

Australia may get federal HR Act next year

The Attorney-General has asked a parliamentary committee to examine a Human Rights Act for Australia.

After nearly four years, the formal campaign by Civil Liberties Australia and other groups has lift-off: the government has announced a broad-reaching inquiry into issues around the human rights “framework” in Australia, including the question of enacting specific federal legislation, possibly in 2024.

The Parliamentary Joint Committee on Human Rights will hold a public consultation on the issue for the rest of 2023. Here’s what the PJCHR’s media release said:

Inquiry into Australia’s Human Rights Framework

The Attorney-General (Mark Dreyfus) has [asked](#) the committee to inquire into, and report on, Australia’s Human Rights Framework by 31 March 2024, specifically:

- to review the scope and effectiveness of Australia’s 2010 Human Rights Framework and the National Human Rights Action Plan;
- to consider whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made;
- to consider developments since 2010 in Australian human rights laws (both at the Commonwealth and State and Territory levels) and relevant case law; and
- to consider any other relevant matters.

Three months to have your say

The PJCHR has called for submissions by 1 July 2023. It is particularly asking for advice about:

- whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission’s recent Position Paper);
- whether existing mechanisms to protect human rights in the federal context are adequate and if improvements should be made, including to:
 - the remit of the PJCHR;
 - the role of the Australian Human Rights Commission;
 - the process of how federal institutions engage with human rights, including requirements for statements of compatibility; and
 - the effectiveness of existing human rights Acts/Charters in protecting human rights in the Australian Capital Territory, Victoria and Queensland, including relevant case law, and relevant work done in other states and territories.

Chair says inquiry will look at privacy

“This is a timely inquiry as the Australian Human Rights Framework has not been the subject of any significant review since first announced in 2010,” the PJCHR chair Josh Burns (photo, Labor, MHR for Macnamara Vic) said.

“In an increasingly digital environment, it is important to look at emerging issues such as the right to privacy and government’s role in protecting people’s data.

“This inquiry will help ensure the Federal Parliament continues to uphold the human rights of all Australians and Australia’s international human rights obligations.”



The committee will hear from some submitters at public hearings between July and December 2023. It will report to both Houses of the Parliament by 31 March 2024. Details: https://www.aph.gov.au/joint_humanrights/

Huge support for federal HR Act: 73% in favour

There is massive public support for a federal Human Rights Act for Australia.

A survey in 2022, by Amnesty International in Australia, found 73% of people were in favour of a federal HRA. Only 3% of people were opposed (just 1% strongly opposed), and 24% of people were “unsure”.

The survey revealed that 51% of people thought Australia already had a HR Act.

Only three jurisdiction do, the ACT (since 2004), Victoria (2006) and Queensland (2020). Their HR Acts, or Charters of Rights and Responsibilities, apply to state/territory law only.

Because there was no federal HR protection, the Australian government could introduce draconian laws nationally and instantly when the COVID-19 pandemic hit. There was no way people could seek a conciliated outcome, or ask a tribunal or magistrate’s court to have a legal decision overturned, which is sometimes what it needed in a hurry.

So, at the strike of a pen during the pandemic, people couldn’t visit their dying parent or kin in an aged care home. And long-laid plans to travel overseas for pleasure or to take up a new job were suddenly off limits.

Top HR body releases model for HR Act

“A Human Rights Act is the central missing piece of government accountability in Australia. It will increase transparency and trust in governments by requiring them to fully consider human rights in their decisions, laws, policies, and practice,” President Rosalind Croucher said last month.



She was launching the Australian Human Rights Commission’s *Free & Equal* report, which argues that Australia needs a federal Human Rights Act.

The AHRC described their report as a ‘Position Paper’.

“The starting point for a national HRA is to recognise that everyone’s rights matter, all of the time. We should expect that Parliament and public servants will actively consider the human rights impacts of decisions they make.”

Australia is the only liberal democracy that does not have an act or charter of rights at a national level, and there are very few legal protections for people’s fundamental rights in Australia.

The AHRC’s proposal follows a three-year consultation and review of existing acts in the ACT (2004), Victoria (2006), and Queensland (2020).

The proposed model would include ways to seek justice if people’s rights are breached, as will be the case under new laws agreed but not yet enacted in the ACT for its 20th anniversary.

People will be able to challenge decisions that breach their human rights, and can go to court if their issues cannot be resolved through conciliation. This replicates the current process for discrimination complaints.

NOTE: Achieving the inquiry into a Human Rights Act has been CLA’s main campaign for more than three years. We are delighted with the interim success...and look forward to having a HRA in place in 2024.

HR Act to fill in the “missing piece” of rights protection in Australia, President says

The Position Paper proposed a model to “complete the central, missing piece of our domestic legislative framework for the promotion and protection of human rights in Australia – by bringing rights home,” AHRC President Prof Rosalind Croucher said in the foreword to the 42-page summary.

“In doing so, (the paper) proposes how to belatedly meet the intended design of the AHRC itself,” she said.

“When established on a permanent footing in 1986, the Commission was intended to have a complaint handling jurisdiction for human rights complaints through an Australian Bill of Rights Act.

“While every other country in the Commonwealth of Nations has moved forward by introducing comprehensive human rights protections in domestic legislation, Australia stands alone in not having introduced a Human Rights Act,” Prof Croucher said. <https://tinyurl.com/mrburp58>

Civil Liberties Australia was one of the handful of selected groups invited to attend the launch. CLA’s HR Act campaign manager Chris Stamford attended on our behalf.

Rights for NSW? Maybe, under new government

In 2022, the Law Society of NSW released a paper calling for a standalone Human Rights Act in NSW.

That call may resonate more now that a Labor government is in power after 12 years and following the vote on 25 March 2023.

President of the Law Society of NSW Cassandra Banks said the organisation welcomed the AHRC’s Position Paper, released earlier in the month.

“The Law Society has long held the view that human rights legislation for NSW will create a fairer, more compassionate society, and (we call) on all parties to commit to the need for human rights legislation in NSW,” Banks said. <https://tinyurl.com/3t7bwx8f>

FORENSICS special

Wilkie calls for forensics overhaul, CCRC

Mr Wilkie (Clark) (15:59)

(photo):

Australia’s record is shameful when it comes to miscarriages of justice. Indeed, you just have to look at Chamberlain, Keogh, Splatt, Wood, Mallard and Button (and Eastman – Ed.) to see how our criminal justice system can get it so wrong and how, once a wrong is done, it is almost impossible to unpick.

No wonder I continue to hold serious concerns about the Tasmanian case of Sue Neill-Fraser, including regarding the conduct of police and forensics. In this case, there are clear doubts about her conviction, including false and misleading evidence about blood, minimised DNA, various non-disclosures, and lost and missing key exhibits.

In another disturbing example, the Sofronoff inquiry in Queensland exposed maladministration, inappropriate thresholds preventing the testing of DNA, and a failure of standards and accreditation requirements. And then there is channel 9’s investigation (in SA – Ed.), which exposed forensic issues in Keogh’s case, which is also alarming. All states and territories must review their DNA processes, appropriately resource forensic labs and make a serious commitment to provide independent and impartial forensic services.



In Tasmania in particular, the forensic services must be taken out of the police department and have its DNA and other processes reviewed—in other words, made independent. Moreover, there is an important role for the federal government to establish a national criminal case review commission, as has been done overseas, where countless convictions were found to be unsafe and overturned.

– Andrew Wilkie, MHR for the seat of Clark (Tasmania), speaking in the Federation Chamber of the Australian Parliament on Monday 20 March 2023.

CLA has asked for national review, regulation

On Australia Day 2023, Civil Liberties Australia wrote to the Attorney-General, Mark Dreyfus, calling on him to introduce a federal regulator of forensic science in relation to education, the courts and the justice system.

We 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.

Edmond criticises corrosive ‘evidence’ impact

Even earlier, U. Sydney Law academic Gary Edmond was part of a push to analyse and review all aspects of forensic evidence used in courts.

Here is an abstract from a 2014 international article, comparing three countries and their systems.

This article compares responses to incriminating expert evidence (that is, forensic science) in Australia, Switzerland, and the United States. It begins with an outline of the three systems.

Then, drawing on recent reviews of the forensic sciences, it explains that many of the forensic sciences have not been formally evaluated—that is, never subjected to validation studies. This means that in many cases we do not know if techniques work, nor how well.

It also means that standards, claims about proficiency and experience, as well as the expressions used by analysts are not empirically based.

These critical findings from a range of peak scientific organisations and commissions of inquiry (for example, the US National Academy of Sciences and National Institute of Standards and Technology) are then used to illuminate the impact of rules, procedures, and the performance of personnel (such as forensic scientists, prosecutors, defence lawyers and judges) across our three jurisdictions.

The article explains how three different criminal justice systems each failed to identify or credibly respond to deep structural and endemic problems with many types of forensic science and medicine evidence routinely used by investigators and prosecutors.

Serious problems with forensic science techniques and derivative evidence are rarely identified, let alone explained and conveyed in ordinary criminal proceedings. Indeed, there is very

limited evidence that lawyers and judges are conversant with emerging critiques or the corrosive impact of speculative expert evidence on criminal proof.

The article endeavours to understand these failures and the weakness of processes and safeguards across advanced criminal justice systems that include adversarial and non-adversarial elements.

– Comparing the Use of Forensic Science Evidence in Australia, Switzerland, and the United States: Transcending the Adversarial-NonAdversarial Dichotomy, Gary Edmond and Joelle Vuille, *Jurimetrics*, Vol 54, No 3 (Spring 2014), pp221-276, published by the American Bar Association.

World FS concern in Sydney Declaration 2023

Writing as lead author of 11 world experts, Claude Roux has foreshadowed a sharper definition and determination involved in a set of principles around the science of forensic science to be adopted at a major conference in Sydney in November 2023.

Roux (photo) is from the Centre for Forensic Science at UTS in Sydney, and is President of the International Association of Forensic Sciences (IAFS). He was writing in *Forensic Science International* in March 2022. In the abstract to the article, the authors say:



“Unlike other more established disciplines, a shared understanding and broad acceptance of the essence of forensic science, its purpose, and fundamental principles are still missing or mis-represented. This foundation has been overlooked, although recognised by many forensic science forefathers and seen as critical to this discipline’s advancement.

“The Sydney Declaration attempts to revisit the essence of forensic science through its foundational basis, beyond organisations, technicalities or protocols.

“It comprises a definition of forensic science and seven fundamental principles that emphasise the pivotal role of the trace as a vestige, or remnant, of an investigated activity.

“The Sydney Declaration also discusses critical features framing the forensic scientist’s work, such as context, time asymmetry, the continuum of uncertainties, broad scientific knowledge, ethics, critical thinking, and logical reasoning.

“It is argued that the proposed principles should underpin the practice of forensic science and guide education and research directions. Ultimately, they will benefit forensic science as a whole to be more relevant, effective and reliable.

“The Sydney Declaration comprises a definition of forensic science and seven fundamental tenets in the form of principles to articulate the nature and the grounds of this discipline under a common framework, spanning the investigation of the crime (or an event of public interest) to the presentation of findings. The seven principles are:

1. Activity and presence produce traces that are fundamental vectors of information.
2. Scene investigation is a scientific and diagnostic endeavour requiring scientific expertise.
3. Forensic science is case-based and reliant on scientific knowledge, investigative methodology and logical reasoning.
4. Forensic science is an assessment of findings in context due to time asymmetry.

5. Forensic science deals with a continuum of uncertainties.

6. Forensic science has multi-dimensional purposes and contributions.

7. Forensic science findings acquire meaning in context.

The 23rd Meeting of the International Association of Forensic Sciences will be held in conjunction with the 26th Symposium of the Australian and New Zealand Forensic Science Society, from 20–24 November 2023, in Sydney, Australia. <https://tinyurl.com/344u5fzz> Conference: <https://iafs2023.com.au/>

ODD SPOT: False ‘evidence’ used to convict in scores of cases

Video: How forensic “evidence” can be unreliable but continue to be accepted by courts is explained by the Center for Integrity in Forensic Science: <https://www.youtube.com/watch?v=HrkYf3nlEn4>

Ends Forensics Special

FAILURE TO DISCLOSE special

Police and prosecutors restrict information

In all criminal cases, police and the prosecutors throughout Australia have a legal obligation to provide the defence lawyers with evidence or facts they know which might help the accused person get off the charge.

The reason is that the Crown (police and prosecutors) have massive resources by comparison with an individual before the court.

The legal obligation on the Crown is to ensure fairness and to make appearing before a court more “equal”.

It is hoped that approach will produce justice rather than biased outcomes based on material unknown but favourable to the accused person, but known to the police and not presented in court.

However, frequently in Australia police and prosecutors break the rules by not disclosing as they should. Police and/or prosecutors are themselves guilty of Failure To Disclose (FTD), though it is not an offence that they can be charged with – yet.

Almost invariably, in major cases in Australia where people have been wrongly convicted and jailed for 12 to 20 years before finally winning their freedom back, police and prosecutor FTD has been part of the problem.

Well-known cases where this has happened include Mallard in WA, Keogh in SA, Eastman in ACT, etc...including, CLA believes based on papers presented to the Tasmanian parliament, in the Sue Neill-Fraser case in Tasmania where she has not yet been acquitted.

If FTD is frequent in major murder trials, on which the media spotlight falls, it is highly likely that it is even more customary in lesser cases out of the public spotlight.

Police don’t take disclosure seriously: barristers

Recently, Tasmanian lawyers who face the FTD problem regularly before that state’s magistrates and higher courts have spoken out in *Twitter* exchanges:

Here is Tasmanian barrister Cameron Scott, discussing the issue of police FTD with other barristers in late February and early March 2023:

1. “Long story short, they have 1 person whose job it is to make disclosure in about 12000 cases each year. Tasmania Police doesn’t take disclosure seriously...”
 2. “This was the message today from (TasPol) to a local solicitor chasing up a request for full disclosure: ‘Therefore all Magistrate files are on hold until further notice.’”
- “Summary cases are in chaos.”

3. Fellow Tasmanian barrister Greg Barns replied: "Disgraceful."

4. Another barrister, Fabiano Cangelosi (photo), described how the problem was "hidden" from the public, whereas magistrates wanted it publicised, and fixed by the government:



"Magistrates often remark on how police treat the court with contempt because of disclosure practices – and sadly observe that the media box* is empty, and that government still has not brought into force the Magistrates Court (Criminal & General Division) Act."

("media box is empty": that is, there's no reporter in court to inform the people when TasPol fails to live up to its obligations to disclose which, according to numerous sources, including barristers and lawyers who deal with the problem almost daily, is not uncommon).

Lawyers call for police to act responsibly

Law Society of Tasmania President Amanda Thompson has written to Tasmania Police to speed up their disclosure of evidence to defence lawyers to hasten court processes.

"The letter addresses an issue that summary matters were on hold for disclosure and only indictable matters were being dealt with," Ms Thompson said, as reported by Nick Clark in *The Examiner*, Launceston.

The Supreme Court has a backlog of more than 600 indictable cases. Lawyer's Alliance president Greg Barns said tardy disclosure had three dire consequences for defendants.

"One, they can't get their case heard; two, they have to pay for their lawyer to go to court for a mention of the matter, and most seriously, in some cases, people are languishing on remand [in custody]," Mr Barns said.

He said some defendants had to pay \$50 to get the evidence against them. <https://www.examiner.com.au/story/8114703/lawyers-want-police-to-speed-up-the-provision-of-evidence/?cs=7661>

If you know of an example, please tell us

In 2023, Failure To Disclose (FTD) is one of the two major campaigns Civil Liberties Australia is running nationally on issues that are skewing justice in Australia. If you know where police or prosecutor FTD has allegedly caused wrongful conviction in recent cases, and it can be proven, please let us know.

What must be disclosed?

In *R v Keogh* (No. 2) [2015] SASC 180 at [54], Blue J summarised the position:

The prosecution owes a duty to disclose to the defence on a timely basis:

- evidence proposed to be adduced (*placed before the court - ed.*) by the prosecution including the evidence of witnesses and proposed exhibits;
- evidence of witnesses who the prosecution does not propose to call;
- material that tends to reflect materially on the credibility of prosecution witnesses;
- material that tends to weaken the prosecution case or assist the defence case;
- material that is relevant to an issue in the case.

– see Prosecution Policy and Guidelines, Director of Public Prosecutions (Tasmania), pages 131-135, version 9 'Updated 18 October 2022'

Non-disclosure delays cases, denies justice

In the 2021-22 financial year, nearly half of all matters before Australian criminal courts took more than three months to reach a resolution, according to new data released by the Australian Bureau of Statistics.

The data does not include matters which are yet to be finalised. <https://tinyurl.com/48y4a9en>

In some cases, the process was far longer. In 2021-22 nearly 60,000 cases — more than one in nine matters before criminal courts around the country — took a year or more to resolve.

The delays are most severe in Victoria and Tasmania, where the median length of a matter was almost six months. That might not sound like very long, given how long trials reported in the news tend to run, but many matters that go through the court are relatively mundane. For example, 35 per cent of finalised matters in Magistrates' courts — which handle the bulk of cases — are traffic offences.

In higher courts, which typically deal with more serious offences, across Australia most matters took more than 36 weeks to be finalised in 2021-22. <https://tinyurl.com/4cu4nbfb>

Ends Failure To Disclose special

Does this report from 150 years ago ring any recent Robodebt memory bells?

"Whilst we acknowledge that the officers and attendants have given us much assistance in carrying out our inquiry, we are nevertheless compelled to record the fact that in many of the answers we received there was a too constant repetition of the stereotyped phrase, 'I do not remember' and 'I cannot recollect'."

"This, when contrasted with the directness of the accusation, tended materially to lessen the value of the defence. Notwithstanding that some of the transactions spoken to occurred long ago, and that the number of patients is large, this lapse of memory is, to say the least of it, remarkable.

"In many instances it would appear as if witnesses, fearing to be guilty of violating an oath, had taken refuge in an absolute forgetfulness."

– 1876, Victoria: Report from the Board appointed to inquire into Matters relating to the Kew Lunatic Asylum, presented to both Houses of Parliament – Angus Mackay, J.B Crews, W. Templeton

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/vic/VicBCPubInq/1876/1.html?>

Oz imprisonment growth third highest in OECD

The rate of increase in Australia's imprisonment rates between 2003 and 2018 was among the fastest in the OECD at 39%.

Only Turkey (120%) and Colombia (46%) experienced faster growth in imprisonment.

By contrast, the imprisonment rate grew by 29%t in New Zealand, and fell by 1% in Canada and the UK, and by 14% in the United States over a similar period.

– Australia's prison dilemma: research paper, Productivity Commission 2021, pages 28-29

Nationally, the rate of imprisonment for Aboriginal and Torres Strait Islander people is 13.3 times the non-Indigenous imprisonment rate, even adjusting for the relative youth of the ATSI population.

The imprisonment rate for Aboriginal and Torres Strait Islander people has increased by 35% since 2006, compared with an increase of 14% for the non-Indigenous population. - page 32

Bail laws need thorough overhaul

The family of a First Nations woman, Veronica Nelson, who died while on remand in a Victorian maximum-security prison, want bail laws changed to remove the presumption against bail for all offences, and forbid remanding someone for an offence unlikely to result in a jail sentence.

A coroner's report found the current Bail Act was "incompatible" with the state's charter of human rights, and discriminatory towards First Nations people.

The government is prepared to pare back the controversial reverse-onus provision of the Act, and the unacceptable risk tests, so they apply only to serious offenders.

But Nelson's family want all bail-related offences scrapped and bail granted unless the prosecution shows there is a specific, immediate risk to someone's safety, a serious risk of interfering with a witness, or a demonstrable risk that the person will flee the state. A coalition of 57 organisations, of which CLA is one, is supporting the proposed Nelson changes to the law.

The Justice Reform Initiative has reported that 52% of unsentenced people in Victorian jails had been on remand for more than three months, 32% for more than six months and 17% for longer than a year. <https://tinyurl.com/2wmuywmm>

NOTE: Bail is becoming a more contentious issue throughout Australia by the month as states and territories try to cope with rising adult and child misbehaviour creating new waves of crime. SA is currently using harsher bail to try to tackle use of child pornography (see below).

See '**CLA Activities for March**' for a recent OpEd by CLA CEO Bill Rowlings for the NT Independent.

Rednecks for Labor cause kids to suffer

Queensland has enacted swingeing new laws cracking down on kids.

The Palaszczuk government's new laws make breaching bail a crime for children, create an aggravating factor for alleged car thieves who post footage on social media, and tighten bail laws for a raft of other charges.

The changes apply to 10-17 year-olds, indicating the state's is switching full-time to a penalty regime instead of an education and support system for children.

Qld Greens say the new laws are "disgraceful" and children's advocates and the state's peak legal bodies are fiercely critical of them.

CLA says the government is engaging in a cynical 'order-and-law' bid to turn out more rednecks for Labor for the state's 2024 election in closely-contested north and far north Qld seats.

The new laws are a 180-degree departure from Qld's own human rights law, introduced in 2020. <https://tinyurl.com/4w5dtfk9>

13-year-olds locked in isolation for months

A 13-year-old Indigenous Australian boy, referred to as "Jack", spent 45 days in solitary confinement for minor offences when in custody at Cleveland Youth Detention Centre in Townsville, Queensland, according to a youth organisation.

This is a clear violation of his human rights and may have broken state laws, according to Queensland's human rights chief.

Despite no serious criminal history and his barrister saying that he was never going to be jailed or juvenile-jailed, Jack spent 22 consecutive days in isolation.

His detention was extraordinary and cruel. Jack flooded his cell with water from the toilet in desperation, and after being denied drinking water. He was released on probation after 60 days in custody.

Another 13-year-old boy with developmental disabilities spent 78 days confined to a cell for 20 hours a day, raising serious concerns over the treatment of minors in Queensland's youth justice system.

The youth organisation is demanding the Queensland government reform its youth justice system urgently, removing inhumane treatment and solitary confinement for minor offences, and providing access to fresh air and exercise for a minimum two hours a day as mandated by Queensland's Human Rights Act.

Jurisdiction to beef up anti-discrimination laws



Anti-discrimination laws in the ACT are being strengthened and expanded to protect the rights of every Canberra – positively – under reforms passed by the ACT Legislative Assembly last month.

ACT Minister for Human Rights Tara Cheyne (photo) said changes to the *Discrimination Act 1991* (the Act) would help ensure Canberra is a city of equality, inclusiveness, and respect for diversity.

"Importantly, the law reforms introduce a positive duty or responsibility on Government, organisations and businesses to eliminate discrimination, sexual harassment, and unlawful vilification," Minister Cheyne said.

"This positive duty will encourage a proactive approach to preventing discrimination in our community and shift the responsibility away from individuals having to make a complaint."

The new obligation to eliminate discrimination applies to public authorities initially, coming into effect in early 2024. It will be extended to other organisations after three years to ensure there is enough time to provide education and support.

The reforms also expand the areas in public life where anti-discrimination laws apply, including formally organised sporting activities, formally organised competitions and the administration of ACT laws or government program.

In addition, the exceptions in the Act (situations where it is not unlawful to discriminate) have been refined, including exceptions relating to employment, workers in private homes, sport, clubs and voluntary bodies, insurance and superannuation providers and religious bodies. <https://tinyurl.com/4wp53ryp>

Police show 'astonishing disregard for the law'

A Victorian man had rape charges dropped after the Court of Appeal found police had shown "astonishing disregard for the law" when illegally searching.

Six officers raided his home on Christmas Day in 2020, looking for a missing 17-year-old girl. No-one was home – and there was no sign of the missing girl – but they searched high and low inside the house for an hour, finding drugs, cash and e-devices.

Searching a laptop – taking even more hours – one officer found a video of an alleged rape, for which the man was charged.

But the appeal court threw the case out: "There was no legitimate basis for the search after five minutes of entering the house... without any proper basis for the police officers being present on the premises.

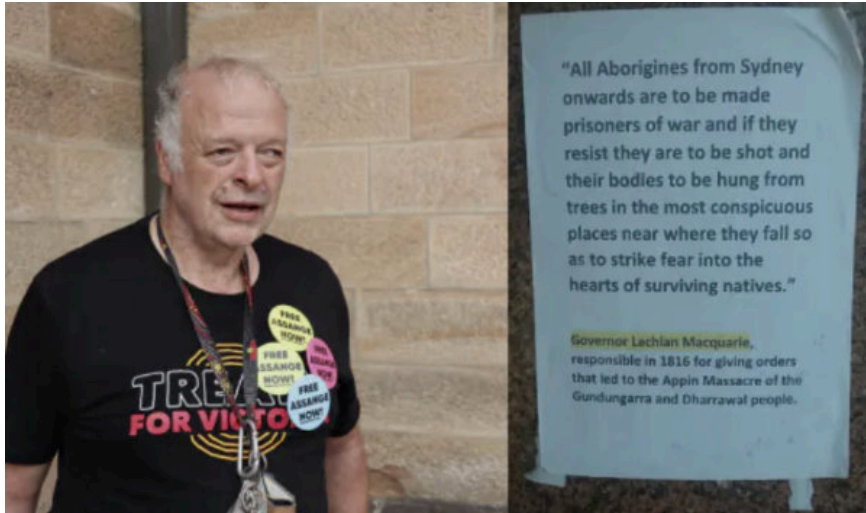
"The applicant's right to privacy was seriously violated over a lengthy period of time and with no apparent consideration given to the illegality of the search and the breach of that right."

The court found that while not determinative to the outcome of the application, it was of "real significance" that no disciplinary

action had been taken against the officers but that the “prosecution now endeavours to persuade the court to give its imprimatur to this significant impropriety”.

“We decline to give judicial imprimatur to a search carried out by sworn officers with such astonishing disregard for both the law and the rights of the applicant. The applicant’s right to privacy was seriously violated over a lengthy period of time and with no apparent consideration given to the illegality of the search and the breach of that right.” <https://tinyurl.com/yck3x4ha>

Right on, Stephen! Keep up the good fight



“Whatever rights we actually have are the ones we fight for. They can be overridden in a minute if we don’t fight for and stand up for them. And for each other’s rights, not just our own,” says Stephen Langford.

“We need a Human Rights Act in NSW and in Australia, before we can get meaningful Indigenous rights. We have to build that foundation first.

“We have to expand the whole rights and responsibilities culture. We have to establish that culture by fighting for basic rights like the right to protest. Even the right to housing.”

Photo shows Langford, due in court again in Sydney on 5 April for pasting an A4 sheet of paper on the statue of a former NSW governor, Lachlan Macquarie, who ordered all Aborigines from Sydney to be made prisoners of war or to be shot. The pasted sheet was a copy of the governor’s order.

Ex-cop warns re overseas recruits: CLA agrees

A former WA police commissioner has warned overseas police recruitment has not previously delivered anywhere near the hoped-for “panacea” to police problems in WA.

Ex-Commissioner Karl O’Callaghan said: “A lot of people who come here realise that they don’t like the climate, they miss their families.” He was in charge when WAPol last embarked on a major overseas recruitment push 18 years ago. – *The West Australian*, 21 March 2023.

He was commenting on the push by WA Police Minister Paul Papalia who has plans to “steal” police from overseas. <https://tinyurl.com/yb3ez2wy>

The problem is, CLA warns, that the “stolen” police might be from the cohort of police, such as in the London Met, who are racist, homophobic, misogynist and corrupt, as a recent inquiry has found (see story under ‘International’).

ODD SPOT: Racist dogs target FN people

A WA parliamentary committee heard from Corruption and Crime Commissioner John McKechnie last month that WA Police used dogs against kids. “Are we a people content to

unleash dogs on children?” he asked. “I think we’re better than that.” After investigating the use of police dogs last year, the CCC found about 61% of all deployments in 2020/21 were targeted at Aboriginal and Torres Strait Islander people, who comprise about 3% of the population. No, it’s not WAPol who are racist, says the WA Police Minister and Police Commissioner. CLA assumes it must be the dogs, then – perhaps they can only see in black and white? <https://tinyurl.com/4wkzssm7>

First Nations’ people targeted by evictions

Of 107 homeless or recently homeless people known to have died in Perth in 2022, 31% were Aboriginal people, research has shown.

The people were homeless at the time of their deaths or had recently experienced homelessness. Average age of death was 50 years.

Well over half of the public housing tenancies terminated in “no grounds evictions” last year were of Aboriginal families, according to Homeless WA campaigners Dr Betsy Buchanan and Jesse Noakes who were appearing before the WA Parliamentary Inquiry into the Financial Administration of Homelessness Services last month.

They explained how WA housing policy continues “to trap Aboriginal people in the system and makes Closing the Gap impossible”. Indigenous people comprise about 3% of the population – *National Indigenous Times* 15 March 2023.

Australian briefs

SA uses bail to crack down on offences

Both possessing child pornography and child-like sex dolls will be classified as serious indictable offences in SA in future, SA Attorney General Kyam Maher said last month. “The proposed changes will also ensure that, when considering bail applications, police and courts take into account the harm that people who deal with child sexual exploitation material cause to children by contributing to the demand for the abuse of children,” Maher said. <https://tinyurl.com/yh7bw398>

Sofronoff moves from forensics to alleged rape



According to the ACT Opposition (Liberal) leader Elizabeth Lee, since self-government in 1989, the ACT has held nine Boards of Inquiry. Six of them were held by 2000; one in 2016; and one in 2022. The ninth was announced earlier this year in relation to ACT Office of the Director of Public Prosecutions’, and the Australian Federal Police’s,

handling of allegations of rape made by Brittany Higgins against Bruce Lehrmann. The allegation applied to an event which may or may not have occurred in federal Parliament House, in a Minister’s office. Lehrmann denies the allegation. The new inquiry is being headed by Walter Sofronoff KC (photo), a former Queensland Solicitor-General and then Supreme Court judge, who has led inquiries into floods, parole and forensics in that state previously.

Fed govt is information black hole

Evidence given to the federal court by the Office of the Australian Information Commissioner shows that, as of mid-March 2023, it was yet to resolve 587 FOI review requests submitted in 2020 or earlier. Forty-two of those reviews were

lodged in 2018, half a decade ago. Another 220 were lodged in 2019. The remainder, 325, were submitted in 2020. Of the 325 lodged in 2020, about 80% have still not even been allocated to a reviewer within the OAIC. – Christopher Knaus, The Guardian 21 March 2023

Letters

Ministers tell Parliament what to do?

Media release 12 March 2023: Qld Premier Palaszczuk and Health Minister D'Ath: *"The Parliament's Health and Environment Committee will be directed – (by whom? CLA asks) – to carry out an inquiry to investigate the availability and prevalence of vaping devices... which will also look at current measures being undertaken in schools to discourage vapers, which are steadily growing in popularity...among younger Queenslanders"*. <https://tinyurl.com/mv2cp98s>

Mark Jarratt writes: I hold no brief for "vapers" but the latest Queensland crackdown is ludicrous and absurd, aimed as usual at validating preconceived "zero risk" bias, unachievable in reality. I assume the juice analysis will be another mission for the highly professional, impartial Qld state forensics laboratory, haha.

Nicotine vape juice is already proclaimed as a prohibited import, with astronomical fines.

Note the usual prohibitionist "think of the children" moral panic, in no way justifying expanding hyper-regulation of adult choice, consulting with the totally compromised self-serving Cancer Council, a begging activist lobby group with proven contempt for any contrary evidence, baseless claims vaping leads to smoking when the opposite is true (smokers often vape to avoid extortionate tobacco taxes, and reduce or cease smoking), and conflating vaping with "smoking rates", when vaping isn't smoking.

How come two Qld Ministers get to "direct" what a Qld Parliament committee will do? (Jarratt is a former director of CLA, and writes from Tasmania. He is one of few remaining smokers).

Some CLA activities for March 2023

Victoria:

Eve Ash (photo), CLA member and producer-writer-director of *Shadow of Doubt* advises that the film is now accompanied by a format for making it available for schools and universities to use in Legal Studies, English and Screen/Media Studies.

Her Seven Dimensions business has created a Video Guide to turn the hard-hitting documentary into an easily-used teaching tool.

Shadow of Doubt tells the first half of the story of Sue Neill-Fraser, the Tasmanian woman convicted of killing her husband by a jury faced with a theory concocted by Tasmanian police and a combination of slanted, pejorative and just-plan-false "facts" presented by the Crown to a court in the worst case of wrongful conviction CLA is aware of that has not been corrected.

Sue is now out on parole, having served 13 years of a 23-year sentence, reduced on appeal from an original 26-years imposed by a judge who did not know the Tasmanian sentencing rules. He is now the state's chief judge.

She has to wear a bracelet on her leg for 10 years; he successfully ran a public relations campaign to have his term extended because he and his current judge mates were a "talented" bunch.



CLA was happy to join the Victorian Aboriginal Legal Service and the Human Rights Law Centre in endorsing and supporting a public call on the Victorian government to commit to wholesale reforms to the state's Bail Act following the death in jail of Victoria Nelson, a First Nations woman.

In a knee-jerk reaction some years ago, Victoria got it wrong on bail after one particularly horrendous incident in the middle of the CBD involving a non-Aboriginal person. First Nations people have been suffering the consequences of the government error ever since.

WA:

Letters in response to 'Cops Leaving the Force in Droves and CLA's reaction to the state searching for new recruits in the UK were sent to WA's Police Minister/Police Commissioner/Police Union acting President/senior Editor of the 'West Australian' (all white males, by the way).

It pointed out that votes of WA police to retain their out-of-touch aggressive, racist, homophobic police culture is the real reason Gens Y & Z (born 1980 – 2012) are leaving in record numbers.

The letter also stated that importing police from overseas will mean WA recruiting more white male police fleeing from the equally infamous, corrupt Met Force in the UK. And with nowhere to house them.

CLA emphasised now is the time for 21st Century enlightened 50/50 female, multicultural police. A well-researched model on how to achieve this was enclosed with the letters.

CLA's WA leader Margaret Howkins followed up a week later with emailed hard evidence of London's Metropolitan Police Force being institutionally broken and rotten. I advised charm is more effective than weapons.

NT: From the past:

Plus ça change, plus c'est la meme chose

(The more things change, the more they stay the same)

This month, we run this a 45-year-old item, as relevant today as then. It is a 1977 comment by the then-secretary of the NT civil liberties body, Robert Wesley Smith, on Police-Aboriginal people issues:

Police/Community Relations. 1977

Calls for an Inquiry into the (NT) Police Force, or into Police/Public or Police/Aboriginal public relations, do have substantial justification and will continue to be made until the situation is perfect – and that's what we should be aiming for.

It is meretricious nonsense by the Cabinet Member for Law Ms Andrew to pretend that her tour of the poor facilities enjoyed by Police in rural areas enables her to say the claims by Bob Liddle are untrue. Why on earth would he report his claims to her when that is the kind of response he would get, a far too common type of response from those in authority.

Likewise, claims by Police spokespeople that the force is perfect are equally farcical. I do, however, commend their apparent freedom of speech, but suggest it would be better put to constructive criticism of the system.

All parties would be better off putting their energies into seeking the better facilities, staffing levels and, especially, training that are so desperately needed by the force. One wonders if these spokespeople and Ms Andrew are so forthright when confronting the Dept of NT or the LCP government in Canberra..

A crash program of building suitable 2-members police stations in all locations which need them would not only serve us all better, but give a much needed boost to rural areas, the building trade, and Aboriginal employment.

Another Inquiry is not so much needed, as action on previous ones, as usual in the NT. If our politicians and the leadership of the Police force cannot gain the improvements necessary, they should resign and give someone else a go. Perhaps Mr Whitrod*** (photo) should be asked to help.



I repeat the calls by the NT Council for Civil Liberties for legislators to implement the Law Reform Commission reports especially on Criminal Investigation procedures. As Mr Justice Kirby says in his letter to us of 24/1/77, such implementation is “a question for the Legislative Assembly of the NT, responsive to the wishes of the people of the Territory, to make the appropriate decisions”.

The NTCCL has considerable experience of complaints and much fruitless follow-up action, and some fruitful. With the current attitudes of the authorities and the civilian population, I doubt if matters will improve. Attitude improvement is needed from all sectors of the population, including Aborigines who may need to develop more effective authority structures for living with present day problems, especially those relating to alcohol and violence.

At the same time, it must be realised that poor housing, health, education and employment opportunities, plus a history of discrimination, are all part of the problem. It is a serious scandal that the present government has restricted housing programs in the NT since it took office. Also the level of social service staffing and facilities available to the people of the NT is a continuing disgrace.

The Police Force should, however, make an initiative to vastly improve its training, and especially to develop further the study of Aboriginal languages and culture. Having a majority of good cops is no cause for complacency. A level of racial intolerance within the Police Force, equal to that outside it, is simply not good enough. The aim must be for perfection.

– R N Wesley-Smith, Secretary NTCCL 1977, who is still today fighting for justice, having been one of the most instrumental advocates for the Gurindji people and for Timor Leste

*** Ray Whitrod, a giant of Australian policing, had resigned in 1976 as Qld Police Commissioner because of police and public corruption under then Premier, Joh Bjelke-Petersen. Whitrod was in 1977 lecturing in Criminology at ANU. <https://tinyurl.com/3rz3p5st>

‘Too much haste, bad law’: CEO

‘Too much haste will produce bad law, ask the community for answers: Civil Liberties Australia’ is the title of an op-ed piece written at the request of the NT’s only independent daily publication.

The request followed the senseless and tragic stabbing death of a young man at a bottle shop in Darwin last month.

CLA’s CEO Bill Rowlings pointed out that doubling or trebling the penalties for crime will not prevent such deaths in future, as criminals by definition ignore the law, no matter what the penalty is.

It will take the community, including young people, coming together to work out solutions to reduce the crime rate in the NT. <https://ntindependent.com.au/too-much-haste-will-produce-bad-law-ask-the-community-for-answers-civil-liberties-australia/>

INTERNATIONAL

48 years in jail, 45 awaiting a sudden hanging

The Tokyo High Court has said 87-year-old Iwao Hakamada, who spent more than 45 years on death row after a controversial conviction for murder, should be granted a retrial. Hakamada was given “temporary release” in March 2014 after new DNA evidence cast serious doubt on the reliability of his conviction and the court that initially convicted him called for a retrial.

His older sister Hideko, who has campaigned for years for her brother, said she was relieved at Monday’s developments. “I was waiting for this day for years and it has come,” the 90-year-old said, according to the *AFP* news agency. “Finally a weight has been lifted from my shoulders.”

Hakamada was convicted of robbing a family of four and setting a house on fire. Police interrogated him for 20 days without a lawyer until, eventually, he confessed.

However, he later retracted his statement, saying he had been beaten, threatened, and forced to confess by the police. <https://tinyurl.com/bdzk2kb2>

Executions are carried out in secrecy in Japan and prisoners are not informed of their fate until the morning they are hanged. Hakamada was saved by ongoing appeal processes.

Nevertheless he served 48 years in jail, much of it in solitary confinement and for 45 years with the threat of a possible sudden call to his execution in a few hours time.

London’s Met Police service ‘broken and rotten’

London’s Metropolitan Police is broken and rotten.

It is suffering from collapsing public trust, and is guilty of institutional racism, misogyny and homophobia, an official report has said.

The report, by Baroness Louise Casey, was commissioned by the Met after one of its officers abducted a woman from a London street in March 2021, before raping and murdering her.

Casey is now Chair of the Institute of Global Homelessness. She left the UK civil service in 2017 to help establish the institute, aiming to deliver an international solution to homelessness across the world.

In November 2017, she gave the 2017 Don Dunstan Oration in Adelaide.

The 363-page Met report details disturbing stories of sexual assaults, usually covered up or downplayed, with 12% of women in the service saying they had been harassed or attacked at work, and one-third experiencing sexism.

Casey said that the lifeblood of British policing was haemorrhaging and her report warned that “public consent is broken” with just 50% of the public expressing confidence in them.

The Met can “no longer presume that it has the permission of the people of London to police them”, which was a founding principle of Sir Robert Peel, who instituted the Metropolitan Police Force in 1829 before becoming Prime Minister in 1834-35 and again from 1841-46.

Casey also reported that the Met should accept that it is institutionally corrupt. <https://tinyurl.com/45syeyu35>

Gay people risk life in jail

People in Uganda who identify as gay risk life in prison after parliament passed a new bill to crack down on homosexual activities, the *BBC* reported last month.

Friends, family and members of the community will be obliged by law to report individuals in same-sex relationships to the authorities.

"There is a lot of blackmail. People are receiving calls that 'if you don't give me money, I will report that you are gay'," a rights activist said.

Homosexual acts are already illegal in Uganda but the new law introduces many new criminal offences.

The bill is one of the toughest pieces of anti-gay legislation in Africa, where same-sex relations are banned in about 30 countries, due to widespread conservative religious and social values. <https://tinyurl.com/2u2xdhtt>

Crowd-control weapons have 'serious, sometimes fatal consequences'

The Lancet medical journal has highlighted two new reports covering what they say is growing use of crowd-control weapons by police forces around the world.

My Eye Exploded, by Amnesty International and the Omega Research Foundation, focuses on kinetic impact projectiles (KIPs), commonly called rubber bullets.

Lethal in Disguise 2, is a follow-up to a 2016 report by the International Network of Civil Liberties Organizations and Physicians for Human Rights.

It examines a broader range of weaponry, including chemical irritants (often described as tear gas or pepper spray); disorientation devices, which also go by the names stun grenades and flash bangs; acoustic weapons; water cannons; and batons.

It concludes that the use of such weapons by government security services on protestors results in "severe consequences to the physical health of both those targeted and bystanders not targeted, on the mental health of everyone involved, and on the enjoyment and safe exercise of fundamental civil and political rights".

Together, the reports paint a disturbing picture of how the use of dangerous and frequently indiscriminate weapons against civilians has serious and sometimes fatal consequences, the *Lancet* article's author, Talha Burki, says. <https://tinyurl.com/bdew4j3x>

Name and shame gets ongoing OK

The Society of Editors in the UK has hailed a decision by the College of Policing to reject calls to allow forces to decide whether or not to name suspects once charged, as "a huge victory for press freedom".

The College has rejected proposals in a draft revision of its Media Relations guidance after widespread criticism that forces across England and Wales could soon be given the option of whether or not to name suspects once they were charged.

The College confirmed that, after meeting the Information Commissioner's Office, police had decided to "maintain the current position" that those charged with an offence "have no reasonable expectation of privacy" and should be named. There will be exceptions for a legitimate policing purpose or if a court imposes reporting restrictions.

In a statement, the College of Policing's Chief Executive Andy Marsh said that "an open, transparent, and professional working relationship" between the police service and the media remained essential to public trust. "Our guidance to police forces is clear that at the point an individual is charged with a crime, there should be no reasonable expectation of privacy. We believe this is strongly in the public interest and compatible with data protection law." <https://tinyurl.com/2u78s7sr>

One for the oldies! Profumo Affair hits the news

The Criminal Cases Review Commission in the UK is investigating whether the conviction and nine-month sentence for perjury against Christine Keeler was justified some 60 years ago.



Keeler, with Mandy Rice-Davies, was at the core of a huge British scandal involving then Secretary of State for War, the married John Profumo, and a Soviet naval attaché, Eugene Ivanov. Keeler was at one stage having sex with both of them (and others at the same time), causing allegations of espionage and leaked secrets to roil the British Parliament for years.

Only Keeler – who died in 2017 aged 75 – did time, for perjury in a domestic violence case. Now her son, Seymour Platt, has asked the CCRC for a

review. <https://tinyurl.com/yeywez7u>

While Keeler was the more central figure, Mandy Rice-Davies is remembered for her famous riposte in court when told that Lord Astor had denied having an affair with her: "Well he would, wouldn't he?" she said. The phrase continues in common use today, especially for politicians who deny the bleedingly obvious fact of their latest transgression.

Photo shows Keeler going to court in September 1963

Moles, Sangha take Aussie initiative to the world

Adelaide-based world gurus on wrongful conviction, Dr Bibi Sangha and Dr Bob Moles, have provided a submission to the UK Law Commission on Criminal Appeals to consider adopting the right to a second or further appeal in the UK – as has been done (or is being done) in most Australian jurisdictions.

Appeal rights – the "one appeal only" variety – were initially introduced by the UK in 1907, so it is refreshing to see Australia taking the lead on the development of the ancient reform, Moles said.

"The current model in Australia is of course far from perfect, and we have made suggestions to encourage its further development. Authorities are also working on changing the law in Canada."

The UK submission is available here: <http://netk.net.au/UK/UK50.pdf>

Collaborative system benefit victims, witnesses

A world-leading \$60 million Scottish Government initiative will digitally transform evidence management: witnesses will not have to attend court as often and police officers' time will be freed up.

Dundee recently began piloting the Digital Evidence Sharing Capability service (DESC), that will for the first time allow prosecutors, court staff, police officers and defence lawyers to access a unified system to handle evidence digitally. DESC handles evidence including CCTV footage, photographs, and data and other materials from computers and mobile devices. This will be expanded to include documents and recordings of police interviews.

Members of the public and businesses will be able to submit digital evidence – such as material recorded on mobile phones – more easily by email when sent a link by a police officer.

Benefits of the system include reducing the impact on victims and witnesses by supporting quicker resolution of cases as well as reducing police officer workloads. It will also significantly reduce the need to transport physical evidence, supporting

wider carbon reduction efforts. A nationwide roll out is planned for later this year.

Only approved staff from justice organisations will be able to access DESC software. Access is fully audited and monitored. <https://tinyurl.com/mr2rwb4w>

International briefs

Just 31 now held in Gbay

The USA has released a Saudi Arabian engineer who was imprisoned for more than 20 years at Guantanamo Bay military prison despite never being charged with suspected crimes following the 11 September 2001 ('9/11') attacks on the US. Ghassan Al Sharbi, 48, was returned to Saudi Arabia after a review board determined in February 2022 that his detention "was no longer necessary to protect against a continuing significant threat to the national security of the United States". Gbay once held 600 prisoners: it now has 31. <https://tinyurl.com/5fy856un>

Pooh banned to save Xi's blushes?

Hong Kong movie theatres have cancelled screening of a horror film based on Winnie the Pooh, apparently because of comparisons made between the children's character and Chinese leader Xi Jinping. *Winnie the Pooh: Blood and Honey*, a British slasher film that features the titular character terrorising a group of young uni women, was scheduled to be released last month, but Moviematic said that its screening had been cancelled due to "technical reasons". Winnie the Pooh, created in 1926 by British children's book author AA Milne, has been censored in mainland China since 2013, when internet users began using the fictional bear's likeness to poke fun at Chinese Premier Xi. <https://tinyurl.com/36dafdpf>

Scotland the brave towards children

Not all states and countries adopt a purely punitive approach to how they treat children. Here is what Scotland has under way: it includes a new law to treat 16 and 18 years old differently, particularly in relation to prisons, and in court and custody arrangements. Secure accommodation for kids also addressed. <https://www.parliament.scot/bills-and-laws/bills/children-care-and-justice-scotland-bill/overview>

Taliban launch polio vax drive

The Taliban have launched Afghanistan's annual polio inoculation campaign to reach more than nine million children under five, the health ministry said. Afghanistan and neighbouring Pakistan are the last countries with endemic polio, an incurable and highly infectious disease that can cause crippling paralysis – and even death – in young children. Polio has been virtually eliminated globally through a decades-long drive. But insecurity, inaccessible terrain, mass displacement and suspicion of outside interference have hampered mass vaccination in Afghanistan and some areas of Pakistan. <https://tinyurl.com/dkxuvnaa>

Forced marriages can cost 7 years in jail

A new law raising the legal age of marriage to 18 has been hailed as a "huge victory for survivors": 16 and 17-year-olds can no longer wed or enter a civil partnership in England or Wales – even with parental consent – in an effort to better protect children from forced marriage. Under the Marriage and Civil Partnership (Minimum Age) Act, it is now a crime to exploit vulnerable children by arranging for them to marry under any circumstances, whether or not force was used. The law covers non-legally binding "traditional" ceremonies which would still be viewed as marriages by the parties and their families, the UK government said. Those found guilty of arranging child marriages face sentences of up to seven years in jail. <https://tinyurl.com/pcns9xxb>

DATES

2023:

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/>

21-23 June, Brisbane: 8th National Access to Justice & Pro Bono Conference. Details: <https://tinyurl.com/y5zjksh2>

1 July, PH Canberra: CLOSING DATE for submission on a Human Rights Act and 'framework' for Australia, to the PJCHR (see page 1)

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

20-24 Nov, Sydney: 23rd International Association of Forensic Sciences and 26th Symposium of the ANZ Forensic Science Society: <https://iafs2023.com.au/>

2024:

By 31 March, PH Canberra: Report on, Australia's Human Rights 'framework', including the possibility of a HR Act for Australia, to be tabled by the PJCHR.

Election cycle for Australia:

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

2026: **South Australia:** 21 March 2026

Victoria: 28 November 2026

2027: **NSW:** 27 March 2027

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 28 March 2023.

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