

New bid to find Bromley innocent, due fraud

The recent decision of the High Court – refusing leave to Derek Bromley to appeal his 40-year-old conviction for murder – was quite extraordinary, academic legal guru, Dr Bob Moles, told CLA last month. So weird was the ruling that Dr Moles proposes a novel approach to “overturning” a High Court decision. “Three judges refused his application for leave to appeal. The remaining two judges (Edelman and Steward) said that they would grant leave to appeal, determine that there had been a serious miscarriage of justice, overturn the conviction and enter a verdict of acquittal,” Dr Moles writes. (*Bromley v The King* [2023] HCA 42)

“As criminal convictions must demonstrate guilt ‘beyond a reasonable doubt’, one might have thought that the determination by two (out of five) of the country’s leading judges that Bromley had been wrongly convicted might constitute such a ‘reasonable doubt’.

“Regrettably, the judges on the appeal refused to allow submissions to be made concerning the evidence of the forensic pathologist who had given key evidence at Mr Bromley’s trial (some 40 years ago) – the now notorious Dr Colin Manock.

“He had been referred to in a recent television program *Under Investigation* broadcast by *Channel 9* as ‘the disgraceful Dr Manock’. Dr Shepherd, a leading forensic pathologist in the UK had described Manock as ‘a charlatan’.” <https://www.youtube.com/watch?v=pTypFBvx2lk&t=7s>



Colin Manock

Trying new approach...

Can anything further be done once the High Court slams the door on a case?

Dr Moles, Adjunct Associate Professor at Flinders University in Adelaide, has played a leading role in Manock and SA wrongful conviction issues for more than two decades. He says Bromley has another option.



Derek Bromley

Dr Moles proposes starting new legal proceedings to demonstrate that Bromley's conviction was obtained by fraud. He believes this could be a real game-changer for those representing people who claim to have been wrongly convicted, not just Bromley.

It requires an originating summons (a fresh legal action) to be made to a single judge of the Supreme Court, alleging fraud. It is not an appeal. It could include allegations of dishonesty, withholding of key information or manifest error.

The application is in the civil jurisdiction of the court although involving a criminal matter. It only requires to be established on a balance of probabilities. The fraud must be specifically pleaded and is the only issue to be raised.

If successful, the single judge can overturn the judgment of any other court including prior decisions of the appeal court or High Court itself.

Dr Manock has said he helped to secure over 400 criminal convictions.

“He failed to mention at any of those trials that his employer (the State of SA: ed) had given sworn evidence to the Supreme Court that he was not qualified ‘to certify cause of death’ and that he did not have any ‘expert qualifications’,” Dr Moles (photo right) told CLA last month.

“If the fraud application is successful in just one case, how could it fail to apply in others?”

“Perhaps instead of going away, the case of Derek Bromley might just be getting more interesting?”



Bromley out, but not ‘free’

Derek Bromley was released on parole in July 2024 after 40 years in jail, sentenced to life for murder. Eligible to apply for parole 20 years ago, it could not be then granted under SA's system because he refused to “show remorse”. “How could I show remorse? I was innocent: I didn't kill Stephen Docoza in the Torrens River in Adelaide in 1984,” was Bromley's constant refrain. And still is.

Another man, co-convicted, was released on parole in 2004.

The High Court 12 months ago refused Bromley's bid for a new trial, even though two of the bench of five judges would have acquitted him, overturned his conviction and released him completely. The behaviour of judges in that case might well be called into question in a future inquiry. <https://tinyurl.com/yc7ccsbu>

Senate becomes ‘House of Review’ for incompetent state policing

Eden Westbrook died, aged 15, by being suspended from a long and thin rope, attached to a very high branch, in a park in the centre of coastal St Helens, Tasmania, just on 10 years ago.

Since that day, the relevant Coroner and the Chief Magistrate have refused to release critical information which her parents – and recently Senator Jacqui Lambie as well – have claimed is behind a cover-up of huge proportions.

The Coroner's office refuses to release autopsy photos for independent review by an independent forensic pathologist employed by the family. There is now evidence that there may have been blunt force trauma to Eden's face and that, within months of her death, police were querying a key witness about possible marks to Eden's hands/wrists.

There are more than hints of pedophile rings plaguing Tasmania's north at the time, mixed with an already proven, homosexual, predatory police officer who had his hands all over the Eden Westbrook case.

Lambie fires up for justice



Senator Lambie (photo) is so incensed she has taken the mushrooming claims for a public inquiry to the floor of the Australian Parliament.

She is aiming to force justice to raise its head in a state with an appallingly poor reputation among the rest of Australia for how the island's police, forensics, and legal systems, including its highest courts, function...or don't, properly.

In November 2024, the Senator said: “I once again call upon the Tasmanian government, particularly the Attorney-General, to make immediate steps to rectify this national disgrace.

“My patience is running out with you. I'm sick of your excuses. You seriously are shameful! You seriously are! There is a stench up to high heaven over what happened to Eden Westbrook at 15 years of age,” she told the Tasmanian government, speaking in the Senate in Canberra on 19 Nov 2024.

“The more you know about the details of this case, the more dodgy it looks. There is stench everywhere, and it just won't go away. In the days following Eden's death, the police didn't even ask to look at Eden's mobile phone and they didn't examine her social media accounts.”

‘Deeply flawed, cover-up, gaslighting, intimidation’...by state authorities

Senator Lambie reminded MPs of her Senate speech on the same matter in July 2024.

“In July this year I gave a speech in the chamber about the tragic death of 15-year-old Eden Westbrook in St Helens, Tasmania, on 18 February 2015.

“The police, who conducted a deeply flawed investigation in the days following Eden's death, stated that Eden had taken her own life, and the coroner also found Eden's death was suicide.

“Eden's mum and dad, Jason and Amanda Westbrook, don't believe Eden ended her life, and neither do I. Amanda and Jason have fought for nearly 10 years to get the truth, despite gaslighting, intimidation and harassment.

“I said in my speech in July this year that I considered there had been a cover-up in this case, and I can assure you I'm not backing down. I don't give a stuff what the police commissioner says.

“I am also concerned about the competence, effectiveness, integrity and impartiality of some within Tasmania Police.

"I question why forensic science in Tasmania is not independent from police and why Tasmania Police is the only police agency in Australia to not have its police forensic services – for example, the crime scene examination, the photography, the fingerprints, the ballistics, et cetera – accredited by NATA, the National Association of Testing Authorities.

"Tasmanians deserve better", Senator Lambie said.

– speech Senate Hansard proof, Senator Jacqui Lambie, JLN, 19 Nov 2024 pp94-95 20.32 hrs

SEE ALSO: *The mysterious case of Michael Cross in Queensland*: <https://tinyurl.com/2atk8v6b>

CLA believes Tas problems stem from 2000 to 2020 period

"Tasmania should hold a commission of inquiry, with full empowering legislation for cold-case investigation, into police, forensic, DPP, coronial and judicial competence during the period from about 2000 to 2020," CLA's President Dr Kristine Klugman (photo) said.

A conglomeration of crimes and cases from that period have produced year-after-year of unsatisfactory outcomes, where justice has not been seen to be done according to many experts, such as some local lawyers as well as most interstate ones.

Their criticism is reinforced by the recent bombshell ruling in the Helen Bird coronial case (Coroner Webster 1 November 2024).

It took 14 years and a diligent police officer working "off the side of her desk" to get to the truth – that the supposed hanging suicide of Helen Bird in 2010 at her home was more likely a murder involving her husband.

The parallels between the Bird case and Eden Westbrook's case are concerning.

"Something has been rotten in Tasmania for two decades, at least. The state needs to examine where the bad apples and bad barrels were, analyse what they did and didn't do, and fix inappropriate systems that still plague the legal structures, particularly police and forensics," Dr Klugman said last month.

"Tasmania is currently a financial basket case; its port infrastructure is in tatters for its major industry, tourism; and its people and parliament are riven by the damage done by poker machines," she said.

"Yet no one will acknowledge that similar problems apply across the ethical infrastructure of the State, from the way the police and interlacing systems operate through to how the government and the parliament take responsibility – or don't – in an anachronous existence not yet caught up with the 21st century.

"It's easy to see when a big ship has nowhere to berth; it's much harder to realise when 'justice' has no proper foundations and is maladministered from the top down over decades," she said.

Thorpe lashes AG's Department for failing nation's children

Senator Lidia Thorpe delivered a withering put down to the federal government during recent Senate estimates hearings over mistreatment of children in Australia.

She said that Australia's obligations under international instruments such as the Convention on the Rights of the Child meant "you can't torture our children, but it continues to happen in this country".

She highlighted evidence given during the inquest into the death in custody of 16-year-old Yamatji boy Cleveland Dodd in WA in October 2023.

"He was killed by the state after being criminalised, locked up, denied healthcare, and subjected to prolonged periods of solitary confinement, more than 16 hours a day, every day," Senator Thorpe said.

"During the inquest, WA Corrections Commissioner Brad Royce said he did not feel bound by international human rights standards. What engagement has the department had with the Commissioner, or with WA's racist government, regarding this disregard for human rights standards?"

The federal Attorney-General's Department took the question on notice. It was appearing before the Senate Finance and Public Administration Legislation Committee.

Senator Thorpe also asked what the Attorney-General was doing about the reintroduction of spithoods into jails in the NT. AGD's Tamsyn Harvey said the issue of spithood use was on the agenda of the Standing Committee of Attorneys-General (SCAG). <https://tinyurl.com/8z3upxp7>



Sir Anthony Mason turns 100 in April

One of Australia's judicial 'giants', former High Court chief judge Sir Anthony Mason, turns 100 on 21 April 2025.

Sir Anthony in 2016 (Bill Rowlings photo)

Here's a few things another High Court judge, Michael Kirby, said of him in 1996:

Kirby on Mason: *Mason – From Trigwell to Teoh*

Democracy

Mason CJ rejected simplistic notions of democracy as involving no more than majority votes in Parliament intermittently elected.

Modern Australian democracy is more complex. It involves a respect for the human rights of minorities, a new sensitivity to the position of the indigenous peoples of Australia (Aboriginals and Torres Strait Islanders) and an awareness of the important developments which are occurring, at an international level, in the field of human rights and fundamental freedoms.

The decisions of all Justices now reveal an awareness of these developments. This advance occurred during Sir Anthony Mason's service. He contributed notably to it.

Human Rights

Many of the decisions at the closing years of Mason CJ's term reflect his empathy with human rights jurisprudence which is developing at the international, regional and national levels in all civilised countries.

The decisions in *Mabo [No 2]*, *Street*, *Dietrich* and *Teoh*, all reflect an awareness of international human rights developments and a willingness to see Australia's constitutional and legal principles in relation to them.

This is not to bring international treaties on human rights into Australia's municipal law where not incorporated by Parliament by 'a backdoor means'. It is simply to recognise that most of the important international human rights treaties were drawn by Anglo-American lawyers. They reflect concepts which are entirely familiar to those brought up in the traditions of the common law.

They may provide a setting in which approaches to Australia's problems can be aided by an awareness of the way in which other jurists, grappling with analogous problems, arrive at their solution.

– from the Melbourne Uni Law Students' Sir Anthony Mason lecture 1996: '*A F Mason – From Trigwell to Teoh*', by the former judge of the High Court of Australia (and many other eminent positions), Michael Kirby AC CMG

INSLM cuts concisely to core issues

Reading annual reports is usually associated with going to sleep. However, the Independent National Security Legislation Monitor's annual report 2023-2024 is a welcome exception.



INSLM Jake Blight writes clearly, free of jargon. I was previously impressed by his reaching out to genuinely consult with a wide range of civil society groups.

The current annual report is concise, informative and critical where needed.

As a civil libertarian I particularly welcomed the comment: "It is time for an independent review to assess whether the current definition of a 'terrorist act' remains fit-for-purpose."

I endorse the INSLM's statement: "The laws that support national security and counterterrorism-related work contain extraordinary powers that have a real impact on the rights of individuals and challenge long-held legal principles".

I was disturbed that government responses to important assessments by the INSLM have been lax. Two major reports of 2023-2024 recommended

significant change to security legislation, but the government has not responded to either the October 2023 or the May 2024 versions.

A reviews planned for 2024-2025 will cover vital areas of implementing these Acts. Importantly, the second review will cover foreign interference.

I recommend the INSLM annual report to anyone who is concerned by incursions into our traditional rights and privacy by security laws. – Dr Kristine Klugman, President, Civil Liberties Australia

INSLM Annual Report <https://tinyurl.com/53a27rhr>



Indigenous kids away from parents hits record

Indigenous kids are being removed from their parents at a record rate.

A *Family Matters* report released last month reveals 22,908 Indigenous kids in the out-of-home care system. They are 10.8 times more likely than non-Indigenous kids to be removed.

The rate Indigenous kids in out-of-home care is now 57.2 per 1000. In 2019, it was 54.2. The Productivity Commission estimates it will be 63 per 1000 in 2030.

Whatever governments, care departments, police and other authorities are doing, they are failing Aboriginal and Torres Strait Island children. Governments must make fixing the problem a top priority, CLA believes. <https://tinyurl.com/yrjvjk4>

Feds kick in a bit more for legal aid

Federal AG Mark Dreyfus last month announced a new \$3.9 billion National Access to Justice Partnership (NAJP) which will increase funding to the legal assistance sector by \$800 million over five years from 1 July 2025..

The new NAJP will provide:

- \$558m for Community Legal Centres and \$276m for Women's Legal Services, a total of \$833m, up \$354m or 74% from the previous agreement
- \$367m for Family Violence Prevention and Legal Services, an increase of \$193m or 112% from the Indigenous Advancement Strategy
- \$838m for Aboriginal and Torres Strait Islander Legal Services, up \$326m or 64% from the previous agreement, and
- \$1.785bn for Legal Aid Commissions, an increase of \$342m or 24%.

Bunnings self-serves secret surveillance of customers

Hardware giant Bunnings broke privacy law by using facial recognition technology to capture its customers' faces, the federal privacy watchdog ruled last month after a two-year investigation.

"Individuals who entered the relevant Bunnings stores at the time would not have been aware that facial recognition technology was in use and especially that their sensitive information was being collected, even if briefly," Australian Privacy Commissioner Carly Kind (photo) said.

She found Bunnings interfered with the privacy of hundreds of thousands of customers across 63 NSW and Victorian stores between Nov 2018 and Nov 2021. They must not repeat the practice in future and must destroy personal and sensitive information collected within 12 months.

The Bunnings example is expected to see thousands of such "spy" cameras removed from businesses throughout Australia. The technology is dirt cheap, and until now there's been no reason to not install surveillance devices without telling customers.

"Just because a technology may be helpful or convenient, does not mean its use is justifiable," she said.

Bunnings' managing director Mike Schneider claims the company's use of facial recognition technology was "never about convenience or saving money but was all about safeguarding our business and protecting our team, customers, and suppliers".

Schneider said stores were seeing "increasing exposure to violent and organised crime" and if just one person could be protected from trauma the use of facial recognition would be "justifiable". <https://tinyurl.com/3ynfwa82>



How reliable are 'memories' 35-50 years old?

The child was aged about 5-9. The memory is from 30-40 years ago. Some septuagenarian (say 70-75 years old) is in court charged with "touching" or "feeling" the then-child (now adult) in a sexual way, illegally.

Who knows whether the allegation by the child-adult is correct? Children cannot differentiate legal right from wrong before at least 10 years old in Australia, some say 14 (ask the NT, which just cut the age of criminal responsibility from 14 to 10).

How good are children's memories of a precise point of time and exactly what happened to them, if something did? Have subsequent TV, films, social media and conversations coloured their recollections, clouded their synapses?.

Similarly the person charged. How good are their memories of what happened, if anything happened? How do you prove a negative in a court, when you can't remember exactly the alleged time or place or event(s), or in truth remember anything wrong happening at all?

CLA knows of two cases where people in just the above situations have faced just the dilemmas outlined, and both have gone to jail. At least one of the two is a wrongful conviction, CLA believes. Possibly both were.

Are notions of fairness not subject to change along with society's changing values? Can 'fact' in fact be a downstream construct of fiction, film-video, social media and imagination?

'Long-remembered' alleged child abuse cases: changing cats into dogs

High Court judges made some interesting comments on these matters in a case last month:

I would not agree with the statement of Gaudron J in *Dietrich v The Queen*, 175 quoted by the plurality (at 176) that "notions of fairness are inevitably bound up with prevailing social values". With respect, notions of fairness are immutable. – judge Simon Steward



The principles governing when it is appropriate to award a permanent stay of historical child abuse claims require closer scrutiny of how specific adverse impacts of the passage of time before bringing the claim add to the inherent unfairness to the defendant of being required to respond to that claim long after the alleged events. – judge Jacqueline Gleeson (photo).

It is open to Parliament to change the rules of trials or to legislate to require trials to proceed even if they will be manifestly unfair. But such legislation could not convert unfair trials into fair trials any more than legislation could convert cats into dogs. – judge James Edelman.

– *Willmot v The State of Queensland (2024) HCA 42, decision 13 Nov 2024*

Australia defies moral imperatives: jails refugee claimants for decade or more

Two people have told the UN that Australia criminalises immigration and has defied its own Ombudsman and the UN Human Rights Committee to keep a stateless man jailed.

Speaking before the UN working group on arbitrary detention, Australian human rights lawyer Alison Battisson, of Human Rights for All, condemned successive governments for "criminalising immigration".

Battisson said Australia operated "immigration prisons" in which people faced arbitrary long-term detention and – until last year's High Court ruling in the *NZYQ* case – in some cases had been held indefinitely.

"I have clients who were detained for over 13 years ... with the long-term average being approximately eight to 10 years of administrative detention."

Long-term stateless detainee Said Imasi gave recorded evidence that outlined his perhaps legal, but immoral, mistreatment across decades. He was jailed across the breadth of Australia, from Melbourne in the south-east to Christmas Island in the far, far west.

A piece of human flotsam blown up on our shores without anywhere to call home, Australia continues to refuse to give Said Imasi a chance by giving him a fair go. – drawn from an article by Karen Middleton, *Guardian*, 18 Nov 2024

Judge Geason, guilty of assaulting woman, quits

Disgraced Tasmanian Supreme Court judge Gregory Geason resigned on 18 Nov 2024.

Visiting magistrate Susan Wakeling had found Geason guilty, and sentenced him to a year-long community corrections order with 100 hours of community work.

He must continue to undergo psychological or psychiatric treatment, including to gain insight into his offending behaviour. She described the evidence he gave in his own defence to be "contrived and implausible".

Given that finding, it is not readily apparent how he could be granted a practising certificate to work as a lawyer in Tasmania – or Australia – again.

Wakeling ruled he had assaulted and abused a woman. He had shaken her, struck her in the chest and pushed her forcibly. Over seven months he had subjected the woman to emotional abuse, tracked her movements and pressured her to sign a contract.

Geason, 63, has been on leave as a judge, formally committed to not hear cases, for the past year. He has "earned" more than \$500,000 while not working.

Second sentence for Geason this month

Separate to the above, in Sydney, 63-year-old Geason had pleaded guilty to breaching an apprehended violence order while visiting NSW.

He is due to be sentenced in the NSW Local Court on that conviction on 13 December.

McKenzie to head integrity

Ellen McKenzie of NSW is the new chief executive of the Tasmanian Integrity Commission.

Greg Melick, who has chaired the TIC for nearly a decade and failed to secure enough funds, staffing and legislative change from the state government for it to do its job properly, according to his own evidence, remains in his appointed position.

“We are the most under-funded integrity body in the country. We have also been waiting for legislative amendments to improve our efficacy for nearly 10 years,” Melick wrote in the TIC’s annual report, and said before a parliamentary committee recently.

For more than eight years, the state government has failed to act on 40-plus recommendations for legislative reform of the Integrity Commission Act by the Cox Review.

Ms McKenzie has been a lawyer for 30 years, running her own practice in Sydney, working for the Commonwealth Director of Public Prosecutions, and recently in a senior position with the Legal Regulation Department of the NSW Law Society.

MPs stay mum on ‘secret’ emails

Meanwhile, two long-running political investigations by the Integrity Commission are held up because MPs won’t play ball...and can’t be forced to.

The Tasmania government has paid out \$200,000-plus this year alone in external legal costs run up by a minister or ministers – but refuses to say what for, or which MPs they relate to.

The Integrity Commission can’t access the the emails, protected under parliamentary privilege.

Investigation Loyetea is examining “a number of allegations that an elected representative failed to declare and manage a conflict of interest”.



Investigation Olegas is looking into claims that a grants program improperly used public funds to pursue electoral goals and that conflicts of interest were not properly declared.

The inquiries date from 2022, long before the March 2024 election. Both are believed to relate to Liberal MPs. The Liberal Party currently governs in minority, Any loss of a seat would almost certainly cause a new election.

Removing a roadblock stopping access to the emails of MPs under investigation for misconduct is a problem for the Integrity Commission to solve with the parliament, Premier Jeremy Rockliff (photo) says. – David Killick, *Mercury* Hobart, 23 Nov 2024 (paywall).

State infrastructure fails in WA

At 30 June 2024, 7792 people were jailed in WA prisons, a 15% jump from the same time last year, driven by a sharp rise in remand* prisoners, according to the official jails inspector.

Two jails, Hakea and Casuarina, recently had 79 prisoners sleeping on mattresses on the floor. Some 77 single cells were housing three prisoners each, questioning in parliament by Greens Upper House Member Dr Brad Pettit revealed.

WA jails Indigenous people at roughly four times the national average. The over-representation of First Nations people is stark in WA’s notorious youth detention system. – sources: *National Indigenous Times*.

* *Remand prisoners are people, refused bail, who have been jailed awaiting their day in court. They have not been convicted...and may indeed be found in court to be not guilty.*

CLA notes that, with an election on 8 March 2025, the ruling Labor Party and the opposition Conservatives are both ramping up the ‘tough-on-crime’ rhetoric.

Bungling cops destroy Indigenous kids justice reform bid

Police in five cars raided a youth rehabilitation event co-run by the Aboriginal Legal Service of WA and arrested three boys taking part last month.

ALS WA chief executive Wayne Nannup said WAPol’s behaviour was “completely unforgivable”.

"We have a program with partners called Old Ways New Ways. Our partners are Hope Community Services, Whadjuk Northside, and the Stephen Michael Foundation. The program is set up and a pilot is running now for youth diversionary engagement coming from community referrals, or from the courts.

"It's funded by justice reinvestment, which is now being closely looked at by the Attorney-General's office federally," Nannup said. "(As) part of our pilot, we had 20 kids roll up, which has been the most we've had, and we've only started it three weeks ago. We're able to engage young kids on the cusp of entering the justice system, or already in the justice system.

"This morning they had all these kids together at Whadjuk North in offices in Balga, and the cops turned up with five car loads of cops, then proceeded to arrest three young boys in that program, handcuff them in front of all the other kids."

Nannup said the incident left all of the children present "distracted".

WA has the highest rate of Indigenous youth over-incarceration in Australia. <https://tinyurl.com/yn5d3sve>

Attorney-General 'sentences' three prisoners to six more years jail each

WA's attorney-general has decided murderers Peter John Maloney, Catherine Margaret Birnie and William Patrick Mitchell will not be considered for parole for at least another six years.

Attorney-general John Quigley said he delayed the parole process to spare victims further trauma. He decided – arbitrarily, politically – to delay their pre-set parole date eligibility.

The three have spent decades in prison over separate horrendous murders between 1978 and 1993.

In 2018, the Labor Government re-wrote a law to give the AG sole power to decide the parole eligibility of certain serial killers and mass murderers – those who killed two people on separate days or three people on a single day.

Jamie Walvisch, senior lecturer at the University of WA Law School, is worried about a politician making what is usually a judicial decision. "It seems highly likely it will be a political decision based on the high-profile nature of the case. The concern is the complete lack of transparency, impartiality and independence in the process."

It set a dangerous precedent, he said. "This law is currently limited to serial killers and mass murderers," he said. "But there is no reason why in the future this couldn't be expanded to other groups of offenders – like terrorists, sex offenders, people who commit home invasions."

Walvisch said WA was the only jurisdiction that granted its AG this power. <https://tinyurl.com/bdfdpsep>

Truth in decline and 'divisive' under new administration

One of the first acts of the new Queensland Premier, David Crisafulli, was to announce he would abolish the truth-telling and healing inquiry and repeal the Path to Treaty Act, instantly curtailing any official activity from 1 December 2024.

Stories of massacres and frontier policing in then newly-colonised Queensland, among other atrocities of the past two centuries, emerged in earlier hearings which began in September.

Seven heads of government departments appeared. One, the Police Commissioner Steve Gollschewski, said Qld Police had "failed" Aboriginal people "for 160 years"—in some cases, going so far as to deliberately kill them.

New Premier Crisafulli said he was shutting down the inquiry because its product, the truth, was "divisive". <https://tinyurl.com/444ktpsp>

Waterfront boss resigns on principle over kids' age reduction

A senior Larrakia traditional owner has resigned from an official government-appointed role in protest against the NT's laws targeting youth crime, the ABC has reported.

The new NT government passed a law slashing the age of criminal responsibility from 14: children as young as 10 can once again face jail time in the territory.

For weeks, Larrakia man Richard Fejo had been weighing up concerns from human rights and health experts that more First Nations children would end up behind bars under the change.

Last month, after four years as chair of the Darwin Waterfront Corporation, Dr Fejo handed in his resignation. "I'm sad to leave that position, but I will not represent — and I cannot represent — a government that is doing this to my people," he said.

Indigenous people comprise about 85% of the NT's prison population, but make up just 26% of the general population. <https://tinyurl.com/m6r8bxzz>

ODD SPOT: Should 10-year-old kids be responsible for \$370 non-attendance fines?

The new 'tough on crime' NT government has rolled out truancy officers to enforce children's attendance at school, and parents are being hit with \$370 fines and compliance notices for not getting their kids into class. In the past six weeks, 14 fines have been issued by the new officers, with the policy raising concerns and tensions among a number of NT school communities. Of the fines issued, six were in the Big Rivers region, seven in Central Australia and one was in the Top End. The move comes as the new Country Liberal Party government lowers the age of criminal responsibility from 14 to 10. It is a wonder the CLP is not making the children responsible for paying the \$370 fines, as they are responsible for 'crimes' from age 10. It's a moot point, as neither the children nor the parents will be able to pay, CLA suspects.

Does candid camera system add to house price?

NT ICAC commissioner Michael Riches was due to auction his \$1.2 million Stuart Park home – with camera surveillance system intact – by the end of November.

The outcome of a drawn-out investigation into allegations of inappropriate behaviour by him towards female staff members has not yet been released.

The house listing highlights a taxpayer-funded security camera system his wife accused him of using to harass her.

A "hand-signed" Britney Spears poster from 2009 and a massage chair were also being hawked on a local online marketplace.

The house listing states that the four-bedroom, two-bath home comes with a secure, high-speed "security camera system which can be monitored anywhere in the world". That system was paid for by taxpayers and it was alleged earlier in 2024 it had been misused by Mr Riches to exert control over his wife, the *NT Independent* reported.

Mr Riches was publicly accused of domestic violence by his ex-wife Jennifer Riches in June. He was served with a domestic violence order in May 2023; it was later replaced with a domestic violence undertaking not to contact his wife that is reportedly still active.

Jen Riches claimed her husband used the taxpayer-funded cameras as part of a campaign of coercive control to constantly monitor her movements and ensure she "completed tasks such as dog-walking".

"He took advantage of ICAC resources to surveil me in my home against my will. I asked Mike to get rid of the cameras many, many times and he just laughed," Ms Riches told the *NT Independent* in June.

Michael Riches told Sky News the same month that the cameras were "installed for security purposes" as part of his role as the ICAC. "Those cameras were installed and paid for by the NT Government as a part of my appointment."

He has been suspended on full pay since mid-June as the prolonged Office of the Public Employment Commissioner's investigation into the workplace allegations remains ongoing.

The auction was listed for 6pm on 27 November. <https://tinyurl.com/yc6k7hjc> (NT Independent, 12 Nov 2024, behind paywall)

ODD SPOT: 'Police Insect Squads' raise the ante at protests, arrests

Militarised police, black-garbed with armour, goggle-eyed and with protruding machine-gun 'stingers' like a phalanx of wasps, appeared in force last month. They turned protests against an arms race conference in Melbourne into a physical and surveillance "arrest-athon", critics say. Police issued 110 people with on the spot offence notices, and served warrants in the following days on 21 others using "live" and historic surveillance data and footage, as well as real-time vision from overhead drones at private residences. Summoning special – but wholly inappropriate – provisions under the Terrorism (Community Protection) Act 2003, they abandoned even-handedness and abused their powers, including by a 12-cop raid, front and back door simultaneously, to intimidate just one of the people holding different views to the state government. According to Crystal Andrews in *Crikey*, the likelihood is that the state and VicPol will face class actions.

Judges' judgement being judged

Judges throughout Australia are in strife, from the bottom to the top and at the capital court in between.

A Supreme Court judge in Tasmania resigned last month after being found guilty of assaulting and abusing a woman.

The case of a Supreme Court judge found by an independent panel in the NT to have been biased is still not resolved, despite lingering for years.



And now the ACT Bar Association is weighing into Canberra's chief judge of the Supreme Court, Lucy McCallum, per medium of Bar President Brodie Buckland.

"The ACT Bar Association is concerned that there may be a perception, based upon recent comments attributed to the ACT Chief Justice at the Jury Research and Practice Conference, that juries in sexual assault trials are getting it wrong because they do not believe the allegations made by complainants," the Bar says. (media release, 19 Nov 2024) *Left: Lucy McCallum (Canberra Times photo).*

"The notion that juries come to the wrong result is flawed, and must be rejected," an ACT Bar in lecturing mode says. "Juries are the ultimate arbiters of fact. Twelve members of the community, brought together to consider the evidence as presented to them, applying their common sense and life experience, make the decision of guilt or innocence. They are foundational to the common law criminal justice system and their decisions must not be gainsaid," said Brodie Buckland, the ACT Bar Council President, in a media release. Buckland quotes in support the words of Dyson Heydon, a former judge and barrister alleged by the High Court, after a non-judicial inquiry, to be experienced in sexual harassment.

He was found to have targeted at least six associates (high-powered, erudite, qualified, junior lawyers who serve closely with HC judges), as well as barristers and a former president of the ACT Bar, Noor Blumer. (Buckland refers to *Heydon J in HCA AK v Western Australia (2008) 232 CLR 438 at 470 – 473*)

"Allegations are just that, allegations. If jurors do not accept allegations beyond reasonable doubt, for whatever reason, then they remain allegations, and the accused is acquitted," Buckland says.

"Hypothesising as to why complainants may not be believed by juries does not advance the criminal justice system. The common sense and diligence of jurors must be respected and be seen to be respected in order to preserve the integrity of the jury system."

Presumably making a contrast with the public opinions of the ACT's top judge, barrister Buckland says: "The ACT Bar Association strives for equity before the law, respect for the law and the fair and proper administration of the law. Respect for juries is paramount in achieving those ideals."

Top judge bans AI in court

NSW's chief judge has banned lawyers and judges from using artificial intelligence to create evidence papers from 3 Feb 2025, the start of the new law year.

They must add a disclaimer declaring they have not used AI to develop any material.

CJ Andrew Bell has issued a ruling – a practice direction – that judges are not permitted to use AI to formulate reasons for judgments or to edit draft judgments, and has instructed them to remain "astute to identify any undisclosed use of AI in court documents". For practitioners, Bell forbade using AI in affidavits, witness statements, character references or other material that reflects a witness's evidence or is to be used in cross-examination.

Victoria and Queensland adopted similar guidelines earlier this year, Ellie Dudley reported in *The Australian*. <https://tinyurl.com/y9cbmvd3>

BRIEFS

Seeking people damaged by wrongful accusations

Macquarie U and the U of Canterbury in NZ are seeking research participants wrongly accused of criminal offences or victims of miscarriages of justice to assess the psychological effects of their experiences. See Bob Moles' NetK Homepage for details: <http://netk.net.au/PsychologyHome.asp>

Another death in custody

A 35 year-old Noongar man died recently in police custody in Perth. More than 600 Indigenous people have died in custody since the Royal Commission into Aboriginal Deaths in Custody made over 300 recommendations in 1991 to better protect people. <https://tinyurl.com/mrvuh4y6>

How Tasmanians can save \$171m a year, plus

While pokies were closed for three months due to COVID-19 from late-March to late-June in 2020, Tasmanians saved \$44,327,013. In 2018-19 Tasmanians lost \$171,603,745 to poker machines – website, Meg Webb, Independent Member for Nelson, Legislative Council, Tasmania

Committee criticises lack of human right

The Parliamentary Joint Committee on Human Rights is continuing to insist the 'Combating Misinformation and Disinformation Bill' is amended to provide better human rights protection to people adversely affected.

“Amending the bill to require the Australian Communications and Media Authority to establish a complaints mechanism (for) breaches of human rights arising from the proposed scheme,” the PJCHR says in its Scrutiny Update Report No 10 of 2024. The committee is also severely critical on human rights grounds of a Migration Amendment Bill (‘Bridging Visa Conditions’) which would “limit several human rights”. See PJCHR homepage for more information.

NAAJA does a backwards reverse CEO-flip

The North Australian Aboriginal Justice Agency (NAAJA) last month has issued a public apology to its chief executive officer Priscilla Atkins for unlawfully sacking her in 2023, and for the accusations it made against her, with the agency also clarifying that she is currently the organisation’s CEO. NAAJA’s press release on 20 Nov 2024 said the Federal Court ruled that between November 2022 and February 2023, NAAJA took unlawful adverse action against Ms Atkins, contravening the Fair Work Act six times. “NAAJA apologises without reservation to Ms Atkins for the unlawful action it took against her and the hurt, pain and suffering she endured as a result of those actions, as well as any damage suffered to Ms Atkins’ reputation by reason of NAAJA’s actions. Ms Atkins remains employed as the chief executive officer of NAAJA.” <https://tinyurl.com/fhjv8wtw>

SCAG to discuss bail and remand

SCAG, the Standing Committee of Attorneys-General, will discuss bail and remand issues in relation to ‘closing the gap’ justice targets at the next SCAG meeting. SCAG usually meets quarterly.

Curtin U enforces ‘freedom to listen’ policy

Curtin University has allegedly suspended and banned a student for a year for confronting former WA Premier Mark McGowan over human rights abuses of Aboriginal kids in juvenile jails at Banksia Hill and Unit 18 for which he was ultimately responsible. Student Emily Lassam questioned the former Premier over his handling of youth justice. Curtin U claims it “strongly upholds academic freedoms”. CLA notes it does not, apparently, uphold the right to disagree with how a politician has enabled human rights abuse of young Indigenous citizens, which in at least one case led to a death through suicide. Curtin U’s “free speech” policy is in fact nothing more than a freedom to listen: students and academics should insist the uni management changes the policy to meet proper standards. <https://tinyurl.com/bcf2acjv>

McGowan fails to ‘progress human rights’

Former Premier McGowan should stand up for the student, and insist the uni reinstates her. But CLA doesn’t expect that to happen. McGowan was elected in 2017 on a Labor Party platform that promised to progress human rights in the state, but sadly human rights have never flowered as a personal McGowan priority. It’s even sadder that his influence is now apparently further repressing human rights in WA.

Mad, sad, bad...and social media

The federal’s government’s MAD Bill (covering misinformation and disinformation) is a bid to legislate common sense. It won’t work if the US social media behemoths are charged with upholding positive standards for children: they have no knowledge or experience in the area. Their expertise is in exploiting new technology for personal benefit, sacking masses of staff periodically, and not paying tax consistently. The government would better spend its time and money on encouraging responsible Australian versions of social media that are better than the originals, and only available for overseas citizen use on payment of a premium. America is more than welcome to keep its creepy-crawly comms comen to itself, CLA thinks.

LETTERS

Wasting internal resources

Thanks for the detailed information on Aboriginal matters in *CLArion*, including kids in juvenile jail. I attended a forum on indigenous incarceration in the ACT: no education for any inmate. Legal whistleblower David McBride is currently an inmate: he could run several courses. – Peter Curtis, Waramanga ACT

Power to be a dictator?

(A Northern Territory) new proposal would further tighten (Chief Minister) Ms Finocchiaro’s control, with an audacity that eclipses former prime minister Scott Morrison’s multiple ministries scandal. Whereas Mr Morrison secretly appointed himself to five ministries, the powers proposed in the leaked discussion paper would give Ms Finocchiaro unprecedented power over any NT ministerial decision, and powers to exempt most NT laws. An opportunistic survey of some new MLAs suggests they haven’t even followed the media revelations of this startling new proposal, let alone read the paper. Will her 16 colleagues grant Ms Finocchiaro these unprecedented powers without even consulting their electorates? Is this really the kind of parliament they signed up for? – Justin Tutty, Tiwi, NT (as first run in the *NT Independent*)

Tax changes are draconian for Not-For-Profits

I have served on the committee of ASRA, a registered not-for-profit supporting the archival preservation of and access to historical sound recordings for over 20 years, most recently as treasurer. I have just become aware of the new ATO reporting requirements for NFPs and am in despair.

As a small organisation, with a gross turnover of tens of thousands of dollars annually and typical end-of-year results between plus and minus \$1000-\$2000, our biggest issue is limited resources from our volunteer committee to undertake management of the organisation. The new rules introduced by the Morrison government will triple my workload this year, impact on resources required for the review we are undertaking of our rules of association, and present an ongoing additional resource need for the committee. Most of our younger volunteers are time-poor, often working two jobs trying to save for a house or under the pump in their jobs at under-resourced collecting institutions in our field of interest. This increased regulatory burden will deliver no benefit to the government or to our organisation and is part of a trend I believe will ultimately make many small associations, such as our own, unviable. – Matthew Davies, Stirling ACT, *Canberra Times*, 11 Nov 2024.



CLA main activities for November 2024

The CLA national Human Rights Act campaign team continued meeting with Labor MPs last month, including with Peter Khalil, the Member for Wills (Vic).

Khalil became Special Envoy for Social Cohesion in Australia from July, with a brief to bring all groups together so they could hold civil conversations with each other. CLA highlighted how a HRA could help.

As a foundation for the nation's ethical infrastructure, it would provide a relatively quicker, easier and less costly way of resolving practical disputes between parties of goodwill as diverse as football clubs, kids groups and religious, community and cultural entities.

Photo shows CLA President, Dr Kristine Klugman, CLA national HRA campaign leader Chris Stamford and Peter Khalil in his Parliament House office.

At meetings and in conversations with MPs who responded to our invitation to Labor caucus members for briefing on the HRA campaign. CLA suggested a strategy for progressing a federal HRA in future. We met with

- Tania Lawrence, MHR for Hasluck WA, and
- Alana Walsh, Advisor to Senator Katy Gallagher (Canberra, Finance Minister).

We sent CLA's one-page email update on HRA campaign to 35 key contacts (non-MPs)

Other events this month:

- Webinar: (In)accessible Information: Australia's approach to Transparency, organised by Centre for Public Integrity.
- Structural Blind Spots: Why We Know So Little about Wrongful Convictions forum: Prof Barbara O'Brien Michigan State University, organised by ANU College of Law.
- WIN (Women's Inclusive Network) NSW Fire & Rescue forum: Forensics, Dr Jodie Ward.
- Invitation to CLA to join INSLM Roundtable discussion on Surveillance Legislation Amendment (Identify and Disrupt) Act 2021 (Cth) on 4 December.

ACT/QLD:

Estelle Blackburn OAM, an ardent CLA supporter in the ACT, was appointed last month to the board of the Griffith Uni Innocence Project in Brisbane. Also appointed were Qld CCL V-P Terry O'Gorman AM, barrister Stephen Keim SC, and Rhanee Rego, a Newcastle solicitor who helped win Kathleen Folbigg's freedom.

WA

Extract from letter by WA CLA team leader Margaret Howkins to Police Commissioner Col Blanch:

Police arrived dramatically, arrested and handcuffed three 16-year-old boys in front of an extremely distressed crowd of children. Was this the only opportunity the normally well-informed police had to 'act'? Were these three youngsters the most dangerous offenders in the city on (that) Thursday? What police training has taken place over the past 200 years or even in 2024 to address systemic racism in WA Police? This incident is embarrassing and shameful for Australia – Margaret Howkins (see news item above).



New campaigner on the front line

Barry Lydon, an experienced activist and university campaigner from Ireland and Europe, is planning to help CLA with future progress towards a Human Rights Act for the state, starting around the 8 March WA election.

He also plans to become involved with other local meetings, letter writing and campaigns as a new government settles in. In private life, he is a project manager in the FIFO business, and has a five-year-old son.

Barry met with CLA's WA team manager, Margaret Howkins, in later November to discuss her plans for the new year around highlighting police anomalies, particularly in relation to detaining Indigenous kids, and human rights regimes in the state's jails and juvenile detention centres, as formally reported by the official inspector.

Dynamite litany of human rights abuse on the fringe

Eamon Ryan's inspection result leaflet, left for prisoners in common rooms at Acacia Prison, is apparently a dynamite liturgy of condemnation covering the shocking conditions at Acacia. Ryan is the Inspector of Custodial Services in the fringe state.

Updating moves for human rights

CLA's updated information on a push for a national Human Rights Act has been mailed to 14 key WA politicians and activists, asking them to forward the information to people prepared to go into bat for a state HRA, as foreshadowed by the Labor Party in its platform for decades. WA Labor has always fobbed off the need for a state HRA, saying 'let's have a federal one first'. But, as the ACT, Victoria and Queensland have now shown for a total of 42 years, state and territory HRAs are needed to protect citizens from abuses by State Governments and the massive conglomeration of state laws. A federal HRA will only cover the relatively limited federal legislation.

INTERNATIONAL

Lies are legally OK in the USA

In every state, police officers are allowed to lie to adults during an interrogation. The hope, in many cases, is that they'll get a person to confess to committing a crime.

When it comes to children and teenagers, a growing number of states are stopping that practice: ten have passed laws in recent years effectively banning police from lying to juveniles during interrogations, starting with Illinois in 2021. But some legal advocates are pushing for a deception ban that would apply to everyone, not just kids.

Deception is a powerful law enforcement tool in eliciting confessions, says wrongful convictions attorney Laura Nirider as reported for the *NPR* online journal.

"Police are trained around the country in all 50 states to use deception during interrogation, to lie both about the evidence against a suspect and to lie about the consequences of confessing in order to make it seem not so bad if you just say that you did these things," she says.

Police can go into an interrogation room with a suspect, Nirider says, and emerge with "one of the most believable pieces of evidence imaginable, a confession. It's a quick and relatively straightforward way to close a case," she says.

But Nirider says using deception can also draw false confessions.

According to the Innocence Project, a national organisation that works to overturn wrongful convictions, nearly a third of DNA exonerations from 1989 to 2020 involved a false confession.

Legal experts say the deception bans passed in recent years fail to protect other vulnerable groups: young adults, people with intellectual disabilities, even just people who are naturally compliant.

There's another way for police to question people, Fallon says, that relies on building rapport and asking open-ended questions, and where the primary goal is information, rather than a confession.

That technique is used in other countries, including much of Europe. In England, France, Germany, Australia, Japan and elsewhere, for instance, the police are generally not allowed to deceive suspects.

<https://tinyurl.com/236mcrpy>

Group 'lawyers up' to tackle promised Trump extreme actions

A liberal-leaning legal organisation, Democracy Forward, has unveiled a large-scale new bid to curtail any excesses of President-elect Donald Trump's second-term agenda from Day 1.

More than 800 lawyers at 280 organisations are developing cases and workshopping challenges to 600 “priority legal threats” such as potential regulations, laws and other administrative actions that could require a legal response. The project – Democracy 2025 – will be a hub of opposition to the new US administration from January 2025.

“We’re leveling up and lawyering up,” Skye Perryman, the chief executive of the organisation, said. “This wasn’t something that just everybody woke up the day after the election and started to plan.”

They plan to address issues including abortion rights, health care, climate, union protections, environmental protections and immigration Trump promises to weaponise the systems of government, particularly the Justice Department, against people who oppose him and his proposals to dismantle federal agencies and sack thousands of government workers. <https://tinyurl.com/46y5c3sj> (NYT behind paywall, by Lisa Lerer 14 Nov 2024

INTERNATIONAL BRIEFS

Nauru sells its sole asset

At the UN climate change summit COP29 in Azerbaijan last month, Nauru launched citizenship-by-investment. In just four months, you can become a Nauruan by kicking in \$160,000 to the National Treasury Fund. Benefits include visa-free access to 89 destinations, unrestricted dual citizenship, and extending citizenship to family members. President David Adeang said: “Investment migration has emerged as a powerful mechanism for mitigating sustainability risks and enhancing climate resilience”. Nauru is the world’s smallest independent republic and the third-smallest country, with a population of about 11,000. It is flat broke, and relies on housing Australia’s forced-offshore refugee claimants to earn a small annual income. <https://tinyurl.com/bdycwpw2>

How Australia can save on boat refugee-claiming arrivals

Australia pays Nauru about \$500m a year so the island nation will keep open the scary “refugee facilities” with which to threaten boat arrivals to Australia. Attention Finance Minister Katy Gallagher ! Here’s an alternative. At the rate of about six (6) Nauruan citizenships for \$1m, we could buy 3000 “illegal” boat arrivals to Australia their Nauruan citizenship each year, and still be ahead on the Cruelty Dolours (‘sorrows’) and Cents Balance Sheet.

Confidence in police eroded

Today, Gen Z and millennial true crime fans interact with stories differently than previous generations did, often feeling like participants instead of just observers. In addition, their confidence in law enforcement, prosecutors and courts has been eroded — in part by the many instances of police brutality captured by ubiquitous video cameras, and by DNA technology that has led to the exonerations of hundreds of people convicted of violent crimes. – ‘The Menendez Brothers’ by Maya Salam, NYT (paywall), 24 Oct 2024

DATES

2025:

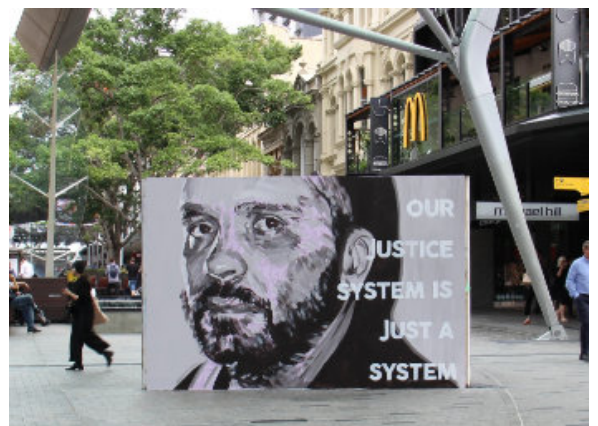
20-21 February, Wellington NZ: Pacific Island Political Studies Association hosts Pacific Islands conference: *Zone of Peace or Ocean of Discontent?* Uni of Wellington. Details: E: pipsa2025@gmail.com

28 Feb, Sydney: Commonwealth Law Conference, run by the Federal Dispute Resolution Section, Hilton Sydney. 8.30am to 1.10pm. PS: None of the 15 speakers “renowned for their expertise and experience” appear to be discussing wrongful convictions resolution. To register: <https://lawcouncil.eventsair.com/2025-commonwealth-law-conference/registrations>

14-25 May, 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 right, 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/>

27-30 July Cambridge, UK: World Congress on Family Law and Children’s Rights. Theme: *Children Caught in Conflict*. Info: <https://www.worldcongress.co>

4-5 Aug, Sydney: Applied Research in Crime and Justice Conference, hosted by BOCSAR with Griffith U, Intntl Convention Centre, Sydney. Details and rego: <https://tinyurl.com/hm6dk7dw>



Election cycle for Australia:

2025: **WA:** 8 March 2025

Federal: Early April 2025 possible; latest is Saturday 17 May 2025

2026 **South Australia:** 21 March 2026

Victoria: 28 November 2026

2027: **NSW:** 27 March 2027

2028: **Tasmania:** likely date is 27 May 2028, but the minority government is inherently unstable

NT: 26 August 2028

ACT: 21 October 2028

Queensland: 28 October 2028

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 27 Nov 2024.

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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