates. <https://tinyurl.com/937ue7e9>

### Bio boss given cold shoulder

Scotland's biometrics commissioner Dr Brian Plastow was appointed to oversee how law-enforcement agencies deal with and store personal data such as DNA, facial images and fingerprints. But he has been unable in his first 18 months in the job to meet the cabinet justice secretary or the community safety minister. Plastow said police in the UK held a huge volume of biometric data, far more than their European neighbours. "The UK DNA database holds records equivalent to 8% of the UK population, albeit some of those records relate to

foreign nationals,” said Plastow, who was appointed in March 2021. “The Scottish figure is about 7%. In Europe, it’s about 1 or 2%. This helps to explain why independent oversight is so necessary.” <https://tinyurl.com/3kd35n9w>

### **Police on hand to target black boys more easily**

There are 979 police officers based in schools across the UK, figures show, which child authorities warn is a “deeply concerning” trend “normalising” police presence, mostly in poorer areas. At the same time, Scotland Yard has acknowledged 650 children underwent “intrusive and traumatising” strip-searches under stop and search powers by the Metropolitan Police (basically, London) between 2018 and 2020. Of these children, 58% were being black, and more than 95% were boys. <https://tinyurl.com/2p8pzcfx>

## **DATES**

### **2023:**

**2 Mar, Sydney:** ‘Chasing Wrongs and Rights’: Elaine Pearson, in conversation with ABC presenter Fauziah Ibrahim, discussing her new book before she moves countries to become Asia Director of Human Rights Watch. 1-2pm UNSW Law Theatre G02, Law Building F8, Kensington. <https://tinyurl.com/2p9bkb96>

**20 Mar, Sydney:** Environment law and governance expert, Dr Kate Owens, presents the 2023 Iain McCalman Lecture on how to effectively harness climate governance to achieve deep coordination and sustained change. Sydney U. Law School <https://tinyurl.com/43ndc5bt>

**25 March, NSW:** State election

**26-28 April, Melbourne:** Humanitarian leadership conference, Deakin U in Melbourne City and online: ‘Re-energising the global disaster response system. <https://centreforhumanitarianleadership.org/the-centre/events/2023conference/>

**28-30 Sept, Gold Coast Qld:** Aust. Bar Association annual conference. Theme: rule of law. Info: <https://austbar.asn.au/>

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### **Election cycle for Australia:**

2023: **NSW:** 25 March 2023

2024: **Northern Territory:** 24 August 2024

**ACT:** 19 October 2024

**Queensland:** 26 October 2024

**Tasmania** (House of Assembly): by 28 June 2025

2025: **WA:** 8 March 2025

**Federal:** March 2025 likely

(Earliest date is 3 August 2024 and latest possible date Saturday 17 May 2025)

2026 **South Australia:** 21 March 2026

**Victoria:** 28 November 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 January 2023.

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