

CLA meets Human Rights Committee and federal/ACT experts



Photo: MHR for North Sydney Kylea Tink (left) with CLA President Dr Kristine Klugman and CLA Human Rights Act (HRA) campaign director at the historic first day of public hearing in 2023 into whether Australia should have a HRA.

The Parliamentary Joint Committee on Human Rights met to consider the issue for the first time on 12 May 2023, hearing from federal and territory rights and liberties experts, including Australia's only Human Rights Minister, Tara Cheyne, of the ACT.

PLEASE make a submission to the inquiry in support of a HRA for Australia.

Closing day for submissions is 1 July 2023, with a report due in March 2024.

Now is the Rights time! says CLA President

For nearly 15 years people have been discussing how to achieve a Conversation to a Pathway to a Framework for a Human Rights Act (HRA), CLA President Dr Kristine Klugman commented recently.

"Instead of beating around the bush, it's time to conclude the conversation, complete the pathway and build the real thing, a legislated Act replete with a framework, chapters, sections etc so as to provide an actual 'roof' over the heads of people in Australia who need the protections that rights and liberties law can bring," she said.

"NZ has one, Canada has one, the UK has one and the US has one with some funny old clauses in it, so there's every reason Australia should enjoy the safeguards that a HRA can deliver, say in times of a health pandemic or panicked reactions by police."

CLA members are invited to make a positive submission to the PJCHR: <https://tinyurl.com/5n7a9b58>

NO MORE CLArions mailed to prisoners and others

This note is to let prisoners and others know that we will no longer mail copies of *CLArion* to them. This JUNE 2023 issue is the last *CLArion* mail-out to prisoners, etc. For many years, we have mailed free or highly-subsidised copies to some prisoners each month. We are stopping mail-outs for three reasons: 1. our manager of prison mail-outs has retired from her regular task; 2. photocopying has increased in price significantly; and 3. postage cost has risen.

Prisoners can ask their families/friends to download *CLArion* from the CLA website each month, and then print and mail a copy to their prisoner. There is no charge for downloading a *CLArion*, which is posted on the CLA website by the 2nd day of the month of the issue date, eg the JULY issue will be available online, for free downloading and printing by prisoners' families, on 2 July 2023.

We do not deal with individual legal or similar quasi-legal cases: prisoners are advised we will not be responding to letters asking for help with their appeals, for legal advice, for recommendations of lawyers to write to, pro bono services to consult, or similar requests.

Kyrou appointed to reform AAT...under a new name

Emilios Kyrou AO is the new AAT head...under whatever name is eventually given to the 'new AAT'.

Attorney-General Mark Dreyfus has charged him with reforming the Administrative Appeals Tribunal completely. It was stacked over a five-year period during the former Liberal government under Scott Morrison and AGs Christian Porter and Michaelia Cash as each faced probable election defeat at the most recent two federal elections.

Surprisingly, the Coalition won the first of the two elections, but their hand-picked, ideologically soulmate nominees remained in place. AG Cash doubled down with a greater preponderance of Liberal-minded appointees before the second election, which the Coalition lost to Labor and Anthony Albanese.

(The one point lost in all the politicising of the AAT is that some 90% of its members have never been criticised for any overt political leanings, meaning they suffer collateral reputational damage for no reason). Kyrou becomes a judge of the Federal Court of Australia and AAT President...and the foundation stone for Dreyfus's plans to replace the AAT with a new administrative review body.

He will lead the AAT through the reform process and will be inaugural president of the new body, once established, over the next five years.

His appointment was transparent and followed a merit-based process, Dreyfus said, with wide calls for nominations and assessment by an independent selection panel.

Kyrou has been a Judge of the Supreme Court of Victoria since 2008 and from 2014 a judge of the Court of Appeal. <https://tinyurl.com/46eb7a4r>

'Information' appointments fly back and forth

Australia is getting a standalone Privacy Commissioner in response to 2022's large-scale data breaches. The move restores the Office of the Australian Information Commissioner (OAIC) to the original three-commissioner model.

Currently, the Australian Information Commissioner, Angelene Falk, holds a dual appointment as Privacy Commissioner. She will remain Information Commissioner and head of the OAIC.

Leo Hardiman resigned recently as Freedom of Information Commissioner, commenting that he didn't have the resources to do the job properly. AG Mark Dreyfus has appointed Ms Toni Pirani as acting FOI Commissioner from 20 May 2023. Both new jobs will be advertised; appointments will be made on merit, the government says. <https://tinyurl.com/2eaw4ymd>

'Solomon' Sofronoff is sharpening his sword

The Sofronoff inquiry in the ACT is shining spotlights on the lack of rules and regulations about how Directors of Public Prosecutions and police should work with each other on convicting criminals.

Each agency has its own laws and rules, but there are no clear-cut, cross-agency provisions. If any ever existed and were enforced, they have fallen by the wayside. Indeed, there is no mechanism for enforcement.

In theory, police investigate and charge someone over an alleged offence. In theory, the DPP then prosecutes.



But in truth DPPs often have acted as sounding boards and strategic legal advisers/counsel to police chasing down more evidence against an alleged criminal. CLA is aware of cases where the DPP has basically run the police investigation, in terms of directions provided and options for expanding the breadth and depth of cases.

When the Bruce Lehrmann- Brittany Higgins case was being prepared in the ACT, the relationship between the DPP Shane Drumgold and ACT Policing went pear-shaped because each had their individual assessment of whether sufficient evidence to prosecute existed.

Walter Sofronoff, a respected and retired Queensland judge, now has the task of Solomon to decide on which side his Board of Inquiry axe will come down.

The first few weeks of the hearing, as reported in the media daily at length, have been fascinating.

Failure To Disclose: govt hides report which fundamentally questions psych tool

The government employs a psych "tool" of extremely doubtful validity and worth, basically to "guess" which convicted terrorists it should keep locked up in jail after they have served their full original sentences, usually of more than a decade each.

The tool, VERA-2R, is used to "determine" whether a due-for-release inmate poses an ongoing terrorist threat to the community. If the person fails the tool test, they will likely be locked up for a further three or more years at least...unconvicted.

A report, titled *'Testing the Reliability, Validity and Equity of Terrorism Risk Assessment Instruments'*, by ANU academics Dr Emily Corner and Dr Helen Taylor, for the Department of Home Affairs, runs to more than 270 pages. The government received the report, known as the Corner report, in May 2020.

Despite the report fundamentally questioning whether VERA-2R is fit for purpose, the federal government keeps using it in court...and has done so at least 14 times.

For more than two years, until use of the tool was highlighted in the media, the government did not disclose the damning report to the lawyers of convicted offenders, its own experts, or the NSW government, which also uses the tool to justify harsh post-sentence orders for offenders, including ongoing detention.

As an example of where the tool was at odds with reality, the report found that autism spectrum disorders, as well as non-compliance with conditions or supervision, were included as risk factors in the tool, despite a lack of empirical evidence.

"The most comprehensive systematic review that has been conducted on the drivers of radicalisation and terrorist behaviour and violence found not a single piece of empirical evidence that supported the inclusion of those two factors, the report found." was how *Guardian Australia* reported the matter. <https://tinyurl.com/457sthu7>

Extremists on all sides seek prominence to help recruiting



Right-wing terror threats make up roughly 30% of ASIO's counter-terror focus, ASIO head Mike "The Scream*" Burgess said last month during Senate estimates hearings.

The right-wing groups were seeking to gain prominence to try to recruit more members, he said.

Burgess did not enlighten the hearing that his own much-increased prominence in the public speaking arena and media over the past few years was for precisely the same reason, aimed at attracting more ASIO recruits.



Religiously-motivated extremism takes up the other 70%...

but the biggest threat of a terror attack is from an individual acting alone. <https://tinyurl.com/bdfaec2x>

* CLA is intrigued at how much Burgess (left) resembles the character in Munch's 'The Scream' painting (right). Also, as the only person in ASIO permitted to use his real name, he is an "individual acting alone".

Trustees put under the microscope nationwide

The Disability Royal Commission heard from some of the 50,000 people across Australia living under the care of a public guardian or public trustee, which manages the lives of some people, and their finances.

"A strong theme is feeling trapped, overly protected, and having no dignity," senior counsel assisting the commission, Kate Eastman, said.

The Queensland government has ordered two investigations into its public trustee.

Both Queensland and Victoria's public advocates have issued calls to pull down the wall of confidentiality, and repeal gag laws.

In WA, the state government has committed to revising its public trustee's fees and self-funding model, and is implementing an independent governing body.

Public trustees across the country mostly follow the self-funding model, minimising cost to taxpayers. An ageing population and an increasing number of people with mental illness means a growing cohort of people requiring services provided under state care.

The government bodies recoup most of their operational costs from fees charged to their clients.

First move to raise age to 14

The ACT will be the first Australian jurisdiction to raise the minimum age of criminal responsibility to 14, but the bar will be set at 12 for children charged with serious offences, including murder and sexual assault.

The new law will take effect from 1 July 2025.

"The bill will also support all children and young people under 18 involved in the criminal justice system by introducing a community-based, intensive therapeutic sentence called a therapeutic correction order," Attorney-General Shane Rattenbury said last month.

This would provide "wraparound" services for young convicted criminals to help address their needs and reduce the likelihood of reoffending.

A major report in October 2021 found sweeping reforms were needed to the ACT's service and support systems if the age of criminal responsibility is raised, concluding that without reforms the legislative change would not result in better outcomes for children. <https://tinyurl.com/2kcne33j>

TasPol cheats and breaks the law when it secretly spies on your phone

For the fourth year in a row, the Commonwealth Ombudsman has pilloried Tasmania Police because TasPol refuses to obey the law in relation to secret surveillance information.

TasPol fudges its practices, cheats Tasmanian citizens by operating illegally, promises to improve and then ignores its responsibilities, year after year.

Its abuse of the system is so blatant that possibly every single case of telecommunications interception by TasPol is illegal. The Commonwealth Ombudsman is actually unable to say whether TasPol complies with the law in how it uses and discloses t'coms data information, because TasPol does not keep records properly.

NOTE: This matter is separate from, but in addition to, in relation to and equally worrying as, the two-month-long illegal surveillance of lawyer-client meetings at Risdon Prison, the subject of a supposed 'targeted review' by the Tasmanian Parliament, set up so ineffectually at first as to be useless.

TasPol's failure to obey the Commonwealth law is not one-off behaviour. It has apparently been breaking the law ever since this law was brought in, as the Commonwealth Ombudsman gives no indication that police in Tasmania have ever been doing the right thing.

Basically, the law – s186A, to be precise – regulates how all Australian police can use or disclose telecommunications intercept data, like emails on your computer, tablet or phone, and your phone voicemails or SMS messages, for example.

TasPol can decide they need to look at your data in secret, without your knowledge.

The same law demands TasPol keep records of how they've used the data, and they must provide an audit trail for who used the information, and how, and with whom, in connection with what crime/case.

In Tasmania, none of these requirements are met. TasPol breaks the law constantly.

As the Commonwealth Ombudsman said in his annual report for inspections and records for the periods 2020-2021 and 2021-22, released in March 2023:

“Over the previous two inspections, we identified that Tasmania Police did not have clear procedures and guidelines for recording use and disclosure of telecommunication data, as required under s 186A(1)(g) of the Act.

“During our 2021-22 inspection, Tasmania Police disclosed that telecommunications data stored on its systems is not able to be restricted to individuals or teams...

“...there was no audit capability to be able to track which individuals have accessed specific records stored through the platform they were using.

“The primary repository for historic data returned from a carrier, once uploaded, was available to all Tasmania Police members with access to the system.

“We also found there were no records to indicate whether Tasmania Police used or disclosed telecommunications data its members have access to.

“As such, we were unable to determine whether any use and disclosure that occurred was in the circumstances permitted under the Act.”

See Commonwealth Ombudsman's report: https://www.ombudsman.gov.au/data/assets/pdf_file/0023/290390/Final-Commonwealth-Ombudsman-2021-22-Annual-Report-Stored-Communications-and-Telecommunications-Data.pdf

How bad is TasPol?

Dr Rosalie Woodruff (Member for Franklin, House of Assembly, Tas, photo)

“It sounds as though Tasmania Police has latterly become dragged kicking and screaming to where all the other states in Australia have already got to: which is looking at data stamping and recording, and having methods for determining who accesses data and at what time. That is a kind of minimum standard for data protection, and for evidence protection as well.

Comment by a barrister:

David Edwardson KC, who represented Jeff Thompson in the Supreme Court over a matter connected to the Sue Neill-Fraser case, saw fit to publicly comment on TasPol behaviour once charges against his client had been discontinued, due to TasPol warrant “inadvertent” errors, by Judge Brett. He commented on the *Wrongful Convictions Blog* on 8 August 2022 as follows:



Frank Merenda (my Junior counsel) together with John Munro (instructing solicitor) and I have been fighting this case now for some years. Finally when the judgements are published everyone will appreciate how misconceived this prosecution was and why the conduct of TASPOL in the context of this case is so reprehensible. Every now and again there is a case which is so important and this is one of them. Jeff Thompson was just trying to help fight for Sue Neill-Fraser's freedom. In return, his life and career was turned upside down by illegal conduct the details of which will be published in due course. Today is a very important day not just for Jeff Thompson. – David Edwardson QC.

NOTE: Full details of the case are still subject to a Supreme Court-ordered suppression order.

\$3.7m upgrade...but will it improve scientists' performances?

A \$3.7m upgrade to forensic DNA analysis and testing in Tasmania will reduce the risk of contamination and human error, political and police boosters say.

If they can confidently claim this, they must know what the risk level is now of contamination and human error: the figures have never been publicly revealed, but should be for future comparisons to be made.

All Tasmanian cold cases will be re-examined using new automatic forensic technology, the recent media announcements reveal.

CLA hopes Forensic Science Service Tasmania (FSST) will examine the so-far unexamined or "missing" exhibits in the Sue Neill-Fraser case, and also exhibits tested more than a decade ago in that case with then very old technology, which has been much improved over the past 15 years.

The first new equipment announced will operate from late-2023, with further upgrades until 2026..

FSST gets 22,000 requests for forensic analysis a year, with about 10,000 of them involving DNA.

It would be interesting to know how much work they undertake for defendants or what independent forensic testing they facilitate. Requests to date for a copy of their policy on independent forensic testing by the president of the Susan Neill-Fraser Support Group to the Director FSST have not been responded to.

Some of the extra funding will go to providing extra storage capacity, which will allow DNA samples to be kept indefinitely, it is claimed. It is not known how long exhibits are being kept until now, as there are no policies available to the public. <https://tinyurl.com/yczy7rm>

Civil Liberties Australia says the quality and integrity of the scientists and their management is perhaps even more important for FSST than the quality of its technology. See the recent Sofronoff Inquiry report from Queensland which comments on concerning issues re management and leadership of such agencies and labs: <https://tinyurl.com/2zyxrhes>

Technology cannot overcome ignorance or lack of integrity in forensics

CLA reminds all Tasmanians, and particularly lawyers and defendants, that FSST is a sub-branch of the Tasmanian Police operation, and gets its rum, rations and management from the Police Commissioner.

It is not an independent authority in the nature of independence as recommended for forensic agencies by the recent major and exhaustive forensic inquiry in Queensland under Commissioner Walter Sofronoff KC, a retired President of the state's Court of Appeal. His findings were handed down in December 2022.

FSST has also been severely criticised for the nature of some "scientific evidence", led by the DPP and permitted to be heard by the judge in the original Sue Neill-Fraser case. Relevant statements of fact – in the Etter-Selby Papers – sit unanswered by police, prosecutors, the judiciary or the Attorney-General in the Upper House of the Tasmanian Parliament.

The DPP has admitted he did not understand the forensics in the original SNF trial: the judge has remained steadfastly silent on his own forensic ignorance...or indeed expertise, if any. He has also remained silent on his lack of logic in relation to his favouring – by repetition – a possible "murder" weapon, and his predilection for logical nonsense about the non-finding of a body after failed searches by police divers.

How would you like to be sentenced to 26 years in jail for a "murder", in a circumstantial case, partly at least on forensic "evidence" that the DPP – and probably the even more aged, "talented"* judge – did not understand? How would you like to be convicted by a judge reasoning illogically?

The Luminol reactive testing and some of the DNA evidence from FSST and the pathology evidence, as it was given at the SNF trial, was not admissible in court, according to wrongful convictions and forensics guru, Dr Bob Moles.

"Until they correct obvious errors how could we ever be confident in any other so-called evidence they put forward – the shortcomings in the above are explained in the report I sent to FSST in 2014," he said.

"I re-sent the report along with further issues in March 2023 to the Director FSST," Dr Moles said.

There were also issues with the custodial integrity of the forensic evidence at the Sue Neill-Fraser trial including the important red jacket which was presented as having a continuous chain of custody whereas it was lost in a police car park for several days.

* "Talented" was the judge's own statement about himself and his cohort of fellow judges some years after the SNF trial.

Surveillance and privacy to be reformed

Consultation is under way on reforming laws that manage surveillance devices and similar technologies to better protect the privacy of Queenslanders.

The Queensland Law Reform Commission has recommended the government rewrite laws covering surveillance devices and privacy.

A consultation paper seeks views on a potential staged approach, starting with criminal prohibitions on using surveillance devices and technologies in both civil and workplace environments.

Technology discussed in the consultation paper includes CCTV, tracking and digital recording devices, as well as recreational and commercial drones with advanced optical and audio recording capabilities.

Queenslanders are currently protected in certain circumstances under the *Invasion of Privacy Act 1971*. Proposed new laws would regulate optical, tracking and data surveillance devices, as well as impose criminal penalties on using, installing and maintaining surveillance devices without consent, and sharing information obtained from surveillance. <https://tinyurl.com/38sjsf3j>

State needs forensic help from AFP, NZ and UK



Queensland's forensic testing services have a massive backlog awaiting DNA testing, according to then***-Health Minister Yvette D'Ath early last month.

Backed-up DNA testing means blocked courts. Blocked courts mean justice delayed.

Testing to be done includes more than 10,000 "business as usual" samples as well as historic cases being further tested after revelations in the 2022 Walter Sofronoff KC Commission of Inquiry, which eviscerated forensic practices in the state.

The inquiry laid bare that the Queensland Forensic and Scientific Services (FSS) lab focused on speed rather than accuracy in DNA testing across

thousands of Queensland crimes, including murder and sexual assault cases over the past 15 years.

Ms D'Ath said Queensland Health had asked the AFP to help with bone sampling testing and NZ was doing advanced testing analysis. The UK also was being asked to help with re-testing.

Two of three staff members who were suspended no longer work for Queensland Health.

About half the 1260 cases re-examined because of the inquiry had to be "rectified", the report said. <https://tinyurl.com/yc5zv6us>

*** Note: In mid-May 2023, D'Ath (photo) returned to her previous position as Attorney-General.

CLA asks Sofronoff to examine DPP-police interactions

The relationship between police and DPPs throughout Australia is in turmoil, and Civil Liberties Australia has asked ACT Board of Inquiry Commissioner** Walter Sofronoff to consider what the laws/rules and guidelines between police and DPPs should be.

Sofronoff is inquiring into the breakdown in relationships between the ACT DPP and ACT Policing, among other issues.

The breakdown was part of an eventual aborting (due to jury misbehaviour) of the Bruce Lehrmann trial over an alleged rape of Brittany Higgins in Parliament House, Canberra.

Lehrmann has denied the charge from the outset. He has defamation actions under way against a range of involved parties.

Sofronoff earned his reputation for astuteness in the past two years when he sorted out an impasse between Queensland Police, prosecutors and the state's forensic laboratory standards of analysis.

Apart from the questionable relationship in the ACT, in Tasmania there is an ongoing dispute between police and defence barristers, which involves the DPP because legal cases are extraordinarily delayed due to police not being able to provide mandatory disclosure material to defendants on time.

And in the NT, Constable Zachary Rolfe was acquitted of murder after an investigation still reverberating in police-political-legal circles around when the decision to charge him was made, by whom and what “expert” evidence was appropriate.

NT Police Commissioner Jamie Chalker has recently fallen on his stun gun...and decided to step down from his position some months early.

Acting NT Police Commissioner is Michael Murphy. He is the brother of long-time Sue Neill-Fraser pro bono lawyer, Barbara Etter APM, who served in the NT Police early in her policing career, which ended as Assistant Commissioner of Police in WA.

** The ACT process is the equivalent of a Royal Commission in other jurisdictions.

Williamson is acting DPP in the ACT

Anthony Williamson, who was a Board Member of CLA from 2005 to 2013, has been appointed acting Director of Public Prosecutions in the ACT (*at right, Canberra Times front page report headline*).

He was appointed on 17 May 2023 until 13 June 2023 while the substantive DPP, Shane Drumgold, took a month’s leave unexpectedly.

Drumgold had recently finished giving his first week of evidence in the Commission of Inquiry, under Walter Sofronoff KC, into a range of matters around the abandoned ACT Supreme Court case involving Bruce Lehrmann and Brittany Higgins. ACT Chief Minister Andrew Barr and ACT Attorney-General, Shane Rattenbury, commissioned the inquiry.

CLA made a submission to assist the inquiry. For a copy, please contact the CEO of CLA, Bill Rowlings.

Acting DPP appointed as Drumgold takes leave to deal with inquiry

Anthony Williamson SC has temporarily taken the reins.

Blake Foden



\$1.6m – perhaps a copy of the cheque should be ‘framed’?

Those investigating whether WA Police detectives framed Scott Austic for the 2007 murder of Stacey Thorne say fading memories and patchy forensics records make it impossible to confirm police corruption.

Austic was acquitted in 2020 of the 2007 murder of Stacey Thorne, with the very judges who ultimately cleared his name declaring he was framed.

Attorney-General John Quigley last month tabled in parliament a WA Corruption and Crime Commission report into allegations police planted evidence after Ms Thorne was stabbed 27 times and left for dead in her home.

The report found no evidence of foul play by police – despite photos days apart mysteriously revealing an incriminating packet of cigarettes that had not been present when the scene was originally recorded.

Happenings were so bizarre that they could well have been copied from the State of HogWArts***: a knife appeared magically, on open ground, found during a search by police detectives well after an organised line search by trained SES volunteers did not spot the shiny murder weapon (except it wasn’t: the found knife was too short to have inflicted the deeply penetrative wounds). A drink can with relevant DNA on it also “fell from the sky”, just precisely in a suitable location to be used against Austic.

When the WA Supreme Court set aside Austic’s conviction in 2020 and ordered a new trial, it found “credible, cogent and plausible evidence” that crucial evidence against him had been planted.

Austic was recently awarded \$1.6 million in compensation by the state government after serving more than 12 years in jail, wrongfully convicted. He asked for \$8.5m. Based on cases elsewhere in Australia and precedent in WA, he should have received at least \$5m, CLA says.

But the Labor government in the richest state in Australia invented a payment “formula” that allowed them to blame the Opposition for not granting Austic a pardon four years before he was released by a court.

<https://tinyurl.com/2v8acarr>

*** HogWArts is a large, mythical state where people say what’s mine is mining, and you can’t see the trees for the forest. Eagles don’t fly very high, birds and people see things in white and black, heritage sites are blown up to engorge company profits, the capital city is guarded by an island of rats, and “democracy” means not having an opposition, or much of one anyway.

Ex-Premier McGowan and crew provide ‘bullshit’ responses to jails crisis

The *West Australian’s* chief reporter Ben Harvey last month gave the then-McGowan government a major dressing down over their handling of the crisis at Banksia Hill Detention Centre.

In his regular show, Up Late, Harvey severely criticised WA Labor MPs and their reluctance to talk about, let alone take responsibility for, the State's crippling prison crises.

"The state of the prison system is the most pressing issue facing the government at the moment," Harvey said.

"There's daylight between juvenile justice and the next most important thing.

"And what happens when a journo asks Labor MPs whether they have any concerns about Banksia Hill? They refuse to comment because somebody at Labor party HQ or the Premier's office told them not to."

<https://tinyurl.com/3j5efatu>

CLA hopes the new Premier will make fixing prisons a proper priority.

ODD SPOT: New book? 'How to raise children', by ex-WA Premier

Former WA Premier McGowan's apparent solution to raising Indigenous children: mistreatment akin to torture and long spells of solitary confinement? That's what is claimed in a class action involving more than 500 children and young adults who have been detained at Banksia Hill, alleging mistreatment akin to torture, including long spells of solitary confinement. Perhaps the former WA Premier will now have the time to write a book on how to raise children? <https://tinyurl.com/2s3v63j5>

Ex-Premier and CLA agree

What CLA says:

"The more you say that no one's responsible for their actions and there's no consequences, the more this behaviour will continue." – said originally last month by Mark McGowan, WA Premier

That's what we say, too – just by chance, that happens to be a quote from the "not-responsible", then-Premier of WA after a recent riot by children in his care at a detention centre.

Any Premier, as head of the state, is supposed to be responsible for all departments of state, including for the Communities Department, once known as the Department of Child Protection.

It is not responsible to appear to be someone who likes his employees bullying sick children verbally, locking them up 23 hours a day behind bars, and denying them the health and mental health services they need, as well as an education.

Charges dropped: AG comes the heavy

WA's DPP has dropped more than 542 corruption charges against an alleged co-conspirator in Australia's biggest public service fraud case, involving an 11-year rip-off of taxpayers to the tune of about \$22m.

No sooner had the charges been dropped than the state's AG, John Quigley (photo), told Jacob Anthonisz publicly that he – Quigley – hoped the man would be re-indicted for helping the jailed former public servant, Paul Whyte.

The DPP's office claims the inability to go ahead with charges against Anthonisz stems from a "breakdown in communications" between WAPOL and the Office of the DPP.

Police Commissioner Col Blanch said he had nine detectives working on the case "around the clock". He did not explain why nine-round-the-clock-police could not assemble all required evidence in the 42 months they had already been on the case, other than to say it was a "complex case". <https://tinyurl.com/c8mtdt7x>

Sounds very much like the ACT and the Lehrmann-Higgins case, now the subject of the Sofronoff Inquiry.

ODD SPOT: When will they ever learn?

Corrupt public servant Paul Whyte's former Department of Communities has been reprimanded for ongoing "significant weaknesses" in its financial controls – including using taxpayer funding earmarked for specific purposes to "fund shortfalls in its operational cash". – media reports.

Is justice 'smarter' or more 'out of touch'?

The NT Fyles government has patted itself on the back for justice reforms it said "provide smarter justice for a safer Territory", which the CLP Opposition said shows how "out of touch" Labor is with Territorians.

This happened as Justice Minister Chansey Paech issued a statement last month to announce \$39 million in the 2023 Budget for various new "reforms".



The self-congratulatory statement comes amid the ongoing crime crisis that has seen six people publicly stabbed in Darwin since March, including two deaths, and nightly violent crimes across the entire NT, including a violent home invasion that resulted in an international student being bludgeoned to death in his bed.

A recent ABC analysis of NT crime stats showed that assaults over the past 12 months were up by 88% from 2009 figures; increasing by 55% in Darwin and 148% in Alice Springs.

“Our government is proud of our reforms that provide smarter justice for a safer Territory, and Budget 2023 provides the investment required to roll out a range of programs to break the cycle of crime,” the AG said.

New law brings culture to court sentencing

A new law in the NT will allow Aboriginal elders and leaders to have a say on what sentences First Nations offenders receive.

The law will govern Community Courts in the NT, allowing culture issues to be incorporated into the criminal sentences of Aboriginal people, who comprise about 85% of the territory's prison population but just 31% of the NT's overall population.

Restoring Community Courts is a key commitment of the recent NT's Aboriginal Justice Agreement, which aims to tackle the over-incarceration of Aboriginal people and reduce reoffending.

Community courts operated in the NT from 2003 to 2012, but were abandoned because of a possible inconsistency in existing sentencing legislation at the time, which has since been amended.

Aboriginal offenders can ask to be sentenced in an Aboriginal community of their choosing, and their connection to that place will be considered by the court.

Local elders and leaders, known as the community's “Law and Justice Group”, will then advise the sentencing judge what the most appropriate sentence for that person would be.

"Community courts support local community involvement and Aboriginal leadership by holding offenders accountable for their behaviour and helping them to understand the impacts of their behaviour," NT AG Paech said. They will operate as part of the existing local and youth courts in the NT, not as a separate new court. <https://tinyurl.com/2xxmed7n>

NT moves to re-form its ICAC

The NT wants feedback on its draft Independent Commissioner Against Corruption Act 2017 changes. ICAC needs sufficient powers to meet public expectations, while protecting the rights of individuals, the government says.

For years, the NT ICAC has taken centre stage in a series of scandals involving its commissioners, investigators and staff: reform is certainly needed, CLA believes.

The government is proposing changes under:

1. Jurisdiction of ICAC
2. Whistleblowers, witnesses and proceedings
3. ICAC enforcement powers and other operational matters
4. ICAC Inspector
5. Journalist privilege
6. Technical amendments

Submissions should be sent to: CMCLegalPolicy@nt.gov.au by 4pm Monday 12 June 2023.

The draft law is a response to the *Discussion Paper for the Review into the ICAC Act 2017*, conducted by Greg Shanahan (photo) in 2022. Further details: <https://tinyurl.com/y78mu2fs>



Cyber takes big jump

NSW cyber crime reports were up 42% over the three years to June 2022. with 39,494 reports of cybercrime made through the national reporting centre and more than \$404 million reportedly lost.

Cyber fraud was up 95% and identity crime by 35%: together, the two categories accounted for 79% of all reports, BOCSAR's May 2023 brief said.

Device offences (malware and ransomware) had the largest increase, with reports increasing by 117%. Details: NSW Bureau of Crime Statistics and Research, BOCSAR: <https://tinyurl.com/2srxkvmc>

Briefs

Beware older women with ropes and a knife

The SA Labor government has dramatically upped the maximum fines for public obstruction from \$750 to \$50,000 or a three-month prison sentence. Premier Peter Malinauskas (photo) told parliament there were few things more important than the freedom of association and the ability to protest peacefully. "It is an essential formulation to the way we govern ourselves," he said. "But that is a very different thing to someone or a group of people who conduct themselves in such a way that puts other people's safety at risk."



The government knee-jerked an instant response to protests by members of Extinction Rebellion: a 69-year-old woman had abseiled over a city bridge and disrupted peak-hour traffic for about 90 minutes. – AAP: <https://tinyurl.com/y4asszkx> CLA says she was lucky she wasn't hit by numerous stun guns 'shots' as per the police protocol in NSW apparently, where a 95-y-o with dementia and a small serrated knife – aided by a walking frame – caused a stunning response by police in Cooma, which led to her death a few days later.

...UK looks for 'fixes' for both the slow and the fast in heavy traffic

In response to slow walking, presumably by old people and young, Home Secretary Suella Braverman is to give police the power to ban slow walking in traffic by protesters. Just Stop Oil protestors had used the tactic for five consecutive days in a climate protest campaign. Meanwhile, Braverman was alleged by some reports to be in trouble for suggesting to public servants they might be able to "fix" a speeding fine she had received when driving in traffic, too fast... <https://tinyurl.com/v66nck9z>

Police deadly for First Nations people

Queensland Police have shot three dead in the past three months. Two were Indigenous people. Police shot eight dead in 2022, three of whom were Indigenous. <https://tinyurl.com/2j4xu6bh>

Small boost for Aboriginal legal bodies

The Australian government is providing \$21 million extra support for Aboriginal legal services because inflation is increasing the cost of providing frontline services. While the services have welcomed the boost, they say their caseload has increased virtually everywhere around Australia. <https://tinyurl.com/yc4j8kb6>

Aboriginal people: more than their fair share

Of the 12,555 adult prisoners in NSW on 31 March 2023, 3709 were Aboriginal people. That is 29.5% of the prison population. The 215 youth in detention reflected an increase of 19.4% on a year earlier. Of the 215, the proportion of youths who were Aboriginal was 56.7%. Aboriginal people comprise about 3.4% of the population of NSW.

Letters

Read slowly, hear the Voice loudly

The Solicitor-General's advice is not a rapid read job, but I still recommend that M. Flint and like-minded readers make the effort to read it themselves and be satisfied that a successful referendum will not have a detrimental effect on our democracy. – John F. Simmons, Kambah ACT, in the *Canberra Times*.

Camilla divine?

It is really galling that following her consecration with the holy oil (with olives picked on the Mount of Olives), Camilla will be deemed to have the Divine Right of Kings. It's all too silly for words. – Jennifer Saunders, Canberra (photo, from 2008). (Jennifer is a former secretary of the Council for Civil Liberties ACT, a precursor body to Civil Liberties Australia).



Detention cost is absurd

Recent personal correspondence from Senator David Pocock has highlighted the cost of Australia's offshore detention for the coming year. It is \$485,721,000 to unjustifiably imprison just over 100 people. This is an astonishing cost of around \$4 million per person. The only things this achieves are misery and depression! If these people were gainfully employed in the community they would be self-supporting and paying tax. Off-shore detention is immoral and is in direct conflict with the UN's 1951 Refugee Convention. We must cease this horrific, deceitful and outrageously expensive cruelty. – Gerry Gillespie, Rural Australian's for Refugees, Queanbeyan, NSW.

Some CLA activities for May 2023

National

CLA's Human Rights campaign team attended the first hearing of the Parliamentary Joint Committee on Human Rights when it began its consideration of whether Australia should have a Human Rights Act.

The Committee is not due to report until March 2024, but it was important to capture a photographic record of such an important inaugural meeting.

The principal people who appeared before the committee were:

- Dr Helen Watchirs, ACT Human Rights Commissioner
- Anne Sheehan, Attorney-General's Department
- Prof Rosalind Croucher, Australian Human Rights Commission, and
- Tara Cheyne, ACT Minister for Human Rights.

PJCHR members present: Josh Burns chair, Russell Broadbent, Kylea Tink, Peta Murphy, Senator Karen Grogan, and by video Senator Lydia Thorpe.

Attending for CLA were Chris Stamford, HRA campaign director, Dr Kris Klugman, President CLA. and Bill Rowlings, CEO,

CLA's general observations of the meeting were:

Despite the terms of reference concentrating on the national human rights framework, the PJCHR showed no interest in updating it. The PJCHR's focus was on the prospect of a human rights act (HRA), in particular:

- The missing elements of the current framework that a HRA would put in place
- Implementation challenges
- The influence of the Human Rights Commission on Government when a HRA is in place and the potential for conflict with parliamentary sovereignty
- Measuring the success of a human rights framework
- The effect that a Federal HRA would have on relations with the States and Territories (conflict of laws and jurisdiction creep)
- Educating executive government and the public into a HR culture, in particular the role of direct action in providing upstream leverage
- The opportunities that a HRA would provide for righting injustices for particular groups.

It was clear from this hearing that the ACT was considered by the PJCHR as the most advanced HR jurisdiction in Australia and its processes and HR culture were deferred to.

Separately, CLA was due to meet Kylea Tink MP re progressing the PJCHR inquiry and submissions.

The CLA President sent follow up email messages to 33 of the people with whom we have met, urging them to make a submission to the PJCHR in support of a federal Human Rights Act.

ACT

CLA met with ACT Peter Cain, (chair) and Andrew Braddock, members of the ACT Justice and Community Safety Committee re progress with amendments of ACT HRA re complaints handling. New legislation, expected soon, will consolidate CLA's initiative of creating No Rights Without Remedy clause in all Australian human rights laws.

Tasmania

Detailed work is under way to fully inform the Tasmanian Parliament over the government's refusal so far to hold a proper inquiry in illegal Tasmanian Police surveillance by audio and video devices at Risdon Prison for more than 2 months.

CLA has prepared briefs for Upper House members of the parliament, with recommendations for full disclosure to all affected lawyers and their clients, an obligation that TasPol, the DPP and the Attorney-General have not met.

CLA is considering making a formal complaint, which would trigger a different and more detailed inquiry than the government wants to undertake.

For years, TasPol has covered up and repeatedly ignored obligations in relation to warrants and data recording obligations. The inquiry that needs to be held must be sufficiently robust to hold to account all police and other authorities who turn a blind eye to their own illegality.



CLA's WA team leader Margaret Howkins reports:

About 200 people took part in the demo on 14 May in Perth against the inhumane conditions for juvenile inmates, overwhelmingly Indigenous, at Banksia and Casuarina prisons in Perth.

Howkins joined key organisers and activists like Megan Krakouer, Gerry Georgatos, Dr Hannah McGlade and Jim Morrison, the Stolen Generations advocate.

"There were about a dozen big cameras and I got followed about a lot, due I reckon, to CLA's striking poster and Aboriginal knitted scarf," Howkins said. Speeches were still going strong when she left mid-afternoon.

"I passed CLA cards to a couple of reporters asking them to contact CLA's CEO for a media statement if they wanted more than my few words about our campaign for a national Human Rights Act with remedies of conciliation or tribunal decisions built in.

Photo shows Margaret Howkins of CLA with rally organiser (and CLA member) Megan Krakouer at right. Credit: Jacqueline Blackburn.

Timid supers balk at \$20 a month cost of inmates staying informed

Superintendents at WA jails are asking CLA to secure written clearances from the Director-General of the Justice Department, Adam Tomison, so they are permitted to put six copies in their prison library each month of CLArion.

"Boy, do we need a Human Rights Act!" CLA CEO Bill Rowlings said. "Prisoners are entitled to whatever they want to read, unless it's likely to cause a riot...which the CLArion is not designed to do.

"Quite the opposite," he said.

"We in CLA want jails to become places of rehabilitation and education, where inmates can get lower and upper Certificate qualifications, and the people so inclined can study online tertiary courses, leading to personal improvement and even degree qualifications."

The superintendents have indicated they are willing to receive half a dozen CLArions into their library... provided they have permission.

CLA has written to Dr Tomison. We await his wise response.

CLA would prefer we sent them one copy, and they photocopied each month's CLArion newsletter 10 or 12 times for their library. As the richest state in Australia, surely each WA prison could afford the extra \$20 or so a month that photocopying would cost.

What a surprise! Police 'inadequate' when they give us the PIP

WA's Corruption and Crime Commission has found a police officer engaged in serious misconduct in September 2021 by pulling, punching and swearing at a man he was arresting and using punitive, unnecessary and excessive force.

It found that an internal review – Police Investigating Police, or PIP, in CLA's language – into the incident was "inadequate", with the force now agreeing to re-investigate the matter. Police arrested a 43-year-old Indigenous man, referred to in the report as "Mr L", after he assaulted a Public Transport Authority officer at Mirrabooka bus port. <https://tinyurl.com/2p943kks>

INTERNATIONAL

Extraordinary stay as death row inmate about to be executed

The US Supreme Court last month granted a stay of execution for Richard Glossip – on death for a quarter of a century – after Oklahoma's Attorney General made an extraordinary plea to stop what he says would have been an "unthinkable" error.

The execution is on hold until the Supreme Court decides whether to formally review the case.

AG Gentner Drummond, who is a pro-death-penalty Republican, petitioned to stop the scheduled 18 May 2023 execution of Glossip. He had been convicted of arranging a 1997 murder of a motel owner in Oklahoma City. The AG argued that Mr. Glossip's conviction was "unsustainable" and "a new trial imperative."

Advocates say new evidence discovered in independent investigations – combined with problems with the state’s prosecution and the destruction of evidence – strongly suggests that there was not enough evidence to warrant a conviction, let alone a death sentence.

Oklahoma Governor Kevin Stitt, also a pro-death-penalty Republican, has twice delayed Glossip’s execution while a court evaluated his appeal. But after a parole board split evenly recently on whether to recommend clemency, Stitt signaled that he would not issue another stay. <https://tinyurl.com/ykc5dysj>
The case appears to be a warning to attorney generals everywhere: sometimes it takes 25 years to prove innocence when police, prosecutors and witnesses have been “corrupted”, and evidence is tainted.



Facial image tech used for database, tracking and ‘apartheid’

Israel is using an experimental facial recognition system known as Red Wolf to track Palestinians and automate harsh restrictions on their freedom of movement, Amnesty International said last month.

Amnesty documents how Red Wolf is part of an ever-growing surveillance network entrenching the Israeli government’s control over Palestinians, and helping to maintain what it calls Israel’s system of apartheid.

Red Wolf operates at military checkpoints in the city of Hebron in the occupied West Bank, where it scans Palestinians’ faces and adds them to vast surveillance databases without their consent.

Amnesty claims Israel’s use of facial recognition technology against Palestinians in occupied East Jerusalem has increased, especially around protests near illegal settlements. In both Hebron and occupied East Jerusalem, facial recognition technology supports a dense network of Closed-Circuit Television (CCTV) cameras to keep Palestinians under near-constant observation.

Amnesty is calling for a global ban on the development, sale and use of facial recognition technology for surveillance purposes. It has documented human rights risks linked to facial recognition technology in India and the US, as part of its *Ban the Scan* campaign. <https://tinyurl.com/348vv3j8>

Dying in prison makes no sense – editorial

The New Jersey Criminal Sentencing and Disposition Commission, which includes former Chief Justice Deborah Poritz and current Attorney General Matt Platkin, want a way that aged inmates, jailed for decades, can “apply to a judge for re-sentencing by proving they have been sufficiently rehabilitated.”

If agreed, such legislation would be the first of its kind in the USA.

There are 1000 prison inmates in NJ older than 65 who have already spent decades inside. Between 2012 and 2019, only 8.7% of those eligible were granted parole. Some 31% of those who appeared before the parole board were not only denied, their period of parole ineligibility was increased by at least one decade. These examples support the perception that the state parole board – long considered a patronage pit, with \$175,000 salaries and free cars for its 15 members – cannot always be trusted to administer justice.

It’s the geriatric inmates that suffer the most, and that is an insult to our humanity and our common sense. Because not only do elderly offenders (even murderers) have less than 1% chance of re-committing any offence according to every known study, their incarceration costs five times more than that of a younger inmate. – *New Jersey Star-Ledger* editorial board, <https://tinyurl.com/yckeecebe>

Brits legislate mixed bag of rights for victims, prisoners

UK rape victims will no longer face unnecessary requests from the police to access their therapy notes or other personal records, thanks to new legislation.

Government ministers will have the power to block prisoners release from jail, CLA notes.

An amendment to the Victims and Prisoners Bill dictates that police should only request material that is absolutely necessary and proportionate to ensure that vulnerable victims aren’t put off seeking vital support. The law will end “expansive fishing expeditions for information that is often not relevant to the investigation and used to undermine the credibility of the victim,” the UK government says.

The new law puts principles underpinning the Victims’ Code on a statutory footing, clearly stating what victims can and should expect from the criminal justice system.

The bill will also overhaul the parole system by allowing ministers to block the release of the most dangerous offenders including murderers, rapists, and terrorists – putting public protection back as the overriding focus of the parole process. <https://tinyurl.com/3up69tn7>

ODD SPOT: Prisoners banned from getting married

The UK's new Victims and Prisoners law (see above) makes it mandatory for the Parole Board to consider public safety as the only priority when making release decisions. The move stops a balancing exercise taking into account prisoners' rights. The new law will also stop prisoners serving whole-life orders from marrying or forming a civil partnership in prison. "This will deny these criminals the important life events they stole from their victims while ensuring their horrific crimes are treated with the seriousness they deserve," the UK government says.

Trolls targeted by new laws

Online trolls hiding behind the anonymity of the internet to encourage others to cause themselves serious harm will face prosecution as part of an overhaul of online safety laws announced in the UK last month.

The Online Safety Bill will make it a crime to encourage someone to cause serious self-harm, regardless of whether or not victims go on to injure themselves and those convicted face up to five years jail. The new offence will add to existing laws which make it illegal to encourage or assist someone to take their own life.

Police or prosecutors will only have to prove communication was intended to encourage or assist serious self-harm amounting to grievous bodily harm (GBH). This could include serious injuries such as broken bones or permanent physical scarring.

The offence will apply even where the perpetrator does not know the person they are targeting.

Encouraging someone to starve themselves or not take prescribed medication will also be covered.

Research from the Mental Health Foundation shows that more than a quarter of women between 16-24 have reported self-harm at some point in their life and since 1993 the levels of self-harm among women have tripled. <https://tinyurl.com/d6w8mwe3>

Plea deals causing the end of trials

The US Constitution guarantees people accused of crimes have the right to a trial. But trials are becoming an endangered species, specially for black, brown and poor people, lawyers say.

Legal and civil liberties advocates are working to focus public attention on the trial penalty, which they say has contributed to the near disappearance of criminal trials. Between 1990 and 2022 the number of federal criminal cases that have gone to trial has decreased 63%.

The trial penalty refers to the difference between a smaller sentence offered to a defendant in a plea bargain before a criminal trial by comparison with a larger sentence the defendant could receive if they elect to go to trial.

In the federal system, about 98% of cases end in plea deals. In big states like Texas and New York, the numbers are similar. And in one county in Arizona, there were no criminal trials at all from 2010 to 2012.

Most criminal cases are heard at the state and local level, so change would have to happen state by state. State governments would have to vote to get rid of mandatory minimum prison sentences.

Prosecutors would have to reconsider how they charge defendants and how many charges they bring. And defence lawyers would have to re-evaluate the advice they give some clients. <https://tinyurl.com/aaf8j435>

Juries may have had their day

Scottish Justice Secretary Angela Constance claims there is "vast evidence" that juries "are influenced by false and stereotypical views".

She said a proposal for judge-only trials was "fair and legitimate given the long-standing low conviction rates for rape".

A pilot project in which judges alone would determine the guilt or innocence of people accused of rape requires the consent of the accused to participate. But lawyers are advising their clients not to take part, embarrassing the government and judiciary, who have spearheaded the plans predicated on research.

<https://tinyurl.com/yt86edhk>

Police taking happy snaps curtailed by court

The NZ Court of Appeal – the nation's second highest court – has confirmed a restriction on how police can photograph people in public randomly.

The court found an officer illegally photographed a man during a random traffic stop. The random photographing, not on reasonable suspicion that he had then committed a crime, was a breach of the NZ Bill of Rights, the court ruled. <https://tinyurl.com/yrn73437>

Police cross-referenced the photo with CCTV footage to identify the man and used the photo ID as evidence in a trial where he was convicted of robbery.

The court found there was no lawful reason to take the man's picture as he stood on the side of the road – officers were not gathering evidence about his offending at that time.

He was compelled by circumstances to leave the vehicle and his photograph was taken simply on the basis that it might be useful in the future. The court said the man had a reasonable expectation of privacy.

Do you – only – own your own face?

New York's City Council plans to curb the use of facial recognition and other types of biometric surveillance by private businesses and landlords.

It is passing rules to ban businesses from using facial scans or other biometric technology to identify customers. Other new rules would prohibit residential landlords from using the same sort of biometric identification of tenants and guests.

Residents are fighting landlords' attempts to install biometric tools — like fingerprint entry systems — citing privacy as well as concerns about the systems' reported difficulty identifying people with darker skin tones. <https://tinyurl.com/yckz2f28>

International briefs

Hangings continue for drug offences

Singapore executed Tangaraju Suppiah recently by hanging, the first death penalty carried in the city-state this year, for trafficking of just more than 1kg of cannabis. The Transformative Justice Collective believes that there are currently 54 people on death row in Singapore, all but three sentenced to death for drug-related offences. Last year, 11 men are known to have been hanged by the state. TJC research found that almost two-thirds of the offenders handed the death penalty for drug offences between 2010 and 2021 were of Malay ethnicity, a minority in the city-state. <https://tinyurl.com/p9wyw9au>

L&O campaigns: 'Excessive zeal, unwise, pointless sentences' says former PM

Former British PM Sir John Major has warned against "excessive zeal" to be tough on crime leading to "unwise policy" under 'law & order' campaigns, as he said the UK is locking up too many offenders. The former Tory leader argued, in a speech to the Prison Reform Trust at the Old Bailey, that "pointless" short-term prison sentences are being imposed where non-custodial measures would be more effective and fair." He also urged abandoning proposals to give ministers more power to block Parole Board decisions, warning the system should not be unduly pressured by public campaigns. In the year to June 2022, 43,000 people were sentenced to a prison term, of which fewer than two in every five had committed a violent offence. <https://tinyurl.com/5n7xbts5>

Terrorists have their religious activities cut

Convicted terrorists in the UK are being banned from taking a leading role in religious services and face more rigorous checks for extremist literature under a crackdown on dangerous radicalisers behind bars. The new rules will prevent terrorist prisoners leading the call to prayer or delivering sermons, aiming to strengthen existing measures which prevent the most dangerous prisoners leading Muslim Friday prayers by extending the ban to all faiths and not just those in high-security prisons. Proponents claim the move will protect frontline staff and the public...but don't say how. <https://tinyurl.com/2xxnmcfh>

DATES 2023:

14 July, Sydney (Newcastle U): *Algorithmic Justice Symposium*, 9:30am - 5:00pm, Terry Carney (AAT, U. Sydney): *Learning from Robodebt*: John Zelesnikow (U. La Trobe) at Sydney campus of Newcastle U, 55 Elizabeth St. Contact: email: socialjustice@newcastle.edu.au

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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