

## Re The Voice:

*One fifth of the people are  
against everything all the time*

– former US Attorney-General Robert  
Kennedy, photo (1925 – assassinated  
5-6 June 1968)



## Where is a Human Rights Act for Australia up to?

With eight weeks until submissions close on 1 July, it is expected that the Parliamentary Joint Committee on Human Rights will conduct a first hearing on 12 May 2023 to set the scene for their full inquiry.

Attorney-General Mark Dreyfus has given the PJCHR the responsibility of advising the parliament and government on the best model for ensuring human rights protection nationally for Australia.

The committee's preliminary hearing is likely to have four witnesses:

- Attorney-General's Department (government perspective on the Australian Human Rights Framework adopted by the then-Labor government in 2010);
- Australian Human Rights Commission (brief on the HRA model and views on a future framework);
- ACT Government and ACT Human Rights Commission (to profile the ACT HRA).

Public hearings will take place after submissions close (1 July 2023), with a report by 31 March 2024.

## Get your submission in!

If you support a Human Rights Act for Australia, please make a submission...even if it is only a one-page letter that signifies you back the idea.

The more people and organisations who support a HRA to the committee, the better.

People concerned with privacy, data protection, religious freedom of choice and choice to be free of religion may well decide to support a benchmark document that sets out the people's rights, and responsibilities in relation to each other and to the nation.

In company with a National Anti-Corruption Commission, it will create a foundational base for how Australian society operates at both personal and public levels. (SEE CLA website for more info).

## Closing date is 1 July 2023

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

- whether the parliament should enact a federal Human Rights Act, and if so, what elements it should include;
- 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;
  - 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 ACT, Victoria and Queensland, including relevant case law, and relevant work done in other states and territories.

The ACT is part-way through a major reform to its near 20-year-old HRA, in a process described as introducing 'No Rights Without Remedy' to give an even fairer go to people.

A public petition process of key community organisations, strongly supported by Civil Liberties Australia (CLA), convinced all three major ACT parties – the power-sharing Labor and Greens government, and the Liberal opposition – to change the 2004 ACT HRA so that anyone with a legitimate complaint that their rights had been breached could get a simple, quick and cheap answer to their issue.

Under the proposed new ACT law, people wronged will be able to seek a conciliated solution through the ACT Human Rights Commission or, if that process fails, a legally-decided outcome ruled by the ACT Civil & Administrative Tribunal, ACAT.

The conciliation element of the new provisions are expected to become law during 2023, with the tribunal aspects to follow on 1 July 2024, the 20th anniversary of the first HRA in Australia.

No Rights Without Remedy is expected to be a cornerstone of any new federal HRA that is proposed by the PJCHR. It is also likely to be introduced as a concept to the other two existing HR Acts in Australia, in Victoria since 2006 and in Queensland since 2020.

**REMINDER:** you can find a copy of the Australian Human Rights Commission's seminal document, which recommends a HRA for Australia and one including No Rights Without Remedy, at: <https://humanrights.gov.au/free-and-equal>



## Dignifying and empowering Australians

As a Liberal I believe in the dignity of every Australian – in what can be achieved when they are affirmed, valued, and empowered. I believe that better policy is made when the very people affected by it are consulted on it. – resignation from the shadow front bench, statement 11/4/2023 by Julian Leeser (photo), then Shadow Attorney-General

## Audit and Accounts committee champions human rights in pandemics

An unlikely committee of parliament has championed human rights during pandemics and other crises.

The Joint Committee of Public Accounts and Audit has told the Department of Prime Minister and Cabinet that it should incorporate human rights into its crisis management planning.

It should also, the committee says in a unanimous recommendation, "outline measures to ensure that any crisis response limiting or restricting human rights is necessary, reasonable and proportionate". So should any other government-allied entity, the committee says.

Chaired by Julian Hill (Labor, Bruce Vic), the JCPAA also criticised the former Coalition government for not consulting with the Public Service before making public statements during the pandemic, and was highly critical of the government's inability to bring Australian home from overseas when they wanted to come.

"The committee also considers that more could and should have been done by the Commonwealth to provide adequate quarantine facilities. This was one of the key constraints upon DFAT's ability to bring stranded Australians home." <https://tinyurl.com/3yira4bx>

## Security Monitor pillories govt for hiding info

Grant Donaldson, who is Australia's Independent National Security Legislation Monitor, recently described the Home Affairs Department's hiding a sensitive terrorist risk report from the courts as "shocking" and "of very great concern".

INSLM Grant Donaldson delivered a scathing report into laws that allow terrorists to be detained almost indefinitely after serving their sentences. He called for the unnecessary rules to be scrapped and described the department's actions as inexcusable.

The result could be that convicted "terrorists" who have been convicted and served their time may soon stop rotting in Australian jails without any practical hope of release 20 years after they went to jail.

INSLM Donaldson wants the federal government to abandon the power to detain terrorists on continuing detention orders... merely on an inexpert "assessment" of someone's likelihood of re-offending.

The tool mostly responsible for the assessment of the likelihood of future offending, known as VERA-2R, should be judicially reviewed urgently, lawyers say. Federal and state governments were told years ago by independent experts that there were problems with it, but have failed to follow up.

## Pseudo-psychology decides 'justice' in Australia

The case that has caused the furore, and brought the Australian government's abandonment of the rule of law to light was back before the courts recently.

Abdul Nacer Benbrika has been locked up for 18 years, despite getting a 15-year sentence. There was intense debate at trial over whether police and spooks had used an agent provocateur to "stitch him up".

The current system means a "terrorist" can be kept in prison after their sentence ends due to "risk of reoffending". They go before a judge, but the judge is operating more as a futurologist psychologist than as the exerciser of judicial powers.

Even if the continuing control orders are abandoned, the government will still be able to operate under an extended supervision order, which allows police to heavily monitor released terrorists 24 hours a day.

INSLM Donaldson wants rehabilitation and reintegrating offenders back into the community to be considered when orders are being made, and is urging relying more on expert opinions of people medically qualified. <https://tinyurl.com/em9y3hnu>

## Direct quotes from Donaldson's report:

1. *Australia leads the world in making laws of a kind discussed in this report.*
2. *The law that this report discusses permits people in our society to be imprisoned, not as a punishment for a crime committed but because it is decided that their living freely in our society unacceptably risks them committing a crime in the future.*
3. *Only one Australian parliament, and a mere handful of Australian parliamentarians, have resisted these laws, and these laws have made us a coarser and harsher society. I doubt that anyone knows whether they have made us safer.*

Donaldson then turns to quoting Alice in Wonderland, and to recent science fiction, to explain how Australian anti-terrorism law works. He wants the law amended to stop governments demanding, and getting, continuing detention orders ruled by the courts in what is a "legal" process of extreme dubiousness.

Instead, Donaldson wants a new Extended Supervision Order authority be set up as a statutory body to ensure fairness across all Australian jurisdictions, and also to meet their obligation to provide adequately for rehabilitation and reintegration of the defendant into the community.

## 'Vague' law to set new example for 'secret' trials

Australia's "intrusive" foreign influence laws are behind what will likely be another "secret" trial to further the securitisation plague infecting Australia.

Barrister Bernard Collaery says his client, Alexander Csergo, did no more than "cut and paste" and then contextualise publicly available information in response to requests for analysis by two people the government says were agents of China.

They paid Csergo for his work...just like the Australian government pays dozens upon dozens of high-priced "expert" business advisory firms and consultants every year for similar cut, copy and paste analyses posing as special insights and expertise, CLA observes.

Csergo, 55, had been living and working in Shanghai, but returned to Australia recently.

"It is alleged that on a number of occasions the man met with two individuals, known to him as 'Ken' and 'Evelyn', who offered the man money to obtain information about Australian defence, economic and national security arrangements, plus matters relating to other countries," the AFP said. The police claim 'Ken' and 'Evelyn' were collecting information for a foreign intelligence service.

The first thing to establish is whether the AFP were running 'Evelyn' and 'Ken' as agent provocateurs, because the nation's police force is not beyond trying a bit of entrapment to achieve its ends, which can include justice but often involves publicity for their own fear-mongering leanings as well.

Footnote: Collaery and his former client, Witness K, were left dangling from a secret court metaphorical gibbet for years over their alleged role in exposing a 2004 mission to bug the Timor-Leste government offices. The Attorney-General, Mark Dreyfus, dropped the prosecution against Collaery last year. Witness K had already pleaded guilty to end the torture-by-court appearances, and had received a slap on the wrist.

Collaery wants Dreyfus to not consent to the prosecution of Csergo, arguing Csergo's climate scanning for profit has been criminalised by what he calls a "vague" law. <https://tinyurl.com/3cb78bxt>

## Securitisation drives the nation's culture

The securitisation of Australia began in earnest after the 11 September 2001 – "9/11" as Americans say – aircraft attacks on New York, the Pentagon and a field in Pennsylvania.

About 3000 people died in the attacks, including 11 Australians.

Rapid "anti-terrorist" emergency laws passed the Australian Parliament in the next five years, a practice continuing to this day. By the end of 2007, there were 52 such special laws: today, the number is well above 100, with mending tweaks and fixes possibly increasing even that figure by 50-100%.

In 2002, as security services, federal police and military intelligence looked around for areas to "pre-secure" by heavy-handed new legislation, all research scientists, academics and specialist foreign affairs experts, among other people, got caught up in changes under the Defence Trade Controls Act 2012.

That act blinkered and muted research and academia in Australia. Swapping of "dual-use" information with overseas researchers working on the same problem was forbidden, unless the Australian end got written approval from the Minister for Defence.

Suddenly, Defence in Australia had (still has) a veto power to run science in Australia. Break the Defence-written and enforced rules, and you could spend 10 years in jail and pay a fine currently set at about \$550,000. The jail time and fines not only intimidated researchers, but curbed any fightback from universities.

As well as that Act, the government passed other foreign influence and interference laws.

Over 20 years, the police, security and intelligence services have taken advantage of a climate of "terrorist" fear to rewrite a slather of old and new laws to their liking. Executive government, individual MPs at federal and state level, parliamentary committees and the like have been unable to or ineffective in insisting that the personal rights and liberties of 26 million people should out-rank mass fear-mongering and repressive laws targeting a few extremists.

That's the climate in which the AFP have charged Csergo (see above). There has been no major "get", to provide publicity for the massive police-state power in the hands of Australian security and police forces.

Alexander Csergo's nickname could turn out to be 'Patsy'.

## Cherrypick the info, plumpick miscreants

Bernard Collaery says, rightly, that the law allows the government to cherrypick between information it approves of and information it doesn't.

Csergo's arrest will "once again draw attention to Australia's drift into authoritarian governance", Collaery says. "Australians are unaware of the vast inroads made into our civil liberties by the most authoritarian western democracy currently in the world: Australia.

"Democratic Australians are just asleep at the wheel," Tory Shepherd quoted him as saying in the *Guardian*.

Collaery took aim at the AFP for including a reference to "espionage" when it announced Csergo's arrest. "The media release issued by the AFP referring to espionage is scandalous and prejudicial because he is not charged with espionage," he said. "He's at the grey end of these intrusive foreign influence laws."

## Defence wants its own committee

The government should "enhance Australia's national security while providing increased parliamentary scrutiny of Defence", according to a report of a parliamentary committee...and be much more forthcoming in explaining why and how Australia goes to war, stays at war, and pays for war and warlike operations.

The Defence Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, chaired by Julian Hill (photo, Labor, Bruce Vic), has proposed a new Joint Statutory Defence Committee, modelled on the Parliamentary Joint Committee for Intelligence and Security (PJCS), able to receive classified information to improve parliamentary scrutiny of Defence strategy, policy, capability development, acquisition and sustainment, contingency planning, and major operations.

The problem with the proposal, CLA says, is that the Defence committee would operate just like the PJCS has, as an unaccountable, secretive, internally lobbying body captured by special interests to comprise another barrier to transparency and accountability. It would be stacked with ex-military types instead of having at least 50% of its membership made up of

human rights advocates first, with trained military and security people comprising a minority.

Hill's committee also recommended:

- changes to the Cabinet Handbook and new Standing Resolutions of both Houses of Parliament, over how decisions and declarations to commit forces are made and publicly reported;
- requiring a written statement tabled in Parliament setting out the objectives of major military operations, the orders made and legal basis;
- requiring Parliament's recall as soon as possible after a declaration, to facilitate a debate in Parliament at the earliest opportunity following a ministerial statement, based on the 2010 Gillard model, including a statement of compliance with international law and advice as to the legality of an operation; and
- introducing mandatory requirements on the Executive government to account publicly for decisions, including regular statements and updates from the Prime Minister and Minister for Defence.

Hear! Hear! CLA says, much of the above was suggested in CLA's submissions to numerous parliamentary inquiries in the far and recent past.

## ASIO climbs to top of spook pile

ASIO will issue top security clearances due to "the unprecedented threat from espionage and foreign interference", according to the federal government in a new bill.

The top domestic spy agency will issue and maintain – and have the power to continuously monitor and revoke – the highest security clearance level.

Previously, security was managed across the Australian Government Security Vetting Agency, the Australian federal police and the Office of National Intelligence (ONI) and ASIO.

ASIO will have the power to decide security clearances "for Asio and non-Asio personnel alike". The agency will also be able to constantly engage in security vetting and assessment after issuing a clearance.

Look out for a big boost in ASIO's staff numbers and funding in the May Budget, CLA says. The move is a major bureaucratic win for ASIO head spook Mike Burgess, who is on the way to becoming the J. Edward Hoover of Australia. <https://tinyurl.com/23yzhad8> For Hoover: see <https://tinyurl.com/2utytd67>

## Squeeze sees more Indigenous people jailed?

Aboriginal and Torres Strait Islander Legal Services throughout Australia are calling on the federal government for a \$250m emergency support package to prevent imminent service freezes and unjust incarceration.

NATSILS, the national peak body for the Aboriginal and Torres Strait Islander Legal Services, warned last month front line services in regional Australia face freezes by mid-May, and that a "dramatic increase" in problems can only be prevented or reversed with additional core funding.

Demand for ATSI Legal Services has increased by up to 100% since 2018 while core funding from the federal government has declined in real terms in that period.

NATSILS warned that service freezes will have "dire consequences" for Aboriginal and Torres Strait Islander Australians who need Aboriginal legal services to have any chance of equal access to justice.

"Service freezes risk disastrous outcomes including increased family violence and child removal, unjust incarceration and deaths in custody." <https://tinyurl.com/392ypvb8>





## Brereton to head NACC

The Albanese government has appointed Paul Brereton as commissioner for the National Anti-Corruption Commission (NACC), due to start operating within months.

Brereton led the inquiry into allegations of war crimes by Australian soldiers in Afghanistan. He has been recently on the NSW Court of Appeal.

Deputy commissioners will be Nicole Rose and Ben Gauntlett, and senior barrister Gail Furness becomes NACC inspector. Rose headed financial watchdog AUSTRAC, and Dr Gauntlett was the national disability discrimination commissioner. Administrative head of NACC will be chief executive Phillip Reed, recently the CEO of NSW's anti-corruption commission.

The Commission for Law Enforcement Integrity is being subsumed into NACC: its head, Jaala Hinchcliffe, will be an interim deputy commissioner until a third appointment is made. <https://tinyurl.com/ypthc4z8>

## World drug boss call for decriminalisation

Former NZ Prime Minister Helen Clark (photo) is calling for drug use to be decriminalised and for drug users to no longer be incarcerated.

As chair of the Global Commission on Drug Policy, she said countries should instead regulate illicit substances like they approach alcohol and tobacco, following the lead of the ACT, where from October people caught possessing small amount of drugs such as MDMA, heroin and methamphetamine will no longer be imprisoned.

Instead, they will pay \$100 fines or be referred to drug diversion programs.

"The evidences is very solid, I believe (in) going down the path that ACT has gone down, which is to decriminalise possession for personal use in general," Ms Clark said in Melbourne last month.

The number of drug users around the world grew to 284 million people in 2020, according to the UN Office of Drugs and Crime. Ms Clark said people would use drugs regardless of legal restrictions so lawmakers should focus on ensuring they use them safely.

"You're going to be able to protect people's health and wellbeing, you're going to lower the prison population very substantially and wouldn't that release resources for harm reduction?" <https://tinyurl.com/bdd65937>

## People want crime solutions, not 'tougher' laws

People of the NT want smarter justice solutions to break the criminal cycle and improve community safety, according to a new report by the NT Aboriginal Justice Agreement group... because the NT Government's 'tough-on-crime' policies have failed.

The new group's report, issued in March, revealed that 70% of Territorians they spoke with support smarter policies – rather than more and longer prison sentences and the use of more police – to deal directly with the underlying causes of crime, according to a report in the *NT Independent*.

"The NT is the only jurisdiction in this country where crime is rising, confirming that so-called 'tough-on-crime' approaches to justice have done nothing to break the cycle of offending or reduce the prevalence of crime in our communities," NTAJA governance committee co-chair Olga Havnen said.

The report entitled '*Smarter Justice: A better way of Doing Justice in the NT*', is part of NTAJA's new campaign for safer communities, which urges the NT Government to rethink what works to reduce crime, stop repeat offending, and make communities safer. – *NT Independent*, 27 March 2023

## 'Hidden mistakes' of judges and juries on show

An important exhibition is on show from Friday 5 May until Sunday 10 September 2023 at the Fremantle Prison Gallery in Perth,

"In all states and territories in Australia we have experienced wrongful convictions to an extent which is unprecedented in any other common-law country. The exhibition will help us to appreciate the true significance of this unfolding disaster," says wrongful convictions worldwide guru, Dr Bob Moles.

Moles and his wife, lawyer and co-author Bibi Sangha, along with exhibition artist Sky Parra and miscarriage of justice victim John Button will hold a discussion on the plague of wrongful convictions at a function on Saturday 6 May from 6-8pm.

Button was imprisoned at Fremantle Prison after being wrongfully convicted of the manslaughter of his girlfriend after she had actually been murdered on his 19th birthday on 9 February 1963 by serial killer Eric Edgar Cooke. <https://fremantleprison.com.au/whats-on/wrongful-conviction-panel-discussion/>

## On the path to further repression

Queensland is heading further down the path towards being the most repressive state in Australia.

On absolutely no scientific basis, the state is doubling the time child sex offenders will be monitored, from 5 years to 10 years; doubling the time repeat child sex offenders will be monitored from 10 years to 20 years, and making it easier for police to plant bugging devices on suspicion. <https://tinyurl.com/3w4pir32>

The Qld Labor government, seeking to portray itself as "tough on crime", is today blaming the Liberal state government under Campbell Newman for being "soft on crime".

Labor has been in power for three terms: Newman was tossed out (losing his own seat) – for running a government that was too right wing and repressive, introducing unconscionable laws against individuals – more than eight years ago.

The 2023 Labor government is exhibiting the excesses and stupidity of the Newman government, passing redneck laws unlikely to lower levels of offending against children.

Surely that's what any government should focus on, the problems of today and the future rather than errors of a government long gone, CLA says.

## Court hands police 'get out of jail' card

Queensland Police face the nightmare of having some 300 police officers reinstated or "un-disciplined" after the Court of Appeal ruled the way they were dealt with was invalid.

Qld's Police Commissioner Katarina Carroll was left lamenting that she does not have the power to issue a "no confidence" determination against any officer. It's a power she has sought, but the government has denied her and former commissioners.

As the fiascos in police forces throughout Australia mount, there are increasing calls to stop police investigating police, and to instead have a civilian-led body handle complaints.

The Qld CCC, like the one in WA, virtually ignores police misbehaviour and refers complaints back to the local police force, despite both of them having "crime" in their name and a specific brief in legislation that they can handle police complaints.

Neither CCC chooses to, because police comprise their investigation arms, CLA believes. There's an argument that the



closeness between CCCs and police is itself a corruption of how the integrity system is meant to work.

In Qld, as in other states, domestic violence allegations against officers, or where officers have been reluctant to chase down complaints by female partners, are among the internal disciplinary matters under a cloud. <https://tinyurl.com/bdcsksw5>

### Clarification closer as Bromley case hearing due: HC wimps it

The case of Derek Bromley, to be heard on appeal in mid-May 2023 by the High Court of Australia, is likely to clarify aspects of new laws that allow for overturning wrongful convictions through second and subsequent appeals in major criminal convictions.

Very similar versions of the law apply in SA, Tasmania, Victoria and soon in the ACT.

Bromley, an Aboriginal man, has served 40 years in SA jails because he refuses to admit he is guilty. Under SA law, he can't be paroled unless he does, and also exhibits remorse.

Bromley should never have been jailed in the first place.

He will get a decision from the HCA in the next few months. But the decision will be on whether the evidence of a person with a known medical condition of schizophrenia can be relied on by itself, or whether it needs corroboration by another evidence-giver because of the nature of the mental issues involved.

The question to the HCA in Bromley's case is framed solely in that way because the High Court has wimped it.

In an earlier hearing, it refused to include among issues to be decided this month the strong and long claim that the chief forensic pathologist of SA, Colin Manock, was for nearly 40 years unqualified to certify death, and was not sufficiently qualified as a forensic expert according to law to be able to give valid expert evidence in court. Opinions expressed by Manock were instrumental in sending Bromley to jail.

### High Court side-steps its duty, CLA says

A too-clever-by-half High Court has deliberately side-stepped ruling on one of the most fundamental issues in jurisprudence in Australia.

If it were to rule, as it must according to cases already decided by SA courts and tribunals, that Manock was not qualified, some 400 decided cases over the past half-century involving murder, rape, gross bodily harm and the like in SA would have to be reviewed.

Further, several cases of alleged baby bashing, where Manock exonerated alleged perpetrators, would need reviewing also (photo).



But the High Court will only consider the issue of schizophrenic evidence competence. Given the HC has self-ruled that it is to operate as a one-trick pony on the Bromley case, it would be astonishing if Bromley is not found to have suffered a miscarriage of justice.

The likelihood a new trial is non-existent after 40 years. How could anyone, in good conscience, put him through another trial?

But Bromley should receive the biggest compensation payout for wrongful conviction ever in Australia, possibly doubling the

\$7m paid by the ACT government to David Eastman for the miscarriage of justice when he served 19 years in jail in NSW and the ACT for allegedly murdering ACT Police Commissioner, Colin Winchester, in 1989.

### Australia needs a High Court fit for purpose, and properly sized for demand

It is long past time the High Court of Australia was subjected to public review.

CLA believes there should be an open and transparent inquiry into its performance over the past 25 years, with a view to establishing new guidelines for how it should operate over the next 25.

Throughout Australia, authoritarian bodies lacking transparency and with no public accountability are trashing the rule of law.

It is ironic that the leading exponent of the wrongdoing is probably the High Court of Australia. For example, it manages its workload according to how hard its judges want to work, not how many cases should be decided.

It gives no reasons for crucial decisions at the 'seeking leave to appeal' stage, taken by a few members of the court, not the entire court. There is always the possibility that the other members of the court might disagree with the panel decisions... if they were public.

It is probably the most anachronistic entity in Australia. At the most basic level, it has had 7 judges only for more than 75 years. In that time, the number of laws, the number of lawyers and the volume of criminal cases and litigation generally has exploded at least tenfold.

It is time for a public inquiry as to whether the High Court of Australia is fit for purpose.

### But the High Court is not the only legal problem in Oz...

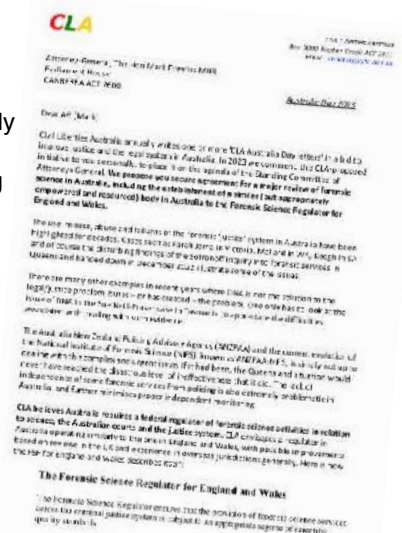
As a generality, the offices of Directors of Public Prosecutions throughout Australia have been shown in recent years to be incompetent and/or biased, out of date with the law, science and the legal interconnections and ramifications between them, and occupied by people prepared to ignore or bend the law... all with statutory immunity and without public accountability.

Police forces throughout the nation are in turmoil. The turbulence seems to increase yearly, at least. Police lie, fabricate and plant evidence (including forensics), some are biased, racist and sexist in a closed culture of misogyny and them-against-us, and police continually demand more people and equipment/technology resources for producing relatively few improvements to making society better.

Forensic science re the law and expert examination and evidence giving is unreliable, misleading and misunderstood. Internationally and in Australia, forensics experts are quoted as saying "forensic science remains in an intractable state of crisis".

CLA asked, in our Australia Day letter of 2023, that federal AG Mark Dreyfus create a national forensic science regulator (right).

Jails, senior and juvenile, are a blot on Australia's reputation, riot generators, suicide enablers and almost the exact opposite



of what they are meant to be, places of rehabilitation and reducing recidivism.

We could go on, and mention the dis-functionality of the court system Australia-wide from magistrates to Supreme Court judges (and judicial commissions are proliferating, with poor judicial conduct being the major cause), as well as of the High Court. We could mention aged judges beyond their best-by date by a decade or more and, retired then recycled well into their 70s by chief judge mates into acting judges who seem to believe dementia and Alzheimers happen to other people, not senior lawyerly types.

The above list is just for starters.

There's much more to critique that needs massive improvement in how we operate as a society. CLA plans to examine, over the coming year, these areas where justice is a lottery and "the law" is an unreliable witness of facts and an enabler of false opinions which trump the rule of law.

## Forensic retention/security, plus access many years later, need overhaul

Every state in the USA has enacted a post-conviction DNA statute because the traditional appeals process was often insufficient for proving a wrongful conviction.

Australia has no similar provisions,

Before most of these post-conviction DNA laws passed, it was not uncommon in the USA for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in their case.

Many of the testing laws are limited in scope and substance.

- Some laws present insurmountable hurdles to the individual seeking access, putting the burden on the wrongfully convicted person to effectively solve the crime and prove that the DNA evidence promises to implicate another individual.
- About 11% of the nation's more than 360 wrongful convictions proven by DNA involved a guilty plea, but certain laws still do not permit access to DNA when the defendant originally pled guilty.
- Many laws fail to include adequate safeguards for the preservation of DNA evidence.
- Several laws do not allow people to appeal denied petitions for testing.
- Several laws prevent people who are no longer incarcerated to seek testing. <https://tinyurl.com/27r9dvpv>

In Australia, several mandatory rules should be in place to permit re-examination of convictions involving important DNA evidence, such as:

- requiring officials to properly retain and catalogue biological evidence while someone is incarcerated or there are other possible consequences of a potential wrongful conviction (e.g. probation, parole, civil commitment or mandatory registration as a sex offender);
- publicly accounting for evidence in official custody, and disallowing procedural hurdles that stymie DNA testing petitions and other post-conviction relief;
- allowing convicted persons to appeal from orders denying DNA testing;
- requiring a full, fair and prompt response to DNA testing petitions, including the avoidance of debate around whether currently available DNA technology was available at the time of the trial;
- avoiding unfunded mandates by providing funding to independent DNA testing and/or review of relevant records; and

- forensic laboratories to have a best practice policy/ protocol on independent forensic testing, including at the post-conviction stage.

## Testing, practices, management questioned

Why are there no policies on independent testing in Australia when NATA accreditation requires it?

NATA is a technical accreditation agency, not an agency that tests matters like how scientifically a sample was collected by police, whether there was an unbroken provenance chain around its care and prevention from contamination, and so on. NATA does not claim expertise in legal forensics.

Why have the procedures, the practices and the qualifications of laboratory scientists (particularly police-run laboratories) to give evidence in different fields not been pulled into line by NATA or NIFS, the National Institute of Forensic Science?

Here's why: NIFS was initiated as the "connective tissue" to a system vulnerable to fragmentation" (July 1914, statement by the Hon Frank Vincent AO QC). Vincent was brought in to try to solve the forensic problems in Australia nearly a decade ago) <https://tinyurl.com/2zewu9me>

But the core problem is that NIFS is subservient to the ANZPAA Board, which "approve(s) the final strategic plan, and program budget, ensuring the work of NIFS complements the broader policing landscape."

Put simply, police completely control forensics in Australia in relation to legal-court matters.

Who is on the ANZPAA Board? These people only:

1. Commissioner Grant Stevens APM, SA Police (Chair)
2. Commissioner Jamie Chalker APM, NT Police, Fire and Emergency Services (Deputy Chair)
3. Deputy Commissioner Neil Gaughan APM, ACT Policing
4. Commissioner Reece Kershaw APM, Australian Federal Police
5. Commissioner Karen Webb APM, NSW Police Force
6. Commissioner Andrew Coster, NZ Police
7. Commissioner Katarina Carroll APM, Queensland Police Service
8. Commissioner Donna Adams APM, Tasmania Police
9. Chief Commissioner Shane Patton APM, Victoria Police
10. Commissioner Col Blanch APM, WA Police Force.

Storage of DNA in Australia is an issue, but stacking isn't: when it comes to stacking boards for control of forensics, police are the experts, as the ANZ Policing Advisory Agency (ANZPAA) board shows.

How can Australia not have proper policies around forensics after the Lindy Chamberlain 'Dingo Took My Baby' wrongful conviction case in the 1980s and the Morling Royal Commission in 1987, not to mention examples of collection and laboratory contamination, interference and/or incompetence in handling testing, and the giving of "expert" opinion in courts when the person claiming expertise actually had none.

The failures of the forensics-legal systems in Australia have cost states and territories million of dollars in compensation to victims who have spent years suffering miscarriages of justice. Adding up the mistakes, victims have probably spent centuries jailed wrongly.

Australia only needs to look to the recent Sofronoff report into lab forensics in Queensland to get an indication of how dramatic and widespread the problem is.

Australia only needs to look to the numerous DNA exonerations in the the USA to realise the number of problems that can arise, many of which have probably been replicated in Australia but stand uncorrected.



## Bad system produces wrongful convictions

As former High Court judge Michael Kirby asks when discussing the need for a national review commission (see below) for wrongful convictions:

*What is it about our country that always sees us limping behind [UK, NZ and Canada] where justice is at stake, whereas we can move with astonishing speed to diminish civil liberties, increase official powers and raise levels of incarceration, with no parliamentarian raising a murmur...*

Australia should seek to establish a single CCRC for Australia, CLA believes, and so does SA wrongful convictions guru Dr Bob Moles

In Australia, there is a complication not so far encountered in setting up CCRCs overseas in the England and Wales, Scotland, Canada and NZ. In those places, criminal laws are established by the national parliament, and subjected to the authority of that parliament. Review applications for example are sent to the Canadian AG and not to the official in the state or province in that jurisdiction.

In Australia, most criminal laws are established by the state or territory parliaments, and reviews of convictions are considered currently by state and territory officials.

However, a CCRC for each state and territory would involve needless duplication and costs of establishment, running and proximity between reviewers and those appointing them.

The preferred option is to incorporate a single body – an Australian Criminal Review Commission, ACRC – and for each state and territory to legislate the transfer of power to that body to review major cases (murder, rape, gross bodily harm, etc) or cases with national implications, on their behalf.

Commonwealth offences already incorporate, under the Judiciary Act, using state and territory procedural laws and courts for implementation. The ACRC would comprise, from all jurisdictions, some legally qualified people but also experts in forensic science, criminal investigation and criminal law with access to expert assistance in other areas (such as psychology, psychiatry, etc).

Any case with a meritorious claim, as determined by the CCRC, would be referred back to its originating state or territory for a Court of Appeal hearing, under existing appeal rules.

*See the CLA website for a fuller background on the question of a CCRC for Australia.*



### Webb asks why three-year delay?

Upper House Tasmania Member Meg Webb (photo) asked why there has been a three-year delay in a new 2019 disclosure law's implementation within the legal system in Tasmania.

The answer by the leader of government business was that the delay was caused by

“complexity”, plus “lack of definitions” and “lack of availability and the need for versatility across the justice system”.

Basically Tasmania's justice department and its advisers have been unable to walk and chew gum at the same time, being years behind in implementing a new computer system according to earlier announced target dates.

The new system, called Astria, is supposedly able to solve all interconnection issues known to judge, prosecutors and police...and maybe to defence lawyers as well, perhaps.

Because the “\$24.5m Astria digital transformation of Tasmania's justice system, Astria”, has gone off the rails. Tasmanian Police are jumping from case to case at the last minute, trying to prioritise between making mandatory disclosure information available in major cases and in minor cases.

“...on occasions this does directly see indictable (sic) matters prioritised over summary matters.

Conversely when there are time-critical summary matters the same level of priority is given to these matters.” according to the leader of the government in a formal reply to Webb. <https://tinyurl.com/yeb9x776> (“indictable” equals “major”, “summary” equals “minor” - Ed.)

### Double failure jeopardy

CLA says that the last-minute panic disclosure of evidence to defence lawyers by TasPol is causing chaos for the courts and the people caught up by the Tasmanian Justice Department's inability to deliver on a computer contract. (See *CLArion* April 2023 issue, and subsequent *Mercury* Hobart reports).

Not only is Astria failing to deliver on its promised benefits on time, it's unavailability is actually making the current situation worse, as TasPol officers – with not enough of them allocated to the task – scramble from urgent mode to crisis-panic delivery and back again, daily.

### Boosting Astria on 24 Nov 2020

In an article personally written by AG Elise Archer in late 2020 for the Tasmanian Liberals website, she revealed two and a half years ago that the “effective and efficient justice system for all Tasmanians” was progressing.

“The \$24.5m digital transformation of Tasmania's justice system is progressing and will be known as Astria,” Archer wrote.

The Astria solution, she wrote, was being developed by the Justice Connect program within the Department of Justice, and would “connect our courts, the Office of the Director of Public Prosecutions, the Tasmania Prison Service, Community Corrections and Victims Support Services”.

The Justice Connect program team, and the consortium led by Fujitsu in partnership with Journal Technologies, Syscon Justice Systems and local Tasmanian company Synateq, is “well advanced in a prototype phase”, the AG told her Liberal Party website.

“It will facilitate better information sharing and greater access to relevant information between and within outputs which will allow our Justice system to work more effectively and have a stronger positive benefit to the community it serves.”

The prototype phase was expected to be completed by March 2021 and implementation would then occur in stages, according to Archer. The first (implementation) stage was to focus on Criminal and Corrective Justice, followed by Civil Justice in the second stage.

The 2020 State Budget “had allocated an additional \$6 million to allow the third proposed stage, connecting our tribunals, will now be possible,” Archer said.

### Yikes! Maybe Tas Justice suffers Dike curse

The Astria system for Tasmania was named after an ancient Greek goddess of justice, AG Elise Archer said four years ago. Unfortunately, she didn't get that quite right: the goddess of justice was Dike, and Astria was the goddess of innocence and purity.

Maybe the Dike goddess is not amused, and is taking revenge on the project?

On 16 June 2020, Elise Archer announced “Justice Connect” is an important project for our government and is anticipated to be fully operational in 2023”. <https://tinyurl.com/2c9svvks>

## What the Tas govt says NOW about the program

This is from the Tas govt's website on 5 April 2023:

*The multi-disciplinary program team developing Astria is a unique, agile collaboration using subject matter experts from different jurisdictions, government agencies and functions who are embedded within the program team as the 'voice of the user' throughout development.*

*The tender process identified an expert consortium with the capability and experience to deliver a modified commercial off-the-shelf solution that will meet the Department of Justice's specific needs.*

*On 30 August 2021, the Minister for Justice (MP Elise Archer) and our vendor partners signed the Astria implementation phase contract. <https://tinyurl.com/354vruij>*

## Lawyers get no pay rise for 10 years

A report has found that for every \$1 of Commonwealth funding directed to relevant legal aid services, there is an estimated return of \$2.25 in improved operational capacity of the courts, value to individuals, and wider government and societal outcomes (including from reduced domestic and family violence).

"It is critical to the continuation of those outcomes that the ACT government place the (ACT) Legal Aid Commission on a viable financial footing so that it can provide services in the criminal law sphere from which the entire community benefits," ACT Bar Association president Marcus Hassall said.

A significant chunk of the Legal Aid Commission's annual funding came from a variable amount paid from the statutory interest account administered by the ACT Law Society. Funding from that source had varied from \$1.4 million about 10 years ago to just over \$300,000 in the 2021-22 financial year and zero for the 2022-23 financial year.

"It is difficult to see how any organisation can be run with that degree of unpredictability as to part of its core funding."

Hassall said there had been no increase in the scale of fees payable by the Legal Aid Commission to private lawyers for appearing in legal aid matters for more than 10 years. <https://tinyurl.com/3rb5fhjk>

## Pollies ignore kids' human rights

Major political parties in Queensland have been accused of embarking on a race to the bottom with new laws to drag children deeper into the criminal justice system and lock them up for longer.

The changes will add numbers to jails, for longer, putting more pressure on already strained detention centres.

Under the new law passed by the Palaszczuk Labor government, children can be jailed for breaching bail laws.

A recent major youth justice public statement was so rushed it almost announced an illegal proposal to keep kids in jail until they had completed "rehabilitation courses" ...even apparently beyond their sentence end-date. The cock-up was realised at the last moment, Brisbane Times reporter Matt Dennien revealed. <https://tinyurl.com/ym53vdak>

And when you say "children in jail" in Queensland, you're really talking young Aboriginal and Torres Strait Islander people: they comprise more than 62% of kids in jail by comparison with roughly 3% representation in the population.

Queensland: rainy one day, racist every day.

## ODD SPOT: Minute-men run kids jails in Qld

On 11 occasions during just over a month in jail, a judge was told, an Aboriginal boy aged 13 had been "separated" – a regime understood to be protection for a juvenile – for 11 hours

and 59 minutes. The judge said from what he had been told, if a juvenile was separated for 12 hours, the chief executive needed to be informed and their approval for further separation obtained. "On its face, repeated separation for 11 hours and 59 minutes cannot be seen as anything other than the most calculated contrivance to avoid the oversight of the chief executive," the judge said, commenting that it essentially meant the 13-year-old was in "24-hour solitary confinement, less one minute". <https://tinyurl.com/4tmv2zjp>

## WA government stuck in a time warp

'1981 prison legislation informs government responsibilities' according to Corrective Services Minister Bill Johnston.

Generic response letters from Minister Johnston on WA's rising prison crises have become meaningless hot air to many who have received them, critics say.

CLA believes we are seeing a 'pack and stack' situation as increasing numbers of desperately struggling Aussies are being locked up.

"Prisoners' families need to take public action to demand basic human rights in WA," CLA's WA team leader Margaret Howkins says.

"It's time to visit your local MP and request action on this massively supported position: 75% of people polled believe such action is needed.

"Rich WA has stalled far too long on caring for its under-supported people."

## Coroner ignored, jail deaths continue

WA's Inspector of Custodial Services, Eamon Ryan, has found the state government pays lip service only to recommendations from coronial inquiries into deaths in custody.

Between 2017 and 2021, the Coroner's Court made 35 formal recommendations to the Department of Justice following 13 inquests into the deaths of 17 prisoners in custody.

The report released last month examined the Department of Justice's closure evidence for 10 of these recommendations and assessed how changes implemented may help prevent future deaths.

Despite making "noticeable improvements" in governance and internal oversight practices, the report found the DOJ was "often prematurely closing coronial recommendations without fully addressing the spirit and intent of the recommendation".

## Australian briefs

### Kingham new reform boss

Fleur Kingham (photo) is the new chair of the Queensland Law Reform Commission. She has moved to the post from being president of the Land Court. She was a part-time member of the QLRC and has broad experience as a former District Court judge, Childrens Court judge and a judge of the Planning and Environment Court. <https://tinyurl.com/2xms8r26>



### Spit hoods dropped

WA police and prisons will continue using spit hoods on detainees after the controversial form of restraint was banned by the Australian Federal Police, and therefore ACT Policing also, last month. The AFP said the risk of safety and human rights breaches meant the risks outweighed any benefits. Only WAPol and NT Police continue to use spit hoods. <https://tinyurl.com/2p85ffpn>



## **Right To Information, RTI (that's FOI, for 'Mainlanders'):**

In Tasmania, if you seek information from a government minister, they'll fail to provide it within the statutory limit of 20 working days about 50% of the time. Government departments are better: they only fail on 40% of occasions. And, if you want what you believe is an incorrect decision reviewed, you'll wait an average of 587 days: that's right, 19 months. Ombudsman Richard Connock noted in his annual report that the ministers/ departments decisions were upheld in only 3 out of 19 reviews his office conducted. So, Tasmania, slow one day, wrong two years later. – source: *The Mercury* Hobart, 3 April 2023, page 3

## **Minister opts for police camera state**

High-tech speed cameras in Perth have recently caught 66,000 motorists using phones, with about 10,000 being repeat offenders. The trial of three pairs of cameras detected 11,400 instances of drivers not wearing seatbelts, 42,000 people breaking the average speed limit between cameras and 265,000 instances of people speeding. About 2000 people would have lost their licence, with 120,000 demerit points issued. Police Minister Paul Papalia said WA will buy three new pairs of cameras for \$11.2m and update the laws by the end of 2023. CLA believes the cameras could be used to end high-speed, cowboy police car chases endangering innocent bystanders – Hamish Hastie, *WAToday* brief 5 April 2023

## **Beauty surgeons barred from using falsies**

Queensland has introduced national laws to protect patients undergoing cosmetic procedures. Only qualified doctors with significant surgical training can use the title "surgeon" when promoting their services. The penalty for a false claims is up to three years jail and a \$60,000 fine. Qld hosts the Health Practitioner Regulation National Law and is introducing the reforms on behalf of all states and territories. Other measures include launching a public education campaign on the risks of cosmetic surgery, reviewing licensing standards for private facilities, and establishing a credentialing system to endorse qualified providers. <https://tinyurl.com/yckme75y>

## **Did police act illegally during Covid crackdown?**

Covid charges in NSW local, children's and district courts have been put on hold until legal advice clarifies whether pending and finalised court cases are affected by an April Supreme Court decision over the validity of how the charges were laid. Court registries are being directed to adjourn any Covid breach matter until after 8 May, to allow time for legal advice to be obtained. The NSW government last year, while the supreme court case was still under way, refunded 33,000 Covid fines worth \$30m. Government lawyers had conceded that the way many penalty notices had been issued was not valid. Another 29,000 fines are affected by the latest imbroglio. <https://tinyurl.com/mup3ufdz>

## **Women and children first**

The Human Rights subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) plans to hold more hearings on women's safety. "We have recently heard evidence detailing the increase of human rights abuses of women and children in recent years, including the prevalence of acid attacks, rape as a weapon of war, and orphanage trafficking. The committee is eager to hear from those working in the sector to learn what they're seeing and what can be done," according to the subcommittee chair, Maria Vamvakinou. The new hearings will follow on from one held on 12 April 2023 in Camperdown, Sydney. Submissions to the inquiry were due by 16 December 2022 but late submissions may be considered. More info: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Womenandchildren](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Womenandchildren) or 02 6277 2205.

## **Letters**

### **Drop these unfounded charges**

I write to strongly support the views expressed by Bernard Collaery, regarding the necessity for the AG to drop all charges against Richard Boyle. The information Richard Boyle leaked on the ATO was an entirely legitimate disclosure of that department's malfeasance. Similarly, the charges against David McBride over the alleged Afghani murders should immediately be terminated. Civil Liberties Australia urges the federal Labor government to amend the Public Disclosure Act to better protect courageous whistleblowers like Boyle and McBride. – Dr Kristine Klugman OAM, President Civil Liberties Australia.

### **Stop the persecution**

The prosecution of whistleblower David McBride is clearly wrong. He has obviously been taken to court to deter other whistleblowers and journalists from pursuing the truth. The fact an Australian soldier has been charged with murder while in Afghanistan vindicates McBride's courageous actions. – Gerry Gillespie, CLA member, Queanbeyan NSW.

### **Turn off Trump**

Enough, already! I do not want or need to know every last detail of the ex-president's trial. He relishes publicity to stroke his enormous ego, which also fires up his fanatic followers. So let's deny him, and them.

If everyone in Australia turned off reports on Trump, on all media, then advertising revenue and audiences would fall. An editorial lesson would be learned. And, instead, we would hear important news from other than the USA that deserves to be reported. Turn off Trump. – Dr Kristine Klugman, Fisher ACT.

### **All WA citizens need govt to abide by provisions of a Human Rights Act**

To: Mr Eamon Ryan, Inspector of Custodial Services, Perth WA 6000: 29 March 2023

At present I reside at Hakea prison (Canning Vale WA) , a maximum-security prison. It consists of a mixture of people convicted or held on remand awaiting sentence. Human Rights Acts in the ACT, Victoria and Queensland and the Australian Human Rights Commission itself state that convicted prisoners should not be placed together with remand prisoners. Unfortunately, in WA we still have no Human Rights Act legislated, and remand (not-yet tried and convicted - Ed.) inmates share the same 'wings' and cells as legally sentenced and *convicted* prisoners.

On 9 March 2023 a remand inmate, Mr Bropho, was bashed to death only a day after being brought into custody and placed in Hakea's 'protective' wing. Mr Bropho had serious, long-term, mental health problems and was under the close supervision of a carer on the outside. His barbaric murder would not have happened had WA implemented the most basic human right protections of *separation* of violent offenders (murderers) from sex offenders, drug addicted prisoners and seriously mentally ill prisoners. <https://tinyurl.com/49sfep69>

Another provocation in Mr Bropho's brutal death was salacious media reporting about him the day before his incarceration which fellow inmates watched on TV at Hakea. Their reactions were mob anger and peer group damning of him: judgements which in some part attempted to justify their own crimes.

Those of us accused of historical sexual abuse crimes (oath against oath circumstantial evidence accusations dating back 30+ years) felt deeply disturbed at the ease with which this murder could take place due simply to proximity and a *convicted* killer prisoner's bigoted inclination.

On behalf of all prisoners at Hakea, I plead that you raise in parliament the basic human right for *non-violent* offenders to be separated from *violent* offenders and *seriously mentally ill*

prisoners. Under-staffing at the prison and no realistic, systemic opportunities for rehabilitation, education or privacy is a form of torture in addition to our punishment of incarceration/lack of freedom. The prospect of being murdered in our sleep adds to a sense of despair and horror. Yours sincerely, Xxxx  
Xxxxx (name withheld).

## Some CLA activities for April 2023

### National and ACT

The nature of the current main CLA campaign, for a national Human Rights Act, means that many of these meetings with ACT representatives are part of enhancing the case for the federal HRA to include a 'No Rights Without Remedies' foundational element.

Meeting with Marisa Paterson MLA Member for Murrumbidgee re No Rights Without Remedy schedule and federal human rights bill inquiry by Parliamentary Joint Committee on Human Rights

Meeting with ACT AG Shane Rattenbury:

- national human rights bill;
- Right To Appeal law (see Keogh, Sue Neill-Fraser cases, etc) to be legislated in the ACT;
- Criminal Cases Review Commission for Australia: discussion with Standing Committee of Attorneys-General during informal meetings in Darwin, April 2023; and
- proposed briefing sessions on new human rights complaints pathway for the ACT by ACT Justice and Community Safety Directorate, and other JACS issues.

Meeting with Marli Popple and former CLA Treasurer Kevin Popple, re historic matters.

Zoom meeting with Margaret Howkins WA CLA leader.

Submission on Voluntary Assisted Dying law for the ACT to the ACT Legislative Assembly.

AGM Sue Neill-Fraser Supporters Group: apologies and follow-up.

Federal Human Rights Act: follow up emails to past contacts urging them to make a submission to the PJCHR on the federal human rights act. Subs are to be made by 1 July 2023.

Support activities for drug law reform and anti-political prosecution groups.

### WA report

A WA prisoner's letter to CLA (see above) quickly evoked an emailed response to Margaret Howkins (MH) from the Inspector, Eamon Ryan. It stated that the issue of conditions for remand prisoners compared to sentenced prisoners had gone into many parliamentary reports over the years. Rising prison population pressure, particularly in the number of remand prisoners, has resulted in no government action. The response also stated that other prison issues were of higher priority at the moment. (No doubt the numbers of children being imprisoned in the same draconian conditions as adults, CLA comments.)

MH has been canvassing contact groups in Albany, Alice Springs, Geraldton and Perth reminding them that Australia's federal Attorney-General, Mark Dreyfus, is reviewing the need for a national Human Rights Act and is welcoming submissions from *anybody* who wishes to contribute personal or group ideas on what to include, for the poorest to the richest Aussie. Send submissions to: Parl Joint Cttee on Human Rights, Box 6100, Parliament House, Canberra ACT 2600.

There has been a sharp rise in requests to receive hard-copy editions of CLArion, due to the turmoil in jails in WA. There has been a sharp rise in requests to receive hard-copy editions of CLArion, due to the turmoil in jails in WA.

MH met with federal MP for Perth, Patrick Gorman, and state MLA Lisa Baker together, to request practical help for a long-term female activist-for-positive-change in WA. They happily offered assistance.

## INTERNATIONAL

### VR to educate people to courtroom processes

Victims and witnesses will use virtual reality headsets to familiarise themselves with giving evidence in court in a pioneering Scottish government initiative to allay fears or discomfort around the process.

The world-leading, near \$1m virtual court project will let people "walk through" a three-dimensional world of actual videos of the court building.

Software allows victims and witnesses to "interact" with depictions of the people and objects they can expect to encounter when they go to court.

Victim Support Scotland volunteers will support people as they experience the virtual court environment, allowing familiarisation with what can be a daunting and often re-traumatising environment.

A working prototype is ready for for Glasgow Sheriff Court and the High Court in Glasgow, with wider development and roll out coming. – <https://www.gov.scot/news/virtual-reality-helping-victims/>

### ODD SPOT: Homosexuality un-Cooked

The Cook Islands has removed a 1969 law from its Crimes Act that could jail men for having sex with men. The law – never enforced – said the offence of "indecent acts between males" was punishable by up to five years in prison. People hosting these acts in their premises faced up to 10 years jail. Under the new Crimes (Sexual Offences) Amendment Act, any clauses that make consensual sexual acts between men illegal will be removed, effective 1 June. Prime Minister Mark Brown said last month that it was a "historic day" for his Cook Islands Party "to stomp out discrimination of the LGBT community." <https://tinyurl.com/y78smh4s>

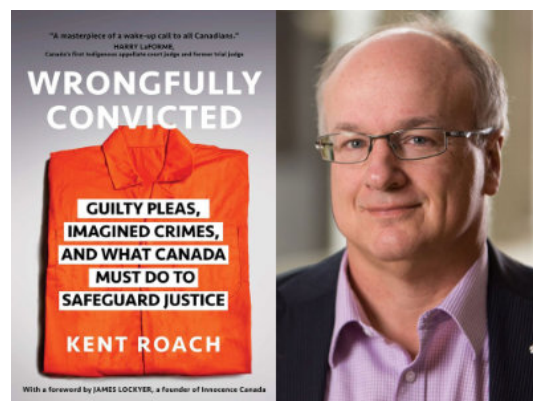
### Roach writes of climbing the wrongful conviction mountain

"Correcting a wrongful conviction is like climbing a very high mountain," Canadian Prof Kent Roach writes. "It takes time, funds, support and volunteers who know the path."

For 35 years, Roach, a professor of law at the University of Toronto, has been studying, teaching and writing about wrongful convictions. On those daunting slopes, he is one of Canada's most experienced climbers, pursuing a path not for the faint-hearted or impatient, Michael Harris writes in *The Tye*.

"No system run by humans can be perfect," Roach acknowledges.

But he worries that wrongful convictions get little public attention, owing to a news cycle where stories come and go at warp speed, and investigative reporting struggles to survive.



One of the most profound points Roach makes in *Wrongfully Convicted* has to do with the way the system is built. He points out that it concentrates more on winning the case than on seeking justice. "No trial is really about discovering the truth," he writes, rather it is a contest between the prosecutor and the accused in a purely adversarial system.

What Canada needs, Roach has long argued, is an independent commission to look at possible wrongful convictions. The Canadian government recently introduced legislation in the House of Commons that would establish just such a tribunal. <https://tinyurl.com/5ccy9s3m>

*Wrongfully Convicted: Guilty Pleas, Imagined Crimes and What Canada Has to Do to Safeguard Justice*, by Kent Roach, Simon & Schuster Canada (2023).

Roach has visited Australia as keynote speaker for conferences on wrongful convictions. Canada has awarded him a CM, one of its top medals given in return for contributions to society. His book will no doubt hold lessons for Australia.

## US Home Security 'violates civil liberties'

The US House of Representatives committee charged with overseeing the Department of Homeland Security launched an investigation earlier this year into a newly disclosed DHS domestic intelligence program, citing "potential violations of Americans' fundamental civil liberties."

Under the program, the department's Office of Intelligence and Analysis gathered information from detainees in US prisons without the detainees' lawyers present, Spencer Reynolds reported in *The Hill*.

Parts of the program were paused after a number of DHS officials raised concerns about its legality, but the fact that this program even existed is deeply troubling — and is just the latest evidence that the department's intelligence operations urgently need reform. <https://tinyurl.com/7y5f5pws>

## European court hit by wave of climate claims

The European Court of Human Rights, sitting in Strasbourg, and tasked with upholding the European Convention on Human Rights for the past 70 years, is facing a rising number of lawsuits on climate change.

A panel of 17 judges sitting in the court's Grand Chamber — reserved for the most important cases that raise novel points of law — recently heard petitions from a group of older women known as the KlimaSeniorinnen against Switzerland. They claim their human rights are being breached due to rising global temperatures and the resulting climatic impacts.

Eight other climate-related cases are on the court's books. One, filed by six Portuguese young people against 32 countries, including all EU member states, Norway, Switzerland, the UK, Ukraine and Turkey, will be heard later this year.

The group, led by 23-year-old Cláudia Duarte Agostinho, claims that government inaction on climate change discriminates against young people and poses a tangible risk to their life and health. Their case was sparked by fires that killed more than one hundred people in Portugal in 2017, which were worsened by climate change. <https://tinyurl.com/2f7bzysb>

## Court time on the rise

Accused people's journey times in Scotland's criminal justice system have increased since the COVID-19 pandemic started, according to new experimental statistics published by Scotland's Chief Statistician.

COVID-19 had a significant impact on the journey times of accused people. Across all crime groupings and court types, the median journey time increased in 2021-22 (post pandemic) when compared to 2019-20 (pre-pandemic).

Analysis shows that in the first 9 months of 2022-23, median journey times (from date of offence to date of verdict) were around 2 years and 10 months for accused in High Court, 1 year 5 months in Sheriff solemn court, 11 months in Sheriff summary court and 10 months in Justice of the Peace court.

The types of charges an accused faces affects their journey time, with the longest times occurring for accused persons charged with sexual crimes in the High court — a proportion of these will relate to historic crimes and the age of the offence will also impact on the journey time. <https://tinyurl.com/2s3cwzrf>

## Human Rights Act may get reprieve in England

Appointment of the new UK Justice Secretary, Alex Chalk, may mean a reprieve for the Human Rights Act after the new minister replaced anti-HRA minister Dominic Raab to become the 11th incumbent in 13 years.

Chalk inherits huge challenges, such as massive court backlogs, the criminal justice system in turmoil with barristers becoming striking workers, prisons and parole under pressure of the government's own making, with many of the issues having rights and liberties overtones.

Chalk takes over responsibility, but probably with much less personal enthusiasm, for Raab's long-term controversial plan to replace the Human Rights Act.

Concerns have long been raised by parliamentarians, lawyers and human rights organisations, among others, over the proposals for a new bill of rights. A new, weaker bill was a project close to the heart of the outgoing Raab. <https://tinyurl.com/y9r7t576>

## International briefs

### Kiwis to use AI in courts

"Proceedings must be simple, accessible and timely," NZ's head judge, Dame Helen Winkelmann (photo), said last month when launching the new Digital Strategy for the Courts and Tribunals of Aotearoa NZ. It imagines, long term, the use of artificial intelligence (AI) "with necessary safeguards" to provide or analyse information, or even to determine "simple procedural applications" such as time extensions and routine management orders. Four core initiatives over the next five years will focus on bringing in a fully-digital document and case management system, holding hearings remotely on screens, outfitting hearing rooms with the infrastructure necessary to enable the technology, and training staff to handle the high-tech tools. <https://tinyurl.com/2p8e9uf7>



### Inmates punished by locking up, lock downs... and a lack of health care

Chronic conditions such as type 2 diabetes, asthma, HIV infection, and mental illness may be greatly under-treated in the 2m people in US jails and prisons, according to a new study from researchers at the Johns Hopkins Bloomberg School of Public Health. People in jail received a third of the medicine for type 2 diabetes by comparison with the general population, and less than a fifth of the treatment for asthma: mental health problems are also severely under-treated. Prison health care is often understaffed, underfunded, and of poor quality in the USA: CLA believes researchers should do a similar study to find out what the situation in Australia is. <https://tinyurl.com/37hjzkcc>

### TikTok socked \$24m

TikTok has been fined nearly \$24m by the UK's data watchdog for failing to protect the privacy of children. It estimated TikTok allowed up to 1.4 million UK children aged under 13 to use the



platform in 2020. The video-sharing site used the data of children of this age without parental consent, according to an investigation by the Information Commissioner's Office. <https://tinyurl.com/2p8ma3v4>

### **Journos have to re-learn press freedoms**

The Fijian Parliament has voted to end a draconian media law, the 2010 Media Industry Development Authority (MIDA) Act, passed and enforced by the former Bainimarama administration. The law regulated the ownership, registration and content of the media in Fiji. It created MIDA, a media tribunal, and other elements of repression which hampered full and frank reporting. Editors are warning that journalists who have never been allowed normal reporting rights will now need re-training to overcome the restrictions they are used to abiding by. <https://tinyurl.com/muaz75k>

### **Two lawyers receive long jail terms**

China has jailed two human rights lawyers for more than 10 years. The state convicted Xu Zhiyong and Ding Jiayi of "subversion of state power" after closed-door trials. They were leaders of the New Citizens' Movement, a civil rights group that called for constitutional reform and criticised government corruption. Xu, who called for President Xi to step down over his handling of the COVID-19 pandemic, was jailed for 14 years, advocacy group Human Rights Watch reported. Ding was jailed for 12 years and deprived of political rights for three years. <https://tinyurl.com/2rfe7h7c>

### **Voters need photo ID**

If you want to vote in person in local elections in England on 4 May 2023, you will need an accepted form of photo identification to cast your vote. The rest of the UK is falling in line with Northern Ireland, which has had photo ID to vote in elections since 2003. Accepted forms of ID include driving licences, blue badges, NUS cards and Freedom passes: voters without accepted photo identification were able to apply for a free local Voter Authority Certificate by post or online 24 hours a day, up to 10 days before the election. <https://tinyurl.com/46e7756y> Stand by for a similar system in Australia.

### **Avoid criticism: do your job on time, tribunal tells police**

The Information Rights Tribunal of the UK found in favour of an applicant, and criticised South Yorkshire Police for treating as 'harassing behaviour' the person's habit of chasing a late response within seconds of a deadline being missed. Saying it had not been shown any chasing correspondence that was unreasonable, the tribunal judges noted: "The burden of being chased for missing a deadline can be avoided by not missing it in the first place." <https://tinyurl.com/yvumnjkk>

### **Sex-for-rent comes under scrutiny**

The British government has called for submissions to an inquiry to better understand the scale and nature of sex-for-rent deals in the UK, with a view to a possible new law. Sex-for-rent is an arrangement where landlords exchange accommodation for free or at a discount in return for sexual relations with their tenants. This is already illegal under the Sexual Offences Act, and landlords can already be prosecuted for attempting to engage in sex for rent. The call for evidence will look at whether these laws go far enough, or if new measures are needed to tackle the issue and better protect vulnerable people from harm. <https://tinyurl.com/33bxtr86>

### **New law aims for sexual assault reform**

A new law in Scotland, the Victims, Witnesses and Justice Reform (Scotland) Bill, aims to reduce re-traumatisation of victims and witnesses and address long-standing challenges in the justice system's approach to serious sexual offences. Reforms proposed include abolishing the unique, Scottish "not proven" verdict in all criminal trials to help create a clearer,

fairer and more transparent decision-making process, reducing juror numbers from 15 to 12 and increase the jury majority required for conviction to at least two-thirds. If passed, the law would also establish an independent Victims and Witnesses Commissioner for Scotland to champion the rights of victims and witnesses and encourage government and criminal justice agencies to put those rights at the heart of the justice system. <https://tinyurl.com/ph7ya72t>

## **DATES**

### **2023:**

**11 May, Brisbane:** 6-8pm Online webinar: Building a brighter future: pursuing practical and non-punitive responses to youth justice, Qld Council for Civil Liberties <https://tinyurl.com/54eua27v> Speakers: CEO Youth Advocacy Centre Katherine Hayes, Sisters Inside Debbie Kilroy, former Dir-Gen Qld Corrective Services, Keith Hamburger

**20-21 July, Melbourne:** Constitutional Law Conference 2023, Centre for Comparative Constitutional Studies, Melbourne Law School, inaugural Michael Crommelin lecture by former CJ of Australia, Robert French. <https://tinyurl.com/2dnwevny>

**21-23 Sept, Gold Coast:** *Cornerstone – The Rule of Law*, Australian Bar Association conference at the Langham facility. <https://austbar.asn.au>

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### **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 likely is 3 August 2024 and latest possible date 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 April 2023.

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