

Australia to pay up big to boat kids

Australia will pay more than \$27m-plus to Indonesians wrongly detained or prosecuted as adult people smugglers when they were legally children.

Basically, the government tried to employ a deeply flawed wrist X-ray technique to defeat justice.

Australia last month settled a class action brought by Indonesians who were as young as 12 when they were locked up in adult prisons and prosecuted in adult courts as people smugglers between 2010 and 2012. This happened during a wave of “smuggler” boats trying to land on the N and NW Australian coasts. The children, from coastal Indonesian fishing communities, were mostly cooks and deck hands promised pittances by local skippers to serve as crew on fishing trawlers organised by smuggling gangs.

The young Indonesian told authorities their ages, which meant they should have been dealt with as children. Instead, police and prosecutors relied on wrist X-rays to convince courts they were adults, paving the way for their prosecution as adult people smugglers.

Australian authorities were told that research showed the X-ray technique for determining age was wildly inaccurate, but they ignored the advice.

Law firm Ken Cush and Associates, with Sam Tierney* (photo) leading, began a class action with 122 juveniles who were mistreated by Australia. More people have joined in the two years the case has been under way. Others who may be eligible for compensation have a year to come forward before the matter is finalised.

The parties have reached an agreement to settle for \$27.5m, plus legal costs. The payout is to be endorsed by the federal court in December.

The former juvenile boat crew, now in their mid-to-late 20s, are expected to receive about \$150,000 each, which is a fortune for fishing villagers in Indonesia. <https://tinyurl.com/3cdyr4mk>

*Disclosure: Tierney is a former Treasurer of CLA.



Why are we still kidnapping asylum seekers to remote island?

Meanwhile, the Albanese government is continuing to send refugee claimants to Nauru.

Refusing to learn from decades of wrongfully inflicting misery on human beings by both Coalition and Labor governments, PM Anthony Albanese condemned 11 people to jail on the island in September 2023. When will the Australian government learn that forced kidnapping – aka rendition, as our US allies euphemistically call it – to Nauru is no different in principle from US forced rendition to Guantanamo Bay. <https://tinyurl.com/bdd4p9te>

And, at the same time, some 64 asylum claimants are stuck in Papua New Guinea, with neither Australia nor PNG willing to take responsibility for them. For many, Australia has been their travel agent for a decade, shuffling them around Nauru and PNG. <https://tinyurl.com/yc7xre6x>

Compassion costs very little. The inevitable court cases, followed by compensation payments, that will result from these latest Australian failures of conscience will cost tens if not hundreds of millions more than allowing refugee ‘veterans’ to live in Australia. Some have lived in a hellish limbo state since for 10 years.

ODD SPOT: Federal MP wants to know who is funding candidates

Independent MP Kate Chaney (Curtin, WA: photo) recently asked Anthony Albanese: Voters have a right to know who is funding their political candidates. In the last 20 years, only 21% of private funding to the major parties has been disclosed. Forty-seven percent is listed as undisclosed and 31% is listed as “other receipts”. So four out of every five dollars [in] political funding is dark money. – Hansard 19 Oct 2023



CLA delivers convincing argument for national Human Rights Act (HRA)

CLA President Dr Kristine Klugman last month outlined clear reasons why Australia needs a HRA, why the relevant committee should recommend one, and why the parliament should deliver a HRA for the people.

Opening a session of the Parliamentary Joint Committee on Human Rights (PJCHR), Dr Klugman said:

“Thank you for the opportunity to appear. Today’s hearings are being held on the lands of the Ngunnawal people and I wish to pay my respects to their Elders. Since I am also elderly, I can observe that this is the 10th occasion that Australian governments have formally considered introducing a human rights act.

“On each of these occasions, arguments made from outside government have been overwhelmingly in favour of a human rights act to alleviate the misery of individuals and bring justice to the powerless.

“CLA absolutely supports those arguments, but notes that they have failed to convince successive governments to act. With such a poor track record, the elephant in the room is whether the value of a human rights act for Australia has increased to the point that it is worth the Government spending political capital to implement it. (The answer is...)

“Yes...because the circumstances have changed. The need for a federal HRA has become even greater.

“At the most basic level, a HRA will provide Members of Parliament with a pathway for resolving up to 60% of constituency complaints that claim human rights abuse.

“A HRA will also help restore the social capital governments need to address intergenerational issues like climate change by building trust through accountability.

“By acting as a quality assurance and control mechanism for policy development and decision making, a human rights act will help government avoid damaging mistakes.

“We know that a human rights act will reduce the misery of thousands of Australians,” Dr Klugman said.

“We know that a human rights act is an internationally accepted cornerstone for rebuilding the social capital we have lost. We know that a human rights act will avoid damaging financial and reputational downstream costs.

“The Australian Human Rights Commission in its *‘Free and Equal’* report has provided you with a workable model for a HRA.

“We have 39 years of HRA practice across three Australian jurisdictions. Those jurisdictions have each told you of the value that a HRA-driven culture is bringing to their decision making.

“The ACT is providing you with a case study of that last step to a stand-alone course of action: *‘No Rights Without Remedy’*.

“The building blocks are all in place,” she said.

“We know that introducing a human rights act is a political challenge, but with social capital declining and individual misery on the increase, a HRA is a circuit breaker.

“A federal human rights act will invigorate the culture of a fair go and provide better and more accessible justice for all Australians. Thank you.”

CLA and Law Council of Australia join forces

President Klugman appeared with CLA’s National Human Rights Campaign Manager, Chris Stamford, and CEO Bill Rowlings.

At the choice of the PJCHR, CLA and the Law Council of Australia (LCA) shared the 45-minute presentation session, led by committee chair, Josh Burns (MHR Macnamara, Lab, Vic). Both groups were grilled over nitty-gritty details of the proposed HRA, but did not waver in explaining why the time for a HRA for Australia had come.

Committee member Kylea Tink (Ind, North Sydney, NSW) praised CLA’s submission, particularly its opening line, which reads:

“Governing is for the people, not over the people.”

Photo: Tink, Klugman and Chris Stamford at an earlier PJCHR hearing.

CLA’s submission to the PJCHR, along with the transcript of CLA session will be posted on CLA website when available.



Terms of reference offer scope for progressive change

The PJCHR is inquiring into:

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

- whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission's 'Free and Equal' report).

The committee is due to report to the Attorney-General, Mark Dreyfus, by 31 March 2024. <https://tinyurl.com/4p3ffuy7>

'Framework' was frittered away at the edges

The 'framework' was a policy-program put in place in 2010 following the largest physical consultation in Australia's history, under chairman, Father Frank Brennan.

The 2009 Brennan inquiry held 64 face-to-face meetings throughout the continent, as well as considering thousands of submissions, in relation to Australia getting a HRA.

Brennan and crew recommended a 'framework' which has left two legacies: legislation bills coming before federal parliament must be accompanied by a statement as to whether or not they comply with human rights, and the very creation-existence of the PJCHR itself as a parliamentary body is a Brennan concept.

However, the strong Brennan recommendation for enacting a Human Rights Act for Australia was not taken up by the then-Labor government. Labor now has another chance to deliver on an item long part of its federal platform promises.

An education program begun in 2010, supposedly for both the Public Service and the public, was stillborn after being immediately short-changed by an incoming government.

High Court's non-experts leave crucial forensic decision to pathologist

The High Court of Australia ruled 3-2 on 11 October 2023 that a forensic pathologist can have "specialised knowledge" of one type of stabbing being more likely than another to condemn a man for murder.

The case: *Thomas Chris Lang, a retired American doctor, was convicted of murdering Brisbane woman Maureen Boyce, 68. Her body was found in her home in 2015 with a kitchen knife protruding from her abdomen in. Lang's first conviction in 2017 over his lover's death was quashed on appeal, but he was found guilty again in November 2020 and sentenced to jail for life. Lang maintained it was suicide, that she had stabbed herself, denying any role in her death. His lawyers argued there were no defensive wounds, and no forensic evidence on Lang to suggest he had been involved. A forensic examination also confirmed no evidence of a struggle. – ABC report <https://tinyurl.com/mtyyt3u8>*

Chief judge Susan Kiefel was in the majority: she has just retired, officially from 5 November 2023. It is quite possible a different panel of judges would produce a different ruling just weeks after the first.



The HC's judgement summary said: "On the expert evidence ground, a majority of the court (Kiefel, Gageler and Jagot, Gordon and Edelman JJ dissenting), held that the admission of Dr (Beng Beng) Ong's evidence involved no 'wrong decision of any question of law' (*Criminal Code (Qld)*, s 668E). *Photo shows new CJ, Stephen Gageler.*

"Dr Ong's opinion – that the deceased's wounds were more likely inflicted by another person than self-inflicted – was substantially founded on his specialised knowledge within the field of forensic pathology.

"Accordingly, the expert evidence ground was...dismissed." Put differently, the HCA is quite happy to allow a forensic scientist to determine guilt.

A recurring issue in forensic science cases is "proven expertise", eg how often has the forensic pathologist seen cases involving people stabbing themselves to death? Can a forensic pathologist express valid 'specialised knowledge' in a situation where experience is non-existent, or severely lacking numerically.

For example, how many forensic scientists are experts on tracking onto a murder scene of DNA from 300m away, over water, on the shoe(s) of a police officer? How many studies are there on the issue, and where are they reported in scientific journals? The answers appear to be: none, none, and there are no reports.

The HC apparently believes forensic scientists' expertise on DNA tracked across water in the Sue Neill-Fraser case in Tasmania, as it failed to grant special leave to appeal on an issue of DNA transfer on the soles of crime scene workers, such as investigating police ferried by small boats accumulating mysteriously in one spot adjacent to a hatch through which a body was possibly lifted on to a yacht's deck by winch.

And in South Australia, the HC won't even consider the SA Supreme Court-ruled fact that for 30 years the chief forensic pathologist was not qualified to certify matters or to give expert evidence in many cases. The

HC has whittled the current Derek Bromley appeal (40 years, wrongly convicted so far, CLA says) to just whether evidence from someone with schizophrenia must be backed up by a corroborating witness.

The current Lang stabbing case is ripe for a second appeal to the High Court, CLA believes, if only the appellant can find a way through restrictive legal barriers to the empanelling of a different HC bench.

https://www.hcourt.gov.au/cases/case_b57-2022

Is the High Court fit for purpose?

Given the judgement (above), and the fact it was so close, it is interesting to look at the main legal experience of the various judges who made the decision.

Kiefel's background before appointment to the HC was in human rights, police tribunal and law reform.

Gageler, the incoming chief judge, worked mostly in constitutional, administrative, revenue and commercial law, before becoming Solicitor-General of Australia in 2008, handling just about everything other than criminal law for the most part.

Jagot, who has sat on the HC for 12 months, is an expert in planning and environment law with little experience in criminal law.

Of the two dissenters, Gordon's main expertise before sitting on the HC was in commercial law. Even Edelman, who has criminal law experience dating from his pro bono wrongful conviction work before being appointed a judge, is most noted for his academic and publishing efforts.

The High Court of Australia is seriously deficient in people with long criminal law expertise, and boasts no-one considered an expert in the increasingly crucial area of forensic science.

It is very hard to see how the High Court of Australia is fit for purpose on these bases, quite apart from other valid reasons why it should be totally reformed. – Comment: Bill Rowlings, CEO, CLA.

ODD SPOT: Bull's eye! Has ACT vote sparked new 'nation-state' thinking

The Voice referendum resulted in 60.51% of Australians voting no, with 39.49% in favour. All six states voted against the proposal to give Indigenous people a formal, Constitutional right to be consulted on any legislation that affected them specifically.

Only the ACT voted in favour, and its vote did not count because it is a territory, not a state. The ACT voted 60.88% in favour, 39.12% against.

Will the distinct vote generate a secession movement in the ACT for the creation of a separate nation-state, apart from Australia? Would ACT secession leave a large cricket ground-size "bull's eye" of land in the centre, housing a parliament for a nation the ACT did not belong to? Could the new nation-state be called VatiCanberra, Can-Do Capital of the World?

The ACT already has a port, Jervis Bay, which it could sell to the Chinese Navy in return for military protection.

The Chinese might be delighted, under their 'belt and braces' program, to build a super highway, incorporating a bullet train, between Jervis Bay and VatiCANberra, along with a huge offshore windpower farm extending 200km out to sea from Jervis Bay, running desalination plants and pumping fresh water and electricity uphill along the super-trainway to new storage reservoirs.

If 'old' Australia decides to move its parliament elsewhere, the current parliament house on top of a hill would provide an ideal major storage location for domestic fresh water distribution.

Which jurisdiction is the 'smartest'?

If the lowest informal vote is a reasonable measure of people's basic intelligence, who do you think the smartest people in Australia are? Here's the informal vote for the Voice referendum in October 2023, in percentage terms – the lower the number, more 'intelligent' the people are:

NT:	0.77
ACT:	0.79
WA:	0.861
Qld:	0.863
Tas:	0.95
Vic:	0.98
SA:	1.08
NSW:	1.15

So, the votes of the ‘smartest’ people in Australia were only counted once in the referendum – because they live in the two territories, not in states.

The votes of the dumbest people in Australia were counted twice, because they live in states.

Is that democracy?

Come on, Albo! We need another referendum to improve the fairness of referendums.

ODD SPOT: NT at last gets to decide on VAD...for itself

The NT has begun consulting on what Voluntary Assisted Dying (VAD, or euthanasia) laws in the NT should look like. An advisory panel will report to the government by July 2024, meaning the NT will be the last Australian jurisdiction to make available an option that a large majority of Australians want to have.

That is ironic, as the euthanasia debate was kicked off when the NT – briefly – legislated to allow it in 1995. The Big Brother Commonwealth Parliament, motivated by a religiously-bigoted private member’s Act, then banned the NT and the ACT from making decisions on VAD. Fortunately, the federal government has overturned the repulsive, anti-free-choice, anti-democratic law. <https://tinyurl.com/yn4av2hp> – *NT Independent*, behind paywall.

(Did you know the *NT Independent* has been nominated for a Walkley Award, top prize in Australian journalism?...but the NT government refuses to speak to the news outlet?)

Prison bugging inquiry gets new investigator

Tasmania has appointed Damian Bugg, a former Commonwealth Director of Public Prosecutions, to preside over an inquiry into illegal surveillance by Tasmanian Police at Risdon prison.

TasPol bugged the main lawyer-client room at the jail for two months, when a warrant it sought was intended to cover one meeting between a named lawyer and a named prisoner on one day only.

TasPol broke the warrant law back in 2017, but the matter has only recently emerged on the public agenda. Since it became public, the police commissioner Donna Adams and the newly-resigned former MP and Attorney-General Elise Archer have tried to downplay police transgression and ignorance.

Archer appointed a former state Solicitor-General Michael O’Farrell to hold an “independent” inquiry into the police behaviour. When Archer herself ran foul of her Liberal Party Premier boss in September, leading ultimately to her resignation, she chose O’Farrell suddenly as her personal advocate. So much for an “independent” appointment process in the first place, when your preferred personal lawyer is given the gig.

Bugg – who did not believe in a state integrity commission – has been called on to extricate the Tasmanian government from previous mistakes, like in 2021 when he formally ruled the Tasmanian Public Trustee had “for 26 years genuinely misunderstood the duties of an administrator under Section 57” of its Act.

Tasmania’s recalcitrant police force will be hoping Bugg can be as adroit in finding another “genuine misunderstanding” in clear, black and white warrant law and in the morals and ethics of dealing with the citizens it is meant to “protect”.

From pedophile police to evidence planting and general incompetence, TasPol’s reputation is in tatters... which has been officially recognised in its position as the least trusted force in Oz by its own community.

ODD SPOT: Gloss comes off Sofronoff’s work

Former judge Walter Sofronoff’s inquiry work is looking a bit tarnished at the edges.

He was originally greeted as a guru in 2022 around his extensive report into forensic science disasters in Queensland laboratories and then in 2023 his dissection of difficulties between the DPP and the AFP in the Lehmann-Higgins court case in the ACT.

In the ACT case, defamation claims among key participants are likely to produce a sweep of judges delving into the Sofronoff Board of Inquiry report, with journalists and main players suing news outlets and each other, and the pilloried former ACT DPP Shane Drumgold seeking what he believes is a better and fairer justice outcome. The cases may go on for years.

New inquiry into alleged forensics failings

Damaging fallout from the 2022 Sofronoff inquiry has just two weeks to produce answers.

The Queensland government ordered a fresh investigation into the state’s forensic DNA lab over concerns about an automated DNA extraction method, under a scheme known as ‘Project 13’.

The allegation is that Sofronoff, through alleged failings of his forensics advisory team, was not sufficiently astute enough to pry into deep-seated technical problems around automatic DNA extraction methods.



Qld Health Minister Shannon Fentiman (photo) announced a quick-fire, six-week, second inquiry to report by 16 November. Retired Federal Court judge, Dr Annabelle Bennett AC, who is also a former president of the Australian Academy of Forensic Sciences, is leading the quick-fire probe.

Project 13 used mock samples to compare the use of robots to extract DNA instead of scientists doing it manually. Using robots was much quicker, and therefore cheaper. A retrospective review of the automated method of DNA extraction, introduced in 2007 and processed by the MultiProbe II instrument, was one of the recommendations in the 2022 Commission of Inquiry, and includes samples affected under Project 13.

After the Sofronoff findings were released, forensic scientist Kirsty Wright blew the whistle on profound failings of the automated system.

"The Queensland lab was performing that step (DNA extraction) manually until 2007, but they were under a lot of pressure with backlogs and missing court dates, so they decided to buy some brand new robots to replace the manual method," Dr Wright said.

"That meant samples could be processed a lot faster and a larger number. The Project 13 document showed that it was recovering over 90% less DNA than the manual method," Wright said.

Note: 90% less DNA can be a severely limiting factor in how deeply DNA samples can be tested. In many cases, it is alleged, criminals have escaped punishment because the DNA sample could not be thoroughly examined accurately.

Qld will review about 7000 extra serious crime and sexual assault cases since at least October 2007 because of insufficient automated DNA extraction, bringing the total number of cases to be reviewed to about 37,000.

Testing abandoned if 'insufficient DNA'

The Sofronoff inquiry was told that in 2018 the Queensland Forensic Science lab made a decision to stop testing forensic samples below a certain threshold and classify them as having "insufficient DNA", even though further testing could have revealed a usable DNA result.

It is fair to say that Qld forensic science involving police, DPPs, courts and the law is in turmoil.

But so it is in South Australia, where state governments run by both major political parties have refused to reconsider forensic cases over a 30-year period that were under the aegis of the chief forensic pathologist, who was not qualified to undertake or sign off on certain pathology procedures.

CLA is writing to all main forensic labs in Australia to ask if and when they implemented the quicker, easier, cheaper and less detailed DNA pre-testing, as was done in Qld.

Even before the Qld revelations, criminal forensic science was in a state of chaos, Australia's experts have said publicly in a 'Sydney Declaration' of recent times. The comment sets the scene for the world's major forensic science conference, which is being held in Sydney this month, November.

Forensic mistakes frequently lead to wrongful convictions. But it is often forgotten that forensic mistakes can just as easily lead to criminals not (rpt, not) being convicted. <https://tinyurl.com/4fadu9yd>

<https://www.abc.net.au/news/2023-10-05/queensland-dna-lab-bungle-second-inquiry-expected/102936794>

Police are building a jail for kids

Queensland is fast-track building a new "youth remand facility" at Wacol, 21km from Brisbane, to house 50 kids. For some weird reason, Queensland Police Service is managing the construction.

The pre-trial jail will be near the existing Brisbane Youth Detention Centre – with common exercise areas and access to educational, medical and therapeutic capabilities at BYDC, which is the kids' jail for Qld.

In other words, the location suits the convenience of police, prison staff and the government, not necessarily of children or their parents from far-flung areas of the huge state. It will be the exclusive kids' jail until other new youth jails are built in Woodford and Cairns. which could be a decade away.

Until that happens, kids and their parents from all parts of the vast state of Qld will have to trek to Wacol once it is built, promised in late 2024 by the government but more likely well into 2025.

In the meantime, police watch houses will be used to lock up Qld kids in a clear violation of the state's Human Rights Act.

Built by police, the new kids' jail will be run by the Department of Youth Justice. – Govt media release: Thursday, 05 October, 2023 <https://tinyurl.com/55tv8a57>

Spraying and scanning for ‘safety’

NT safety officers can now discharge capsicum spray on buses to keep people safe, while at the same time police are using small, hand-held e-devices to show up concealed weapons on Darwinites.

Both moves are in a bid to crack down on violent crime.

Infrastructure Minister Eva Lawler said bus safety officers have been extensively trained to use the capsicum spray, including how to care for people sprayed.

Police Minister Kate Worden said the scanning “wands” had produced positive results in Alice Springs and Katherine with 399 people tested by police revealing 12 weapons, including an axe in Alice Springs and many pairs of scissors in Katherine, the *NT Independent* reported.

‘Corruption’ has commissioner stumped

The Northern Territory ICAC commissioner appears, in his annual report, to have given up.

Michael Riches says: “I have observed, amongst a range of public bodies, repeated instances of failures to abide by proper process, a lack of clear policies and systems, and a lack of effective management and audit processes. ...many allegations of serious improper conduct, which must be reported to my office, are not being reported.”

These comments fly in the face of his opening remark that: “I have not observed wide-spread (sic) or systemic corrupt conditions within NT public bodies.” – Michael Riches, ICAC commissioner, annual report.

The see-heaps-of-evil, hear-no-evil commissioner is being pilloried by some for what appears to be a muddle-headed approach. As well, the Independent Commission Against Corruption (ICAC) itself has been mired in controversy over actions of some staff in recent years.

Despite failing on its key indicator, ICAC enjoyed a full time equivalent staff (FTE) increase from 23.5 to 25.8 over the year. Notably, the ‘Assessment Unit’ had zero (0) staff at the end of 2022-23 whereas it had had four (4) staff at the end of 2021-22. The ‘Investigations Unit’ had zero (0) staff in 2022-23 whereas it had had nine (9) staff the previous year.

Footnotes indicate the Assessments and Investigations units had been combined during the year into an ‘Operations Unit’ in a change of deckchairs...but the Operations unit had only 10.1 FTE, meaning it was nearly three (3) staff down on the previous years in that part of the ICAC business.

Surprisingly, the Corporate Services Unit had gone from three (3) staff to 5.7 staff, a near doubling.

The NT ICAC’s key performance target is completing a mere 60% of investigations within six months of starting them: the annual report shows its actual performance against this measure was 40%. Given such poor performance, CLA wonders if anyone in the NT will investigate how its ICAC is managed?

‘Blood boils’ as cops allegedly dodge proper inquiries, says McKechnie

Meanwhile, in WA, the head of the Corruption and Crime Commission, John McKechnie, has said his “blood boils” over the refusal of WA Police to lay criminal charges against public officers.

He also wants the bureaucracy to address internal corruption in departments...so he can get on with investigating more serious issues.

WAPOL is apparently complicit in a technique that downgrades alleged offences to managerial-employee relations only. “It makes my blood boil at times but there’s not much I can do about it,” said the former Supreme Court judge and DPP who has been CCC head since 2015, and is appointed until 2026. (*The West*, 31 Aug 2023).

Actually, there is, CLA says. McKechnie could support CLA’s long-standing call for a separate, independent body to investigate complaints against police, doing away with what gives everyone the PIP, Police-Investigating-Police. It’s enough to make ordinary citizens’ blood boil, too.

Govt fails its kids, and has done for decades

The WA government failed a 16-year-old detainee who died last month after self-harming in his cell at the youth Unit 18 wing of maximum-security, adult Casuarina Prison on October 12, several senior people believe.

Inspector of Custodial Services Eamon Ryan was scathing of what the government did in the lead-up to and aftermath of Cleveland Dodd’s death,

He warned the government must provide better care to other detainees in the unit, which is based at the adult men’s prison. The Banksia Hill juvenile jail is unable to house some children so they get “promoted” to the adult jail.

“Ultimately, I think they failed this boy,” Ryan said. “I think there are so many others [in Unit 18] that haven’t had a tragic outcome, but they should be getting far better care.”

WA Children’s Court President Hylton Quail, who has been criticising the state’s youth detention system for years, last month described the youth wing of the adult jail as “barbaric”.

Twenty months ago, he said: “(W)hen you cage children and treat them like animals, you should expect when the door is opened that they will behave in that way.”

Even Premier Roger Cook knows the state is abusing children’s rights and the duty of care owed them.

“At the end of the day, they’re kids, they’re kids with significant problems and challenges and we as a state have to do better, we simply have to do better,” Cook said.

But when? Juvenile jailing of Aboriginal people and the treatment of such children by police, warders, community services and the Department of Justice has been a disgrace for decades. <https://tinyurl.com/ywofj7q6>

Briefs

How did you react to the ‘strong claim upon you?’

A quote from ‘*Towards the Referendum*’:

"In 1842, Australia’s first Catholic bishop, John Bede Polding, criticised the treatment of Aboriginal and Torres Strait Islander peoples: ‘The life of an (Aboriginal) human being is valued no more than the life of a kangaroo, and far less ...than that of a bullock’. In 1849, he wrote to the people of Sydney in his Lenten message, ‘The wretched unfortunate Aborigines of the country – the first occupants of the lands over which your flocks and herds now roam – have a very strong claim upon you’.

Relatives of people killed by police want independent inquiry

Families of vulnerable people fatally shot by NSW police have united to call for an independent inquiry into the way officers use force when responding to mental health emergencies. Their call has been backed by a former coroner and leading lawyers after four fatal police interactions in as many months. Clare Nowland, Steve Pampalian, Jesse Deacon and Krista Kach were fatally wounded or shot by NSW police between May and September while they were experiencing mental health issues that left them detached from reality. <https://tinyurl.com/dbzd39jk>

Man who didn’t warn of murder freed from jail

In the NT, Zak Grieve is free on parole after serving 12 years of a life sentence for a murder plot he pulled out of in advance, and a murder at which he was never present. He was jailed for failing to stop the murder happening, caught up in the territory’s mandatory sentence scheme. <https://tinyurl.com/mr2kb2xt>

Drug-jurors-fines regimes changing

Major changes to ACT laws began operating, or were mooted, in late October. The new decriminalised drug regime started: it fines people and refers them for health help rather than to jail for a criminal conviction. A Legislative Assembly inquiry into penalties for minor offences by vulnerable people recommended a review of public space and offensive behaviour offences, bringing in warnings for first offences rather than a fine, and cheaper fines for concession card holders. The ACT is also proposing majority verdicts, 11 out of 12 jurors rather than a unanimous decision, and up to two years jail for a juror committing “misconduct”, such as looking up relevant information on Wikipedia during a trial. The last two changes are proposed following the aborted Bruce Lehrmann trial when fellow Liberal staffer Brittany Higgins alleged a rape had occurred in a Minister’s office inside Parliament House.

Ankle bracelets must not discriminate

WA has announced it will legislate in 2024 for GPS tracking devices – ankle bracelets – for repeat domestic violence offenders of DV, bringing it in line with some other Australian jurisdictions. We hope the bracelets will appear on the ankles of the hefty number of police, celebrity, judicial, political and government people, who are repeat-offenders, and not just on the legs of First Nations people.

Letters

Leave whistleblowers alone

How is it possible that the Albanese government is continuing with the prosecutions and persecution of (Afghan war) David McBride and (ATO garnishees) Richard Boyle? Comprehensive investigations into the issues these whistleblowers raised would seem the correct choice for Attorney-General Dreyfus rather than destroying the innocent. This is especially true when the first charges of criminality in Afghanistan have

been laid and the near future may see many more. The further these cases go, the more the government will be seen to be part of the problem. – Gerry Gillespie, Queanbeyan NSW.

Barista at law

Correspondents have recounted confusion after giving a name to a barista. Spare a thought for barristers who are occasionally asked which coffee shop they work in. – Daniel Cole, barrister, St Albans, Vic: letter, The Age, 20 Oct 2023

CLA activities highlights for October 2023

National report

CLA appeared before the PJCHR, as noted in items above. The CLA submission was notably the only one of 330 submissions to stress the fundamental importance of social capital and trust in governments in building a nation, and why a Human Rights Act for Australia would help that process in a major way.

Meetings:

Visit of Margaret Howkins, VP of CLA in WA, to Canberra, including meeting with Chris Stamford, CLA National HRA Campaign Director and Estelle Blackburn, author and miscarriages of justice advocate. *Photo shows President Dr Kristine Klugman and VP Margaret Howkins inspecting CLA's National Liberty Tree in the National Arboretum.*



- Zoom with Dr Des Griffin to discuss the Voice campaign.
- University of Newcastle zoom meeting with extended panel, discussing wrongful convictions, failure to disclose and Criminal Cases Review Commission issues, including CLA members Barbara Etter APM and Estelle Blackburn OAM also.
- Professor John McMillan to discuss current issues involving privacy and FOI.
- Peter Cain, ACT Shadow AG, re next steps in HRA 'No Rights Without Remedy' legislation.

WA

CLA VP Margaret Howkins reports that the head of the CCC, John McKechnie, is at last realising the PIP problem, Police-Investigating-Police...or not doing so, as McKechnie's comments above indicate.

The WA Labor Govt has actually committed to fixing the PIP problem in their election platform. A parliamentary committee report '*If Not the CCC...then Where?*' has also highlighted the problem.

Howkins tries to gather data on police violence against and abuse of WA citizens. Some is reported in the media, most apparently isn't.

What is needed is a national repository which collects and collates examples of police wrongdoing on a regular (once a month?) basis, then compares what states and territories, and the federal government, are doing about fixing the problem

CLA would be keen for the Inner Melbourne Community Legal Service to take on the role again. Its PIP program appears to have fallen into a hole.

Tasmania

CLA has been asked to comment on a draft Bill to create an updated "approved card" system for people working with vulnerable people and children. But the proposed legislation is so far over the top that its excesses should be readily apparent to the legal society and barristers group in Hobart, who should rein in the first efforts of Justice Department drafters. They are inevitably "over the top".

Before writing such legislation, governments should learn what risk management is. You cannot legislate to avoid every risk. A sensible, balanced approach is needed. It is called "management", not "elimination". There is a danger the proposed new laws will squelch volunteering in the state.

For example, it probably would be illegal in future for CLA to give advice, as requested, on proposed "child worker card" law, because we don't hold such a card!

There is also legislation going through Parliament which will give the Police Commissioner total power over the state's Fire Service during an emergency. The last thing you want in an emergency is unqualified amateurs trying to run fire brigades, fires or bushfires, specially big ones.

Police are good at running "command and control" operations, where they are in total control. In a fire situation, you need community cooperation, which is the opposite of the usual "do as I tell you" police approach. Again, when will governments learn?

NT

- Zoom meeting with NTCOSS re possibility and promotion of NT Human Rights Act.
- Discussions re likelihood of Ministerial line-up changes

The *NT Independent* is reporting that NT Director of Public Prosecutions, Lloyd Babb, has refused to answer questions over why his office pursued charges against a *Nine News* reporter for allegedly impersonating a police officer. The charge was based on the testimony of a witness described by the judge as “evasive” and “unreliable”.

“The charges were thrown out of court in the latest embarrassing prosecutorial failure for the Office of the DPP, which has seen repeated high-profile cases dismissed for a lack of evidence after they start,” the *NT Independent* says.

“That includes a failed July prosecution against an NT Police media employee for allegedly disclosing confidential information that saw the charges dropped mid-trial by the prosecution, on the grounds of insufficient evidence.” – 23 Oct 2023, behind a paywall.

Babb was NSW DPP for 10 years from 2011. Mid-term, he was mired in controversy over criminal charges he twice refused to lay against two men alleged to have sexually assaulted and murdered a woman on a beach at Iluka in northern NSW. After revelations by the *ABC Four Corners* program, the men were eventually charged and sentenced to 15 years and nine years jail in 2017. <https://tinyurl.com/mwd3hhrj>
Offices of DPPs throughout Australia have seldom come under proper scrutiny in the past. Maybe it's time for a DPP Commission, like the various Judicial Commissions around Australia.

INTERNATIONAL

New, secret force set to control NZ

Official Information Act documents show the Ministry of Business, Innovation and Employment's (MBIE) intelligence wing, MI, has expanded in the past 12 months beyond immigration to cover the entire Kiwi ministry, taking charge wherever it perceives there is a national security threat.

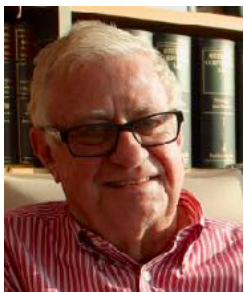
MI's budget has doubled in one year to \$11 million – nearly four times what it was in 2017 – and its staff has grown to 115.

MI's "National Security Intelligence Team" is expanding even though the NZ Security Intelligence Service (SIS), Government Communications Security Bureau (GCSB) and National Assessment Bureau already do the same work. Unlike MI, those spy agencies all have outside scrutiny from an independent watchdog; MI has none, only an internal monitoring group, *RNZ* reported.

MI deploys tools to scour social media under a secret deal with controversial Israeli surveillance-for-hire firm, Cobwebs Technologies, with the IT tools able to reach into people's private social media channels.

NZ is ‘using Cobwebs tools to prevent and/or detect a mass arrival’, the government has admitted recently. “It was acquired exclusively for use in identifying potential mass arrival activity offshore. It is only used for this purpose and for nothing else.”

A mass arrival has never occurred in New Zealand. <https://tinyurl.com/yawf8npj>



Courts clogging: where are ‘friends’ when you need them?

Kiwi courts are being clogged by self-represented litigants, lawyers say.

The number of people self-representing in the NZ Family Court has more than doubled in the past 10 years, from 602 in a year in 2014 to 1416 in 2022. In the Civil District Court, self-represented parties have risen by nearly 50%.

Advocates are calling for more use of McKenzie friends. This is the name/title of people who prompt, take notes, and quietly give advice to people appearing before a court. They need not be legally trained or have any professional legal qualifications.

The first McKenzie friend – backstory <https://tinyurl.com/bde9dam2> – was then-junior lawyer and recent graduate Ian Hanger (photo, Bill Rowlings pic), who is still practising in Brisbane and is now a KC with an AM. He has become a leading international mediator, a far cry from the un-registered barrister who visited England and gave his “client’s” name to a worldwide court system.

NZ lawyers and advocates are calling also for more cases to go to tribunals, rather than courts, and for legal aid groups to receive much more funding.

In Australia, the practice of acting as a McKenzie friend is virtually non-existent, but could be usefully revitalised, CLA says. <https://tinyurl.com/me6ydksd>

Court rejects appeal over conviction based on junk science

Robert Robertson is on death row in Texas after the US Supreme Court last month rejected his appeal that the 2003 sentence for killing his daughter, Nikki, 2, was based on junk science.

Robertson, now 56, was convicted of shaking his daughter to death, but subsequently several alternative causes that scientists have identified for the symptoms linked to shaken baby syndrome have been found to apply to the toddler. The girl had been ill with a fever of 40.3C shortly before she collapsed, had undiagnosed pneumonia, and had been given medical pills that are no longer considered safe for children as they can be life-threatening.

Five retired federal judges and 16 current and retired forensic scientists and pediatric doctors support Robertson's appeal. So does Brian Wharton, the police detective who led the case against him.

The officer highlighted the words above the courthouse: equal justice under the law. "Those words are just a bumper sticker, they're just jargon. We hold those ideals up, but in this case rather than seeking justice it seems like the system is going out of its way to resist it," Wharton said.

Pommy prisoners to be transported to Australia?

The UK government will soon pass laws to rent prison cells overseas to cope with rising criminality.

The average prison sentence in the England and Wales jurisdiction is up 57% since 2010. No-one has explained why citizens are becoming more wicked, or magistrates and judges more punitive, but government 'law and order' legislative crackdowns are likely a primary cause.

The UK is building six new prisons for an extra 20,000 places in the biggest prison expansion program for 100 years. Some 5500 places are already being built; another 2400 places have been created in existing prisons in the past year by doubling up cell occupancy and delaying non-urgent maintenance work.

But it is still not enough, Justice supremo Alex Chalk admits. The government will partner with countries overseas to rent prison space abroad, starting in Europe. <https://tinyurl.com/32k8wyb5>

Will ship hulks on the Thames be next, followed by one-way trips to Australia, CLA asks?

Judges are 'beyond review'

A senior Scottish judge, Roderick Macdonald (Lord Uist), has his sporan in knots over proposals by the government to diminish the status and tenure of judges or sheriffs, and make judges and the courts subject to executive review.

A new "Justice Reform" law will give senior judges the power to remove judges of lower rank who are appointed to a proposed Sexual Offences Court.

That's not on, says Macdonald (photo), because never before has a judge been removable from office for any or no reason and without prior legal procedure. The European Convention on Human Rights also wouldn't allow that to happen, he says.

But worse, the executive government is trialling the new judges-sexual court system, and wants a report after the trial period so it, the executive, can review how the system is working

In other words, Lord Uist says, the work of the pilot courts is to be subject to review by the executive and a report of that review is to be submitted to the legislature. This amounts to politicians treating the courts as forensic laboratories in which to experiment with their policies.

He says that the Scottish government's new justice bill features two provisions which are "constitutionally repugnant" and must be removed. <https://tinyurl.com/4pd5vvjy> CLA believes regular review of judges' performance – as happens in most workplaces – would be an excellent idea in Scotland, and in Australia.



ODD SPOT: Smoking? No right. Drunken domestic violence? Go right ahead

A new law will prevent children turning 14 this year, or younger, from ever legally buying cigarettes in England. The government wants to create the first 'smoke-free generation'. The law will effectively raise the smoking age yearly until it applies to everyone. The government claims smoking is the UK's biggest preventable killer responsible for 64,000 deaths a year in England.

However, the British government never compares smoking deaths with deaths, disabilities, child trauma and family violence-dislocation from drinking alcohol, which is itself a major cause of deaths and other anti-social outcomes. The Crime Survey for England and Wales for the year ending March 2022 estimated that 5% of adults 16 years and older (2.4 million people) experienced domestic abuse in the previous year. The impact on children, if included, would probably extend that figure out to more than 7m per year. It is estimated that less than one-quarter of domestic abuse crime is reported to police. <https://tinyurl.com/b6e66pty> and <https://tinyurl.com/2j52853d>

Court says you can have your cake, but not the icing

The Indian Supreme Court has ruled being part of a gay couple is OK, but same-sex marriage isn't. The court was asked to rule on a claim that failure to recognise same-sex unions violated LGBTQ people's constitutional rights.

While the court stopped short of allowing equal marriage, it recognised the rights of gay couples. So Indians are free to engage in same-sex relationships, assured of constitutional protection, but marrying someone of the same sex remains forbidden.

Chief Justice DY Chandrachud presided over the five-judge decision, which appears to be a bit like being allowed to eat cake, but not the icing. <https://tinyurl.com/3zm23nx7>

How can you tell what you don't know?

A man jailed for murdering his estranged wife 20 years ago who won't say where her body is, is not safe to be released from prison, the Parole Board has said.

Glyn Razzell killed his wife, Linda, in 2002. He told a public Parole Board of England and Wales hearing last month that she was still alive and one of the reasons he wanted to be freed was to find her and prove she had framed him.

The Parole Board decided Razzell was trying to control the narrative around his conviction and took into account a new law which makes it harder for prisoners to be released if they do not disclose the whereabouts of a victim's body.

In other words, Razzell stands twice convicted: once by a court, once by a parole board. What if he is innocent?

Petitioners want end to death penalty

A petition with 1700 signatories has been delivered to the Singapore government, asking for an immediate end to the death penalty for drug offences and a longer-term review aimed at abandoning the long-standing state policy.

At least 16 people have been hanged in Singapore since 2022 when executions resumed following a lull during the pandemic.

Activists believe there are currently about 50 prisoners on death row in Singapore, with all but three of them jailed for drug-related offences. <https://tinyurl.com/2vf4f93t>

International briefs

Secretaries combine against kiddy porn

UK Home Secretary Suella Braverman and US Homeland Security Secretary Alejandro Mayorkas have committed to joint action to tackle the alarming rise in AI-generated images of children being sexually exploited by paedophiles. They want other nations to join them. The announcement came during Braverman's visit to the National Center for Missing and Exploited Children, the US-based child protection organisation whose work includes reporting online child sexual abuse cases to global law enforcement agencies. <https://tinyurl.com/w9rzptj3>

Gun deaths of kids nearly double in 10 years

The rate of firearm fatalities among children under 18 has increased dramatically in the USA, making firearm injuries the top cause of accidental death in children. Some 2590 children and teenagers under 18 died of firearm injuries in 2021, up from 1311 in 2011, according to a study in the journal *Pediatrics*. More than 4.5 million children live in homes where at least one gun is loaded and not secured. The article said that drug poisonings among children under 18 more than doubled, <https://tinyurl.com/mppaks2f>

ODD SPOT: Why does the USA government repeatedly gridlock?

About 50 members of the Senate in the USA are lawyers. There are another 145-odd lawyers in the House of Representatives. This makes a total of about 195 people with law degrees out of the total number of 541 people, roughly 36%. House Members ages average about 60, and Senators about 66. – Congressional Research Service, 14 Dec 2022 <https://tinyurl.com/38fz9vn9>

Bail checks target the easy, not the dangerous

NZ Police are checking offenders on bail who are "convenient to check rather than high priority". A Bail Project Management Report shows hassling of low risk offenders while failing to monitor dangerous ones. Just 0.4% of offenders are automatically flagged as high risk, not because the proportion of high risk

offenders is that low, but because police IT systems are not fit for purpose. The numbers on electronic monitoring bail have exploded from 230 in 2014 to more than 2000 today, with a further 35% increase expected over the next 18 months. The police bail review was triggered when police shot a man, who was being electronically monitored, who had been subjected to physical monitoring 70 times in 38 days, sometimes multiple times on the one night. They had never found evidence he was breaching his bail conditions. <https://tinyurl.com/4kx6dys>

No housing? Go back to jail

Prisoners with unstable housing are nearly five times more likely to be re-imprisoned within their first year of release than those with stable housing, an Auckland U. study has found. NZ is failing prisoners by not providing stable housing options on their release, it says, after interviewing 201 people from six prisons while jailed, just before their release and six and 12 months afterwards. The report's lead author, AssProf Alice Mills, said 34% of people who reported having unstable housing during their first post-release interview were re-imprisoned within a year. <https://tinyurl.com/mr36jcfv>

Murdering parent to lose control over children

New laws in the UK will automatically suspend parental responsibility and rights from anyone convicted of the murder or voluntary manslaughter of a person with whom they share parental responsibility. The move will ensure that children are protected from their remaining parent having any say in their life, from going on holidays to which school they attend. Courts will still consider the best interests of the child through a review stage and a right to apply to have the suspension lifted. <https://tinyurl.com/4s7b7zrz>

Bio-man wants Forensic-man role as well

The Scottish Biometrics Commissioner, Dr Brian Plastow (photo), argues in his recent annual report that his independent supervision should extend across all criminal justice agencies...which would subtly rein in, monitor and dissipate police control of forensics. Plastow's report highlights that biometric data is used extensively in criminal prosecutions, in prisons and in the multi-agency management arrangements for violent and sexual offenders. "I encourage Scottish ministers to extend the independent oversight of my office and the safeguards of the statutory Code of Practice in Scotland to that whole ecosystem." The independent scrutiny of biometric data should cover the entire criminal justice landscape, he said. <https://tinyurl.com/mryb5y3n>



Military boss worried about fake online soldiers

The Philippines' defence chief Gilberto Teodoro Junior has ordered all 163,000 military personnel to not use artificial intelligence (AI) apps to generate personal portraits, saying they could pose security risks. He specifically warned against the use of a digital app that requires users to submit at least 10 pictures of themselves and then harnesses AI to create "a digital person that mimics how a real individual speaks and moves." <https://tinyurl.com/5n92u2kp>

DATES

20-24 Nov, Sydney: 23rd Meeting of the International Association of Forensic Sciences in conjunction with the 26th Symposium of the ANZ Forensic Science Society: details: <https://tinyurl.com/344u5fzz> Conference program: <https://iafs2023.com.au/>

Note: Key item for discussion will be the 'Sydney Declaration', which has been described as "*representing a significant milestone in re-evaluating the essence of forensic science beyond mere technicalities and protocols. Its seven fundamental principles emphasise the pivotal role of trace evidence, the importance of context, time asymmetry, the continuum of uncertainties, the need for broad scientific knowledge, as well as ethics, critical thinking, and logical reasoning. These principles are central to the practice of forensic science and provide guidance for education and research to make the field more relevant, effective, and reliable.*"

11 Dec, Adelaide: Former ACT Human Rights Commissioner Dr Helen Watchirs address to the SA Law Society on need for a HR Act in SA. Details: email@lawsocietysa.asn.au

2024:

31 March, Canberra: Parl Joint Cttee on Human Rights report re a Human Rights Act is due to AG Dreyfus

May 2024, NSW and Van Diemen's Land: Bicentenary of the Supreme Courts (NB: VDL then = Tasmania now)

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 Oct 2023.

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