

## Habeas corpus? When is a body a body?

The High Court may soon rule on whether a foot-less body can be harmless to a prisoner's chance of early release under 'No body, no parole' law in Queensland.

The legislation has been mirrored Australia-wide.

Can a killer gain parole if a body's legs and arms are missing?

The Qld Parole Board said no, but Qld's Court of Appeal said yes, because all "existing" remains had been located.

Shaun Barker's remains were found in bushland, but a forensic pathologist told a court the missing hands and feet could have been burned in a bushfire, or taken by animals.

Lawyers for the paroled man, Matthew Leslie Armitage, claim the laws should not apply where "no amount of cooperation from a prisoner ... can ever alter the fact that the remains no longer exist and are incapable of being located".

The appeal court was told only 16 prisoners had been subject to the legislation since 2017.

Another 19 prisoners in custody may have the laws applied to them...depending on the HC's decision. <http://tinyurl.com/m5dckppa>

## FORENSICS: Laboratory and NATA quality control come under close scrutiny

An independent reviewer has published a witheringly scathing report into the quality of forensic science in Queensland and has questioned whether Australia's supposedly independent NATA (Note 1) quality control entity is independent, as claimed.

"With this framework in place, together with such a degree of inter-relatedness and a wealth of relevant expertise and experience on offer to assure the quality of forensic science in Australia, it is difficult to understand how an Australian forensic science provider could continuously, over many years, have been so poorly managed and operated and provide sub-optimal outputs and unreliable evidence as detailed at length in the Commission of Inquiry report.

"However, the very degree of interrelatedness and resulting lack of true independence may have generated conflicts of interest which led to a less rigorous approach to quality management. (page 6)

"The reports issued by the DNA Laboratory clearly did not conform to the Standard. Given that concerns were raised about the accuracy of reports from late 2012 onwards [1592 p486/500] it is again hard to understand why this non-conformance was not identified at audit and corrective actions raised.

"It may be that NATA is too closely related to Australian forensic science providers to be truly independent." – S. Doyle, Forensic Science International Synergy 8 (2024) 100449 <http://tinyurl.com/43k3kx52>

- Sean Doyle, Linked Forensic Consultants Ltd, Raumati Beach, 5255, New Zealand E-mail address: [sean@linkedforensics.com](mailto:sean@linkedforensics.com). Article discusses Queensland laboratory's DNA failings and international conformance and accreditation.
- Note 1: NATA is the National Association of Testing Authorities, the recognised national accreditation authority for analytical laboratories and testing service providers in Australia.

## Genetic testing risks insurance cover: legislation needed, say doctors

The Federal Government should legislate a ban on the use of adverse genetic testing results by life insurers, according to the RACGP.



In a submission in response to a Federal Treasury consultation paper, RACGP President Dr Nicole Higgins (photo) notes the capacity of genetic testing to help medical professionals.

'[It] offers great potential in improving health outcomes,' the submission states.

'It enables the diagnosis of genetic conditions and can help identify and manage risk for conditions such as familial breast cancer.

'However, these gains are at risk if people avoid testing because it may lead to them being denied personal insurance cover.

'In order not to undermine the advances and to build public trust in genomics medicine, consumer protection against genetic discrimination is crucial.'

According to the college, the Government should pursue the option to bring in laws that would totally or partially ban life insurers from using adverse results of genetic testing in their underwriting.

A total ban would align with the Canadian approach to the use of genetic test results by life insurers, the consultation paper suggests. <http://tinyurl.com/52w3xfyd>

## Supermarket captures your 'DNA' by stealth

Uni of Technology Sydney human technology institute fellow Dr Kate Bower, who specialises in AI regulation, has compared using facial recognition technology to taking DNA data.

"Facial recognition is what I'd call a highly invasive privacy technology, and it is a bit different than your standard CCTV camera," she told a news outlet.

CCTV only captures video footage, but facial recognition "actually captures the biometric data of each individual person who walks past the camera. It captures a lot of data points from your face and these form a face print and the easiest way to think about this is like it's like a fingerprint or it's like a strand of your DNA."

She explained that facial recognition technology could identify a person in a crowd, and could match them to a database of names. She was commenting on a supermarket in NZ running a trial to capture faces of people who might have stolen items. <http://tinyurl.com/wx4pt9p5> (See NZ item under International Briefs)

## Human rights report due to AG this month

The Parliamentary Joint Committee on Human Rights (PJCHR) is due to present its report to the Attorney-General, Mark Dreyfus, by the end of March.

The biggest inquiry into what the Labor government calls the 'human rights framework' since 2009-10, the committee has spent a year consulting widely on what key people and organisations think about how basic rights are regulated at the national level.

One part of the "framework" is the PJCHR itself. See item below – **'Report highlights committee review...'** – for how easily considered opinions can be ignored.

The core issues to be addressed in the new report will include whether or not Australia should have a Human Rights Act,

whether housing should be among the rights to which citizens are entitled, and whether PJCHR analysis and report on upcoming Bills should be mandatory before Parliament can pass them.

The committee is headed by MHR for Macnamara, Labor's Josh Burns.

In 2023 it lost one of its key members and strong HRA advocate, Peta Murphy (photo, SBS), who was the MHR for Dunkley. She died of cancer, aged 50. Vale.



## CLA points to 'remedy' principle

CLA's submission to the PJCHR "framework" inquiry concentrates on the need for a HRA as part of the federal infrastructure which includes the National Anti-Corruption Commission (NACC).

It is available here:

[https://www.cla.asn.au/News/wp-content/uploads/2023/07/CLA-sub-PJCHR-FederalHRA-29June2023.pdf?zoom\\_highlight=human+rights+submission#search=%22human%20rights%20submission%22](https://www.cla.asn.au/News/wp-content/uploads/2023/07/CLA-sub-PJCHR-FederalHRA-29June2023.pdf?zoom_highlight=human+rights+submission#search=%22human%20rights%20submission%22) OR by this short URL: <http://tinyurl.com/346jetu5>

CLA, which helped introduce the No Rights Without Remedy (NRWR) principle into the recently amended ACT Human Rights Act, notes that the model proposed by the Australian Human Rights Commission includes the same NRWR concept.

CLA's submission also reveals – as no other commentator in Australia has yet observed – that for the past decade the nation has been run by Royal Commissions (see Footnote 8 on page 7).

With a NACC and a HRA in place, Parliament could take charge again.

## Report highlights committee review is frequently waste of effort

The Parliamentary Joint Committee on Human Rights on 7 February tabled its *Report 1 of 2024*, which analyses the human rights compatibility of recently introduced bills and legislative instruments.

CLA says the report highlights one of the major problems with the PJCHR's review of Bills: in relation to the Migration Amendment, for example, the Bill was passed before the committee's comments could be considered.

### Bills

Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023:

- By allowing litigation guardians, the bill permits substituted, rather than supported, decision-making. The committee believes that's not compatible with the Convention on the Rights of Persons with Disabilities.
- There is a risk that preventing the applicant from disclosing some information may impermissibly limit the right to a fair hearing and due process rights.
- Abolishing the AAT (now ART) and effectively dismissing members risks incompatibility with the notion of an independent tribunal.

Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 and related instrument:

- Imposing mandatory visa conditions on visa holders – and granting new powers to authorised officers – risks

being incompatible with multiple human rights, but as the bills have now passed makes no further comment.

### Legislative instruments

Charter of the UN (Listed Persons and Entities) Amendment (No. 2) Instrument 2023 [F2023L01372]

- The committee has significant human rights concerns around the sanctions regimes, and considers this instrument, in applying sanctions to a person in Australia, risks being incompatible with rights. The committee recommends a full review of the compatibility of the sanctions regimes, with a view to including legislative safeguards.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2024/Report\\_1\\_of\\_2024](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2024/Report_1_of_2024)

## Analysis shows wide divergence in NT: 80,000 police nationally

"Operational police staff" is considered the primary estimate of the number of police staff actively engaged in delivering police-related services.

Nationally in 2022-23, 89.8% of the 79,664 police staff were operational. This proportion has dropped every year since 2017-18 (92.2%).

In 2022-23, there were 272 operational police for every 100,000 people nationally. Rates varied across jurisdictions from 218 to 301, except in the NT which had rate of 749.

The rate of operational sworn police staff gives greater context to police service provision across Australia. Nationally in 2022-23, 72.7% of the total 79,664 staff were operational sworn police.

This proportion has dropped every year since 2019-20 (74.7%). There were 221 operational sworn police per 100,000 people nationally in 2022-23. Rates varied across jurisdictions from 163 to 238, except the NT had a rate of 505. – Report On Government Services (ROGS) January 2024 – <http://tinyurl.com/3va53heb>

## Expert warns against Defence's bid to control basic scientific research

Proposed amendments to the 2012 Defence Trade Controls Act (DTCA) will put the Department of Defence in charge of how virtually all research is communicated to and from Australia, giving it the power to "boa constrict" academic progress, a leading expert in the field has said.

Among other matters, the DTCA currently creates a 'virtual border' around Australia, allowing the Department of Defence to control who certain information and technology is shared with outside Australia (including via email and video-conference).

Some of this technology relates to military goods, but other controlled technology includes information on viruses and bacteria that can be used for good (eg, vaccine development) or bad (biological weapons development). This is so-called 'dual-use' technology.

Dr Tim Vines, a former Vice-President of CLA, says the 2023 Amendment Bill represents a seismic shift in the scope and reach of the DTCA.

It collapses the virtual border and allows Defence to regulate who information is shared with inside Australia. It increases the extent to which defence and security interests shape (if not constrain) research policy and academic freedom in Australia.

The amendments undo much of the good work achieved during the development of the Defence Trade Controls Bill 2011 and the 2015 amendments to the DTCA. This includes undoing core elements of the compromise that was achieved to reduce the burden of the DTCA on the academic sector.

In simple words, the new Defence powers would be like a boa constrictor applied to the most important aspect of national scientific endeavour, research.

He also questions what is the opportunity cost on Australia's research activity.

A key part of the debate a decade ago over the Defence Trade Controls Bill 2011 was that it lacked an explicit exemption for 'fundamental' or 'basic' research. Opponents to the legislation pointed to equivalent protections in UK export control legislation as a model for Australia.

An opposition amendment to the 2011 Bill was passed by the Senate but then overturned by the House of Representatives the following day – with the Opposition voting against its own, successful amendment.

The most important issue now is to not pass the proposed 2023 amendments until the parliament puts in place protection for fundamental research, he said.

Dr Vines (photo), who is an expert in health research law and national health regulation, said tightening controls on the sharing of information (ie, 'technology') on goods listed on Part 2 of the Defence and Strategic Goods List (DSGL) may create unintended consequences for Australia's ability to prepare for pandemics and disease outbreaks and contribute to global preparedness activities.



"The Bill continues an unfortunate trend over the past 10 years that has seen ever higher and tighter borders placed around scientific inquiry and the sharing of knowledge."

Dr Vines is not the only one speaking out over Defence's bid to control science- research.

The Red cross – both its International Mission in Australia and the Australian Red Cross – also made a submission to consultation around the new Bill.

"We recommend that the DTC Bill incorporate a humanitarian exception in s10C that extends to the conduct of all humanitarian activities and performing an official duty for a component of the International Red Cross and Red Crescent Movement."

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/DTCAmendment47/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/DTCAmendment47/Submissions)

## Risk up for people who help or hinder crime

South Australia is beefing up its definition of "high risk offender" to people who help or hinder crimes of violence or sexual offences...putting them at risk of continuing detention.

The Criminal Law (High Risk Offenders) (Additional High Risk Offenders) Amendment Bill 2024.

extends the definition of high risk offender to include someone convicted of assisting an offender or impeding an investigation in relation to a serious sexual offence or a serious offence of violence.

The High Risk Offenders Act currently applies to anyone imprisoned after committing a serious sexual offence or serious offence of violence, as well as terror suspects.

Under the Act, the Attorney-General may ask the Supreme Court for a high risk offender to be subject to an extended supervision order (ESO). The conditions of an ESO can be similar to those that can be imposed on a person on parole. If the conditions of an ESO are breached, the offender could become subject to a continuing detention order (CDO). <http://tinyurl.com/mtppcaax>

## New types of justice come to far north

Communities across Groote Archipelago in the NT realised three significant initiatives last month, including an alternative to custody unit, a community court, and a law and justice group.

Part of the NT's Aboriginal Justice Agreement (AJA) and the Groote Archipelago Local Decision Making Agreement, the changes aim to reduce offending and jail rates, engage and support Aboriginal leadership, and improve local justice responses and services.

The Anindilyakwa Healing Centre for young men will provide culturally appropriate, community-based residential rehabilitation as an alternative to jail. It will be operated by Drug and Alcohol Services Australia, which manages the inaugural Alternatives to Custody Life Skills Camp in Alice Springs.

The Anindilyakwa Land Council has partnered with the NT government's \$13m investment over four years for infrastructure and operational funding. The first youths will enter a 16-bed component this month: another 16-bed unit is due to be completed by mid-year.

A Community Court and the Community Justice Group are being set up with initial funding of \$1.12m over two years to help address high rates of imprisonment and recidivism by engaging community leadership in the sentencing process.

The first Community Court will be held in Angurugu in March after referrals from the Local Circuit Court in Groote Eylandt. – media release, NT AG Chansey Paech and Minister for Local Decision Making Selena Uibo, 5 Feb 2024.

## On remand prisoners hit record high

The numbers waiting in a NSW jail for their cases to be heard in court hit a record high during December, according to the state's Bureau of Crime Statistics and Research (BOCSAR).

Two out of five adult prisoners – or 5,055 people – were on remand. This amounted to 42% of the total state prison population. Ten years earlier, in December 2013, the figure was 27.9%.

The cases mostly involved allegations of domestic violence assault, sexual offences, and plain assault.

People were spending 90 days on average in prison on remand, which law advocates said could have devastating consequences.

"In the year to June 2015, there were 123,899 people with a first court appearance in NSW," a spokesperson said. "In the year to June 2023, that figure had increased to 154,357 – an increase of 25%."

Since the 2015 change to the NSW Bail Act, bail refusal rates had increased by 11%.

BOSCAR data showed for the year to September 2023, 1.4% of prisoners on remand were found not guilty.

Of those who had at least one charge proven, 39.1% received a non-custodial penalty. <http://tinyurl.com/28hc3wpu>

## Ombudsman flies globally, charges locally

WA's ombudsman Chris Field is alleged to have corruptly used his position to obtain a benefit, spending \$223,429 on overseas travel in one financial year, claiming it brought value to the state's taxpayers.

The Corruption and Crime Commission is holding an inquiry.

In 2023, Fields travel included trips to Pakistan, Italy, Morocco and Mexico associated with his being president since 2021 of the International Ombudsman Institute.

Its website says the institute is the "only global organisation for the cooperation of more than 200 independent Ombudsman institutions from more than 100 countries". <http://tinyurl.com/6mmjs3xa>



## Minister puts the heat on kids

The WA Police Minister Paul Papalia last month defended having no air-conditioning in the kids supermax jail, Unit 18 at Casuarina Prison in Perth, as a heatwave hit the state.

Many young offenders are on remand and have not been found guilty of a crime. WA's Children's Court president Hylton Quail has called Unit 18 a "barbaric dungeon."

Minister Papalia said a lack of air-conditioning was not a "major issue". "Generally, the nature of the buildings is adequate to deal with the heat and house people comfortably," he said.

Kids in Unit 18 are frequently kept in their cells 23 hours a day. Suicide attempts are common.

"(Unit 18) is one of prolonged systemic dehumanisation and deprivation, with no rehabilitative element or effect," President Quail said in 2023. <http://tinyurl.com/f66nsms5>

## 40 degrees C doesn't matter much...when other prisoners face 46.4

Minister Papalia is probably correct: a lack of air conditioning in a Perth jail with the temperature reaching 40C is probably "not a major issue" – not when compared with a lack of air conditioning in Roebourne jail in the north of WA.

There, of the first 12 days of February 2024, the daily maximum temperature was over 40 Celsius on 10 of them. It was 44.9 and 46.4 on consecutive days in that stretch. That's 112.8 and 115.5 Fahrenheit for overseas readers.

WA has relatively new industrial manslaughter laws. They have never been tested in the jail context, to CLA's knowledge, in relation to officers of the Crown or officers of departments/agencies or officers of contractors. It is not likely any entity can opt out of basic common law obligations, or that states can opt out of commitments made by the Australian government.

As average temperatures rise due to climate change, the WA government is on a clear warning that its standard of health care for people must improve in relation to what are acceptable temperatures for human habitation, especially when people are confined without the chance to seek relief from excessive heat.

## Selective indignation rules in the WA ministry

Minister Papalia is the master of selective indignation.

Last month he criticised judge Wendy Hughes, who sentenced a 17-year-old to a year in juvenile jail for a range of offending, but with no specific sentence for assaulting guards inside the kid's supermax prison in Perth, Unit 18.

Papalia strongly suggested judge Hughes failed the prison guard, "who was assaulted by a juvenile detainee and then there was no consequence." AG John Quigley also piled on.

Papalia made no comment about the fact that judge Hughes said in court that Minister Papalia, AG Quigley, current Premier Roger Cook and former Premier Mark McGowan had constantly and consistently failed the youth for about half his life.

She told the 17-year-old, who pleaded guilty to three counts of assaulting staff while in detention, that he had been "well and truly failed" by a system that had not addressed his mental impairments. <http://tinyurl.com/2p9puub6>

CLA believes it is becoming increasingly obvious that members of the WA ministry have been suffering from morality and humanity impairments for the seven years, since 2017, that they have been in charge of "the system". The system that failed the youth is them.

## Females booted from Greenough prison to ease crowding in men's facilities

Too many male prisoners has forced WA Corrective Services to transfer 27 women locked up at the regional Greenough Prison elsewhere, allowing it to become an all-male facility.

With temperatures in cells reaching 50 degrees C, the Prison Officers' Union warned Hakea Prison in Perth was a tinderbox waiting to explode, with fewer staff having to deal with more prisoners in trying summer conditions.

Some 27 female prisoners in the 77-bed Greenough women's facility 400 kilometres north of Perth were transferred to other prisons around the state so the women's prison could take male prisoners.

The WA Department of Justice said the male prisoner population in WA had risen by 12.8% over the past 12 months, and there was a "seasonal surge" in prisoner numbers from December to May. <http://tinyurl.com/8byjj42f>

## Allegedly 'talented' judges are in fact a bit slow

The state with "talented" Supreme Court judges – according to their chief judge when he was publicly campaigning for a new law to extend their tenure, which the parliament granted him – has had to appoint two emergency judges to cope with a massive backlog of cases.

If talented, the Tassie wigged ones are extremely slow. The court's backlog rose by 100 over a year to the end of June 2023, reaching 743 cases.

This was before one of the seven judges was charged, initially only in Tasmania but later in NSW as well, with assault-type charges of a domestic nature.

## Islanders lack confidence in their police

One in four people who had contact with Tasmanian Police in the past year were dissatisfied: a third of Tasmanian don't have confidence in TasPol to deliver services to the community.

The awful results – which are not at all surprising, to Civil Liberties Australia – come from the first Tasmania Police Community Survey, run by the police themselves. In November 2023, 4000 people took part. See the TasPol website for details.

## BRIEFS

### Assange ruling threatens US First Amendment

Thirty-five law professors have written to the US Department of Justice warning that Espionage Act charges against Julian Assange "pose an existential threat to the First Amendment". An appellate hearing on the WikiLeaks founder's extradition from Britain to the US was held at the High Court in London last month, with a ruling imminent. Assange has been held in Belmarsh prison for five years. The professors warn the implications "could extend beyond the Espionage Act and beyond national security journalism [to] enable prosecution of routine news gathering under any number of ambiguous laws and untested legal theories". <http://tinyurl.com/4ebds99z>

### What if Matildas rated at 75%?

Transparency International annual corruption perceptions index, released last month, places Australia 14th best, on a score of 75 out of 100. The measure rates countries on possible corruption in public services. In 2012, Australia's score was 85. This year, in the Asia-Pacific, NZ scored 85, followed by Singapore at 83 with Hong Kong at 75. If our Matildas football team ranked at 75%, we'd be horrified: so should we be striving for a 95%-plus anti-corruption rating? <http://tinyurl.com/yctkj6u>

### Miscarriages of justice feature

A half-day seminar in Brisbane late last month addressed 'Reforming the Law in Australia to Deal with Miscarriages of Justice'. Speakers included successful Kathleen Folbigg lawyer Ranee Rego as well as members of the unsuccessful High Court Derek Bromley appeal team of Stephen Keim and Samuel Lane and supporting academics Dr Bob Moles and Prof

Bibi Sangha. Former HC judge Michael Kirby gave an opening address and former WA Governor and top barrister Malcolm McCusker spoke on miscarriages of justice in WA. The international Commission of Jurists as well as Griffith U's Innocence Project and Law Futures Centre organised the event.

### State moves to curtail guns

WA's gun buyback is under way. The \$64m scheme will run until August if the money doesn't run out. Across the same time frame, state parliament will consider a new firearms bill. There are more than 360,000 licensed firearms owned by fewer than about 90,000 people in WA. <http://tinyurl.com/ycxwtb9k>

## LETTERS

### Where may people freed from jail sleep?

Dear WA Housing Minister William Carey and William De-Haer of the WA Housing Department: Neither Mr Simon Akkerman nor myself have received a response to our letters requesting availability of housing or affordable renting in WA for prisoners who have served their punishment and are seeking secure shelter. The number of distressed homeless people in WA is rising. Rents for flats or rooms are rising too, without 'fair go' oversight. Please respond with a plan to protect the most vulnerable. – Margaret Howkins VP CLA, Maylands WA.

### Self-fulfilling prophecy on Parliament

It is entirely unhelpful for Karen Barlow to predict "[the] ...chances of an all-in, unedifying brawl over taxes, trust and tying the opposition in knots over economic management". ('An all-in brawl and mudslinging in all directions. And it's only week one', February 5). There is an element of delight in bad behaviour, as if inviting it. Surely it is incumbent on political commentators to deal more seriously with the significant issues involved. – Dr Kristine Klugman OAM, Fisher ACT

### 'Newspeak' in danger of becoming policy foundation: barrister

It is disappointing Attorney-General Shane Rattenbury announced his government's plan for what was described as the territory's first dedicated legal service for victim-survivors of sexual assault at the ceremonial sitting of the ACT Supreme Court on 29 January 2024. We were told it would allow victim-survivors to seek legal recourse "in a safe trauma-informed manner". It seems the Attorney-General and those advising him and the government have learned little from the Brittany Higgins debacle.

There is no victim, nor any victim-survivor, until a crime is proven to have been committed by a court. To consistently refer to victim-survivors as though anyone who claims to have been the subject of a sexual assault is a victim and a survivor devalues the presumption of innocence. "Newspeak" such as "trauma-informed" may mean something to bureaucrats but it tells me very little. It simply seems to assume – at least to some degree – a knee-jerk acceptance of allegations before they are tested in court.

We do not need specialised sexual offence judges nor the retraining of lawyers to ask questions in a "trauma-informed manner". We need an Attorney-General who has some real world rather than theoretical experience of how the adversarial criminal justice system works and some idea of how many false or seriously exaggerated claims of sexual assault are made year in and year out.

Mr Rattenbury could ask me or any number of senior defence counsel, men and women. What he would hear is not what his bureaucrats are obviously telling him. – Jack Pappas, Barrister-at-Law, Canberra.

*Photo shows two of this issues' letter writers, Dr Kristine Klugman and Jack Pappas.*



### Taxes debated in smoking-drinking comparison

Dear Editor: Re your 1 Feb 2024 CLArion newsletter and Mark Jarratt's interview of a PhD student. Jarratt was in favour of people being able to make their own health choices provided they did not interfere with anyone else. He also criticised the relatively low taxing of tobacco as compared to alcohol, arguing that alcohol was a greater danger to community health with respect to crime and domestic violence. Perhaps you should have also given the student's answers. (*Note: "interview" is a two-way exchange: this interview was the PHD student seeking to interview someone from CLA for the student's personal PhD thesis: we chose Mark Jarratt, a smoker member of CLA, to do the interview for – on behalf of – CLA.*)

It is well known that cigarettes significantly increase the risk of COPD and respiratory cancers, shortening the life expectancies and decreasing the quality of life of wage earners and parents, not to mention those of passive smokers. According to the Department of Health, smokers lose an average of 10 years of life as compared to non-smokers. These risks imply a cost to the medical system, a weakening of the workforce, and a heavy cost to families from the premature absence or long-term health impairment of loved ones. Whether the total social and economic costs of excess alcohol are higher than those for tobacco is a moot point, requiring evidence. In any case, the lower and inconsistent taxes on alcohol, which are surely an outcome of alcohol advocacy, are not an argument for lowering the tax on tobacco, as Jarratt is suggesting. Politicians should listen more to medical advice and the general public rather than lobby groups. – David Roth, Canberra.

(*Note: Jarratt is "general public": he is not a tobacco lobbyist. His core argument is for freedom to make personal choices.*) Having run one "pro" and one "anti" item of coverage re "smoking" over the Feb and March issues, we're ending debate on smoking: there are many other places where people can hold debates over smoking, rather than in these columns.

### The proximate cause

The disproportionate rate of incarceration of Indigenous people is certainly a concern. But we're asking the wrong question. Assuming the incarceration rate mirrors the crime rate why are Indigenous people committing so many crimes? Unless we address that, anything else will simply be a bandaid. It seems obvious poverty and inequality are significant factors. – Fred Pilcher, Kaleen ACT

### CLA activities highlights for February 2024

CLA appeared before the Select Committee on Covid 19, speaking to a CLA submission, which highlighted how citizens' rights had been lost instantly that pre-ordained emergency legislation was evoked.

CLA President Dr Kristine Klugman, CLA National Human Rights Act Campaign Manager Chris Stamford and CLA CEO Bill Rowlings gave evidence. Included on the committee was Senator David Shoebridge (Greens, NSW).

*Photo shows Greens Senator David Shoebridge and CLA CEO Bill Rowlings.*



CLA President Dr Klugman attended a small, selection roundtable held by the Independent National Legislation Monitor, Jake Blight, on possible changes to terrorism legislation

#### Meetings, etc:

Zoom meeting with Sue Higginson and Jenny Leong (Greens, NSW) re NSW HRA.

Teams meeting with Chloe Wood (Aboriginal Legal Service WA) re WA HRA.

Two Zoom meetings with NT group campaigning for a HRA.

Zoom meeting with Caitlin Nash re her PhD research concerning miscarriages of justice.

Zoom meeting with WA CLA director Margaret Howkins re WA HRA.



Zoom meeting with Prof Gillian Triggs re federal and state HRAs.

Teams meeting with Rob Hulls RMIT Centre for Innovative Justice re HRAs nationwide, upcoming HRA forums and Indigenous initiatives in Queensland.

*LEFT Photo shows Hulls and Triggs.*

Zoom meeting with Peter Russo MP Qland parliament re review of state HRA.

In person meeting with Prof Ros Croucher, President of the Australian Human Rights Commission, re current HRA campaigns

Submission to SA inquiry into HRA for SA.

Conference at ACT Legislative Assembly on Alternatives to Incarceration

#### **WA**

Comment by a member on the WA Special report in the *CLArion* February 2024 issue:

This is one of the best *Clarions* with regard to Human Rights. Itemising all that you (WA CLA manager, Margaret Howkins) have personally done to bring these matters to the forefront in WA and the government ignoring all of them really demonstrates that they have no desire to implement anything to change the system. Your association with Brad Pettit and Dorinda Cox will hopefully help to propel the case against WA before the UNHRC. You have worked so hard and achieved so much, Margaret and it will eventually make a difference. Congratulations, my friend. – Members' name withheld.

#### **NT:**

CLA acted as a supporting secretariat for the NT Human Rights Act (HRA) group for the final time on 26 February. We committed to supporting the group through January and

February as they held fortnightly ZOOM meetings to get themselves organised.

The group plans to canvas all candidates for the upcoming NT election, on 24 August 2024, to state publicly whether or not they support a HRA for the NT.

Members of the NT HRA group include people from the gay community, Amnesty Darwin, lawyers and long-time activists across the spectrum. They enjoy wide but subdued support from people in official positions.

CLA will remain an observer at the NT group's meetings, if invited, and will assist them with generic papers on which to base their material and campaigning.

## **INTERNATIONAL**

### **Old lags seek out help from the law**

Canadian federal prisoners aged 50 and older have launched a class action to claim they are special targets for assault, intimidation and bullying because of their ageing.

The allegations claim older inmates are denied health services they need to cope with age-related indignities, from lost dentures to incontinence.

Justice Simon Fothergill approved the lawsuit claiming systemic negligence after hearing from inmates serving time for sexual assault and murder.

Canada's former prisons watchdog from 2004 to 2016, Howard Sapers has long warned of the problems created by and involving ageing inmates. <http://tinyurl.com/m5jhh28>

### **Law takes to AI with gusto**

Some 26% of legal professionals in the UK say they use generative AI tools, based on "large language models", at least once a month, according to a LexisNexis survey of 1200 people.

Use of AI has more than doubled in the past six months. Nearly two thirds (62%) of law firms have changed their day-to-day operations as a result.

Changes include launching AI-powered products for internal use, running AI-related training for staff, the hiring of AI experts and developing policies for the future use of the technology.

Most common use is to save time in drafting documents, cited by 91% of respondents, but 90% said it could be applied in researching matters and 73% for streamlining communication tasks. <http://tinyurl.com/5n8kza5e>

### **Are allegations of research misconduct rising? The Lancet says yes**

Accusations of image manipulation by scientists at the Dana Farber Cancer Institute have recently led to several retractions, medical journal *The Lancet* said in a recent editorial comment.

According to a *Nature* analysis, more than 14,000 papers were retracted in 2023 – the highest number ever – with more than 8000 linked to Hindawi, an open access publisher, driven by what its owner Wiley has called "large-scale systematic manipulation" involving paper mills, reviewer mills, and fraudulent special issues.

The role of artificial intelligence in misconduct is an additional concern.

Research misconduct is nothing new, but the scale and reach of these cases represent a threat to the whole scientific enterprise. Research misconduct can not only contribute to research waste but also cause real harm to patients by distorting the evidence base.

These cases have once again emphasised the fragile nature of trust in science. All key players in the research ecosystem – editors and publishers included – need to ask themselves some



tough questions about the underlying drivers. <http://tinyurl.com/3zwer888> Editorial, *The Lancet* (paywall) 24 Feb 2024 Vol 403, Issue 10428, P699

## Kiwis chalk up first CCRC correction of miscarriage of justice

A refugee boy – who served time in an adult NZ prison aged only 15 after a mix-up over his birth date in the courts – won his case last month in the first court decision stemming from the nation's new Criminal Cases Review Commission.

The boy was sent to prison for 11 months in 2001, an outcome prohibited by legislation because of his age. Last month, Justice Susan Thomas last month set aside the conviction and quashed the sentence: it was "simply too late" to substitute any other order, she said. The judge did not mention possible compensation or redress.

The boy's aunt, who accompanied him to NZ from a war-torn country, took papers to the jail to show staff he was under age but "nobody listened", according to the NZ High Court decision.

The CCRC, also known as Te Kāhui Tātari Ture, has received 423 applications to have cases reviewed since it began work in 2020, an average of 10 a month.

About 160 cases have not been taken up, usually because they are deemed not to be in the interests of justice, or other appeal processes are still available.

Almost 190 cases of the total applications have involved convictions for sexual offending, but 67 stem from murder or manslaughter. <http://tinyurl.com/yzu2rjp2>

### ODD SPOT: Honk if you're in the right

Our observant Washington DC correspondent has spotted a new, claimed, protected right of free speech called "expressive honking". He says some imaginative lawyers have a theory – now before the US Supreme Court – that the new right is impaired by safety laws limiting honking: <https://www.scotusblog.com/case-files/cases/porter-v-martinez/>. Next, he says, they'll be banning middle-finger salutes and road rage! PS, he notes: "I'd like to see more protection of that 'expressive' conduct in America called 'voting'."

### Scots change their trans prison policy

Trans women who have hurt or threatened women or girls will not be held in female prisons unless there are "exceptional" circumstances, new prison guidance states.

The Scottish Prison Service (SPS) policy follows a public outcry after a rapist was sent to a women's prison. Isla Bryson raped two women while still known as Adam Graham.

The Scottish Conservatives said the new policy was "subjective" and "unacceptable".

The latest figures for Scotland show there were 23 trans prisoners in Scottish jails. They included 19 transgender women, seven of whom were in a women's prison, and four transgender men, one of whom was in a male prison. <http://tinyurl.com/494rvkmt>

### 'Scan us like barcodes,' privacy critics say

Live facial recognition is a "vital tool" for policing, Chief Superintendent Andy Brittain of London's Metropolitan Police claims.

Two vans equipped with live facial recognition (LFR) technology were deployed in inner-suburban Croydon last month, leading to 45 arrests. LFR technology scans faces and compares them with a database of people of interest to the police, allowing them to be questioned if there is a match.

Madeleine Stone, senior advocacy officer at Big Brother Watch, said the technology was "really intrusive" and turned streets into "permanent police line-ups".

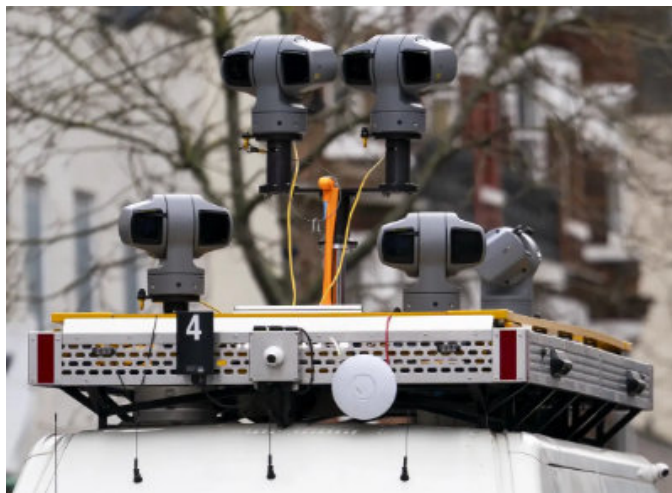


Photo: Live facial recognition technology being used in Croydon, London. Photo: Jordan Pettitt, PA.

"The police are able to scan us like barcodes," she said. "There's no specific legislation on facial recognition technology. It hasn't even been debated in Parliament."

Big Brother Watch, Liberty and Amnesty International have criticised the technology as an "Orwellian" breach of privacy. <http://tinyurl.com/4fwtpu46>

### Police in schools seem to cause more problems than they solve

Chicago Mayor Brandon Johnson has told the local newspaper he supports ending the controversial Chicago Public Schools program that puts uniformed police officers in dozens of high schools.

The *Chicago Sun-Times* reported that Johnson will give the Board of Education the green light to end its \$15.7 million contract with the Chicago Police Department.

In 2020, *Sun-Times* analysis found that students who attended a high school that had a Chicago police officer stationed inside were four times more likely to have the police called on them than kids at high schools that didn't have in-house cops. And there was a stark divide in the rate at which Black students were policed compared to their peers.

The presence of school officers has also not proven to prevent school shootings, research shows. <http://tinyurl.com/mrwb6v3>

### Will-he-she-they win in uncharted territory?

A judge has approved a court challenge to Saskatchewan government's law requiring parental consent for children under 16 who want to change their names or pronouns at school. Judge Michael Megaw says the applicant, UR Pride, an LGBTQ group in Regina, the province's capital, should be allowed to make its case surrounding Canada's Charter of Rights and Freedoms even if the Charter's "notwithstanding" clause has been invoked. "The claim here is in somewhat uncharted territory," Megaw wrote. "However, that UR Pride has a steep hill to climb in this regard does not mean it should not be given the opportunity to engage in the climb in an effort to illustrate that the incline can be conquered." Megaw's decision allows UR Pride and the government to provide all their evidence and arguments before court. The judge can then decide his next steps. <http://tinyurl.com/5eje67hs>

### Right to help abroad may become law

UK campaigners are demanding new legislation which guarantees a legal right to Foreign Office help for Britons abroad who are at risk of torture, death or human rights abuses. Providing consular support by the UK Government is currently discretionary, decided case-by-case.

Edinburgh West MP Christine Jardine is sponsoring a Private Members' Bill in the British Parliament that would enshrine in law a right to support. She highlights the case of Nazanin Zaghari-Ratcliffe, who was arrested in Iran on April 3, 2016.

Zaghari-Ratcliffe said she spent years locked up in an Iranian prison before she ever had a meeting with UK government officials. <http://tinyurl.com/yc7c6tb5> Critics say the system, as it is now, is unfair: if you make enough noise, you get attention.

## Brits force teachers to report child sexual abuse

British Home Secretary James Cleverly (photo) is bringing in a legal requirement for anyone in regulated activity relating to children in England, including teachers or healthcare professionals, to report it if they know a child is being sexually abused.

Any one failing to report child sexual abuse they are aware of, so falling short of their legal duties, face being barred from working with young people.

Anyone who actively protects child sexual abusers – by intentionally blocking others from reporting or covering up the crime – could go to prison for seven years.

By making mandatory reporting a legal requirement, the government is delivering on a key recommendation in the Independent Inquiry into Child Sexual Abuse (IICSA) report to protect children from harm and make sure authorities never again turn a blind eye to this kind of devastating crime. <http://tinyurl.com/3tnj2twx>

## God dictates right to life, selectively: chief judge

The Alabama Supreme Court has ruled that frozen embryos are considered children, and that a person could be held liable for accidentally destroying them,

Agreeing with the majority decision, Alabama's chief judge Tom Parker wrote: "Even before birth, all human beings have the image of God, and their lives cannot be destroyed without effacing his glory." <http://tinyurl.com/dv28nzc6>

Capital punishment in Alabama is a legal penalty. Alabama has the highest per capita capital sentencing rate in the USA. In some years, its courts impose more death sentences than Texas, a state that has a population five times as large.

Alabama executes by lethal injection, unless the condemned person requests electrocution or nitrogen hypoxia. On 25 January 2024 Alabama was the first state in the USA – and the first place in the world – to use nitrogen gas as an execution method. That surely effaced someone's glory, CLA believes. – Wikipedia.

## International briefs

### 'Murder' trumps time, distance and medical opinion

A slight, short, 18yo Mayan-speaking, Guetamalan farm worker who was legally in Florida was assaulted by police – stunned six times in two minutes as he was held by three officers – then handcuffed and locked in a patrol car. Five minutes later, the arresting officer had a heart attack and was taken to hospital, where he died. Doctors found he had suffered cardiac arrest and ruled Sergeant Michael Kunovich's death was by natural causes. The autopsy report said: "These cardiac changes, while recent, predate the struggle with the subject. The circumstances do not fully meet the criteria for a homicide manner of death." Florida has charged the young man with murder. The youth has been held in jail without bail for nine months, even after judge R. Lee Smith in December 2023 found

him incompetent to stand trial because he does not understand English or Spanish and is unable to understand the criminal justice system, the *Times-Union* reported. <http://tinyurl.com/ryzss2yz>

## ODD SPOT: Be careful what you vote for...

The number of people waiting for National Health Service hospital treatment in the UK reached 7.7m in October, 2023, double that on the eve of the 2016 EU membership referendum ('BREXIT').

Since 2016, health workers from the EU working in the NHS have dropped precipitously: from September 2016 to Sept 2021, nurses trained in the European Economic Area and registered in the UK fell 28%, from 38,992 to 28,007. Shortages of medicines have doubled since January 2022.

"A major lesson from the vote to withdraw from the EU was that an increasingly unfair and unequal UK makes those whose health is most negatively affected by such inequality more susceptible to polarisation and populism." – Jessamy Bagenal and Martin McKee, in *The Lancet* 30 Jan 2024. <http://tinyurl.com/3brwvz5b> (paywall).

## EU IDs WCs

Legal psychologists from Leiden University, Maastricht University, Lucerne University of Applied Sciences and Arts, and Phillips-Universität Marburg have launched a European Registry of Exonerations (EUREX). They want to find out how many wrongful convictions (WCs) occur, examine their causes and stop them happening in future. At launch, the registry holds 115 exonerations from 17 European countries, which provisionally show that people suffering miscarriages of justice spend an average of seven years in jail. Some 30% of the European cases involve a false confession. <http://tinyurl.com/2s3rpryk>

## Average is 9 years wrongly convicted...mostly for blacks

In the USA, public agencies have paid out \$6 billion Aust. to compensate people for the nine years, on average, they wrongly spent in prison in America, according to the National Registry of Exonerations. Black people make up 13.6% of the US population but 54% of the 3433 exonerations studied. And they lose more years of their lives – 10.1 v 7.7 for white people and 8.3 years for Hispanic people – before being cleared. (Exonerations total had reached 3464 at the January 2024). <http://tinyurl.com/2d56xxx5>

## US introduces towering surveillance

The US Customs and Border Protection plans to spend about \$103 million acquiring 277 new surveillance towers and upgrading 191 existing towers along the entire 3200km border with Mexico over the next 14 years, the most recent federal contracts show. The agency has received more than \$1065 million in funding for surveillance since fiscal year 2017, according to a 2021 report by the Office of Inspector General. Towers are being upgraded to 360-degree, AI-fueled, visual and auditory surveillance capabilities, critics says. <http://tinyurl.com/28fxe6jm>

## Govt swaps \$\$\$s for surveillance

Chinese property developers must install surveillance monitoring equipment at their projects, under official measures which began in February. The rules apply to firms that have received at least \$6m in government funding during a period when the property industry is facing a crisis. The surveillance is to make sure government-provided funds are being used for the correct purpose. <http://tinyurl.com/4z6wps9u>

## Kiwis trial shoplifter facial database

The privacy commissioner is keeping a close eye on a facial recognition technology (FRT) trial at Foodstuffs North Island



stores to gather evidence on whether facial recognition technology was a justified way to lower retail crime. Foodstuffs plans to use FRT to scan and make a biometric template of each shopper as they enter the premises to see if they match a watchlist of people identified with repeated harmful behaviours. It follows 4719 incidents of retail crime reported across Foodstuffs stores in the last quarter of 2023, including 513 trespass breaches, up 52% on the previous quarter. <http://tinyurl.com/yeysa877>

**ODD SPOT:**  
**Only in America: Pelican state judges run skim scam**



In Louisiana USA, the Pelican State, judges benefit from the fines and fees they impose on people, including the inequitable bail bonds which blight the poor. Some of the money goes into a judge-controlled fund that can be spent on anything related to court operations.

So judges have rented a BMW, booked two weeks in beachfront accommodation for five people, paid for rooms at a luxury hotel, and bought an iPhone. Some 200 district court judges in Louisiana reimburse themselves for “travel and support” costs that blur the line between personal and professional.

This unique Louisiana system does NOT apply in New Orleans. A federal court ruled that using the system by criminal court judges in New Orleans created a conflict of interest violating the due process clause of the Fourteenth Amendment. But the two rulings apply to the New Orleans court only, which reformed their system, not that of other courts in the state. <http://tinyurl.com/2kpwvndp>

**Tougher laws against protesters**

Police in the UK are getting powers to arrest protesters wearing face covering to avoid prosecution, and confiscate and arrest anyone using fireworks or flares at protests. Police can arrest anyone disregarding their orders, with people facing a month behind bars and a \$2000 fine. Protesters will no longer be able to cite the right to protest as a reasonable excuse to get away with disruptive offences, such as blocking roads. <http://tinyurl.com/2u67crc9>

**DATES**

**2 March, Dunkley, Melbourne:** By-election for federal seat due to death of Peta Murphy.

**11 March, Sydney:** Guardian UK-based columnist Polly Toynbee (photo) in conversation with historian-journalist David Marr on ‘An Uneasy Inheritance’, her new book about a privileged background and a socialist foreground. Roundhouse, UNSW, 6.30-7.30pm. UNSW Centre for Ideas: <https://www.events.unsw.edu.au/event/polly-toynbee-uneasy-inheritance>



**31 March, Canberra:** Parl Joint Cttee on Human Rights report re a Human Rights Framework, possibly

including a Human Rights Act, is due to be presented to AG Mark Dreyfus.

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

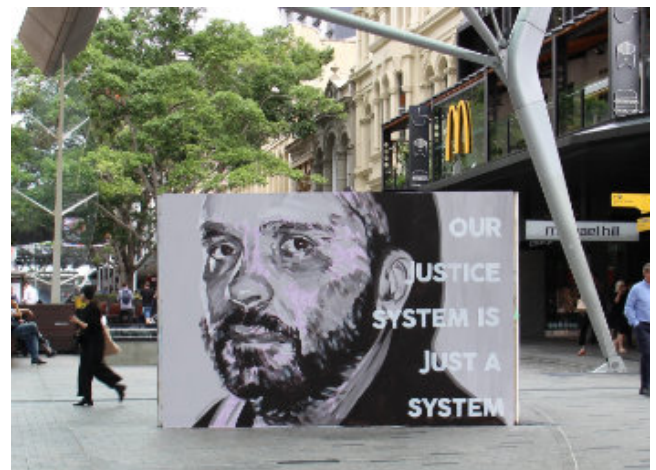
**30 April, Brisbane:** Launch of the Australian Human Rights Law Association and address by its patron, Pamela Tate AM KC, on ‘Proportionality under Australian State-level Human Rights Statutes’. 5.15-7pm, Supreme Court Brisbane. Details/booking: <http://tinyurl.com/2mbcwwpe>

**May 2024, NSW and Van Diemen’s Land:** Bicentenary of the Supreme Courts (Note: VDL then = Tasmania now).

**15-17 May, Belfast & Dublin:** World Bar conference. Topics include: Cancel Culture, Free Speech and the Right to Offend; Law in the Era of Climate Crisis; Rule of Law Under Fire; AI Unleashed. Details: <http://www.worldbar2024.com> Hosts: Jointly, Bar of Northern Ireland, Bar of Ireland.

**10 May, Melbourne:** ‘Science and Medicine in the Courts: Learnings from the Wrongful Conviction of Kathleen Folbigg’, 12.45 - 6.00pm, Owen Dixon Chambers East, Level 5, 205 William Street. Details: Vic chapter, Aust, Academy of Forensic Sciences: [aafs.vicchapter@gmail.com](mailto:aafs.vicchapter@gmail.com)

**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](mailto:info@apsacc.com.au)



**22 Aug – 15 Sept, Hobart:** ‘Denied’, exhibition of Sky Parra’s portrait series on Wrongful Convictions, Salamanca Art Centre, 67 Salamanca Place. The artist has painted Scott Austic, Derek Bromley (see photo above, in Queen St Mall Brisbane in 2022), Frank Button, Henry Keogh, Andrew Mallard and Lloyd Rayney, among others, with a new portrait likely to be unveiled for the first time in Hobart. Details: <https://www.skyparra.com/>

**Election cycle for Australia:**

- 2024: **Tasmania** (House of Assembly): 23 March 2024
- Northern Territory:** 24 August 2024
- ACT:** 19 October 2024
- Queensland:** 26 October 2024
- 2025: **WA:** 8 March 2025
- Federal:** March 2025 likely (Earliest possible is 3 August 2024 and latest possible 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 26 Feb 2024.

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