

Get ready for a big election year

In the Great Cycle of Australian Democracy, four jurisdictions are likely to go to the polls in the coming 12 months...and it could be five.

Formally scheduled are the NT on 24 Aug 2024, the ACT on 19 Oct 2024 and Queensland on 26 Oct 2024. Wobbly Tasmania, with a possibly unworkable minority Liberal government in place, must hold elections for its House of Assembly by 28 June 2025. Some observers are tipping the Tasmanian lower house election will be much earlier, possibly in the first half of 2024.

That next Tasmanian election will tell us much about how Australia is changing. The Tasmanians have plumped to go from a 25-seat lower house to a 35-seat version. Smaller parties and “independents” may well be more prominent across the chamber after the election, foretelling changes in the federal Houses. ...and, of course, for the fifth election in 2024, it is always possible that the Albanese government will decide to go early. It can go to the polls for a concocted reason any time, but the likely first available date in normal circumstances is 3 August 2024. In late-breaking news, the ACT and the NT may go from 2 to 4 Senators. **SEE** below for the tale of a corruption commissioner with curious conference election timing.

How do we encourage and protect whistleblowers?

Should whistleblowers be protected when gathering evidence before disclosing possible wrongdoing? Do we need a standalone, independent whistleblower protection authority? Should whistleblowers be rewarded financially?

Attorney-General Mark Dreyfus has posed these and other questions in a consultation paper – *Public sector whistleblowing reforms, Stage 2, reducing complexity and improving the effectiveness and accessibility of protections for whistleblowers*.

Some 62% of Australian believe whistleblowers should not be prosecuted. Some 74% said the government should intervene to protect current high-profile whistleblowers, including the man who exposed that the ATO had acted like the mafia, Richard Boyle of Adelaide, from further court action.

For the paper: <https://consultations.ag.gov.au/integrity/pswr-stage2/>

...and do away with excessive secrecy laws?

AG Dreyfus has also promised to slash secrecy offences, make the remaining laws more fit for purpose, and improve protections for press freedom.

He has promised the government will:

- remove criminal liability from 168 secrecy offences out of the 875 total secrecy offences;
- cut other offences by passing a catch-all general secrecy offence binding Commonwealth officers and others with confidentiality obligations, including in cases like the alleged PwC breach of confidentiality which may have caused widespread harm;
- improve protections for press freedom and for people giving evidence to Royal Commissions; and
- lay down principles to guide future federal secrecy laws. <https://tinyurl.com/5fxvwzzj>

McBride admits to being ‘black hat’ whistleblower

Army lawyer David McBride was not a free speech warrior, as many of his supporters – including CLA – had believed. He was on the “hush-it-up” side, rather than pro-transparency.

Last month, for the first time in public, he revealed he leaked secret documents to defend Australian soldiers accused of illegal acts in Afghanistan, not expose them. His whistleblowing had entirely the opposite effect: it spotlighted the inquiries under way in Defence, instead of closing the curtains on them.

McBride has pleaded guilty in court to several leaking-related charges.

The inquiry under way when McBride blew the whistle resulted in the Brereton *report. In 2020, Brereton found that Australian special forces allegedly killed 39 unarmed prisoners and civilians in Afghanistan. As a result of his report, 19 current and former soldiers have been referred for potential criminal prosecution.

Only one has been formally charged as at mid-Nov 2023. A civil defamation case, brought unsuccessfully by an SAS soldier, the Victoria Cross winner Ben Roberts-Smith, against media outlets has traversed most of the facts to be aired in any future criminal trails of the infamous 19.

* Paul Brereton, both a NSW Supreme Court judge and a Major-General in the Army Reserve at the time of his inquiry, was appointed the first head of the new National Anti-Corruption Commission in March 2023.

Faith, integrity, trust in government lost

“To restore faith, integrity and trust in government”, it was announced last month, was the reason that the Albanese government has agreed, or agreed in principle, to all 56 of the Robodebt Royal Commission’s formal recommendations.

The federal government is newly providing \$22.1 million in extra funding over four years from 2023-24, and \$4.8 million each year after that. There’s an extra \$228m (and 3000 extra staff) for Services Australia in 2023-24 to improve service, making \$1 billion in extra funding for Services Australia since October 2022.

The government has boosted rates of working age and student payments, expanded eligibility for Parenting Payment (single), and increased Commonwealth Rent Assistance.

All this is on top of a \$1.8 billion settlement for 433,000 people.

The Royal Commission found that *“Robodebt was a crude and cruel mechanism, neither fair nor legal, and it made many people feel like criminals. In essence, people were traumatised on the off-chance they might owe money. It was a costly failure of public administration, in both human and economic terms”*.

If Australia had had a Human Rights Act – including a No Rights Without Remedy clause to ensure access to conciliation or a tribunal ruling if the government did the wrong thing – Robodebt would never have occurred, or would have been nipped in the bud within six months or a year at most, CLA says.

Bureaucrats would have had to justify their decisions, based on law, in open hearings...which would have been an impossibility.

The cost of introducing a Human Rights Act to Australia would be about 1/50th of what Robodebt cost the nation, and that’s without putting a financial cost on the loss of faith, integrity and trust in government.

Will Dreyfus do some human rights ‘whispering’

Attorney-General Mark Dreyfus will deliver the 2023 Human Rights Day* oration on 8 December 2023.

This year marks the 75th anniversary of the Universal Declaration of Human Rights. The AG will speak on that and its significance for Australia and internationally.

Most listeners to Dreyfus (photo, ABC pic) will have ears cocked for any reference to plans for a federal Human Rights Act for Australia. For four years, Civil Liberties Australia has been one of the leaders of the national campaign to achieve such a ‘bill of rights’, along with the core principle of ‘No Rights Without Remedy’ under which you can secure conciliation or a tribunal ruling if your rights are breached.



The parliament’s Human Rights Committee is currently conducting an inquiry into updating Australia’s human rights framework. Their report is due by 31 March 2024. Details: <https://tinyurl.com/5n7a9b58>

Details of oration and awards: <https://tinyurl.com/yc4ke6fn>

- * Human Rights Day is customarily 10 December each year.
- * For one of the first human rights heroes of Australia: <https://tinyurl.com/jj975uap> OR https://www.cla.asn.au/News/dead-to-rights-how-an/?zoom_highlight=hodgson

ODD SPOT: Harm to kids kept hidden

The UN’s Special Rapporteur on the sexual abuse of children was reportedly told crimes against NT children jumped by 22% last year but the NT government has not released the total figures. The UN’s Mama Fatima Singhateh undertook a nationwide investigation last month at the invitation of the Australian government. She was told there had been 107,824 reports of harm against children in the NT in the past four years, but the nature of harm and other details have not been disclosed. <https://tinyurl.com/3me32j92>

The bravest – or dumbest – govt official in Oz? Riches beyond compare

Is Michael Riches Australia’s bravest public servant? Or the most naive? Or what?

Riches, as head of the NT Independent Commission Against Corruption (NT ICAC), has agreed to host Australia’s biggest conference on corruption, gathering all the national corruption experts into Darwin, and ensuring the entire focus in the three weeks before the next Northern Territory election is on allegations of corruption.

The Australian Public Sector Anti-Corruption conference will be held in Darwin on 30 and 31 July, after a workshop on 29 July; the NT election will be held on 24 August.

In the NT, corruption rules, OK?

Well, claims of corruption rule, anyway, tossed about like confetti by foe against foe, sometimes friend against friend, opposition against government, would-be MPs against sitting MPs.

The one constant throughout the reigns of Michael Gunner, and now Natasha Fyles, since the previous NT election in 2020 has been fighting off corruption allegations.

Of the corruption allegations, some are probably absolutely unfair, while some are not so obviously unreasonable. But they date back to even how Labor MPs used/abused flights paid for by taxpayers for campaigning in mid-2020 before the last election, held in August of that year.

The claims extend to alleged corrupt – in the form of politically biased – legal behaviour by a member of the NT senior judiciary. An independent tribunal has ruled in favour of the barrister who made the claim against the judge, and a new “panel” has to make a determination. The saga has been going on for years.

In these and the circumstances outlined below, all you can do is say: Bravo, Michael Riches, currently the NT ICAC Commissioner.

But for how long? Will he remain in the position when Chief Minister Natasha Fyles realises the entire focus on corruption in Australia will be on her doorstep just 23 days before she offers her questionable government for re-election?

Will Riches be told by the govt that Darwin and the NT will not host the 2024 conference? Can NT ICAC be ordered to desist, and told to send the conference elsewhere, even at this late stage?

How will Fyles deal with disaster delivered to her campaign doorstep?

If the conference remains in Darwin, will speakers be censored by organisers to avoid mention of copious cases of alleged corruption, or possibly questionable competence, by the NT Labor government, its ministers and staff, and involving even the NT ICAC itself?

Legal and allied system in turmoil in the NT

The legal profession and allied activities in the NT are in turmoil:

- the main Aboriginal legal service has a revolving door to cope with changes in its chiefs;
- the top judiciary is in turmoil, with a finding of bias made against a Supreme Court judge and no finality as to his future prospects or ultimate fate: former Chief Minister Delia Lawrie is calling for him to stand aside;



Politics

Court rules Territorians cannot sue watchdog for incompetence

A former remote principal has lost her last-ditch attempt to sue the Territory's inaugural corruption watchdog Ken Fleming KC, after the courts ruled incompetence was not a 'misfeasance'.

- a ruling that incompetence is not a misfeasance (that is, it is a passive rather than active happening). The ruling has saved the first and former ICAC boss from being sued, but clearly questions the level of competence in ICAC in previous years at least;

- recent NT Police Commissioners have left in questionable circumstances: one was convicted of corrupt activities involving his travel agent girlfriend, and she and he both went to jail;

- the Chief Minister herself is claimed to have held shares in mining companies doing deals with the NT government without declaring them, as usually required, and also failing to declare her husband's

involvement with a health-related company benefitting from government contracts worth hundreds of millions of dollars since she became health minister in 2016;

- police officers have been charged with all sorts of bizarre behaviour, some of it out of frustration but some of it criminal;
- meanwhile, the long-running saga – involving Kumanjaya Walker who was shot dead by Constable Zach Rolfe during an attempted arrest – puddles along, with coroner Elisabeth Armitage this month ruling she did not have to step aside due to apprehended bias. The coronial inquiry is not finished, even though the death occurred in November 2019. Rolfe has been acquitted of murder and manslaughter charges by a jury.



Ex-pollie calls for senior NT judge to stand aside pending panel decision

Delia Lawrie said Justice Stephen Southwood 'should go on leave immediately and not harm, or be able to harm, anyone else' until an allegation of 'malice' against him is resolved.

Illustrations show how the NT News reported some of the strange happenings in the Frontier North of Oz.

Riches himself has a chequered career as ICAC NT

How tenuous is Riches' future, given this extraordinarily strange decision to put the government that appointed him at greater risk of being thrown out because he is assisting the public focus to be on corruption just before an election?

And, of course, that comes on top of other richly odd decisions by the same man:

- the annual report fiasco (as reported in the November 2023 *CLArion*), where he said there was no corruption to report on, then gave examples which most people believe are definitely corruption;
- the firing/hiring/secondment of staff in/out of ICAC NT;
- bizarre reports and non-reports over key issues (horse racing club, flights);
- failure to meet key performance indicators by 50% (reaching the 40 mark, instead of the 60 target: see last *CLArion*).

Riches' career began as a South Australian cop. He studied while working as a police officer to achieve Arts and Laws degrees. After graduating, he stayed with SA Police as a solicitor before joining the SA Crown Solicitor's Office in 2009.

From there, he was appointed deputy Independent Commissioner Against Corruption for SA. In May 2021 he was officially appointed NT ICAC.

Need new way to get rid of the corrupt and the incompetent

Ignoring the NT situation for the moment, how do you get rid of people appointed to independent, statutory positions if they prove not competent, biased, corrupt or criminal?

That should be a core* question for heavies at the national corruption conference to consider, CLA says. They'll all be there, from the National Anti-Corruption Commission through every state/territory equivalent body, and other misbehaviour review agencies.

One of the emerging problems nationwide is how you get rid of a statutorily-appointed officer when she/he proves not up to the job, for judgement, management or competence reasons, or corruption.

Every state and territory, and the feds, have faced or are likely to face this problem.

The most common mechanism for ridding society of statutorily-appointed turbulent or troublesome "priests" is a majority vote of parliament, often combined houses. But, in the adversarial climate that pervades all jurisdictions, agreement across political boundaries is much less likely in the 2020s than it was in the 1920s when many such legal mechanisms were introduced.

It is likely the issue will become bigger over time, as personal integrity and propriety don't appear to be growth areas.

*...and, how to restore the principle that Ministers who fail in terms of public truth-telling or portfolio management take responsibility for their actions, or inactions, and resign.

Forensics in chaos: 103,000 DNA samples may need re-testing

Some 103,000 DNA samples across 37,000 cases may have to be re-tested to see whether offenders escaped prosecution over the nine years of a scientifically-incompetent forensics system in Qld.

A controversial DNA method was fundamentally flawed, an inquiry ruled last month.

Retired Federal Court judge Annabelle Bennett probed the Qld Health Forensic and Scientific Services laboratory over "Project 13". This was a report in 2008 by seven scientists who recommended using an automated DNA testing system, rather than continuing the then practice of extracting samples manually.

The decision was a disaster. It was wrong in science, and unjustifiable legally.

The automated method yielded up to 92% less DNA than the manual technique. (In lay terms, this means only about 1/12th of the DNA may have been available for checking. Sometimes, no DNA was available).

Guilty criminals may have gone free, or innocent people might have been jailed.

"It is apparent that the ... method was introduced at the QHFSS laboratory without having been scientifically validated," Dr Bennett found. She called it a "devastating outcome for the criminal justice system, including victims and their families."

"This reflects a systemic failure in the governance of the QHFSS laboratory," she said.

According to Health Minister Shannon Fentiman, the originally much-lauded but ultimately ineffectual Walter Sofronoff forensics inquiry in 2022 had been misled, but not deliberately, by Dr Linzi Wilson-Wilde (LWW), the recently-installed new head of Forensic Science Queensland, who remains in that position.

LWW "did not draw attention to the deficiencies of Project 13" in her evidence before the first inquiry, which led to setting up the second, Bennett inquiry: there was no adverse finding against her in Bennett's report.

'Samples should be re-tested externally'

Independent forensic biologist Kirsty Wright and murder victim Shandee Blackburn's mother, Vicki, called for all re-testing of samples to be done outside Queensland.

Dr Wright was the diligent scientist who exposed the flaw in the automatic testing method, and in how it had been glossed over in formal reports. She said she was "disappointed about the lack of accountability".

The Bennett inquiry held no individual responsible for the failed method or for keeping its catastrophic problems concealed. Some scientists involved have been able to continue working in the lab, *The Australian* reported, as part of its excellent revelations and coverage of the Qld forensics disaster.

Forensic Science Queensland's new chief executive, Linzi Wilson-Wilde, was cleared to continue overseeing the lab despite the inquiry finding she failed to sound the alarm about the DNA testing disaster when involved as an expert witness at retired judge Walter Sofronoff's first inquiry in 2022.

Despite a call for other states to do the re-testing, they may be just as bad: no-one has checked nationally, so new testing of samples outside Queensland may run into exactly the same problem as in that state.

No-one has yet checked – and passed – all other relevant laboratories outside Qld to see whether they adopted exactly the same flawed regime as in Qld.

Given there was an enormous saving in time and costs by not doing the testing properly, the "Qld method" would have been extraordinarily attractive since 2008 to labs in other states.

All forensic laboratories in Australia must be re-vetted, immediately, CLA believes. We said so in January.

Govt must reform forensic regulatory oversight

Each year, Civil Liberties Australia writes an Australia Day letter on a major issue proposing improvement to the legal system or justice in Australia.

On 26 January 2023, CLA wrote to the Attorney-General Mark Dreyfus calling for the appointment of a Forensic Science Regulator for Australia, and the establishment of a forensic regulatory authority here.

It took eight (8) months, but eventually we received a reply dated 31 August 2023 from a person signing off as Dr Simon Walsh PSM, Chief Scientist, Australian Federal Police.

Dr Walsh explained the bureaucratic system which he and the AFP say supports "best practice forensic science in Australia and New Zealand." (The Qld fiasco proves we do NOT have best practice in Oz).

In short, the ANZ Police Advisory Agency is the manager of the system. The 10 members of the ANZPAA Board, who provide "Strategic Governance", are the 10 police commissioners of Australia and NZ.

So far as CLA is aware, not one of them holds any serious, up-to-date, forensic science qualification.

If the system Dr Walsh and the AFP backs is what is supposedly providing "best practice forensic science", that claim is not backed up by the disaster as found in Queensland where 103,000 samples of DNA collected over a nine-year period are liable for re-testing.

CLA calls on Dr Walsh to provide a better answer as to why a new Forensic Science Regulator and Authority is not needed in Australia.

In passing, we note but make no further comment on the close professional working relationship between Dr Walsh and Dr Linzi Wilson-Wilde over many years.

Who comprises the ANZPAA Board?

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



Wilkie quizzes Dreyfus over forensic regulation

Independent Member of the House of Representatives for the electorate of Clark in Tasmania, Andrew Wilkie, asked AG Mark Dreyfus the following in Question Time last month:

“Attorney, given the catastrophic failings with DNA testing in Queensland and other alarming forensic failures like Keogh in South Australia, Eastman in the ACT and Neill-Fraser in Tasmania;

“...will you take the lead and work with the states and territories to improve and harmonise Australia’s forensic services to restore trust in our criminal justice system? This would include reviewing the National Institute of Forensic Science and the National Association of Testing Authorities?”

ABC Radio Hobart interview: Forensics, CCRC 2.19.00 <https://www.abc.net.au/listen/programs/hobart-breakfast/hobart-breakfast/103088516>



New chief judge, and judge, for High Court

Robert Beech-Jones, on 6 November 2023 became the new boy on the High Court of Australia bench (*photo, ABC News pic*). He has been a NSW Supreme Court judge since 2012. He grew up in Tasmania, before moving to Canberra to study for a Bachelor of Laws (Honours) and a Bachelor of Science from the ANU.

Beech-Jones was a barrister in NSW from 1992 and was appointed Senior Counsel in 2006. His major expertise is in the areas of commercial law, regulatory enforcement, white collar crime and administrative law.

The new head judge, styled ‘Chief Justice’, is Stephen Gageler, who has been on the High Court since 2012. Former head judge Susan Kiefel stepped down earlier than necessary, on 5 November, months before reaching the mandatory 70 retiring age.

Sharp new director

AG Dreyfus appointment last month of Raelene Sharp KC as Commonwealth Director of Public Prosecutions (CDPP) may allow for a backdown on the Richard Boyle case.

She replaces Sarah McNaughton, newly appointed judge of the Supreme Court of NSW. The hardline McNaughton was the one who decided to continue pursuing the whistleblowers, Boyle and David McBride. Boyle revealed how the Australian Tax Office used mafia-like debt collection techniques against the small businesses of little guys. The ATO was then, and is now, allowing the big local and foreign corporates to pay less tax than a part-time pie vendor.

Sharp’s five-year appointment starts on 4 December 2023. She has been a Victorian Barrister since 2010, but only achieved the honorific of ‘senior counsel’ in 2022.

Sharp (*photo*) is strong on criminal law, appearing for the CDPP in complex and sensitive cases, her appointment blurb says. She has broad public law experience, as counsel in public law litigation and through working with the Office of the Special Investigator and the then Australian Crime Commission.

The Office of the Commonwealth Director of Public Prosecutions is an independent prosecution service established by Parliament in 1984 to prosecute alleged offences against Commonwealth law.

The CDPP operates independently of the AG and the political process. But the AG has an over-ride authority in some circumstances.



Jobs for the right boys and girls?

The federal government has asked for people to nominate to become non-judicial (ie, not legally qualified) Deputy Presidents and Senior Members of the new Administrative Review Tribunal (ART).

The ART is the body which replaces the Administrative Appeals Tribunal (AAT).

The now defunct AAT had become so stacked with Coalition-friendly operatives that the incoming Labor government in 2022 decided there was no use doing their own counter-stacking: the only option was to start again with a new body. Hence the ART.

Information about the available roles and how to apply: [Attorney-General’s Department website](#).

CLA hopes the Albanese government meets its commitment to NOT stack the new body with Labor-leaners only, but appoints people on their abilities, not their politics. CLA believes the ART could become a vital body in enforcing human rights in Australia, if it is nominated as the tribunal to legally rule on any difficult cases that cannot be decided by conciliation through the Australian Human Rights Commission.

Here's hoping new INSLM stays truly independent

Jake Blight has been appointed Independent National Security Legislation Monitor (INSLM).

The Rudd govt established the INSLM system in 2010. It is meant to independently review the operation, effectiveness and implications of national security and counter-terrorism laws and consider whether the laws contain appropriate protections for individual rights, remain proportionate to terrorism or national security threats, and remain necessary.

Blight is the fifth INSLM, the first full-time. The government boosted funding in the May 2023 Budget to \$8.8m over four years from 2023–24 for a full-time position and to increase INSLM staff to eight.

The workload is increasing and there are priority reviews upcoming, including into espionage, foreign interference, sabotage and secrecy offences, Blight's appointment announcement said.

CLA wants INSLM to review the entire sweep of excesses contained in all the "anti-terrorism" panic laws passed since late-2001. These hasty laws should be completely re-thought, rewritten, and then included in the Crimes Act where they should have been in the first place.

Blight is security insider

Blight (see item above) comes from a national security background. For 10 years he was deputy Inspector-General of Intelligence and Security (IGIS), with a role to oversight intelligence agencies. Before that he was with the office of the Australian Government Solicitor.

His appointment blurb says he has a commitment to promoting human rights and equality and has directly contributed to significant law and policy changes through community work. He is also a volunteer fire fighter, dog trainer and motorcycle rider, with degrees in Law, Gender Studies and Cybernetics.

The retiring part-time INSLM, Grant Donaldson, was a standout in the role. He reviewed major laws, bringing a sceptical and critical approach to oft-inflated, air-plucked and usually evidence-free claims of the security agencies in their continual demands for more laws, more power. <https://tinyurl.com/y3z868yc>

Falk moves on

Information and Privacy Commissioner, Angelene Falk, will step down in 2024 after six years in the job.

She has held senior positions at the Office of the Australian Information Commissioner (OAIC) since 2012, Brandon How reported in *Innovation Aus*.

AG Dreyfus announced in May 2023 that the OAIC would move to a three-commissioner model, splitting the responsibilities of information and privacy and appointing Toni Pirani as interim Freedom of Information Commissioner. In general, this is how the OAIC was supposed to work in the first place. The FOI Commissioner role had remained vacant since Leo Hardiman, the first FOI commissioner in seven years, quit after less than a year, citing a lack of resources.

Late in November, he appointed the Information Commissioner and CEO of the NSW Information and Privacy Commission, Elizabeth Tydd, to the role of federal FOI commissioner for a five-year term. At the same time, he announced Carly Kind would be Privacy Commissioner. She comes to the role from being director of the London-based Ada Lovelace Institute.

The OAIC has been a disaster almost since it started, because it tries to combine functions that should be separate, and it has never had the resources to make FOI work properly in and for Australia.

At one stage, under the Morrison govt, the situation had reached the farcical state that the head of the OAIC, Prof John McMillan, was operating from his suburban house in Canberra, without formal funding or support. <https://www.innovationaus.com/gig-guide-falk-to-step-down-as-information-commissioner/>

ODD SPOT: New tool measures impact on kids

The Australian Human Rights Commission has launched the Child Rights Impact Assessment tool, developed with UNICEF Australia, to assess how children's rights and wellbeing are affected by law, policy or program changes. The 18-question checklist can measure the anticipated impact of a new law or policy, and whether it supports the best interests of children and their families in Australia. The tool report *Safeguarding Children: Using a child rights impact assessment to improve our laws and policies* includes a case study in which the effects of policies and school closures on children during the COVID-19 pandemic are retrospectively assessed. <https://tinyurl.com/5c7ev62h>

Sofronoff has become the 'horn of plenty' for Oz legal system

The more protagonists, the more and higher legal fees. The more downstream inquiries or legal cases after inquiries, the more protagonists and therefore barristers and solicitors needed.

The more Walter Sofronoff KC inquires, the more litigation follows.

The retired Queensland judge has become the horn of plenty for Australia's legal profession.

His first inquiry, into bad DNA practices in Qld forensic lab work, caused laboratory sackings, a massive injection of new funding into the lab system by the Qld government, and a wholesale change to the corporate structure and supervisory system of forensics in Qld.

But then it was found that the Sofronoff 1 – Qld Forensics inquiry itself was deeply flawed, and failed to get to the root cause of massive problems in the state's legal system which will require re-looking at more than 100,000 DNA samples.

Sofronoff 1 generated Bennett 1, a more granular public inquiry into how Forensics Qld got it so wrong.

Bennett 1 has just reported (see item earlier).

Sofronoff 2 – into core aspects of the ACT Legal System, was a formal board of inquiry, ordered by the ACT government, into the behaviours of the ACT then-DPP, Shane Drumgold, and officers of ACT Policing (part of the AFP) and the Victims of Crime Commissioner.

That inquiry found largely against now-resigned DPP Drumgold and mostly in favour of ACT Policing officers...though police copped some Sofronoff 'serves' along the way in his report, which he naively leaked to two media outlets in advance of giving it to the ACT government, who employed and paid him.

Drumgold now wants a legal declaration that he was denied natural justice, and for the findings to be declared invalid because of an apprehension of bias...presumably by Sofronoff.

New fee-go-round push follows Sofronoff 2 inquiry (the ACT one)

Six AFP police officers have applied formally to join the Drumgold legal challenge to rulings by retired judge Sofronoff's in the commission of inquiry held after the Bruce Lehrmann–Brittany Higgins case.

Sofronoff's report was scathing of former DPP Shane Drumgold. Drumgold is asking in a civil action for the ACT Supreme Court to quash the Sofronoff findings. The police want some findings to remain but are challenging others they say question the "character and conduct" of police.

Sofronoff found that Drumgold had not acted with fairness and detachment, and had knowingly lied to Chief Justice Lucy McCallum about a conversation with journalist Lisa Wilkinson. Sofronoff also included allegations that Drumgold did not hand police reports to the defence when he should have done so.

Victorian Judge Stephen Kaye has been appointed to "referee" the civil challenges, which are formally against the ACT government and its Attorney-General Shane Rattenbury.

One new case seeks damages, one seeks conviction

In another case, Lehrmann is claiming damages for defamation against Lisa Wilkinson and news media.

Brittany Higgins alleged a rape took place in a Minister's office in Parliament House, Canberra, in 2019. Lehrmann has always denied the alleged rape occurred and no finding against him has been made.

Aspects of the allegations were reported, before Lehrmann had been identified publically and charged, by several news outlets. Lehrmann claims his identity was obvious to peers, even though he was not named.

The rape jury was discharged in October 2022 by the ACT's chief judge, Lucy McCallum, after a juror brought 'research material' into the jury room. The trial was then aborted completely due to possible danger to the mental health of participants.

There were no findings against Lehrmann, with the former Liberal party staffer maintaining his innocence.

Qld Police have subsequently charged Lehrmann with rape in an apparently quite separate case. He denies the allegation. No further details are available.



Pappas has no faith in ACT police

The extent of misbehaviour by police against footballers, particularly Indigenous ones, has reached such a state that a prominent barrister publicly declares he has no faith in police internal investigations.

Rugby league star Latrell Mitchell's barrister Jack Pappas says no meaningful change will come from a police review into the failed case against Mitchell and fellow RL star Jack Wighton. Both of them have played for Australia.

"I have not the slightest faith that any internal police investigation will identify or root out the problems with ACT Policing which the Mitchell and Wighton case has highlighted," barrister Jack Pappas (photo) said last month.

Pappas is no junior lawyer. He is one of the most senior barristers in the ACT.

Charges relating to an alleged scuffle earlier this year were dismissed by the court after evidence given by the officer overseeing the RL players' arrests was contradicted by CCTV footage. In other words, the police officer's evidence was untruthful.

The case against Mitchell and Wighton has been referred to the AFP's Professional Standards team, which can investigate serious misconduct and corruption matters.

ACT Policing confirmed the senior officer, Sergeant David Power, had not been stood down during the review, Tim Piccione of *The Canberra Times* reported.

His report also carried a photo composite which included Raiders rugby league hooker Tom Starling with severely scarred face (photo) after an encounter with NSW Police.

A police officer allegedly suffered a cut to his hand: Starling was charged with seven offences.

A magistrate eventually dismissed all of them, finding NSW Police had breached their duty to Starling, and that Starling had in fact been assaulted by police officers. <https://tinyurl.com/2wxn77bb>



Lawyers say police internal investigations are non-transparent

Barrister Pappas said he had been exposing police failings for decades but "I have yet to witness any attempt at systemic reform or cure."

"It is unclear to me why journalists and others simply accept, like trusting children, the tut-tutting and there-thering of the police and largely uninformed and ignorant members of parliament, when these things are exposed," he said.

Mitchell's solicitor, Tom Taylor, shared Pappas' skepticism for internal investigations, which he said were not transparent. "They're done behind closed doors, and the process and the ultimate findings are sometimes heavily redacted or not released," Mr Taylor said. "It troubles me when police review police."

Pappas revealed another case involving Sergeant Power during the police officer's cross-examination.

In 2018, magistrate Glenn Theakston said he was not satisfied the force used by Sergeant Power and another officer during an arrest was "necessary and reasonable". The two began "heaving" a man out of a taxi by grabbing his leg before capsicum spray was used on him without warning by a third officer.

The man was then "hauled through the air and on to the ground", where he "did not struggle to any significant degree" but was hit with capsicum spray, again without warning.

"In the instant case, there was no such necessity to subdue the defendant. He was merely sitting in a taxi," Theakston said in his decision.

The magistrate observed "there were key and significant inconsistencies between the CCTV footage, police perceptions and the use of force report".

He directed the court registrar to draw the inconsistencies to the chief police officer's attention by providing his reasons, a transcript of the proceedings and relevant evidence.

Pappas said Sergeant Power had made it "perfectly plain" he was "never subjected to any re-education, nor any disciplinary action" following the referral in 2018.

"Nobody ever asked you to explain yourself?" Mr Pappas asked Sergeant Power last month. "No," the officer responded. <https://tinyurl.com/bdfedkwc>

'Cowboy' cops fail to secure convictions

In June 2022, Pappas – then vice-president of the ACT Bar Association – accused ACT Policing of a "cowboy culture" when collecting evidence, which he said led to cases being thrown out.

His comments followed publication of Productivity Commission data about the ACT's criminal conviction rate, showing it had dropped from around 95% for the five years before 2019 to 65% for 2019-2020 and 66% for 2020-2021. <https://tinyurl.com/4t7serka>

ODD SPOT: Is charging a cop the last resort of police ?

A high-ranking NSW detective, 46, who is part of the NSW Police executive, has been charged with drink driving and driving under the influence. NSW Police have denied there was a "cover-up". CLA believes them: instead, the police probably spent six months trying to work out a way of not charging a police officer but, in the end, found even they could not be so brazen. The question for NSW Police is: how many police officers have not been charged with offences when they could have been, say over the past five years, in similar circumstances to this case?

Tassie locks up and locks down Aboriginal people excessively

"Tasmania is not alone in being impacted by lockdowns in prisons but unfortunately, for adult prisoners, it has the worst total average time out of cell in Australia," Richard Connock reported recently.

Connock is the Custodial Inspector for Tasmania (as well as being Ombudsman and wearing other hats). He made his comment about lockdowns under "key observations" in his 2022-23 annual report.

He wrote that the national comparative "bible" for statistics, the Report on Government Services (RoGS), recorded that, for 2021-2022, Tasmanian prisoners only had an average of 7.7 hours per day (out) of their cell. In 2021-2022 the Tasmanian average hours out of cell per day for *secure* prisons was 7.4 and for 15.5 for *open* prisons.

"The Department of Justice has indicated in the past that Tasmania performs poorly against this indicator because of its significantly lower number of prisoners in 'open prisons', dragging its average out of cell hours down compared to interstate jurisdictions. The ACT has a smaller overall prison population than Tasmania, however, and performs better," Connock wrote.

"I reported last year on the high rates of assaults in adult custody and this continues. It is reasonable to assume that there is some connection between this and the rates of lockdowns," Connock wrote.

The state has the worst prisoner-on-guard assault record in the nation, about two and a half times higher than the next worst state, NSW.

"According to RoGS, the rate of prisoner-on-officer assaults in 2021-22 was 4.52 per 100 prisoners in Tasmania. The next highest rate, in NSW, was 1.76. The rate of serious assaults was 0.31 per 100 prisoners, which was also the highest rate in Australia," the Custodial Inspector wrote.

He also highlighted the hugely disproportionate rate of locking up – and therefore also locking down – Indigenous prisoners.

"In 2022, 22.7% of Tasmania's prison population was Aboriginal. In 2021-22, the average daily number of young people who were Aboriginal in detention was four, which represented just under half of Ashley Youth Detention Centre's total average population. In the 2021 Australian Census, however, 5.4% of the Tasmanian population identified as Aboriginal or Torres Strait Islander.

– Tasmania Custodial Inspector annual report 2022-23

Prisoner gets \$160,000 compensation

A Canberra jail prisoner dragged unresisting from his cell by guards in 2017 has been awarded almost \$160,000 for his "harrowing" ordeal.

He was violently handcuffed and dragged away (photo). The ACT Supreme Court chief judge Lucy McCallum ruled the "hard extraction" of the man amounted to an excessive use of force in a "degrading" manner.

"This dangerous, intractable tension between the rights of prisoners and the safety of corrections officers will continue so long as full-time imprisonment remains the primary form of punishment for serious offences and prisons continue to be overcrowded, under-resourced and unable to offer prisoners any real opportunities for education and reform," McCallum's judgement said.

The inmate had asked for damages for assault and battery, claiming he suffered extreme pain, a significant injury to his right shoulder and ongoing mental harm from the incident. <https://tinyurl.com/58fy6sxw>



Elderly man stunned, sprayed with pepper, by police

A criminal investigation of two police officers is under way in SA after an elderly man was stunned with an electronic weapon and pepper-sprayed at a care home in Adelaide.

Police said there was an altercation between police officers and a man at the facility and they used a stun gun and pepper spray. "The man, aged in his 60s, was restrained by police and sustained minor injuries during the arrest," the police said.

A complaint was lodged with the Office for Public Integrity and SA Police three days later. After reviewing bodycam footage, police investigators identified concerns and began criminal and disciplinary investigations.

In May, NSW police stunned a care home resident, Clare Nowland, who was allegedly holding a knife while using a walking frame. She fell and hit her head and died from her injuries: a police officer has been charged with manslaughter. <https://tinyurl.com/a93vywnj>

Minister Papalia talks pap

Corrective Services Minister Paul Papalia says he was given incorrect information when he praised the actions of youth jailers hours after a 16-year-old boy killed himself in the notorious Unit 18 in Perth.

The *ABC* reported that Cleveland Dodd used his in-cell intercom to tell officers he was killing himself about 16 minutes before they arrived to find him unresponsive in the early hours of October 12.

That contradicts Mr Papalia telling reporters — as the teen was on life support in hospital, just before he died — that the response time was only “a matter of minutes” and that the officers had “conducted themselves exceptionally well”. <https://tinyurl.com/yc3k5skk>

When will Australia return to the old code of conduct under which ministers resign if they are found out in untruths, or if their administration of a portfolio is obviously not sufficiently competent to avoid the well-known risk of deaths in custody of Indigenous children, CLA asks?

NB: definition: ‘pap’: (information) lacking substance or real value.

One month on, a different tune...

A month later, the interim official report of the incident tells an entirely different story involving significant failures. "Operational procedures were not followed on the night," Papalia told reporters. "Record keeping was poor and not up to standard."

Papalia said Cleveland was not placed under observation despite making self-harm threats and staff who were checking inmates were not carrying radios.

"Two of the five staff required to wear body-worn cameras on the night did not sign out their devices," he said. "Staff were resting or watching movies at the time Cleveland self-harmed."

"None of these things are acceptable," Papalia said.

Nor is a minister regurgitating lies to the media and public, CLA says. When politicians in Australia had standards, in days of yore, a minister would resign in these circumstances.

WA petitioners wants kids age raised to 14

Some 15,000 West Australians have urged the state government to raise the age of criminal responsibility to 14 in a petition to Attorney-General John Quigley.

More than 30 justice coalition groups organised the petition, which called for the state's system to be in line with international human rights standards and best practice, *National Indigenous News* reported.

Currently children as young as 10 can be arrested, sent to court and locked away in prison, contrary to the UN Convention of the Rights of the Child.

WA is expected to reveal its plan to raise the age at the Standing Council of Attorneys-General (SCAG) meeting in December. <https://tinyurl.com/yffh9ymv>

CLA believes WA supports raising the age, but not necessarily to 14 in the first instance.

ODD SPOT: Legal Aid funds continue to decline, relatively

The National Legal Aid organisation's *Justice on the Brink report* reveals \$484m in funding was needed to prevent the threat of “supply failure”, expand family and civil law services, provide greater means-tested access and increase fees for private lawyers. The report found that, while the Productivity Commission estimated in a 2014 report that the shortfall was \$200m, the same methodology produced the new figure. <https://tinyurl.com/yc868a22>

Folbigg changes forensics for good

Kathleen Folbigg – convicted for killing her four children between 1989 and 1999, jailed for 20 years, then paroled in mid-2023 due to DNA science – will get a chance to be exonerated by the NSW Court of Criminal Appeal.

Former NSW chief judge Tom Bathurst, after an inquiry, has referred the case to the CCA. The CCA can quash (nullify) her original conviction.

Folbigg has always maintained her innocence. <https://tinyurl.com/mc3dxxt4>

Whatever legal result, her case has changed how courts worldwide consider child deaths, such as in cases of supposed “battered baby” and “sudden death syndrome”.

Effectively, she was acquitted by scientists when – for the first time, so far as CLA knows – an inquiry judge allowed that other peoples’ expert knowledge (100 or more scientists) was superior to amateur jury or judicial scientific reasoning. <https://tinyurl.com/mc3dxxt4>

PIP problem denies citizens proper response to their abuse claims

Queensland's corruption watchdog spent more than \$400,000 hiring consultants to investigate whether police should stop investigating police...or what CLA calls the PIP problem.

A commission of inquiry into police responses to domestic violence recommended setting up a civilian police integrity unit in the Crime and Corruption Commission within 18 months to "deal with all complaints" against police officers.

The inquiry heard numerous witnesses' claims of shocking evidence of sexism, racism, fear and silence within the Queensland Police Service.

The CCC investigates less than 1% of complaints against police officers, referring most complaints back to Queensland police for internal review. <https://tinyurl.com/4keaez7f>

The same issue is a major problem in WA and in other Australian jurisdictions. PIP must end, CLA says.

Briefs

Govt faces up to scam threat

Australians in 2024 will use passkeys such as face or fingerprint recognition instead of usernames and passwords to access government services online in a bid to beat scammers. Thousands of *myGov* accounts are suspended each month for fear they have been breached by "scam-in-a-box" kits sold by criminals on the dark web. Australians have lost billions to scams and *myGov* – which hosts Centrelink, Tax Office and Medicare data – is a prime target. However, from NZ comes a warning that facial recognition accuracy is improving, but has been less accurate for brown and black people, than white people, for many years. <https://tinyurl.com/2r7t3ktz> See also: <https://tinyurl.com/bphxfn5k>

Face recognition? Welcome to the Australian police FaceBase

ACIC* runs the National Police Reference System (NPRS), which holds 10 million photos of Australians. If you are registered with photo ID on *myGov*, inevitably your face will be in ACIC's "FaceBase" files. That means operational police, anywhere in the country, can access your image (or anyone who looks a lot like you) to make on-the-spot decisions about whether you are dangerous or wanted for other offences. The NPRS provides 75,000 Australian police with access to more than 11 million records and 10 million photographs on handheld devices, in-car terminals and desktop computers. And, by the way, facial recognition is now widely used by police at demonstrations, rallies and sports events to identify suspects from video recordings.

*ACIC is the Australian Criminal Intelligence Commission: CLA believes ACIC and its sub-agencies may never have been legally incorporated. <https://tinyurl.com/5n8bm3f2>

Stat decs? Welcome to the Australian Signature Base

The federal government announced last month that you will be able to use digital statutory declarations... through the online platform *myGov* and its digital mate, *myGovID*. Again, of course, all your details – including your signature, linked to your photo – will be held by the government, and available to police throughout Australia, security agencies like ASIO and Home Affairs, and so on. Will all this online information be safe? No, of course not, CLA says. Government websites are hacked into so regularly there is a permanent government system / digital entity for recovery, cleansing and re-establishing the sites. If Optus and other big commercial firms can go down, or be hacked, or have core information stolen, so can the Australian government. It is inevitable.

Who protects Australia's cyber assets?

If you don't think it's possible, be warned that most Australian government (and other) databases are protected by "highly sophisticated" software built and maintained by "secret squirrel" Israeli firms. They are also the same firms who provided the secret intelligence software which was allegedly protecting Israel from surprise Hamas attacks.

Papuan leader 'chaired' in absentia

Victor Yeimo, leader and political figure of the West Papuan independence struggle, was awarded the 2023 'Voltaire Empty Chair Award' by Liberty Victoria last month. The spokesperson for the West Papua National Committee (KNPB) and the Papuan People's Petition (PRP) received the award for his persistent struggle for human rights, freedom of speech and civil liberties in West Papua, and because he was considered a strong fighter for



West Papuan independence from Indonesia. Yeimo has been arrested repeatedly, thrown into a police cell, charged with treason and tried when he was seriously ill. He has been in and out of Indonesian prison many times. The award is so named because the recipient is unable to appear physically to collect it.

Police tend to find women at fault more than courts

Data obtained by *ABC News* earlier in 2023 showed police in Tasmania issue Police Family Violence Orders (PFVOs) against female respondents at more than triple the rate that courts issue them, raising questions about whether police officers are always picking the right perpetrator. Now, new figures reveal the number of applications to revoke PFVOs increased 102% in the six years to June 2023, with applications by female respondents jumping 154%. <https://tinyurl.com/4yeskws5>

How long has violence against women been a problem?

In 1889, Louisa Lawson (photo) wrote: *“Will it be believed, a hundred years hence, that such a state of things existed?”*. Louisa Lawson – mother of Henry Lawson, poet and author – wasn’t talking about women getting the vote. She was talking about violence against women.



Letters

Time for a ‘war’?

Re "PM challenges Australia to 'wipe out' domestic violence" (Letters, 4 Nov 2023). Let's do it like our best friend America would do it and declare a "War on Domestic Violence". – Kenneth Griffiths, O'Connor ACT

Cash works 24/7/52

I can think of several good reasons why a cashless society is a bad idea, but (last month's) national outage by Optus said it more eloquently than I ever could. On the subject of the outage, I wonder if it could have had anything to do with the sacking of 600 workers. – Fred Pilcher, Kaleen ACT.

CLA activities highlights for November 2023

National report

Meetings continued with people who may be able to support the campaign for a Human Rights Act federally and in the remaining state jurisdictions, and the NT, without one.

President Dr Kristine Klugman, CLA HRA National Campaign Manager Chris Stamford and CEO Bill Rowlings met with the strategy and community engagement manager, Natasha Blucher, for Senator David Pocock. We were able to update her on progress since our meeting with him three months ago.

Senator Pocock is a HRA supporter, and is pleased with the work all three political parties in the ACT (Labor, Greens and Liberal) did to help CLA achieve a 'No Rights Without Remedy' approach as a model for other jurisdictions, and for an Australian HRA.

We also held a Zoom conference with Rob Hulls, the former AG of Victoria, who was responsible for introducing the second HR law in Australia, the Charter of Rights and Responsibilities, into Victoria, where it became law in 2006. He is helping CLA with advice of how to achieve HRAs in other jurisdictions.

Due to Natasha Blucher's experience in refugee work on and in relation to Nauru, and her extended time in the Northern Territory, she was able to suggest a Darwin contact who could provide a pivot point for information in the lead-up to a local rights campaign.

Model rules: The ACT is introducing new "model rules" for incorporated community associations in 2024. Civil Liberties Australia has always been a nationally-focussed entity, campaigning in all Australian jurisdictions for better justice, improving laws and a fair go for the little person, particularly in terms of personal liberties and human rights Acts. When CLA was an incorporated entity, we operated with the ACT association rules as the basis of our constitution, which itself was based on the very old (50 years) constitution of the former Council for Civil Liberties of the ACT. Now that CLA is no longer incorporated, and all paid memberships under the previous incorporation have effectively lapsed, we'll review the status and need for rules and changed operating principles after the new ACT rules become effective next year.

Tasmania:

CLA is frequently asked: "How is Sue Neill-Fraser doing? Where is she up to in her battle against her wrongful conviction for murder?"

The two pieces of good news are that she is adjusting well to life outside prison, after 13 years inside due to the incompetence of the Tasmanian ‘justice’ system, and that breakthroughs which may lead to her exoneration are likely, and may be closer than previously expected.

Many elements of the DNA case against her – including exhibits not tested, or tested but with results not apparently revealed to her defence lawyers – are still subject to further scrutiny. Legal academic Dr Bob Moles has listed half a dozen reasons that her original trial miscarried. Former lawyer, senior police officer and CEO of Integrity Tasmania, Barbara Etter, and barrister Hugh Selby have tabled papers which sit silently truculent and massively incriminating of official incompetence on the table of the Upper House of the Tasmanian Parliament, unanswered and unrefuted.

Failure by the Crown (police, DPP, judges) to act with propriety, particularly failure to disclose information in an original trial, can always lead to overturning a guilty verdict (see story below about a NZ prosecutor fined \$20,000). And the Sofronoff and Bennett inquiries in Queensland are indicating clearly that there may need to be DNA material retested throughout Australia, not just in that state. Stay tuned.

WA

CLA VP Margaret Howkins reports from Perth that talking with emeritus Professor of the Uni of Adelaide, Chilla Bulbeck (*photo: Alison Bulbeck*), who moved to WA 12 years ago, was enlightening and reaffirming.

“We discussed 10 issues obstructing progress in politics, justice and a ‘fair go’ in WA, issues entrenched and stagnating in its white male culture. We agreed neither of the two traditional political parties has shown a speck of initiative or guts in addressing WA’s misogynist status quo. For example, we noted the claims about how few sexually assaulted women or school children report the incident to Australian police,” VP Howkins reported.

According to a report in *The West Australian*: “The Australian Bureau of Statistics found 92% of women who experienced sexual assault...by a male in 2021-22 did not report the incident to police. – ‘A System that Fails to Deliver on Justice’, *The West*, 2 Nov 2023.

The leading reasons for not reporting the sexual assaults were:

- feeling they could deal with it themselves (34%)
- not regarding the incident as a serious offence (33%)
- feeling ashamed or embarrassed (31%)

Note: the figures are over a 10-year period. About 145,000 women over 18 experienced sexual violence (assault or threat) nationwide during 2021-22, which is about 2800 a week – ABS Personal Safety Survey.

<https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release> 23/08/2023

Howkins says only WA has no plan or legislation in place to end male violence in general or male sexual violence against women, specifically ‘stealthing’ which is when males refuse to use birth control whilst pretending to, solely for their own gratification. “This has become an unchecked epidemic of male entitlement in turn affecting all male-entitled behaviours, including political and legal. WA should implement mass gender-respect education in schools and unis,” she says.

CLA believes academic institutions in all jurisdictions should lead the way in implementing the national draft action plan released last month and available here: <https://tinyurl.com/3hrpcj7b>

Howkins wrote to politicians in November and collected more data on police misconduct, also saving links to stories of police consistently not meeting their own stated standards. The data collection is part of CLA’s bid to stop Police-Investigating-Police, a national CLA program led by her from WA. During November she also received calls from prisoners and prisoners’ family reporting ongoing issues in WA prisons.

She also noted that of the 42,000-odd prisoners in Australia, the WA jurisdiction had the second highest average daily imprisonment rate of 303 prisoners for every 100,000 adult population, behind the NT.

But in terms of Indigenous prisoners, WA led Australia with 3903 per 100,000 adult Indigenous prisoners... and rising. The WA rate outstripped that of the NT. – ABS: Corrective Services Australia, 21 Sept 2023
<https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>

INTERNATIONAL

Relatively, the judge simply ruled age was no barrier

The Indonesian President’s brother-in-law – the nation’s top judge – has been demoted after ruling the President’s son, aged 36, could run in the next presidential election even though the minimum age is 40.



A judicial panel in Indonesia demoted Anwar Usman after finding him guilty of a conflict of interest and a gross violation of the court's ethics code for failing to recuse himself from the age case. The panel allowed Usman to remain on the nine-judge bench.

The age dispensation 5-4 majority ruling allowed President Joko Widodo's eldest son, Gibran Rakabuming Raka, to run for vice president alongside Defence Minister Prabowo Subianto. Some say it is a way of keeping control of the world's largest Muslim nation (231m Muslim population, 87% of Indonesians) in the hands of one family.

The panel ordered judge Usman must not take part in any election cases in which he could have a conflict of interest. <https://tinyurl.com/89z5ay5c>

ODD SPOT: The path to power and wealth begins with greatness

"Donald Trump's severe narcissistic, antisocial ... character disorder means he cannot tolerate or even acknowledge losses or defeats. Instead, he lashes out with less and less grasp of reality, insisting more and more that he is personally great, a saintlike martyr and anyone who dares to hold him accountable for his lies or his crimes is evil. His lengthy history, however, shows ... he is simply a sociopath, interested only in his personal gains in power and wealth despite the harm to others" – a psychiatrist, reported in Salon magazine (as quoted by Roger Fitch Esq, reporting on doings in Washington DC in the online Australian legal journal, Justinian. Reported here with permission.)

Police use illegal licence plate surveillance to charge people: claim

Defendants in NZ are challenging police use of high-tech automated number plate recognition cameras to identify vehicles, and drivers, without authorised surveillance warrants.

The Kiwi authorities have more than 5000 cameras in two private networks providing footage of vehicle licence plates that police use to prosecute people.

Lawyers claim this amounts to using a tracking device without a warrant, in breach of search and surveillance laws. Another challenge is that the process breaches NZ's two main protections, the Privacy Act and its Bill of Rights.

Two court cases are under way, but suppression orders mean details cannot be reported, *Radio NZ* reported.

The nation's Criminal Bar Association said police's use of automated number plate recognition (ANPR) was just the "tip of the iceberg" of surveillance methods police were not being open about. "We need to have a public conversation about the appropriate level of state surveillance in a free and democratic country," it said.

Six thousand staff can access the networks for routine non-tracking searches – that is, identifying the owner of a car in, say, a supermarket carpark or petrol station forecourt as a one-off – and 1000 of those have the extra authority to use the information for more invasive tracking of vehicles from place to place, *RNZ* reported. <https://tinyurl.com/2xtat89v>

Prosecutor fined \$20K for errors, failures, concealment in murder trial

A prominent NZ Crown Solicitor was ordered to pay \$20,000 costs last month for significant errors and failures during a murder investigation: he and police concealed facts and evidence from the defence.

The high-flying prosecutor Ben Vanderkolk (photo) and Wellington police denied they did not comply with their disclosure obligations to the defence in a high profile trial.

Disclosure involves the prosecution handing over any relevant evidence in its possession to the defence, even if the facts might help the defence case. It is a core principle of all English-based law courts and systems, designed basically to give the defence a fair go in mounting a case for acquittal.



Note: There have been similar allegations of prosecutors manipulating high profile cases in Australia. Allegations include failure to disclose evidence to the defence, twisting and selectively introducing forensic evidence, manipulating forensic experts, emotive and over-theatrical performances in court, misogynistic behaviour, deliberately manoeuvring to reverse the onus of proof, and "inventing" murder weapons.

In both NZ and Australia, royal commissions will eventually need to sort out the extent of prosecutor malpractices – or outright criminality by a Crown representative – that has taken place.

Vanderkolk and police were found by NZ High Court judge Rebecca Ellis to have not revealed prison snitches had been given incentives to provide “suitable” evidence to help a conviction. The prosecutor had ordered his attendance at a prison meeting with one snitch should be concealed.

As well, telecoms data had not been supplied to the defence, as was required.

Two other snitches were lined up to give evidence...but their statements were contradictory, so one must have been lying, and the prosecutor and police must have known that as a fact. This was also kept from the defence.

Judge Ellis said: “It is fundamental that Crown prosecutors must act at all times as ‘ministers of justice’, and that standard was not met here.”

Vanderkolk has long had a penchant for utilising jailhouse snitches, acknowledged worldwide as probably the most unreliable type of “witness”.

A 2015 trial Vanderkolk was prosecuting had to be aborted when it was discovered police and the Crown helped a crucial witness get bail, after the man offered to assist with their investigation, and implicated others.

And he was also the Crown prosecutor when it was revealed in the Privy Council that a critical witness statement in the Mark Lundy murder case had remained hidden from Lundy’s lawyers from 2001 to 2013.

In the recent case, the police also were ordered to pay \$20,000 for their actions and failures.

The recent case involved the shooting murder of Palmiro MacDonald in 2016. Three men were charged with murder. Eventually, after court cases, all three had the charges dismissed. No-one has been convicted over the murder. <https://tinyurl.com/3p58myz2>

International briefs

Vlad targets gays

Russia is asking its Supreme Court to outlaw the LGBTQ “international public movement”. The Ministry of Justice has “lodged an administrative legal claim” aimed at recognising the LGBTQ movement “as extremist and banning its activity in Russia”. The move is part of a decade-long crackdown on LGBTQ rights in Russia under President Vladimir Putin, who says “traditional family values” are the cornerstone of his rule. The first court hearing was due on 30 Nov 2023. <https://tinyurl.com/279rmcx2>

Inaugural code to judge the judges by

After numerous ethics scandals cascading on the heads of senior rightwing judges, the US Supreme Court has published its first ever code that sets out the “rules and principles that guide the conduct of members of the court”.

The 14-page document follows heavy criticism of their failure to apply to themselves basic ethical rules that bind all other judges in the US.

The superior judges claimed that the furore of recent months over paid-for holidays abroad, sweetheart dinners with mates who had business before the court, and so on, had been a “misunderstanding”.

The code release statement said that the absence of a code had led in recent years to the “misunderstanding that the justices of this court, unlike all other jurists in this country, regard themselves as unrestricted by any ethics rules”.

The code has no mechanism for enforcement, which means the judges will be policing themselves. <https://tinyurl.com/3hx4ya34>

DATES

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)

29-31 July, Darwin: Australian Public Sector Anti-Corruption Conference (APSACC). Workshops (29 July) and conference (30 and 31 July) hosted by the NT ICAC Commissioner. Info: info@apsacc.com.au

16 April, Melbourne: New Legal Thinking for Emerging Technologies? 2024 Ninian Stephen Law Oration. Uni Melbourne, 5.30-7.30pm, Science Gallery, 700 Swanston St Carlton. Details: <https://tinyurl.com/2xfzh27v>

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 Nov 2023.

As we are not a law firm, and are not licensed to give legal advice, we do not deal with individual legal or similar quasi-legal cases: prisoners and others are advised we will not be responding to letters or emails asking for help with appeals, for legal advice, for recommendations of lawyers to write to, pro bono services to consult, or similar requests. We work to change laws rules and anomalies for the generic benefit of all Australians.

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