

Australia should have a Human Rights Act, says parliamentary committee

After receiving 335 public submissions, over 4000 form or campaign letters, holding six public hearings and discussions with stakeholders nationwide, the Human Rights committee of the federal parliament has tabled its inquiry report into Australia's "Human Rights Framework".

The primary recommendation is that, for the first time, Australia should get a Human Rights Act.

The committee has made 16 other detailed recommendations, including that the government re-establish and significantly improve Australia's Human Rights Framework, which should include:

- protecting human rights in law, comprehensively and effectively, by passing a Human Rights Act;
- making a major, ongoing commitment to national human rights education;
- requiring public servants to fully consider human rights in developing laws and policies (eg, before implementing a Robodebt system);
- enlarging parliamentary scrutiny of human rights;
- enhancing the role of the Australian Human Rights Commission;
- reviewing Australia's laws, policies and practices for compliance with human rights; and
- taking active measures to monitor progress on human rights. <https://tinyurl.com/z278eedy>

For a full rundown of the 17 recommendations of the Parliamentary Joint Committee on Human Rights, see the back pages of this edition of CLArion.

MPs stress help for the vulnerable, protecting Aussies

At the 30 May 2023 launch at Parliament House, HR committee chair Josh Burns (Lab, Macnamara, Vic) spoke forcibly about the need for a HRA to protect the vulnerable, such as homeless people.

He also stressed that Australia was the only liberal democracy in the world which did not have a rights law.

Committee member Kylea Tink (Ind, North Sydney, NSW) passionately explained why HR protections for all Australians were so important.

She said that 96% of people recognised that fact, judging by the overwhelmingly positive response in nearly all submissions to the committee.

Another committee member, Alicia Payne (Lab, Canberra, ACT) explained how important the first HR Act in Australia, in the ACT in 2004, had been in legislating citizens' rights in the territory.

Now, after 20 years, the ACT Human Rights Act was introducing better, quicker and simpler ways to enforce people's rights if needed.



Photo shows, in foreground, CLA President Dr Kristine Klugman, NSW MHR Kylea Tink, Victorian MHR and committee chairman Josh Burns, and the MHR for Canberra ACT, Alicia Payne at PH on 30 May 2024.

Leading civil liberties groups attend launch

A range of major civil society groups spoke in support of enacting a HRA: the Australian Council of Social Service (ACOSS); the Human Rights Law Centre, Amnesty and Civil Liberties Australia also spoke.

CLA President Dr Kristine Klugman stressed the "No Rights Without Remedy" clauses being inserted into ACT law, after 20 years' experience, to ensure anyone who believed the government or a bureaucrat had breached their right could get conciliation help from a Human Rights Commission or from a tribunal like ACAT in the ACT.

This was a model that should be in all HR Acts, she said, and in fact was recommended in the *Free + Equal* report of the Australian Human Rights Commission.

Dr Klugman said Australia now had a National Anti-Corruption Commission to deal with corruption or abuse at the upper political or corporate level. A Human Rights Act was the obverse of that social justice issue, in that it enable the "little guy" to achieve enforcement of her or his rights over people in positions of power.

Four-year CLA focus produces first hurdle result

It is worth recording that CLA has spent four years focused mainly on this one project.

CLA has helped secure a platform commitment among political parties; we have held 200-plus in person or e-meetings with some 350 key players, from politicians to mining bodies and Aboriginal Land Councils; and written numerous submissions to federal inquiries on rights, civil liberties and like issues.

Led by CLA's National HRA Campaign Manager, Chris Stamford (photo), we have also supported and made submissions promoting state and NT HR Acts.



Meanwhile, the committee – the Parliamentary Joint Committee on Human Rights – has logged a wave of support for a HRA. Of 331 submissions over the past year to its inquiry, 300 or more than 92%, were in favour of Australia having a federal Human Rights Act.

The federal Opposition tabled a dissenting report with the PJCHR: it largely concentrated on tired old arguments, long rebutted, that somehow a HRA would give extra-ordinary power

to judges. In fact, under the “dialogue” model recommended for the proposed HRA, judges would be obliged to refer any tricky legislative question back to parliament for a voted resolution of the question by MPs.

Why is a HRA needed in Australia?

Why do Australians want to live under a federal Human Rights Act (HRA)? Because HRAs better protect the average, less-powerful citizen against excesses of those who “rule” arbitrarily over them.

If citizens believe their rights are being ignored, they can in most cases challenge the excessive might and assumed never-ending rights of politicians and government bureaucrats, and the punitive, penalty and taxing decisions of big departments and public agencies.

For example, when Robodebt was a national problem, people could only seek justice from the very public servants who were insisting the people owed money to the government. There was no independent human rights agency to appeal to.

People in Australia also want the same types of protections enjoyed under personal rights law by New Zealanders, Canadians, British people and Americans.

Only three human rights campaigns have so far succeeded in Australia. The ACT (2004), Victoria (2006) and Queensland (2019-20) currently have HRAs. There have been nine (9) unsuccessful attempts to enact a Federal HRA to cover all national laws.

Where are HRAs up to in Oz?

In summary, here is the status of human rights, and Human Rights Acts, in Australia as of May 2024:

TASMANIA

The Tasmanian Law Reform Institute on 30 April 2024 made 21 recommendations and urged the state to become the fourth jurisdiction in Australia to adopt human rights legislation. The TLRI report – *A Charter of Human Rights for Tasmania? Update* – reviewed and updated its 2007 report on human rights in Tasmania, upholding its earlier recommendations, which included the need for a HRA (see <https://tinyurl.com/2pd9xtx3>). The TLRI report endorses the No Rights Without Remedy (NRWR) model, which enables access to conciliation/tribunals. A Tassie MP has in late-May called on the government to enact such a law.

SOUTH AUSTRALIA

The most advanced campaign within non-HRA jurisdictions is South Australia. The state government, on 10 Dec 2023, announced a formal inquiry run by SA Parliament’s Social Development Committee, to explore the potential for a HRA for SA. Submissions closed on Friday 16 Feb 2024. Committee hearings are likely to be held over a number of months, with a report tabled and made public probably late in 2024.

WESTERN AUSTRALIA

In December 2021, the WA for a Human Rights Act Coalition (WA4HRA) was officially launched. The overarching goal of WA4HRA is to build on the 2007 consultation and obtain a commitment from the WA Government to introduce a HRA for WA. The WA4HRA Coalition is led by a steering committee co-chaired by the Aboriginal Legal Service WA and Australian Lawyers for Human Rights (WA). The group is drafting a model HRA to use when consulting with stakeholders. In March 2024 the group held a strategic planning day. They plan to lobby each State MP. The WA election is due on 8 March 2025.

NEW SOUTH WALES

With NSW Labor in power after many years in opposition, there is renewed interest in a HRA amongst individuals in Labor’s

parliamentary wing, and continuing strong interest within the NSW Greens. There is a Human Rights for NSW Alliance made up of community and civil society groups campaigning for the human rights of NSW citizens to be guaranteed by law. The HRA4NSW Alliance is co-convened by NSW Council for Civil Liberties (NSWCCL) and Australian Lawyers for Human Rights (ALHR). Its steering committee includes the NSW Society for Labor Lawyers. In 2024 so far, the Alliance had held three youth forums. AG Michael Daley has publicly indicated his support for a HRA for the state.

NORTHERN TERRITORY

AG Chansey Paech supports a HRA for NT. Like AGs before him in other jurisdictions, he is waiting for strong community support to emerge. In January 2024, a group led by Rainbow Territory and Darwin Amnesty began to seek widespread support through signatures on letters from major community groups, and by gaining the commitment of major parties to enact a NT HRA after the next election, due on 24 August 2024. Campaigners will seek the individual stance on a potential HRA from each candidate standing.

REVIEWS OF CURRENT ACTS:

ACT

This was the first jurisdiction in Australia to introduce a HRA, which became operative on 1 July 2004. Significant changes to the HRA achieved in 2023-2024 will enable efficient and effective HR complaints handling, when the second tranche of the CLA-assisted reform agenda – *No Rights Without Remedy (NRWR)* – is likely to be enacted in 2024-25 (the further legislation has tri-party support). The first part, involving conciliation for all matters by the ACT Human Rights Commission, is now legislated and in place.

VICTORIA

A review of the Victorian Charter of Human Rights and Responsibilities Act 2006 in September 2015 recommended implementing the NRWR model to make it simpler and easier to protect human rights by allowing people to act in the more accessible and lower-cost jurisdiction of VCAT. This reform was not made.

“There are no further statutory reviews of the Charter required, however we continue to advocate for Charter reform with Government and other stakeholders. Our key strategic priority is to embed a culture of human rights which includes that we would like to see human rights protections expanded in Victoria”. – Vic Equal Rights and Equal Opportunity Commission.

Supporters of improving the Victorian Act believe a retired judge could hold a public review, with the state ultimately adopting the NRWR principle. Victoria goes to the polls on 28 Nov 2026.

QUEENSLAND



On 27 February 2024, the Qld AG appointed Prof Susan Harris Rimmer (photo) to undertake an independent review of the Qld Human Rights Act 2019. The review will evaluate how well the HRA is meeting its objective of building a culture of human rights in the Queensland public sector.

Prof Harris Rimmer will report to the Attorney-General by 20 September 2024. Supporters want the QLD HRA to be upgraded to the NRWR model, to reflect best practice identified in the ACT, by the AHRC and by the Tas LRI.

HRA supporters are also advocating for tougher override provisions. The Qld government has over-riden its HRA twice: in March 2023, the parliament passed amendments to override the state's HRA to create an offence for children who breach bail conditions, requiring a sentencing court to consider a child's bail history, and enabling a child to be declared a serious repeat offender. The HRA was nullified again in August 2023, to enable children's detention in police watch houses and adult detention facilities.

– Researched & written by Dr Kristine Klugman OAM, President of Civil Liberties Australia.

New AHRC President appointed

Hugh de Kretser is the new President of the Australian Human Rights Commission, for five years. He replaces Rosalind Croucher, in the position for the past seven years.

Making the appointment, Attorney-General Mark Dreyfus said: "The AHRC promotes and protects human rights in Australia and plays a critical role in upholding the rights of all Australians to be treated with dignity and live their lives free from discrimination.



de Kretser (photo) is currently CEO of Victoria's Yoorrook Justice Commission. Earlier, he ran the Human Rights Law Centre and was EO at the Federation of Community Legal Centres (Victoria). He has served as a Commissioner of the Victorian Law Reform Commission and a Director of the Sentencing Advisory Council.

Croucher, as President, battled successfully to retain international accreditation and, over four years, produced *Free and Equal*, a seminal report on where to next for human rights in Australia.

The government's response to that report is expected to be included in the PJCHR's 30 May release of committee recommendations.

Committee wants evaluation of rights v laws

The Human Rights Committee of federal parliament wants a range of fundamental assessments of whether key Australian laws are compatible with human rights.

This is an extension of how strongly the committee states its position, and appears to be setting the scene for requesting more powers to rein in draft laws that largely ignore rights.

On 15 May 2024 the Parliamentary Joint Committee on Human Rights tabled its Report 4 of 2024.

Under the *Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024*, the PJCHR alerted Attorney-General Mark Dreyfus and the parliament to the need for "foundational human rights assessments". It wrote that:

- the bill, by seeking to expand existing search and seizure and asset freezing powers to apply to digital assets like cryptocurrency, engages numerous human rights and reiterates that a foundational human rights assessment of the Acts sought to be amended is required to fully assess their compatibility;
- increasing the penalty unit amount, including those applicable to civil penalties, may risk some civil penalty provisions being considered to engage criminal process rights under international human rights law; and
- enabling several state anti-corruption bodies to receive intercepted information engages the rights to privacy and

fair trial, and recommends a foundational human rights assessment be undertaken of the Telecommunications (Interception and Access) Act 1979.

NACC gets on with nicking nasties

At 1 May 2024, the National Anti-Corruption Commission statistics were:

- received 2858 referrals;
- excluded 2208 (not involving a Commonwealth public official or not raising a corruption issue);
- 164 referrals awaiting triage;
- assessed 220 'triaged' referrals, including 23 under preliminary investigation;
- assessed 288 referrals, decided to take no further action in 234 cases of them; and
- referred 9 corruption issues to agencies for investigation or consideration.

NACC had decided to investigate:

- 16 corruption issues itself; and
- 5 corruption issues jointly with another agency. <https://tinyurl.com/3auzk62j>

NACC began operating on 1 July 2023, so it will soon run up hard against its first anniversary without a high-profile win. Expect some NACC news in June 2024.

Australia wins! Now most imprisoned people in the world

Gold ! Gold for Australia ! First Nations people in Australia are the most imprisoned people in the world, according to two UTS academics, Prof Thalia Anthony and Kristopher Wilson (photo).



"This unenviable record is consolidating rather than receding.

"In 2023, First Nations people accounted for 33% of the prison population – an all-time high. Indigenous people make up only 3% of the country's population, yet they are 17 times more likely to be imprisoned.

"This situation is the culmination of centuries of racism, punitive policy and persistent failures to listen to Aboriginal and Torres Strait Islander people."

They say that massively increased jailing in Australia coincides with a rapid growth of policing. In 2006, there were 44,809 police officers. Today there are 62,300.

"(C)ontributing to imprisonment has been the introduction of more punitive sentencing laws since 2000. This has included mandatory prison sentences and the implementation of standard non-parole periods

"When standard non-parole periods were introduced in NSW in 2003, sentences increased by up to 300%.

"Many of the challenges (Indigenous people are) facing, on top of chronically underfunded legal and community support services and decades of underinvestment, can be traced and directly attributed to the Commonwealth's NT Intervention in 2007.

"The intervention disbanded local Aboriginal community councils, enforced discriminatory policing powers in Aboriginal communities, restricted Aboriginal peoples' rights to social security, diminished Aboriginal land rights and enforced a blanket prohibition of alcohol in Aboriginal communities."

– from The Conversation 8 May 2024 <https://tinyurl.com/32xj7js>

ODD SPOT: Shiny-gowned on the outside, but sad and sombre on the inside

The Chief Magistrate of Tasmania, Catherine Geason, has decreed that magistrates are obliged to wear judicial robes from 6 May onwards. In a jurisdiction regularly and deeply criticised by CLA, local and interstate barristers and others for the failings of police, prosecutors, magistrates and judges, it would seem that appearance is more important than substance on the island down under Down Under. “If you don’t deliver justice, you may instead pretend to do so. All costume, painted ‘perfect’ and shiny-gowned on the outside but, like colourful clowns, occasionally if not repetitively, sad, sombre and somnolent on the inside,” commented CLA’s CEO Bill Rowlings.

Lab mistakes are a problem all over

Australians should not complacently think that wrongful convictions don’t happen here: they happen everywhere, Griffith Uni’s Dr Robyn Blewer (photo) has pointed out.

For example, the police lab in Austin, Texas, was shut down in 2016 following revelations its failures may have compromised the evidence used in more than 1800 convictions.

Issues were also uncovered in labs in Washington DC in 2021, California in 2022, New Jersey in 2018, Massachusetts in 2012, and Oregon in 2016, she wrote in *The Big Smoke*.

In Canada the Motherisk Drug Testing Laboratory used hair analysis in child protection cases to support allegations of drug and alcohol abuse against parents. A 2015 review showed thousands of child protection cases and eight criminal matters were impacted. This wasn’t the first time this hospital was the subject of a scandal. A 2008 inquiry revealed the work of the hospital’s paediatric forensic pathologist had resulted in “at least 12 wrongful convictions”.

Reviews and investigations have uncovered issues in labs throughout Australia, as well as the well-known problems in Queensland, over the past few years, Dr Blewer reported.

The 2017 PathWest review into WA’s forensic science lab was initiated following the wrongful conviction of a man based on an incorrect DNA match. The man had the same first name and surname as another person with a sample in the lab.

In 2019 Victoria’s President of the Court of Appeal, Justice Chris Maxwell, raised concerns about expert evidence and forensic science, and the potential for wrongful convictions. His reservations were backed up by deputy director of the Victorian Institute of Forensic Medicine, Associate Professor Richard Bassed.

Even more alarmingly, Dr Blewer disclosed the issue of forensic science in Australia was expressly removed from the agenda for the national Council of Australian Governments (or COAG) in May 2021 and is not currently on the Standing Council of Attorneys-General (SCAG) agenda.

ODD SPOT: Ask...and you will be elided

CLA notes that forensic science in Australia is not directed by scientists, but by the police commissioners of all jurisdictions acting as a national forensic science board without even one of them having specialist forensic science qualifications or detailed experience. CLA has asked AG Dreyfus to appoint a National Forensic Science Regulator and regulatory board, but he will not even engage with us: twice he has sent formal letters on to a federal police forensic person to reply to CLA (unsurprisingly, the AFP forensic science person thinks the system is blemish free). This on-passing is a noted technique of

Australia’s AG, known as being Marked by Elision. <https://tinyurl.com/bddw4dtr>

\$161m for firearms, nothing for forensic regulation

The Australian government will spend \$161.3m to set up a national firearms register and reform existing firearms management systems.

By contrast, a forensics regulatory system would likely cost about \$10m.

AG Mark Dreyfus announced the four years of funding for a firearms register before the May budget.

National cabinet approved the register in December 2023, in what Dreyfus called “the most significant improvement in Australia’s firearms management systems in almost 30 years.” <https://tinyurl.com/59c7n6vc>

There has been no improvement in Australia’s forensics system in 30 years. In fact, academic research, judicial inquiries, court cases and the Academy of Science all say it is getting worse, much worse. But there’s no money for improvements in forensics, apparently.

Island state needs HR Act, researchers say

Tasmania should have a Human Rights Act, its pre-eminent legal research body says.

The Tasmanian Law Reform Institute on 30 April released a report making 21 recommendations and urging the state to become the fourth jurisdiction in Australia to adopt human rights legislation. The ACT since 2004, Victoria since 2006 and Queensland since 2020 already have operational human rights laws.

The TLRI’s report *A Charter of Human Rights for Tasmania? Update*, reviewed and updated its 2007 report on human rights in Tasmania, upholding its earlier key recommendations, which included the need for a HRA.

“It remains the view of the TLRI that there is a need for a Human Rights Act for Tasmania in seeking to protect human rights, develop a human rights culture across government and to frame parliamentary debate,” report co-author Dr Rebecca Bradfield said.

The new report’s recommendations include:

- enacting a Tasmanian Charter of Human Rights or a Human Rights Act;
- covering public functions including emergency, utility, public housing, education, health, disability and transport services, along with the operation of correctional and detention facilities;
- including in Bills going before parliament distinct human rights statements, prepared by a new Human Rights Unit, which specify whether the proposed laws are human rights compatible, or not;
- creating a dedicated Parliamentary Human Rights Scrutiny Committee to examine all Bills for compatibility with human rights;
- establishing an independent Tasmanian Human Rights Commissioner and office; and
- enabling citizens to directly appeal for redress if they claim to be victims where a public authority has breached human rights laws.

The Institute confirmed the right to religious freedom should be included in the HRA. It identified a need to consider the treatment of religious bodies within a human rights and anti-discrimination framework in more detail and recommended this be considered in a further review. <https://tinyurl.com/5b2uca26>

Note: CLA believes Tasmania should have a Minister (and Shadow Minister) for Human Rights.



Coroner says proposed new law not needed

A state coroner wants a new law overturned before it is officially proclaimed.

In a double-handed swipe at former Attorney-General Elise Archer, coroner Simon Cooper says 'Jari's Law' is not needed, would double the number of inquests and cause delays. The law dictates a public inquest is mandatory if the coroner suspects family violence may have contributed to the death.

Archer promoted the law – which has passed both House of the Tasmanian Parliament but has not yet been proclaimed – when Jari Wise died in 2020 after being hit by a car driven by his girlfriend Melissa Oates late at night after she had been drinking heavily and when she was not wearing her driving glasses.

Coroner Cooper ruled a public inquest into the Wise death was not needed. Supreme Court judge Michael Brett backed Cooper's decision. Within hours Archer had used her AG powers to over-rule the Supreme Court decision "to give the deceased family satisfaction that every avenue available had been exhausted".

Archer made captain's picks about death cases

Elise Archer (see item above) studiously did not apply the same reasoning in response to years of statewide and national protests over what CLA believes is the wrongful conviction of Sue Neill-Fraser for murder.

In September-October 2023 Archer resigned as AG, and from the Liberal Party and the Parliament after bullying allegations by some of her staff in the closing days of the previous state parliament.



Archer (photo) also allegedly sent messages describing then-Premier Jeremy Rockliff as "too gutless to be leader" and former premier Peter Gutwein as having a "glass jaw" and being prone to "knee jerk reactions like a child". <https://tinyurl.com/3cykw9yp>

Archer was also noted for making similar personal selection of people to serve on TASCAT, the small

claims tribunal. She rejected recommended people chosen by a panel of lawyers, and inserted her own picks instead. – See *Hobart Mercury* 12 Nov 2022.

Justice in Tasmania is a hand-picked self-selection of the ruling government, it seems to CLA.

Ind. MP provides blueprint for social justice

Independent Member for Nelson Meg Webb wants Tasmania to have an Independent Police Oversight Authority, fixed-term, four-year elections and a Human Rights Act.

Making her formal parliamentary governor's address-in-reply speech, she also criticised the absence of reconciliation with the Tasmanian Aboriginal community in the Governor's speech, which comprises a formal outline of the Liberal government's priorities.

"For the second time the Tasmanian Law Reform Institute has recommended Tasmania legislates a Human Rights Act. There is no further excuse for failing to implement this recommendation and I call on the Rockliff government to prioritise this necessary reform.

"I am also calling for the new parliament to take the initiative and establish an Independent Police Oversight Authority. By nature of their function, police forces wield considerable authority and power, and it is in the public interest for the use, or potential abuse, of such powers to be subject to independent oversight.

"Current internal complaints processes and the minimal oversight provided by the integrity Commission of those processes, is perceived by many Tasmanians as little more than self-regulation. This undermines public confidence in our police force, does not meet modern community expectations of robust transparency, and basically fails the pub test," Webb told the Tasmanian Parliament.

Bidding rises as parties go \$ for \$ to be elected

The 'law & order' auction for the NT election on 24 August 2024 has begun in earnest.

The Country Liberal Party's 'Plan for a Safe Territory' proposes building two women's prisons in Darwin and Alice Springs, a \$10m fund for two new adult prisoner work camps, a new Work in the Community Home Detention program, and \$5m for a sentenced-to-a-skill program.

The plan also includes:

- setting up compulsory alcohol, drug and behavioural change rehabilitation for related offences for sentences more than three months;
- creating a standalone corrections agency which will include youth justice; boosting "sentenced to a job program";
- compulsory community service for youth offenders;
- two youth boot camps, in Darwin and Alice Springs; and
- a commitment to build all future prisons at outer suburban Holtze, in Darwin, which is the site of the new main jail and where the CLP proposes to build one of its new women's prisons. <https://tinyurl.com/yc344wyp>

Riches beyond crisis, editor says

Meanwhile a respected newspaper editor is calling for the end to the reign of NT ICAC head Michael Riches.

The editor's critique is contained in a story colourfully headed: '*Time for Michael Riches to resign and bury his career in the casket next to our democracy*'.

Christopher Walsh criticises Riches for handing down a report in May, just as the NT Parliament rose for the 2024 election and so giving no time for debate in parliament.

The report was into alleged corruption and misallocation of funds – before the previous election – by the incumbent Labor government.

In the *NT Independent*, Walsh writes:

The report, titled "Operation Jupiter", is a complete abrogation of responsibility and outright dereliction of duty, which may make Riches complicit in the misconduct that has transpired, or at the very least, a passive observer who has admittedly looked the other way when serious transgressions backed up with hard evidence were raised.

He wrote at one point that in order to make a finding of "improper conduct" against former chief minister Michael Gunner and Territory Labor that he would have to "do so on the basis of my assessment of all of that evidence", adding, "where evidence was conflicting, I would have to weigh that evidence in order to determine, to the relevant standard, where I think the truth lies".

No shit. That's his job. Don't let us stop you, Michael.

Walsh is the editor of the *NT Independent*. Before that, he was a senior political reporter at the Murdoch-owned *NT News* and investigations producer at *ABC Darwin*. He is also co-author of '*Crocs in the Cabinet: An Instruction Manual on How Not to Run a Government*'.

The fate of ICAC's Riches may well become an item when a new government is in place. – Note: main story 26 May 2024, behind paywall.

Seventh review in seven years

The NT government has announced the seventh review into the Batchelor Institute of Indigenous Tertiary Education (BIITE) since 2017 which follows the Auditor-General refusing to sign off on the institute's financial report for a second year running. The latest review announcement comes about 15 months after the Independent Commissioner Against Corruption released his review. For more than a year, BIITE had no permanent chief executive officer or chief financial officer, and on its website listed just four members of what is supposed to be a 10-person board. – *NT Independent* (paywall) 13 May 2024.

\$\$\$ signs flash as King's men engage in silky barney

SA top judge, Chris Kourakis (photo), says the state's top legal eagles are appointed "silk" – and permitted to use 'SC' for Senior Counsel after their names – to serve the people.



They are not appointed SC to "exploit" clients by converting the honour to a royal title of 'King's Counsel' to charge higher fees, he says.

His comments came as AG Kyam Maher proposed a new law to scrap the 'KC', or King's Counsel' title for barristers, honouring them as 'SC', or Senior Counsel instead...and only.

Barristers, judges, the Bar Association and the Law Society of SA are outraged. They are fighting for the right to use the royal title, the traditional honorific before most Australian jurisdictions opted for SC instead.

The appointment to "silk" means the upper class of barristers are entitled to wear shimmering gowns in court. But "silks" can ask the AG for a formal change of title, who may then recommend to the Governor they be appointed a KC by issuing of a 'royal warrant'.

Chief judge Kourakis denied the reform of SC only was a republican plot.. "As it happens, people we appoint Senior Counsel are entitled to a higher level of costs when ... taxed in this court in litigation but, of course, many charges are levied outside the court," he said.

Three quarters of almost 60 "silk" barristers in SA are KCs. SA silks charge between \$5000 and \$10,000 a day, on average. Top Australian silks can cost more than \$20,000 a day (allowing them to buy luxury items like a Tang dynasty porcelain camel: see *CLArion* April 2024, page 3, for the words of chief judge of the High Court, Stephen Gageler). – *this item drawn from 'Top judge hits out as lawyers fume at AG's push to cancel KCs', Andrew Hough, The Advertiser, 7 May 20024 (paywall)*

NB: Wikipedia notes that: "Silk is also excellent for insect-proof clothing, protecting the wearer from mosquitoes and horseflies."

Remand goes through the roof

More prisoners in NSW are on remand than ever before (5452 in March 2024, up 674 or 14% since March 2019).

The increase in the adult figures are driven by domestic assault (up 236 or 35.7%), sexual offences (up 177 or 30.1%), non-domestic assault (up 122 or 18.4%), intimidation-stalking (up 148 or 96.1%), and weapons offences (up 82 or 67.2%).

- In March 2024, there were 3008 adults in custody for domestic violence offences (up 762 or 33.9% since March 2019). More than half (52.2%) were on remand.

The Aboriginal prison population is also now at a record high, with 3841 Aboriginal adults in prison in March 2024. This is 31% of prisoners.

- 148 young Aboriginal people were in youth detention at end-March 2024, 27 more than in March 2019. Two-thirds (66.4%) of those in youth detention are now Aboriginal, the highest figure on record.
 - 78.4% of Aboriginal youths in detention are on remand. Their main remand offences are break and enter (29.3%) and car theft (22.4%).
- Jackie Fitzgerald, ED, NSW Bureau of Crime Statistics and Research <http://www.bocsar.nsw.gov.au/>

Weasel word 'significant' gets a new meaning

NSW prosecutor Brett Hatfield SC appears to have raised the bar of anyone appealing a conviction for a major crime. He has laterally arabesqued the judge's weasel words, "not significant" to a pre-emptive guilt measure.

Chris Dawson, 75, is appealing a two-year-old murder conviction over the killing of his wife, Lynette, who disappeared in January 1982. No body has been found. Dawson, a teacher then, claims she abandoned the marital home and their two children of her own accord when he was having a relationship with a babysitter.

Dawson was convicted at trial in 2022 after a gap of 40 years following another of the increasingly common 'podcast prosecution'. That's where a crusading commentator or two revisit a cold case and "convict" someone in the court of public opinion on the basis of selective presentation of circumstantial detail. Picked up by general media, the case goes viral and virulent, and a long-aggrieved family get another day in court.

In Dawson's appeal, prosecutor Hatfield SC said the trial judge had made the correct decision. "There is not a significant possibility that an innocent person has been convicted in this case," he told the NSW Court of Criminal Appeal.

Hatfield's words reverse the usual judicial formula.

Appeal judges usually rule a person should not be acquitted or granted a new trial because "there is not a significant possibility" that the first jury or judge got things wrong.

"Significant" has never been defined. Is it akin to "on the balance of probabilities"? Or does it lie closer to "beyond reasonable doubt".

Neither of the two latter terms have ever been defined either. We have a justice system that teeters on the unbalanced beam of imprecise language.

CLA's CEO Bill Rowlings says: "There appears to be a **significant** linguistic difference between the judges' usual weasel formulation of 'not significant' as above – which admits there might be a possibility, but it's not significant – and the new Hatfield heresy of some imprecise bar of 'significance' which an appellant must climb over before they get a possible correction to a wrongful conviction.

"Sometimes podcasts do good, sometimes they don't, but every one appears to lower the bar for achieving a conviction to that of the lowest common media," Rowlings said. <https://tinyurl.com/ycx2dmyu>

Dawson suffers from lack of forensic evidence

The 75-year-old Dawson is trying to overturn an August 2022 NSW Supreme Court murder verdict by judge Ian Harrison.

The judge found Dawson committed murder because he was so infatuated with pursuing a teenager who worked as his babysitter that he had to get rid of his wife.

Unfortunately for Dawson, despite digging in dozens of different places, NSW Police have never been able to find forensic evidence of Lynette's body. Unlike the Folbigg acquittal on new scientific evidence, Dawson can be convicted partly because there is no scientific evidence.

No rights access behind suicide attempt by boy, 16: claim

A 16-year-old boy with intellectual and physical disabilities attempted suicide after being suspended from school for touching a student support worker on the face to get her attention, his mother says.

Nadine Moore said her 16-year-old son, Liam, was “an absolute mental wreck” when she attended the school in 2021 to pick him up after he had been heavily counselled, without support people present, and suspended from school for four days.

Moore, a disability advocate, reportedly feels like a failure for his now-12 lost years of education.

Her requests for adjustments and more appropriate education plans for Liam were not properly considered.

There was no independent body to which complaints could be directed, to conciliate or provide a ruling to resolve the problem.

In a recent article by Sarah Martin in the *Guardian*, Moore says families often feel they are at war with schools.

“For Liam it was a nightmare, and I know a lot of parents with children with disabilities who say that the best day of their life was when their child left school.

“It’s so sad that you can get to 12 years of education, and all it’s brought you is heartache, and pain and misery and no result out of that.”

If the family lived in the ACT, Victoria or Queensland, they could have sought a ruling under the human rights laws in those jurisdictions to force the education department and the school to honour Liam’s right to a suitable education.

But in NSW, his mother had nowhere to go, no body to turn to, to find an appropriate remedy.

Families in states – NSW, Tasmania, SA, WA – and the NT continue to face severe problems with schooling and other issues for children with disabilities, and for children in general, CLA understands. It is well beyond time these jurisdictions brought in their own Human Rights Acts. <https://tinyurl.com/5bm8kndp>

BRIEFS

‘Dictator’ can lock up kids for weeks on end...

The NT Police Commissioner Michael Murphy now has the power of a dictator to lock kids up at night for weeks on end. A new law means he can declare snap three-day curfews anytime, anywhere in the territory other than over Aboriginal land if there is “public disorder”. Not even the Police Minister can over-rule him. The NT Labor government has introduced the law after violence in Alice Springs recently, where a three-week “circuit breaker” curfew was brought in. Labor also wants peace and quiet in the lead-up to the 24 August NT election. The Country Liberal Party opposition supports the move, because they don’t want to be seen as soft on “law-n’order” matters. <https://tinyurl.com/2xv5s5x4>

...adults face five times higher fines

Bottle shop security guards can now apply to carry OC (pepper) spray on duty, the NT’s government has announced. Unruly pub-goers could face a fine of \$880 – almost five times the present penalty – if they refuse to leave a licensed venue, as part of a long-delayed government effort to “reduce crime and anti-social behaviour” in bottle shops and pubs. A law ‘n’ order auction is ramping up as the NT prepares for a 24 August election, possibly a cliffhanger. – source: *NT Independent* news update 7 May 2024 (paywall) <https://ntindependent.com.au/>

Pro bono...but in the interests of the court?

The WA Court of Appeal is introducing a pro bono scheme for criminal appeals where the convicted person who is appealing

can’t afford a lawyer or find one who won’t charge. The court is asking barristers to volunteer: any barrister. Email ExecutiveOfficer@wabar.asn.au What the court wants is to eliminate as many self-represented appellants as possible, because they take two to three times the usual time to deal with when presenting ill-prepared material before the learned judges. Perhaps the “pro bono” barristers should be paid an honorarium by the court, CLA suggests.

Reformers want privacy laws boosted in Tas

The Tasmania Law Reform Institute’s has released *Review of Privacy Laws in Tasmania, Final Report No. 33*. It asks the government to strengthen laws about listening devices and optical, tracking and data surveillance. TLRI says technological advances like spyware, covert cameras and drones mean the state’s privacy protections should be reviewed. Laws covering stalking and intimidation should also be scrutinised. TLRI has made 63 recommendations after examining the Personal Information Protection Act 2004 and other state-based protections. They include Tasmania joining other states in making it an offence to share intimate images without consent: Tasmania is the only state without such a law. <https://www.utas.edu.au/law-reform>

LETTERS

Let’s extradite Elon

If Elon Musk (photo) refuses to obey Australian take-down laws couldn’t we extradite him from the USA? Or, if he goes to the UK, we could get that country to put him under virtual house-arrest in the Ecuadorian embassy for seven years and then jail him for five more without a trial. – Richard Manderson, Narrabundah ACT



Where is our right to assent?

It was reassuring to have (a columnist) reminding us that “liberal democracies will endure” even if Trump were elected (Canberra Times, 30 April 2024) and then to be reminded that it can be universally appreciated that “the only legitimate form of government is government with the assent of the governed”. But I’m worried to discover that we, “the governed” in Australia, will not even have the chance to assent or not assent in our Parliament about whether to join the US and UK if they defend Israel and demand we do the same.

Australians for War Powers Reform’s Dr Alison Broinowski says: “If any request comes to Australia from the Biden administration or the Sunak government, the public should be informed, the Parliament should be convened and a properly-informed debate, followed by a vote, must take place before any decision is made”. I agree with her. Whilst I consent to be governed, I want the opportunity to assent or not assent through the Parliament we’ve elected, on what would be a profoundly significant matter! – Jill Sutton, Watson ACT

AI is the village idiot

“AI” can be used to mean artificial irresponsibility, artificial insanity, artificial idiocy. A friend looked me up on ChatGPT recently. It reported that I died 10 years ago. I pinched myself, considered the claim carefully, and on mature reflection decided they had got it wrong.

My friend agreed and wrote back to ChatGPT, telling them to improve their account. But they managed, amazingly, to come back with an even more incorrect response. Admitting I was alive, they insisted that I was an internationally celebrated and admired leader in various fields of activity.

If truth be told, not so. We had a good laugh. – Thomas Mautner, Griffith (slightly edited – Ed.)

CLA highlights for May 2024

Human Rights campaigns get active

With human rights hotting up federally, in Queensland, and in Tasmania, national CLA activity has focused on those individual campaigns.

The CLA HR team – President Dr Kristine Klugman, National HR Act Campaign Manager Chris Stamford and CEO Bill Rowlings – have held meetings with people throughout Australia in the past month.

With the Qld Council of Social Service, we met online with Lauren Bicknell and Samantha Swales to discuss important fundamentals CLA would like to see recommended in the review of the Queensland HRA, now under way. We also took part in the webinar led by QCOSS CEO Aimee McVeigh and the Qld HRA Independent Reviewer, Prof Susan Harris Rimmer.

We exchanged information with Kerry Weste of the WA Lawyers for Human Rights to help their current activities in that state, and held our regular meeting with Elsa Adshad, of Amnesty Darwin, to support the NT campaign seeking commitment from candidates to enact a HRA before they stand for the August Territory election.

Federally, we met with Dr Andrew Leigh, the MHR for Fenner, ACT, re the federal HRA and its critical role in being able to report with figures and facts on the impact of a Wellbeing Budget. In similar vein, we met with Chris Yates of the office of Dei Le, Independent MHR for Fowler NSW. In that Teams meeting, we were also able to fill her staff in on prospects for a NSW HRA campaign.

We held a Zoom meeting with Lesley Vick (photo, Dying with Dignity Victoria) to help prepare the CLA submission on reforms to the ACT Voluntary Assisted Dying Bill. A major issue, federally, in relation to VAD counselling is that doctors are prevented from discussing life decisions options under antiquated provisions of telecommunications legislation. The t'coms laws were written when VAD did not exist in Australia: now it is universal in all jurisdictions (or will be very shortly).



A late-month meeting was scheduled with Qld Human Rights Commissioner, Scott McDougall re the importance in all jurisdictions of the No Rights Without Remedy (NRWR) provisions being introduced to the ACT HRA from this year.

WA:

WA's jail bosses are creating so much tension within the prison system that outbreaks of violence are inevitable.

For example, they are turning WA's best operating prison into its worst. Karnet prison farm, about 70km SSW of Perth, has been winning awards for its food production and mini-building expertise.

But jails in the state are so overcrowded that prison bosses are planning to ship inmates from notorious three-to-a-cell jails like Hakea into current Karnet cells now housing two inmates.

Food production has been down locally due to a long-running drought and an outbreak of bird flu.

In these straitened circumstances, the jail bosses are adding numerical and behavioural problems.

"It seems new prisons can't be built fast enough as WA descends further into Mad Max dystopia," CLA's WA manager Margaret Howkins says. "I'm puzzled that prisoners aren't being tasked to build anything. Convicts were skilled 200 years ago. Our current crop of politicians and bureaucrats appear incapable of anything innovative or practical outside of

cultivating systems capable of propping up corporate organised crime."

Praise for showing the way: Pasan M Ganegama gives CLA's WA group praise for opening his eyes "to see human life from a completely different perspective." He makes the observation in his recently-published book, *The Five Lives: Handbook for the Migrant Wayfarer*. He has written the book for Australia's migrant communities.

Tasmania:

"This is ridiculous! Seven days to comment on quite significant amendments". These words were the first reaction of a Tas CLA person when the new government gave citizens just seven (7) days to comment on sweeping legislation aimed at fixing some of the core problems of child abuse in the state.

The proposed laws are a partial response to a Commission of Inquiry, led by three experts, which sat for two and a half years. Their report has 8 volumes and 23 chapters. The recommendations alone take up 117 pages (117 is correct).

Yet the State of Tasmania considers "stakeholders" should have seven days only only to comment on 39 pages of proposed legislation with nine (9) pages of an "explanatory fact sheet" provided by the government.

"Ridiculous," CLA President Dr Kristine Klugman agrees. "When will the State of Tasmania take a realistic approach to solving all its child sexual abuse problems throughout the public sector? For example, when will the pervasive pedophilia which has been rife and covered up across the past and recent history of Tasmania Police be addressed?"

INTERNATIONAL

Young people put much higher priority on civil liberties

Members of Generation Z are more likely to be civilly disobedient than older adults, with UK research suggesting young people value liberties more than other generations.

A report by the National Centre for Social Research (NatGen) highlights the political implications of the changing profile of the UK electorate. By 2030, Gen Z will make up a quarter of the electorate.

Analysis of responses to NatGen's most recent British Social Attitudes survey showed just 16% of voting-age members of Gen Z, which overall includes people born between 1997 and 2012, believe the law should always be obeyed even if that law is considered to be wrong. This compares to 32% of all adults who feel the same, representing one of the starkest inter-generational variations found by the research.

If present trends persist, Gen Z will be a generation that value personal freedoms and civil liberties more than any other current generation.

The survey included 5578 interviews with a representative, random sample of adults in Britain. It was conducted between 12 September 2023 and 31 October 2023. <https://tinyurl.com/n6rhf2fw>

There is no 'right to vote' in America

The history of voting in the USA shows the high cost of living with an old Constitution, unevenly enforced by a reluctant Supreme Court, according to Richard L. Hasen, writing in the *NY Times*.

Hasen has written several books about US elections and democracy, words that frequently don't sit together comfortably. "Unlike the constitutions of many other advanced democracies, the US Constitution contains no affirmative right to vote," he says.

“We have nothing like Section 3 of the Canadian Charter of Rights and Freedoms, providing that ‘every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein,’ or like Article 38 of the Basic Law of the Federal Republic of Germany, which provides that when it comes to election of the Bundestag, ‘any person who has attained the age of 18 shall be entitled to vote.’

“The framers were skeptical of universal voting. The original US Constitution provided for voting only for the House of Representatives, not for the Senate or the presidency, leaving voter qualifications for House elections to the states. Later amendments framed voting protections in the negative: if there’s going to be an election, a state may not discriminate on the basis of race (15th Amendment), sex (19th) or status as an 18-to-20-year-old (26th).

Most expansions of voting rights in the United States have come from constitutional amendments and congressional action, not from courts – NY Times (paywall) <https://tinyurl.com/4h945dew>

Don’t forget to fold! In Australia, the *Commonwealth Electoral Act 1918*, under section 245(1), states: “It shall be the duty of every elector to vote at each election”. The actual duty of the elector is to attend a polling place, have their name marked off the certified list, receive a ballot paper and take it to an individual voting booth, mark it, fold the ballot paper and place it in the ballot box.

Infected blood scandal report wants formal accountability for public servants

The chair of a public inquiry into the UK’s infected blood scandal has reported the scandal was not an accident: he expects the government to apologise, and wants a statutory duty of candour imposed on public servants and healthcare leaders in the wake of his findings.

Sir Brian Langstaff opened the inquiry in 2018 to examine the circumstances in which men, women and children treated by the National Health Service were given infected blood and infected blood products, in particular since 1970. He has not formally closed the inquiry, and is awaiting the government’s responses before doing so.

The scandal, largely over transfusions infected with HIV, led to 30,000 people being contaminated with ‘life shattering’ viruses and more than 3000 deaths so far.

Langstaff said adults and children were treated in hospital and at home with blood and blood products. “That NHS treatment resulted in over 30,000 people being infected with viruses which were life-shattering. Over 3,000 have already died and that number is climbing week by week... Parents watched their children suffer and, in many cases, die. Children witnessed the decline and death of one, sometimes both parents, their lives irrevocably altered as a result. People had to care for their grievously ill partners or family members often at the expense of their own health and careers. Early on in particular, they had to do so whilst being shunned or worse abused, by neighbours, workmates, by people they once thought of as their friends, sometimes even by health professionals.”

Langstaff declared: ‘This disaster was not an accident. People put their faith in doctors and the government to keep them safe – and their trust was betrayed.’

To end a “defensive culture” in the civil service and government, Langstaff encouraged the government to reconsider whether, in light of the facts revealed in the inquiry, ‘it is sufficient to continue to rely on current non-statutory duties in the civil service code and ministerial codes’.

He recommended a statutory duty of accountability on senior civil servants for the candour and completeness of advice given

to permanent secretaries and ministers, and of their responses to concerns raised by the public and their own staff. <https://tinyurl.com/5yfr86bz>

Watson gets new chance, after 26 years in jail

Scott Watson, in his 26th year in jail as his case goes back to court, will be allowed to argue police manipulated a witness to produce a false identifying of him.

His appeal is scheduled for five days, from 10 June, in Wellington NZ.

Justice Stephen Kos’s ruling on 25 May 2022 is allowing the ID issue to be raised, but it has taken two more years since the ruling for Watson to get back into court, for the fifth time. He has been denied parole four times.

Another issue in question is the quality of forensic testing of two hairs allegedly found on Watson’s yacht.

Watson, 54, was convicted of killing two young yachties, Olivia Hope and Ben Smart, in Marlborough Sounds NZ in 1998 after a New Year’s Eve party. The case is one of NZ’s most controversial, as Watson has steadfastly maintained his innocence, claiming he never even met the pair.

“If there is one lesson from the history of miscarriage of justice in the context of criminal appeals, it is that no good is done by the procedural suppression of a tenable ground of appeal which has not yet seen the light of day in an appellate court, while other grounds of appeal are nonetheless allowed to proceed,” wrote former Court of Appeal President Stephen Kos.

“As Lord Atkin once wisely observed, ‘finality is a good thing but justice is a better’.” <https://tinyurl.com/4258rvsx>

Trans women gain jail rights

A groundbreaking legal agreement now requires the US state of Colorado to overhaul how it jails transgender women and provides medical care to all trans people behind bars.

The state’s prison system must provide the same gender-affirming health care covered by state Medicaid, and trans women must have the option to be housed with other women.

Lawyers worked with Colorado officials to outline a legally binding agreement to effect these changes. Experts hope it will serve as a model for comprehensive change for other states.

Transgender women across the country face life-threatening circumstances behind bars — and most are forced to live with men. <https://tinyurl.com/tuwfk23x>

Jurors doing it tough to get help

Jurors suffering mental and emotional strain after difficult cases will soon be entitled to free counselling sessions in the UK, the Ministry of Justice has announced.

Help is currently limited to signposting to a GP or to a charity support group, which can leave some people feeling isolated after doing their civic duty.

The new pilot will provide specialist expert support for jurors, offering six free counselling sessions and a 24/7 telephone helpline for round-the-clock triage support, advice and information.

A pilot program will run for 10 months in 15 courts across England and Wales from July 2024. <https://tinyurl.com/2bpmknzz>

Govt rebuffed twice over putative protest crackdowns

Regulations which lowered the threshold for police intervening in protests were unlawful, the Britain’s High Court ruled last month.

Civil liberties group Liberty brought legal action against the Home Office over protest regulations passed by statutory

instrument last year. The government had tried to pass the provisions as laws, but the House of Lords rejected the bill.

The government then turned to making regulations, trying to lower the threshold for what is considered “serious disruption” to community life, from “significant” and “prolonged” to “more than minor”. “As a matter of ordinary and natural language ‘more than minor’ is not within the scope of the word ‘serious’.” Lord Justice Green and Justice Kerr ruled.

The judges found the Home Office acted outside of its powers by reducing the threshold and failed to carry out a fair consultation process. <https://tinyurl.com/5fhkp4ak>

Welsh tackle reoffending due to mental health problems

About 700 offenders in Wales will be ordered to attend treatment when they are handed a community sentence in court, in a bid to slash the \$35bn cost of reoffending to taxpayers.

Community Sentence Treatment Requirements will include three streams: alcohol, drug rehabilitation and mental health.

Courts are now able to force convicted criminals into treatment, which covers counselling sessions with medical professionals, drug testing and accredited programmes such as anger management courses.

The UK government has awarded \$2 million to G4S with Forensic Psychology Consultancy to run the initiative for a year. A mental health practitioner will assess offenders to inform sentencing and start targeted treatment, or therapy, within weeks of their arriving in jail.

The new service follows a successful pilot in Swansea running since August 2021. The pilot found that 80% of offenders who took part in this type of community order experienced a significant benefit to their mental health. <https://tinyurl.com/57zdurf>

ODD SPOT: Free to roam...and to be identified

At a trans-rights protest in October 2023 at Edinburgh Uni, campus security allegedly told students occupying a lecture theatre that a roaming service called ‘Eduroam’ would be used to identify them. Eduroam is a free service for visiting university staff and students which can be used at academic institutions around the world. In “exceptional circumstances” Edinburgh Uni could use the data for internal investigations, a freedom of information request has revealed. Critics said the potential for a university to use Eduroam for surveillance has “serious implications” for freedom of speech and assembly. <https://tinyurl.com/ycxxbacc> Note: Eduroam operates in Australia.

Pay people when AI takes over: guru professor

The computer scientist regarded as the “godfather of artificial intelligence” says the UK government will have to establish a universal basic income to deal with the impact of AI on inequality.

Professor Geoffrey Hinton told *BBC Newsnight* that a benefits reform giving fixed amounts of cash to every citizen would be needed because he was “very worried about AI taking lots of mundane jobs”.

“I was consulted by people in Downing Street and I advised them that universal basic income was a good idea,” he said. He said while he felt AI would increase productivity and wealth, the money would go to the rich “and not the people whose jobs get lost and that’s going to be very bad for society”.

Professor Hinton is the pioneer of neural networks, which form the theoretical basis of the current explosion in artificial intelligence. Until last year he worked at Google, but left the tech giant so he could talk more freely about the dangers from unregulated AI.

International briefs

Marijuana becomes less dangerous

The USA plans to reclassify marijuana as a less dangerous drug, classifying it as schedule three, the same as ketamine and Tylenol with codeine. Currently, it is schedule one on par with heroin and LSD. The move doesn’t legalise recreational use outright, but means lighter punishments and narrowing a gulf between federal law and about 40 states where the drug is legal in some form. Marijuana (cannabis) was first outlawed at the national level in 1937, and is blamed for decades of racial inequality. Black people are 3.6 times more likely than white people to be arrested for marijuana possession despite using the drug at similar rates. The latest survey shows 88% of Americans believe marijuana should be legal for medical or recreational use. <https://tinyurl.com/zszewt6p>

Jails full

Scotland’s Justice Secretary was seeking emergency early release of prisoners last month due to a spike in numbers putting the prison estate at “critical risk”. Speaking in parliament, Angela Constance said there had been an increase of 400 prisoners incarcerated in Scotland since 18 March – with the total figure sitting at 8348 in May. While the cause of the increase was not yet known, Ms Constance said some of Scotland’s prisons are “essentially full” as a result. <https://tinyurl.com/53v6255m>

ODD SPOT: Do children have a right to hug their parents?

Hundreds of jails throughout the USA have banned personal visits and replaced them with video calls...from which prison bosses, their corporate managers and others stand to get kickbacks, amounting to about 40-50% of the call costs. With calls billed at rates of about \$US1 a minute, the system is lucrative all round. Now there’s a fightback from kids who never get to hug their parents, parents who can’t see their children in person, and everyone who thinks that civil liberties and human rights mean even sentenced criminals are entitled to a hug. The New Yorker reports: <https://tinyurl.com/4626yrcn>

Perhaps not shaken stirs controversy

The US magazine, *Slate*, reports the medical science ‘jury’ is out on whether shaken baby syndrome can be reliably diagnosed. There has been “a split screen of legal rulings,” *Slate* says. In 2008, the Wisconsin Court of Appeals became the first to overturn an SBS conviction, because of “fierce disagreement” among doctors and “a shift in mainstream medical opinion” about the certainty of the diagnosis. In 2023 a New Jersey appeals court barred the admission of evidence about SBS, calling it “junk science.” But a review of more than 1400 appellate rulings between 2008 and 2018 found that only 3% of SBS convictions were overturned, a far lower rate than in other types of cases. “The reality is that, in parts of the USA, evidence of the telltale triad of symptoms won’t warrant an arrest – but in other parts, it can literally amount to a death sentence,” author John J Lennon writes. *Slate*: <https://tinyurl.com/yck8yza5>

Watch this space:

Four men from the Birmingham area in England are appealing convictions in 2017 for plotting a terrorist attack. Their plea is being considered firstly by the Criminal Cases Review Commission, where they have become known as the ‘Birmingham 4’, bringing back memories of the Birmingham 6, which was one of the cases of police, prosecutorial and forensic abuse that generated the need for a CCRC 25 years ago. Tahir Aziz, 38, Naweed Ali, 29, Mohibur Rahman, 33, and Khobaib Hussain, 25, were convicted at Old Bailey of preparing acts of terrorism are the “new” Birmingham 4. <https://tinyurl.com/5xu6pr52>

DATES

4 June, National: 8.30pm on SBS, *'Trial By Media'*, The story of Peter Weygers, in the late-1990s Mayor of Claremont WA and President of the WA civil liberties body, and how his personal, work and private-public reputation was shattered – never to recover, even to today – when he was wrongly and probably maliciously named by WA Police as a 'person of interest' in the Claremont Murders.

6-7 June, Sydney: Free + Equal Human Rights Conference, Australian Human Rights Commission, including *Rights On Time* panel on evening of 6 June. Hyatt Regency. Details: <https://www.freeandequal.com.au/>

10 June, Wellington NZ: Scott Watson trial begins. <https://tinyurl.com/4258rvsx>

24 July, Brisbane: Supreme Court Library Qld webinar: *'Human rights and law making'*, second webinar in the 2024 Democracy in action webinar series. Created for teachers to enhance their knowledge and understanding of our democratic system of government. More info: <http://www.sclqld.org.au/>

29-31 July, Darwin: Australian Public Sector Anti-Corruption Conference (APSACC). Workshops (29 July) and conference (30 and 31 July) hosted by NT ICAC Commissioner. Info: 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 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/>

19-20 Nov, Melbourne: *'Policing Reimagined'*, conference of the ANZ Policing Advisory Agency (ANZPAA), whose board is made up of the police commissioners of Australia and NZ. ANZPAA runs NIFS, the National Institute of Forensic Science, which is the peak body for forensic science in A and NZ. <https://tinyurl.com/3faswaf2>

25-27 Nov, Canberra: Indigenous Higher Education Curriculum Conference 2024, U. Canberra: Australian unis are embedding Indigenous perspectives into higher education curriculum to provide students with Indigenous graduate attributes to work with and for Indigenous Australians across their chosen professions. Details: Marina Martiniello 0417 478 028 Email: IHECC@canberra.edu.au

Election cycle for Australia:

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

2028: **Tasmania:** likely date is 27 May 2028

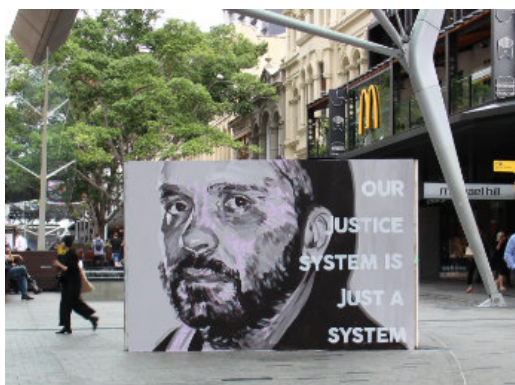
CLArion is the regular e-newsletter of Civil Liberties Australia Box 3080 Weston Creek ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA's Public Officer,

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 29 May 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.

ENDS ENDS

ENDS



Recommendations of the PJCHR for a Human Rights Act for Australia follow...

Inquiry into Australia's Human Rights Framework

Recommendations by the Parliamentary Joint Committee on Human Rights after a 14-month inquiry, 30 May 2024.

Recommendation 1

9.11 The committee recommends that the government re-establish and significantly improve Australia's Human Rights Framework, which should include:

- comprehensive and effective protection of human rights in legislation, through the establishment of a Human Rights Act;
- a significant and ongoing commitment to national human rights education;
- requirements for public servants to fully consider human rights in the development of legislation and policies;
- enhancements to human rights parliamentary scrutiny;
- enhancements to the role of the Australian Human Rights Commission;
- review of Australia's legislation, policies and practices for compliance with human rights; and
- measures to monitor progress on human rights.

Recommendation 2

9.42 The committee recommends that the government introduce legislation to establish a Human Rights Act. The committee considers the bill should broadly reflect the model proposed by the Australian Human Rights Commission, with the following modifications and considerations (the committee has prepared an example Human Rights Bill, see Appendix 5, in order to promote understanding of this proposed model):

- ensure the drafting of all rights and freedoms:
 - is consistent with international human rights law (except with respect to the principle of progressive realisation in relation to economic, social and cultural rights). This should include ensuring rights, such as the right to freedom of religion and the prohibition of torture or cruel, inhuman or degrading treatment or punishment, are drafted consistently with the provisions of the International Covenant on Civil and Political Rights;
 - includes legislative notes where relevant to indicate if more specific limitation criteria apply under international human rights law to those rights (for example, the right to freedom of religion);
 - captures the immediately realisable aspects of economic, social and cultural rights, including obligations to ensure people enjoy rights without discrimination; satisfy certain minimum aspects of these rights; and not take backwards steps (or 'retrogressive measures') with respect to these rights;
 - captures the right of aliens not to be expelled without due process; the prohibition against advocacy of national, racial or religious hatred; and the right of all persons to take part in cultural life and to enjoy the benefits of scientific progress and its applications;
 - includes, where appropriate, notes referring to the elaboration of these rights in other United Nations (UN) treaties and the United Nations Declaration on the Rights of Indigenous Peoples, and is accompanied by detailed guidance materials to assist public authorities in interpreting and applying the law;
- consult with Aboriginal and Torres Strait Islander peoples in relation to the framing of Indigenous peoples' right to culture to ensure it adequately captures all applicable rights under international human rights law;
- further consideration be given to the drafting of the right to a healthy environment, including consultation with Aboriginal and Torres Strait Islander peoples on how best to recognise the

relationship between the right to a healthy environment and the rights to culture, health and self-determination for Aboriginal and Torres Strait Islander peoples;

- allow cases to be brought directly to a federal court, without the need for conciliation, when conciliation is not appropriate;
- specific provision should be made to protect individuals from adverse costs orders when bringing action against public authorities under a HRA, in line with the government's proposed equal access cost protection provisions for federal anti-discrimination claims (see Australian Human Rights Commission Amendment (Costs Protection) Bill 2023); and
- the first review of the Act should specifically be required to consider whether:
 - progressive realisation principles should be incorporated; and
 - additional rights relating to specific groups, such as Aboriginal and Torres Strait Islander people, people with disability, children, older persons and victim-survivors of crime, should be included.

Recommendation 3

9.43 The committee recommends the government seek legal advice as to:

- whether the collective right to self-determination could be recognised as a stand-alone right in a Human Rights Act (HRA);
- whether requiring the Attorney-General to monitor court cases involving a HRA and reporting to Parliament would raise constitutional issues;
- the appropriateness of including compliance with duties under a HRA as part of a judicial review claim;
- whether including courts in the definition of public authorities would raise constitutional issues; and
- whether there is a constitutionally sound way of reintroducing an intermediate adjudicative process that could determine complaints under the proposed HRA (a process sitting between conciliation by the Australian Human Rights Commission and litigation at the federal courts).

Recommendation 4

9.44 The committee recommends the government consult with Aboriginal and Torres Strait Islander people, people with disability, children's groups, civil society and other experts on how the proposed participation duty and equal access to justice duty should operate, including whether it adequately captures the principle of free, prior and informed consent. Following this, the committee recommends the government develop detailed guidance material to assist public authorities to understand their specific obligations under these duties.

Recommendation 5

9.50 The committee recommends that the government commit to:

- significant and ongoing funding of human rights education for the community, including in primary and secondary schools; and
- appropriately funding the Australian Human Rights Commission and representative non-government organisations to develop educational programs and resources.

Recommendation 6

9.51 The committee recommends that the Attorney-General's Department republish on its website the 2009 National Human Rights Consultation report, associated submissions and commissioned research to operate as an educational resource, reflecting the large body of work done in reviewing the state of human rights in Australia.

Recommendation 7

9.54 The committee recommends that the government commit to significant and sustained funding to ensure greater respect for individual rights and freedoms, in particular by ensuring:

- the Australian Human Rights Commission is effectively and sustainably funded to perform its community educative role, help lead cultural change within public authorities to better respect human rights, and conciliate human rights complaints;
- departments and agencies are appropriately resourced to develop internal human rights understanding and the Human Rights Office within the Attorney-General's Department is adequately resourced to establish a centre of expertise to provide whole-of-government human rights advice;
- sufficient resources and expertise are provided to support the work of the Parliamentary Joint Committee on Human Rights; and
- non-government organisations, including those providing legal services, are sufficiently funded to allow them to advance human rights protection.

Recommendation 8

9.59 The committee recommends that the government (in consultation with the Australian Human Rights Commission) provide ongoing training and resources for public authorities, including:

- making basic human rights training mandatory for all Australian Public Service employees (including the Senior Executive Service);
- providing specific and tailored ongoing human rights training and guidance material to all public sector staff involved in:
 - delivering services to the community;
 - developing policy in areas that engage human rights; and
 - developing legislation;
- making human rights training available to all parliamentarians, including ministers, and their staff; and
- providing tailored human rights guidance material to those private entities that perform functions of a public nature (for example, aged care and National Disability Insurance Scheme providers).

Recommendation 9

9.60 The committee recommends the government update the Australian Public Service (APS) Code of Conduct and Values to require APS employees to respect and promote human rights by making decisions and providing advice consistent with human rights, and implementing, promoting and supporting human rights.

Recommendation 10

9.63 The committee recommends that the Secretaries Board establish a standing senior leadership group or sub-committee comprising senior leaders of all departments and a representative of the Australian Human Rights Commission to regularly:

- consider the human rights training needs of public servants;
- consider reports of the Parliamentary Joint Committee on Human Rights and responses to those reports;
- establish senior leaders as Human Rights Act champions;
- discuss emerging human rights issues and get updates on any complaints or cases taken under a Human Rights Act; and
- get updates on comments or decisions involving Australia by United Nations human rights treaty bodies and on Australia's Universal Periodic Review process.

Recommendation 11

9.72 The committee recommends, in order to embed requirements for public servants to consider people's rights and freedoms when developing government policy and legislation, that the government:

- set up specialised human rights units in each government department to provide advice on the applicability of human rights within each portfolio;
- establish a Human Rights Office (HRO) in the A-G's's Department with staff with human rights law expertise;
- update policy development guidelines to require policy makers to consider the potential impact of each decision on human

rights and the need to consult with potentially affected groups, particularly those with relevant lived experience;

- develop tailored human rights impact assessment tools or checklists to guide decision makers in determining whether human rights are engaged by the proposed policy or legislation;
- amend budget documentation to include an assessment of the human rights compatibility of the budget measures in the statements of compatibility for the annual appropriations bills;
- update the Legislation Handbook and the Legislative Instrument Handbook to alert public servants to the need to consider human rights when developing legislation, and the need to involve their human rights unit and the Human Rights Office early in the development of legislation;
- require the HRO to provide advice on legislation and policies at the early stage of development, including:
 - to be provided with drafting instructions and early drafts of all bills to provide advice to instructing officers and the Office of Parliamentary Counsel (OPC) on how the proposed legislation can better protect human rights;
 - to review all statements of compatibility with human rights involving bills;
- require OPC to review their drafting practices, drafting guidance materials and drafting directions in line with a reformed human rights framework.

Recommendation 12

9.80 The committee recommends that the House of Representatives and Senate amend their standing orders to provide that:

- a member of the Parliamentary Joint Committee on Human Rights may move a motion for the adoption of an interim report setting out the bills the committee considers requires its detailed consideration and the day fixed for the committee to report on each bill;
- any member of the House or Senate may seek to amend such a motion, including the date by which the committee must report on a bill; and
- where the motion is agreed, those bills stated as requiring the committee's detailed consideration may not proceed after the second reading until the day after the committee reports (with no restriction on the passage of bills that the committee indicates it does not seek to consider in detail).

Recommendation 13

9.85 The committee recommends that the government introduce amendments to the Human Rights (Parliamentary Scrutiny) Act 2011 to:

- expand the functions of the committee to allow the committee to inquire into any matter relating to human rights (other than individual cases) on its own initiative (without requiring the Attorney-General's referral);
- if a Human Rights Act is introduced in accordance with recommendation 2, amend the definition of 'human rights' to refer to the rights and freedoms recognised in that Act;
- if a Human Rights Act is not introduced in accordance with recommendation 2, amend the definition of 'human rights' to include the United Nations Declaration on the Rights of Indigenous Peoples and the Refugees Convention; and
- empower the committee to review the results of individual communications against Australia from United Nations bodies, and Concluding Observations from the United Nations about Australia, from time to time and report on the adequacy of the Australian Government's response to these.

Recommendation 14

9.89 The committee recommends that the government introduce amendments to the Human Rights (Parliamentary Scrutiny) Act 2011 to:

- require the rule-maker in relation to all legislative instruments (not only disallowable legislative instruments) to cause a statement of compatibility to be prepared in respect of that instrument;
- require the statement of compatibility to explain how the bill or legislative instrument is compatible with human rights and if it is incompatible with rights, the nature and extent of the incompatibility; and
- require a statement of compatibility to contain a description of the nature of any consultation undertaken on the bill (including by reference to the participation duty under the proposed Human Rights Act) and if no consultation took place, explain why.
- ensuring regular forums for dialogue with the non-governmental (NGO) sector on human rights and supporting the independent participation of NGOs in the UN human rights processes; and
- reviewing, with a view to withdrawing, all existing reservations and interpretive declarations under UN human rights treaties.

ENDS

Recommendation 15

9.94 The committee recommends the government consider expanding the role of the Australian Human Rights Commission to enable, or better enable, the Commission to:

- conduct own-motion inquiries into systemic human rights concerns;
- monitor, and report on, compliance by public authorities with a Human Rights Act (HRA);
- inquire into, investigate, and report on, any act or practice of a public authority that may be contrary to a HRA;
- intervene, with the court's leave, in court proceedings involving the interpretation or application of a HRA; and
- where the AHRC has identified systemic human rights concerns, commence proceedings to enforce compliance with a HRA if other methods have failed.

Recommendation 16

9.99 The committee recommends that the government review all existing primary and delegated legislation for compatibility with human rights and bring forward any necessary amendments to legislation identified as raised human rights concerns, noting that such reviews:

- could prioritise reviewing legislation that this committee has reported on as raising human rights concerns or that courts have found to be incompatible with a Human Rights Act;
- should be embedded within government processes, so that when existing Acts are being substantively amended, or legislative instruments subject to sunseting are being remade, a review of their compatibility with human rights must be undertaken (if not already reviewed); and
- should be undertaken in good faith with a view to maximising the realisation of human rights in practice (rather than considering whether the legislation is arguably compatible with rights).

Recommendation 17

9.104 The committee recommends that the government commits to monitoring and improving Australia's progress on human rights, particularly by reference to the Australian Human Rights Commission's Free & Equal final report, including:

- developing a national human rights indicator index to measure progress on human rights over time;
- requiring each department and agency to develop human rights action plans detailing how they will respect rights within their portfolio, and make annual reports on compliance with their plan;
- requiring the Attorney-General to make an annual statement to Parliament identifying areas of progress on human rights and areas of continued focus;
- establishing a publicly available database setting out all findings and recommendations of United Nations human rights treaty bodies about Australia, and individual communications involving Australia, and any Australian government responses;