

Australians trust in government declining

More than 60% of Australians don't like how democracy is working in Australia, a July 2024 Guardian Essential poll has found.

Just 37% are satisfied with the Albanese government, up from 32% in March 2024. These figures are well down on the 47% high recorded in May 2022, when the Labor government took power federally.

The poll of 1122 Australians found 75% of us think politicians enter politics to serve their own interests, and just 25% believe they do so to serve the public interest. <https://tinyurl.com/4zhpjw28>

It's time for Labor to find some courage...on behalf of the people

These figures back up Civil Liberties Australia's observations to the parliamentary inquiry into a new human rights framework for Australia, including whether we should have a Human Rights Act (HRA).

CLA pointed out that government works best when it has the confidence and support of the people. Without mutual trust, when government tries to dominate and ignores the rule of law and the wishes of the people, society goes backwards. The Robodebt fiasco was the classic example.

If Labor has the courage to legislate a HRA – giving more equal power to the people over their day-to-day dealings with government – Australia will be a better place...and Labor's prospects for reelection are likely to rise.

A properly functioning, federal HRA and a strong National Anti-Corruption Commission would work together to help restore trust that government had the best interests of Australians at heart.

NACCery becomes toothless pussycat

Australia's supposed corruption chaser, the NACC, underwhelms and lacks transparency, critics say, so much so that the body is already itself under independent investigation.



Since the National Anti-Corruption Commission was established on 1 July 2023, it has received 3190 referrals, but it is conducting only 26 corruption probes.

Of the 3190 referrals, NACC has managed to exclude 2443 because they did not involve a Commonwealth official or did not raise a corruption issue.

NACC Commissioner Paul

Brereton (photo) says he only investigates if it is in the public interest.

In 252 referrals assessed, Brereton's NACC has taken no action. It has held no – zero – public hearings. It has refused to hold an inquiry into alleged corruption in the Robodebt matter (see below), already the subject of a Royal Commission. Robodebt cost the government about \$1.9 billion, at least.

NACC boss's record is weak on final results

REMINDER: Brereton was the man – NSW Supreme Court judge and also Army Reserve officer – who took four years to investigate claims made from about 2014 that Australia's elite

forces had allegedly committed murder and other crimes against humanity.

That was an unconscionable time, given two things: one, there was video and audio evidence available, and two, his recommendations led only to more investigations, not to immediate criminal action.

A decade on, and Brereton's work has produced virtually no outcomes, and left a cloud hanging over the Australian Defence Force. CLA hopes he can perform better as head of NACC. His first year in charge is not encouraging.

NACC to be investigated for its failure to act

The Inspector of the National Anti-Corruption Commission, Gail Furness, is investigating the NACC for its decision to not inquire into the Robodebt RC.

She has received nearly 900 individual complaints about the decision by NACC not to commence a Robodebt corruption investigation.

"Many of those complaints allege corrupt conduct or maladministration by the NACC in making that decision. I also note that there has also been much public commentary. I have decided to inquire into that decision. I will make my findings public, in due course," she said. <https://tinyurl.com/kbcxpy52>

Robodebt year10: officials not called to account

The illegal, Coalition-conceived Robodebt scheme ran from 2016 to 2020, trying to recover more than \$750 million from about 900,000 vulnerable Australians in supposed debts they owed the central government.

In lay terms, the scheme was illegal because it used "guessed" average income of welfare recipients instead of any debts arising from the precise payments received, fortnight by fortnight.

It caused massive angst and mental health problems, was linked to several suicides, and cost the government a total \$1.9 billion settlement.

The final report of the Royal Commission into the Robodebt Scheme was released on 7 July 2023. Along with 57 recommendations, a sealed section referred several unnamed individuals for further investigation or action, to four separate bodies.

The result so far? Zilch, nil, zero.

NACC's decision to not investigate those people dealt a serious blow to public confidence in the Commission, Greens Senator David Shoebidge said. "When you add to that a complete absence of public hearings it's little wonder that there has been an ebbing of public confidence in the NACC as a serious corruption fighting body for the Commonwealth," he said.

Furness's NACC's oversight body will investigate the Commission's decision to not pursue findings from the Robodebt Royal Commission.

When the public is looking for investigations into mismanagement and corruption on a grand scale by people in the most senior positions (ie, as in Robodebt), NACC has released details of the results of some of its investigations so far. They include convicting an AFP officer who misused a corporate credit card and an ATO employee who accepted a bribe. Charges have also been laid against a Western Sydney Airport worker alleged to have solicited a \$200,000 bribe. <https://tinyurl.com/2cfcog45>

Inaction: govt fails on death penalty push

A committee of parliament is inquiring into how well – or otherwise – Australia is doing in promoting an end to the death penalty worldwide, which has been a public commitment for years.



The Human Rights sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade is taking submissions until 2 August 2024.

Basically the committee wants to know whether Australia has progressed our campaigning since a 2017 report on the same subject, and how we can promote abolition better in the future, “particularly utilising civil society and non-government organisations”.

CLA believes the inquiry will find that the Australian government has done buggar all over the past seven years, except pay lip service to abolition in formulaic, “tick the box” diplomatic meetings with other countries, and now realises it needs help from groups like CLA to make progress.

Subcommittee chair Maria Vamvakinou (Labor Calwell, Vic) says: “There is no place for the death penalty in the modern world. State executions are cruel and are often associated with miscarriages of justice; all too often, innocent people are put to death and around the world, minorities and those with disabilities are disproportionately sentenced to death.”

Yes, we all agree that’s the problem. But let’s, for once CLA says, act morally, speak up as a nation throughout the world, and lead the push to have the practice abolished. Info: Committee’s [website](#).

Kirby comes off the bench in favour of Oz HRA

Michael Kirby stood up to be counted last month with an op-ed piece in *The Guardian* backing a Human Rights Act for Australia.

“This is precisely the tool Australia needs to ensure that parliament is held to account for upholding human rights, and to give people access to justice in case their rights are violated or simply ignored,” the former High Court judge wrote.

He criticised the “Liberal side of politics” for antiquated views, at least half a century out of date, in the current human rights debate.

“Our governments are good at many things. But it was our government that enabled the stolen generations, the dispossession of Indigenous land, the laws oppressing women, LGBTQ+ people and people with disabilities.

“The aged care and robodebt royal commissions make it clear that anyone’s human rights can be trampled by government decisions at any time – not just people in minority groups.

“History shows that parliament and public officials do not always do well at protecting individual human rights. Particularly for minorities,” Kirby wrote.

“That is why we need to embed the principles espoused in the Universal Declaration of Human Rights in our national laws, as tools to support parliament in protecting human rights.

“It will also create a “rights-minded” culture – a greater understanding in the community of what our basic rights are.

Hopefully, it will encourage education of this in schools. In the same way that a copy of the UDHR sparked my interest in human rights in 1949.”

Dismissing the furphy argument of opponents of a human rights law, he wrote: “Parliament will still have the last word, but the people will have new means to get action before inquiries and apologies are needed.” <https://tinyurl.com/yc4yukmc>

Speak up and out, stronger and bolder

Kirby, the former High Court judge from 1996 to 2009, who was once known as the Great Dissenter, has been super cautious as most former HC judges are, about entering current debates.

But Kirby’s voice, from the liberal rather than Conservative side of judgedom, is desperately needed across a range of crucial issues where the law in Australia is becoming an ass.

For example, the Parole Board of SA last month had to do a backflip on its own earlier, immutable principle that showing remorse was needed before a supposed murdered could be released. The board let Derek Bromley out, after 40 years in jail, without his showing remorse as he has claimed for 40 years that he is innocent.

High Court fails Bromley and the nation

The High Court refused his appeal bid recently 3-2 in a case where it refused to even consider an elephant in the room in SA in relation to forensic science. The elephant remains in the room in Adelaide and in the back rooms of the concrete bunker that is the High Court in Canberra.

The HC has failed the nation. Thirty years of forensic science incompetence and fraudulent behaviour in SA between the late-1960s and late-1990s is still unaddressed legally.

In other cases, the High Court (2024 photo above) is years behind in laying down core findings over matters to do with forensics, such as the competence of scientific “experts” and the forensics incompetence of barristers and judges which CLA believes is causing wrongful convictions.

Not to mention the fact that some jurisdictions have systems under which the “independent” forensic science experts used in court are actually employees in the local police departmental structure.

Kirby should speak up more often, and more forcibly. CLA congratulates him on doing so over a Human Rights Act for Australia.

‘Blightman’ crusades for security wind-back

Australia’s caped crusader appointed to keep the nation’s spooks honest, Jake Blight, has produced the heaviest report yet – 290 pages – into how Australia has become a state of secrecy.

‘Blightman’ points out that, in 2009, there were 506 secrecy provisions; by 2023 Commonwealth secrecy offences and non-disclosure obligations had jumped to 875.

Blight, formally titled the Independent National Security Legislation Monitor (pron: in-sellem-im), is the fifth appointee to the role, taking up his post in 2023.

In his first 15 major recommendations, he proposes a new public interest defence, as well as “limiting” the reach of draconian laws to special electronic surveillance, “narrowing” the scope of offences, and a repeal of “dealing with” and “proper place of custody” legal snares for the unwary.

He also wants the law changed so that *ABC* and *SBS* journalists are not double-penalised for doing their investigative jobs because they are Commonwealth employees.

And, in recommendation 15, he strongly suggests the Commonwealth – that is, the government – should expressly include the public interest in a free and open press as a factor

considered before any journalist or news media organisation is prosecuted under a secrecy offence.

Blight sets the scene for winding back the Australian secret state by quoting from two eminent judges:

In our society, threats to the rule of law are not likely to come from large and violent measures. They are more likely to come from small and sometimes well-intentioned encroachments upon basic principles, sometimes by people who do not understand those principles. – Former High Court chief judge Murray Gleeson (his daughter, Jacqueline, is a current HC judge)

Official secrecy has a necessary and proper province in our system of government. A surfeit of secrecy does not. – Judge Paul Finn

– INSLM report into Criminal Code Secrecy Offences, tabled 31 May 2024

Day by day, Australians subject to increasing intrusion into their lives

It's not only Australia's security laws that have major flaws: across the spectrum of rights and liberties, Commonwealth laws impinge on people's everyday lives.

Spencer Zifcak, Professor of Constitutional and Human Rights Law at the Australian Catholic University, has praised the Australian Law Reform Commission (ALRC) for its report entitled *'Traditional Rights and Freedoms: Encroachments by Commonwealth Law'*. <https://tinyurl.com/5n8smzyx>

Prof Zifcak wrote:

"The report identifies hundreds of provisions in Commonwealth law that may constitute incursions on human rights and freedoms.

"The nature and extent of the legislative provisions that may be in breach of fundamental rights and freedoms will come as a shock to anyone who cares to delve into the ALRC's first class report. No report in recent decades has come close to providing such a detailed enumeration, description and analysis of statutory infringements of human rights.

"Take freedom of speech and procedural fairness as examples.

"Commonwealth laws that may prohibit or restrict freedom of speech have been identified in criminal laws, national security laws, secrecy laws, contempt laws, media and telecommunications laws, intellectual property laws, information privacy laws and anti-discrimination laws.

"Not all of these laws will be unjustified but, equally, the ALRC has distinguished many that are likely to be. These include provisions in the Crimes Act, Aboriginal and Torres Strait Islander Act, Aged Care Act, Anti-Money Laundering and Counter-Terrorism Financing Act, Australian Securities and Investments Commission Act, the Australian Intelligence Organisations Act and the recent Australian Border Force Act." Prof Zifcak wrote.

Secret surveillance becoming totally out of hand

To prove the point, citizens generally have no idea how widespread surveillance is throughout Australian society.

Last month, the Parliamentary Joint Committee on Human Rights cautioned against allowing the tiny ACT Integrity Commission to join the big boys of the spook world.

In the Instruments section of its Report No 6 of 2024, the PJCHR says that "authorising the ACT Integrity Commission and its staff to access stored communications and telecommunications data, which includes both the contents of, and information about, communications, significantly risks impermissibly limiting the right to privacy, and recommends amending the declaration to assist with proportionality."

The open slather for even tiny entities to pry into people's lives is exactly what Blightman the INSLM complains about – and wants changed – in his report, above.

ART tries to rebuild reputation in the federal 'small claims' space

The new Administrative Review Tribunal (ART) starts on 14 October 2024.

It replaces the Administrative Appeals Tribunal (AAT), which was generally perceived to have been corrupted because of the biased appointments of too many people of a particular political leaning. Judge Emiliou Kyrrou AO was given the job of inaugural AAT President on 9 June 2023 to prepare for building a better reputation for the new "small claims" tribunal.

The new non-judicial Deputy Presidents, announced last month by Attorney-General Mark Dreyfus, are: Ms Simone Burford (photo), Ms Krana Dordevic, Ms Gina Lazaras, Ms Kathryn McMillan KC, Mr Damien O'Donovan and Ms Clare Thompson SC. They were appointed after a merit-based selection process for the appointment of non-judicial members, Dreyfus said. <https://tinyurl.com/3vz8j3rh>



Police investigating police is unacceptable

If we permitted families to investigate fellow family members who had committed alleged crimes, do you think there would be much-reduced guilty findings, fewer people in jail, and a serious lack of accountability in society?

You do? CLA thinks so too. That's why we can't understand why all jurisdictions in Australia allow the police "family" to investigate the police "family" when a police family member allegedly commits a crime, or is the subject of a serious formal complaint by a member of the public.

Police constantly stress how their organisation is a "family", a group of like-minded people with very similar values and a constant culture...for good or bad.

Any investigation into alleged cases of their values and culture – and formal rules – not being upheld should therefore be investigated by someone outside "the system".

As a nation we should say toodle pip to Police Investigating Police (PIP).

Police not held to account

Lauren Stefanou from the Aboriginal Legal Service said NSW Police are rarely being held to account over allegations of misconduct.

"Too often police end up investigating themselves over allegations of things like misconduct or excessive force against Aboriginal people. For a lot of our clients, the outcomes that are possible through a police complaint are really unsatisfactory."

New Law Enforcement Conduct Commission data published recently on Aboriginal and Torres Strait Islander people's complaints against NSW Police revealed that an investigation occurred for only 66 out of 245 complaints triaged by police, for the period between January 2021 and June 2022.

The majority of complaints were investigated by police themselves.

Fishy business surrounding Inspector Nemo?

Stefanou (above) was speaking as this case came to light:

A 46-year-old police inspector, whom a court has ruled cannot be named, faces court on 27 Sept 2024 over crashing a police vehicle in a Sydney tunnel in May 2023.

He was not charged – with a high range drink driving offence, involving blood alcohol of 0.15, which he denied – until six months later. The possible penalty is 18 months jail.

Inspector 'Nemo' said he had had 8 standard drinks in 9 hours. Turns out, it might have been 23.6 standard drinks in 9 hours.

The NSW LECC investigated...and found there had been no cover-up, but Inspector Nemo – or, at least, a member of the police "family" – had shown deliberate dishonesty on insurance claims.

Greens MP Sue Higinson said the "outright lying and gross misconduct" was emblematic of the "culture of impunity and cover-up" within the force. <https://tinyurl.com/2huzvy44>

No Sue, it's just a "family" resemblance to the mafia, called the PAFIA: Police Against Fair Investigation & Accountability. Happens everywhere in Australia.

ODD SPOT: 'Unlawful, unreasonable, oppressive and unjust': – but police say OK by them

The WA Corruption and Crime Commission has turned the WA Police into a public laughing stock for how they bungled an internal investigation into the unlawful arrest of a 14-year-old Aboriginal girl in 2022.

The girl was walking, nearing her home, from a friend's place late at night, pushing her electric scooter because it had a flat battery, when officers in an unmarked car arrested her.

She had done nothing wrong, but it took three internal investigations before action was taken against the officers who arrested and handcuffed her.

The CCC claims police "departed from various procedures" and handcuffed the girl for too long, but WA Police still claim the arrest was lawful and the force "reasonable".

"The Commission formed a different view," a CCC statement released last month read. "The arrest and subsequent force used were unlawful, unreasonable, oppressive and unjust." <https://tinyurl.com/2sp93mvt>

Juvenile jail in WA - SPECIAL REPORT

Kids in jail cost \$1m a year

Each youth in juvenile jail in WA costs WA taxpayers about \$1 million a year, according to a former inspector of custodial services, Neil Morgan.

He said WA's youth jails had been at a crisis point for more than a decade: it was time for a different approach, he said.

Morgan was speaking in an inquest for Indigenous teenager Cleveland Dodd, 16, who fatally self-harmed in custody. Dodd was found unresponsive in a cell in the notorious "temporary" youth wing of a high-security adult jail in the early hours of 12 October 2023. Taken from Casuarina Prison to hospital in a critical condition, he died a week later.

Morgan called for an organisational "shake-up": a separate youth justice department was required. He said it cost about \$1m a year to keep a child in youth jail.

WA should have smaller regional youth detention centres and detainees should to be separated by age so younger children were not mixed with older teens. <https://tinyurl.com/2rd5bs87>

'Children are not small adults', judge says

Backing Morgan up (see above), former Children's Court president from 2004 to 2018, Denis Reynolds, said he predicted there would be a death at Unit 18 a year before Dodd died.

He also said it was "essential" a department be set up to manage the handling of young offenders in prisons given that there were currently 7000 adult prisoners and 65 child prisoners.

"If you've got a department weighted like that, it's overwhelmingly concerned with adults," he said. "Children are very different. They're not small adults." <https://tinyurl.com/mryhwbp5>

Dept boss admits wrong focus, failure

Appearing before the inquest, former director general of the Department of Justice, Adam Tomison, said it was a "total tragedy" and admitted he and the department had failed.

He resigned in December 2023, after seven years in charge.

Dr Tomison agreed the department had focused on bolstering security and not on improving therapy and welfare for detainees. He said it would have been better if the department had not overused "oppressive" lockdowns to manage detainees in the face of staff shortages.

He agreed the department acted unlawfully by confining detainees to their cells for long periods even after two Supreme Court judgements against it. <https://tinyurl.com/5xc8dd6m>



Above: CLA President Dr Kristine Klugman meeting with Dr Tomison in Perth in 2017.

Dept head signed a document of lies

Dr Tomison conceded a document he signed contained a series of "grievous lies" that led to the special child unit being created in a wing of the adult jail.

He also agreed the minister should not have been misled and if the government knew the truth it would not have approved Unit 18.

"I accept responsibility as head of agency," he said.

The briefing stated Unit 18 would have a full suite of services available for child detainees, including therapeutic programs, cultural support, dedicated health services, education and recreation.

In reality, Unit 18 had few of these and detainees were held in solitary confinement for up to 23 hours per day, often in cells that did not have running water.

The briefing document also said detainees would spend more than nine hours per day outside their cells and there would be up to 120 visitor appointments available five days per week. That was simply not possible due to ongoing staffing issues.

Dr Tomison agreed it was a "blatant lie" and the people who prepared the document had "lied to the minister".

How do citizens enforce the telling of the truth?

Two key questions arise from Dr Tomison's testimony.

The first, and most important, is how many other heads of departments of Justice or Corrections or Attorney-Generals in the rest of Australia have signed documents containing lies?

There must be a investigation in each state and territory (but particularly WA, of course), going back at least 20 years, into who lied to whom about juvenile justice issues.

The second is how can department heads and senior officials who sign lying documents be penalised? Is such behaviour fraud, or corruption? Or both?

Should they go to jail, or pay massive fine? Or both?

How do states, territories and the nation fix such a fundamental problem?

The entire basis of democratic government and the justice system is that people tell the truth. If those in charge in government (politicians and high bureaucrats) don't tell the truth, the system and society is broken.

Ends WA SPECIAL REPORT

Gilding the lily is not the rights thing to do

With an election in the offing, Queensland has moved sharply to try to correct its errors and omissions and denying citizens their basic human rights.

The Qld govt twice suspended the state's Human Rights Act in 2023 – to keep children in custody in adult watch houses, and to criminalise breaches of bail for juveniles – as well as removing the principle of “detention as a last resort for minors” earlier this year.

Last month the Qld govt trotted out ‘*Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031*’ which it claims will improve the criminal justice system's operations for Indigenous people.

Basically, they have re-worked the system into four focus areas which will supposedly “transform the justice system and reduce overrepresentation”.

The four areas are: working together; early intervention and prevention with local decision-making for safer communities and families; doing justice differently for a better and fairer justice system; and addressing offending and reducing re-offending.

Stephen Tillett, a Maa island Torres Strait Islander and Queensland's First Nations Justice Officer, will oversee the Strategy's implementation. <https://tinyurl.com/2mb7k33e>

Forensics boost, but structure is wrong

In the NT, with an election on 24 August 2024, the government is pumping money into police coffers.

The Police Forensics Sciences Branch is receiving an extra \$25 million, \$5.4m this year, and a promised \$4.8m for each of the next four years.

According to government puffery, these amounts will employ 12 more staff and provide quicker and more accurate output.

The NT Police FSB collaborates with Charles Darwin Uni, which now has a scanning electron microscope, producing magnifications of up to 200,000 times the resolution of the human eye.

It can extract quality data from smears, minute contact traces and microscopic samples and more, the government's puff piece says. They also have an X-ray diffractometer to help police to solve crimes. <https://tinyurl.com/4uf7k54u>

CLA believes police should not run forensics laboratories, which should be independent scientific bodies able to provide and give evidence uncontaminated by formal links – such as pay and rations – with the police hierarchy.

‘Sleepers awake’ when money is up for grabs

In Tasmania, the sleepy old “Integrity Commission” has suddenly burst into print, not to produce reports on lack of

integrity, which it does infrequently at best, but to claim it needs more money.

Integrity Commission boss Greg Melick was noted for having heaps of other jobs concurrently at one stage, from barrister and mediator “in several jurisdictions”, RSL National President, on the War Memorial Council, a part-time deputy president of the old, dishonoured Administrative Appeal Tribunal, and a Major General in the ADF. Now he's come out pleading for more money to jump on the bandwagon of investigating police after the Sergeant Reynolds suicide and pedophilia allegations came to light in the Ashley Detention Centre inquiry.

Citizens of Tasmania might ask Melick where was the Integrity Commission before other bodies did the type of work it is supposed to do to reveal lack of integrity in the child care and police system.

Giving more money to the “Integrity” Commission of Tasmania would be a total waste of funds, given its appalling track record of not being able to find serious wrongdoing over about a decade and a half.

Photo: Special pleading by Melick in The Mercury...not for integrity, but more funding after others have done the hard work!

Judicial Commissions Bill – Bill being rushed

Civil Liberties Australia has made a 39-page submission to the Tasmania's Department of Justice on its proposed Judicial Commissions Bill.

The legal system in the state is in turmoil as one of its Supreme Court judges faces an interstate magistrate in Hobart's courts on allegations of assault and mistreatment of a female partner. The case is continuing at the deadline for this newsletter.

The big question raised, however, is how can the State force the resignation of a judge in such or similar circumstances. Unfortunately, the only law relating to removal of judges in Tasmanian dates back about a century and a half to when the State became a state.

What is required is both Houses of Parliament “addressing the Governor” for the judge to be removed. But the Parliament tried moves along those lines late in 2023, before the current case got to court, and Parliament would not act with the judge having “his day in court”.

So the government decided to produce a “quickie” Judicial Commission Bill to allow eminent panels to sit in judgement on judges (and magistrates) and avoid the Parliament being judge, jury and executioner.

Judges' Bill is a drafting disaster

CLA has a working on Judicial Commission-type (JC) laws for small jurisdictions for five years.

We cautioned the NT in 2020, in a formal submission, before it adopted a JD law that has turned into a nightmare. See the report of senior barrister Alistair Wyvill for chapter and verse on



Police & Courts

Integrity Commission boss laments lack of budget to investigate cops

The Integrity Commission says it needs a bigger budget to investigate all sexual abuse allegations against Tasmania Police officers. The comments come after a damning report into disgraced policeman, Paul Reynolds.

how his complaint against judges has turned into a three-year fiasco, still unresolved, in the NT (contact the CLA secretary for a copy).

All the things CLA said could go wrong in the NT have proven to be prophetic.

Now, faced with a worse draft Bill in Tasmania, we are again warning disaster is the prognosis if the state proceeds with its current proposed Bill (submissions closed on 26 July: we lodged our main submission on 26 July, and plan a supplementary submission on 30 July).

The Tasmania draft Bill is modelled on the ACT equivalent. But the ACT JC Act is predicated on links to other existing laws and entities, like the ACT Integrity Commission, which do not exist in Tasmania.

The Tassie drafters have unfortunately not realised that their island version won't work unless they amend at least two other major Acts.

But even those are not the main concerns: the big problems with Acts like those in the NT, the ACT and – soon – Tasmania is that they think that, in small jurisdictions, local judges and barristers and the like can possibly act independently in making life and career judgements concerning close mates of usually 20 or 30 or 40 years standing.

In small jurisdictions, barristers and solicitors have lived and partied side by side for decades before they become judges, sometimes since university.

They know each other, and each others' families, intimately. Their kids have gone to school together, and inter-married. They are friends, mates.

Then went promoted to the bench, they have sat for years side by side, interacting one with the other, frequently in the case of Supreme Court judges sitting in judgements on appeals from their close-mate judges decisions.

All these facts in small legal jurisdictions demand that interstate or overseas (NZ for example) judges and magistrates are invited to comprise the commissions and investigatory panels needed to make sure justice is done for everyone.

But somehow, the legislative drafters in the NT could not see the need, and Tasmania is going down a similar path.

The Tasmanian Parliament needs to be strong to prevent the Tas Department of Justice leading it astray, CLA says.

Briefs

Knife-carrying dangers slice into usual rights and liberties

The ACT is consulting with groups like CLA over possibly introducing laws similar to Queensland, NSW, the NT or Victoria to allow police to search people in designated areas *without* having reasonable suspicion that a person is carrying a knife or weapon. With knife crime mushrooming, some form of short-term curb may be needed, CLA says...but so is a national program to educate people to not carry knives unless their job calls for it.

Less news is bad news

Twenty News Corp journalists lost their jobs last month, with sub-editors relatively the hardest hit. 'Subs' correct mistakes in journalists' articles, among other key tasks, which bodes ill for accurate reporting. The company's editorial staff has reduced by about 200 since 2021. News Corp employs just under 1000 journalists (with the new departures, that's a drop of close to 20% in less than three years). Rival Nine is cutting about 130 staff across its publishing division, which includes *The Age*, *The SMH* and *The AFR*, and in its Pedestrian Group division, with youth titles including *Vice*, *Refinery29* and others closing. <https://tinyurl.com/jn2mrbth>

Is there a relationship between number of lawyers and justice in society?

The total number of practising solicitors in Australia as at October 2022 was 90,329. – Australian Pro Bono Law Centre. In NSW, at 30 June 2024, there were 42,228 solicitors holding practising certificates, of whom 23,284 were female – NSW Law Society practising solicitor statistics. Too many? Too few? What is the "correct" number or ratio of lawyers in and to society?

Cost of youth jail more than doubles in four years

The cost of the new youth detention facility at Holtz in the NT has blown out to \$130m – from an original \$55m tender four years ago. NT Chief Minister Eva Lawler (photo) says the astonishing increase was unavoidable but worth the cost because it will help "support young people on their journey". The 44-bed facility will have CCTV, body scan and digital access technology and anti-climb external perimeter fencing. It will also have GP, dental, medical specialist and mental health support services for inmates. Current Don Dale jail inmates are expected to transfer to the new facility in October. – from the NT Independent 23 July 2024



Sting in tail allegation surfaces as Geason hearing ends

The fate of Tasmanian Supreme Court judge Gregory Geason will be revealed about the middle of September, visiting Victorian magistrate Susan Wakeling said as the seven-day hearing ended on 23 July. He is charged with assault and emotional abuse or intimidation, pleading not guilty to both charges. It was revealed in cross examination that his ex-wife, who is not the complainant, claims police attempted to get her to make a biased statement in favour of the alleged victim. It will be interesting to see how that allegation is treated in future by police, the DPP and the legal system in Tasmania, who have a responsibility to act when such a formal claim is made, CLA says. <https://tinyurl.com/5ezhyr7v>

LETTERS

Government by Royal decree

Following Sir Keir Starmer's win in the UK elections one of the British newspapers had a headline something along the lines of "*King asks Sir Keir Starmer to form a government!*". That's not the case. The King "instructs" the winner of a free and fair election he or she "must" form a government. I look forward to the moment when Australians wake up and realise how outdated and irrelevant a constitutional monarchy is in the 21st century. – Mark Tomkinson, Bridgetown, WA

Who has jurisdiction here?

Triggered by the Assange and perhaps the Daniel Duggan examples, I wonder if some legal expert could explain what laws an Australian must obey when they are neither a citizen nor physically inside the country that made and enforces those laws. If you are outside the USA, must you obey all American laws or just some? Must you also obey the laws of other countries such as China or Russia? – Greg Dunstone, Bruce ACT

Ben medals again! Roll on a republic

The King awards proven (on balance of probabilities - Ed.) war criminal Ben Roberts-Smith a Coronation Medal and said war criminal goes to WA Government House to receive said medal from the WA State Governor, "The Honourable" Christopher Dawson. For shame Mr Dawson. Well may we say God save

the King, because nothing will save Mr Dawson (and the monarchy) from the scorn of every decent, fair-minded Australian. In a Republic of Australia no such problems would arise. Roll on an Aussie Republic. (Apologies to the late, great Gough Whitlam). – Mark Tomkinson, Bridgetown, WA

God save us all

It's reported that Senator Fatima Payman has said her future will be "guided by God". This, however, has apparently upset some of her Labor colleagues. But isn't that what they all do when they start each Parliamentary day with the Lord's Prayer? What's more, it's the mandatory procedure for all MPs in both houses. – Eric Hunter, Cook ACT

Free, open, transparent = human rights

Commenting on Elizabeth Tydd, the Australian Freedom of Information Commissioner writing in the *Canberra Times* on 8 July 2024.

She references the fundamental values of the Parliament of Australia, which are derived from the Universal Declaration of Human Rights (UDHR) in 1948. Australia has no federal human rights act, unlike UK, US, NZ, Canada and the European Union.

Strong recommendations from very reputable and respected bodies support the introduction of a federal Human Rights Act (the Parliamentary Joint Committee on Human Rights, and the Australian Human Rights Commission in its report *Free+Equal*).

A federal Human Rights Act would form part of the ethical infrastructure, which, acting with FOI and National Anti-Corruption Commission, would make governments more accountable to citizens and provide redress for infringements of rights.

This would increase trust in governments which is currently at a historical low and which is vital to a properly functioning democracy. – Dr Kristine Klugman, president Civil Liberties Australia, Canberra

CLA report for July 2024:

National

CLA's Human Rights Act team is embarking on a new round of briefings to ensure key people stay aware of the recommendations to government, made in May, by the Parliamentary Joint Committee on Human Rights.

The committee proposed Australia gets its own, federal Human Rights Act (HRA), one of a number of initiatives put forward to improve the human rights "framework" in Australia.

The CLA team is writing to all members of the federal Labor caucus with a copy of CLA's latest paper on No Rights Without Remedy, the model developed by us and already part-legislated in the ACT.

As well, we're promoting the same paper and principles to the hundreds of people we met in person or by Zoom/etc in the lead up to our submitting input for the parliamentary committee's report. They include a wide range, from academics to business leaders, from mining executives to Aboriginal land council CEOs.

Separately, CLA is encouraging some key supporters of a federal HRA to write articles for mainstream media, online journals and social media on how important legislated safeguards for rights and liberties will be in future.

QLD:

CLA has made an important submission to the formal review of the Qld HRA. Now five years old, Prof Susan Harris Rimmer has been tasked with analysing how well or otherwise the State's HRA is working, and what improvements could and should be made to it in future. CLA is proposed that Qld adopts

the No Rights Without Remedy model into its HRA, to start to build consistency of legislation across the nation.

TAS:

CLA has called on its in-house expertise to analyse the draft Judicial Commissions Bill (TAS) 2024 put forward by the Dept of Justice, and released for consultations which closed on 26 July.

Our analysis of the Bill is that it is deeply flawed, for two reasons:

the basic principle is wrong, that a small legal jurisdiction can fairly and with integrity analyse the behaviour and/or misbehaviour of one of its judges, magistrates or the like; and the drafters, copying provisions from the ACT jurisdiction, have not understood that their JC Act works in conjunction with the ACT Integrity Commission and other legislation to have proper effect: those links are absent in Tasmania and in the proposed new Tasmanian Act. See article above for more detail.

INTERNATIONAL

Harris has track record achieving positive change

Some things US Vice-President – and presidential candidate – Kamala Harris did when she was Attorney-General of California from 2011 to 2017:

- In 2012, Harris announced that the California Department of Justice had improved its DNA testing capabilities, clearing California's DNA backlog for the first time.
- In 2015, Harris conducted a 90-day review of implicit bias in policing and police use of deadly force.
- In April 2015, Harris introduced the first of its kind "Principled Policing: Procedural Justice and Implicit Bias" training, to help law enforcement officers overcome barriers to neutral policing and rebuild trust between law enforcement and the community. https://en.wikipedia.org/wiki/Kamala_Harris

Criminal review 'safety' body fails to deliver: boss to be sacked

The chair of the British Criminal Cases Review Commission is about to be sacked after Andrew Malkinson spent 17 years in jail for a rape he did not commit.

Lord Chancellor Shabana Mahmood said she has begun the process to remove Helen Pitcher as the commission's chair.

The CCRC commissioned barrister Chris Henley KC to review the organisation's handling of the case.

Henley called out a "complete failure to get to grips with" the potential significance of new DNA evidence from the outset of the first appeal. On a second application, which charity APPEAL submitted on behalf of Malkinson, Henley said it was disappointing that the CCRC did not set up a meeting to understand what APPEAL was proposing to do in relation to fresh DNA testing.

Henley said: "Mr Malkinson spent many years in prison fighting this appalling miscarriage of justice. In 2009 he turned to the CCRC but they failed him. Lessons must be learned. The CCRC must make every possible effort to identify other applications where mistakes might have been made, and immediately implement the recommendations made in my report."

Malkinson's first two applications for the CCRC to use its statutory powers to refer his case back to the Court of Appeal were refused. The third application resulted in a referral to the Court of Appeal in January 2023. Six months later, his conviction was quashed. <https://tinyurl.com/3br8kpd>



EUREX aims to cut wrongful convictions

Europe has developed a new register of wrongful convictions to try

to rein in a problem that is worldwide in “justice” systems, and prevent it recurring so frequently in future.

EUREX – the European Registry of Exonerations – is recording miscarriages of justice in Europe that ultimately led to exonerations. It is the initiative of legal psychologists from Leiden U, Maastricht U, Lucerne U of Applied Sciences and Arts, and Phillips-Universität Marburg.

The founders were legal psychologists from the Netherlands, Germany, and Switzerland: Dr Linda Geven, Dr Jenny Schell-Leugers and Dr Teresa Schneider (*Photo: L to R*)

At its launch, the database already held 115 exonerations from 17 European countries.

Based on these cases, the researchers presented striking figures: wrongfully convicted people spend seven years on average in prison and in 30% of these cases a false confession contributed to the conviction. <https://tinyurl.com/2s3rrpyk>

Cautionary tale of when crime lab standards fail

An experienced and senior California police officer has described the Washington DC Department of Science crime lab as “a cautionary tale of what can happen if standards fail”.

Writing in the US-based online journal *Police1* in April 2024, Deputy Chief Andrew Jenks says: “The DC lab lost its accreditation in 2021 when it was discovered mistakes were being covered up, and the accuracy of evidence analysis came into question.”

He says extra audits uncovered more problems. When the lab tried to regain accreditation it could not demonstrate improved processes. So then it had to engage outside contractors to process evidence samples and review a decade’s worth of convictions relying on evidence analysed by the lab.

The local prosecutor declined to bring charges in two-thirds of all arrests by DC police in 2022 because the lab was not accredited to perform forensic testing.

Jenks writes that, in 2022, an audit found the lab:

- failed to act as an independent part of the justice system,
- failed to comply with its policies, and
- did not maintain adequate resources to function as a crime lab.

The non-functioning crime lab cost DC millions of dollars. “They expected in early 2023 it would take at least until 2024 to reopen,” he writes.

But, he says, the DC lab story “is not an anomaly. Labs across the USA, including the San Diego Regional Crime Laboratory and Houston Police Department Crime Lab, have experienced similar issues”. – *To build trust, forensic DNA labs must also embrace transparency*, by Deputy Chief Andrew Jenks. <https://www.police1.com/to-build-trust-forensic-dna-labs-must-also-embrace-transparency>

Jenks has more than 23 years law enforcement experience and has worked for the Glendale (California) Police Department since 2002. He oversees the Professional Standards Bureau, Training Bureau, the Transparency, Audits and Accountability Bureau and assists the Chief Officer in day-to day operations of the police department. Police1.com says it is the #1 resource for law enforcement online.

First Nations people get \$52 billion

In a historic agreement, the Canadian government will pay \$52 billion over 10 years for long-term reforms to Indigenous child and family services across the country.

The landmark settlement represents “a profound commitment to our future, rooted in our sovereignty,” Ontario Regional Chief Abram Benedict said in a press statement.

Funding for the First Nations Child and Family Services Program will cover a range of services, and include efforts to prevent child abuse and neglect, improve access to safe housing and provide support for young adults leaving the child welfare system.

First Nations people represent 1 in 3 Indigenous peoples, or 5% percent of the country’s population, according to the 2021 census. <https://tinyurl.com/57pky6n3>

Susskind takes up AI justice role

Prof Richard Susskind (photo) is the new Commonwealth special envoy for justice and artificial intelligence.

He gained his LLB from Glasgow University, and later became the world’s most cited author on the future of legal services. He has worked on artificial intelligence and the law since the 1980s.



Susskind will support the 56 Commonwealth countries in achieving sustainable development goal 16: ensuring equal access to justice for all by 2030, using artificial intelligence.

The Commonwealth international association of 56 member states is made up primarily of former territories of the British Empire. Australia is one such territory. <https://tinyurl.com/ytu3nb2b>

Re-trials put UAE justice on trial

Some 80-plus lawyers, academics and activists in the United Arab Emirates – who had been convicted in show national security trials mostly 10 years ago after calling for political reforms – were suddenly re-prosecuted and re-sentenced last month to new prison terms of from 10 years to life.

They had expected to be released from prison soon as, one by one, their sentences expired.

But, instead, UAE authorities accused the men of starting a terrorist organisation called the Justice and Dignity Committee. A court in Abu Dhabi sentenced 10 of them to an extra 10 to 15 years behind bars, and 43 others to life in prison.

The court dismissed the cases against 24 defendants, the Emirati state news agency said, and acquitted one of them.

The outcomes of the cases against the remaining defendants remained unclear.

“It is something that shocked everyone — for what?” said Ahmed Al Nuaimi, an Emirati dissident living in exile in London. “Just calling for democracy leads to life in prison?” he said. “It’s unacceptable and unimaginable.” He himself had been charged and tried in absentia in the case, and his brother, who is imprisoned in the Emirates, received a life sentence, he said.

“Life” in prison in the Emirates generally means a 25-year term. But for many of the detainees, who are in their 50s, 60s and older, there is little difference, relatives said.

The Emirates is a federation of seven sheikhdoms on the Persian Gulf. – NYT, <https://tinyurl.com/299fjdn7> behind paywall:

Added financial woes for anti-fluoride groups

Two groups opposing water fluoridation must pay about \$18,500 each after losing a court case against NZ's Hastings District Council.

The Fluoride Action Network and NZ Doctors Speaking Out with Science applied for an urgent injunction against the council in April. They were trying to stall the council's decision to reintroduce fluoride in the water supply for Hastings, Flaxmere, Havelock North, Bridge Pa and Pakipaki, in response to a government directive under the Health Act.

Decades of studies show that fluoride helps prevent tooth decay, and adding it to the nation's water supplies is endorsed by the NZ Parliament.

However, the anti-fluoridation groups argued that it was unlawful for the council to treat the water before another case considering water fluoridation in relation to the NZ Bill of Rights is heard by the Court of Appeal in 2025. <https://tinyurl.com/4h6czdfa>

Prisoners out early to avoid system collapse

The new Labour government will release thousands of prisoners in England and Wales after serving just 40% of their sentences to avoid "collapse of the criminal justice system" brought on by a prison overcrowding disaster, with prisons at 99% capacity for the past year.



Lord Chancellor and Justice Secretary, Shabana Mahmood (photo), said the situation threatens "a total breakdown of law and order" and the new release policy was "the only way to avert disaster".

She said that, if prisons ran out of cells, courts would be forced to delay jailing offenders and police unable to arrest dangerous criminals – a crisis that would

leave the public at risk. "If we fail to act now, we face the collapse of the criminal justice system. And a total breakdown of law and order," she said.

She also outlined plans to recruit more than 1000 extra trainee probation officers by March 2025, allowing for greater oversight and management of offenders once they leave prisons.

From September, the new release scheme is expected to allow several thousand prisoners to leave early. The measure is expected to be applied to prisoners serving sentences of under four years and will not apply to those convicted of violent, sexual or terrorism-related offences.

The previous Conservative government released more than 10,000 prisoners up to 70 days early, figures revealed. <https://tinyurl.com/34jmh25>

Children's rights locked into law

Children's rights are now fundamental to decision making in Scotland as their new UN Convention on the Rights of the Child (UNCRC) (Incorporation) Act comes into force.

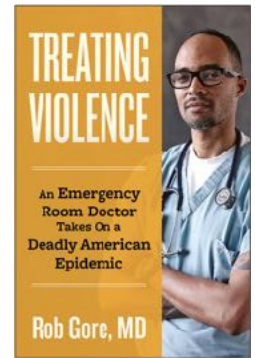
Public authorities must protect children's human rights in their decision-making and actions. Children, young people and their representatives can use the courts to enforce their rights.

The Scottish government will publish statutory guidance to support those with duties under the Act, and is also developing a Children's Rights Skills and Knowledge Framework to support public authorities to embed children's rights in public services. A child friendly model complaints process has been developed by the Scottish Public Services Ombudsman for public bodies under its jurisdiction. <https://tinyurl.com/3xzry7yv>



Books seek to explain US epidemic

Noted US health researcher, Prof Mary T Bassett of Harvard and Columbia Unis, has highlighted two books which cover the epidemic



seriously killing people in the Land of Blood and Gory. Writing in *The Lancet*, she says: "In 2022 about 48 000 people died of gun-related injuries in the USA. The same year, there were almost 25 000 homicides and nearly 80% of them resulted from guns. Gun violence is a leading cause of death nationally among young people aged up to 19 years. Young Black people in the USA make up a disproportionate share of these numbing statistics. A Black child or teen is 20 times more likely to have a firearm death than a young person who is white." https://en.wikipedia.org/wiki/Mary_T._Bassett

Counselling notes no longer admissible

Rape survivors' counselling notes will no longer be admissible as evidence in criminal trials from early next year in Ireland.

Irish Minister for Justice Helen McEntee said she wants to change the situation where notes from victims' counselling sessions can be sought by the Director of Public Prosecutions or defence teams in rape or sexual assault cases.

"I don't want this to be a feature in court cases," she told *The Irish Times*.

Preparatory work was nearing completion, she said, to enable legislative change to end the practice.

Among issues to be addressed is balancing the right to a fair trial and right to privacy.

Her move is in response to the 2023 annual report from the Dublin Rape Crisis Centre showing a 25% increase in calls to the 24-hour helpline in two years. <https://tinyurl.com/mu2dx75z>

International briefs

Unmasking protesters

Ireland's Minister for Justice Helen McEntee is leading a law change so gardai (Irish police) can order protesters to remove face coverings and masks. It was not acceptable that masked groups could attack anyone's home or family, she said, after two different masked groups had gathered on separate occasions outside the home of the Prime Minister of Ireland, Simon Harris. Garda Commissioner Drew Harris (not a relative) wants the new powers after attacks on politicians during the recent election campaign. <https://tinyurl.com/5n8zs3rw>

AI knowledge coming to the help of young brains

A new artificial intelligence tool is designed to help cut the number of jailed youths, according to a US Juvenile Law Center report. Lawyers, judges, and even people in jail can access the latest neuroscience and social science research at their own reading comprehension level, with the help of digital design engineering agency Monogram. The Georgia-based startup teamed up with the Center for Law, Brain & Behavior NeuroLaw Library at Massachusetts General Hospital, which is a Harvard Medical School teaching hospital, to create an AI-powered digital library. The resource is intended to democratise information on adolescent brains and behaviour in hopes that it will be a valuable resource for people caught up in, or working in, the juvenile justice system. <https://tinyurl.com/ypppedpr>

Hospital charge is enough to do your head in

Sultan Khan was treated at California's Napa State Hospital psychiatrically for three years after pleading not guilty by reason of insanity to a criminal charge after an assault. Two years after being released, he received a bill for \$1.15m. California has five state mental health hospitals caring for more than 5500 patients, most from the criminal justice system charged with or convicted of offences related to their serious mental illnesses. The chances of them paying the bills are remote, so the state is starting to write them off. <https://tinyurl.com/s3478shy>

Near half a million refused ballot paper

About 445,000 potential voters were refused a ballot paper in the recent British Election because they did not have the correct identification, polling suggests. Of 2047 people surveyed by the organisation, More In Common, 3.2% reported being turned away because they lacked the necessary ID. Extrapolated across the UK, this would equate to more than 850,000, according to the pollsters. The recent election was the first time in the UK that everyone wanting to vote in person had to show ID before receiving a ballot paper. <https://tinyurl.com/y6kz5pwj>

DATES

1 Aug, Brisbane: Role and Running of Commissions of Inquiry, Banco Court, George St Brisbane, 4.30–6.45pm. Former Qld CJ and Robodebt RC Catherine Holmes, Co-lead Protection of Children NT Margaret White, Reviewer of Culture & Accountability in Qld Public Sector, Prof Peter Coaldrake. <https://academyoflaw.org.au/event-5749910>

2-4 August, Sydney: National Justice Forum on Sexual Assault. Banco Court Supreme Court of NSW. Details: <https://conferences.com.au/2024ajja-program/> Keynote speaker: Former High Court judge Virginia Bell.

16-17 Aug, Queenstown NZ: Tasman Bar conference, including: '*Judicial responses to misconduct by prosecutors and the police*'. Chair: Justice Andru Isac, High Court of NZ; Madeleine Laracy - Dep Solicitor-General (Criminal), NZ; Ruth Shann SC - Parnell's Barristers, AU; Kirsten Edwards SC - Forbes Chambers, AU; Elizabeth Hall - Pipitea Chambers, NZ <https://na.eventscloud.com/website/68724/programme-1/>

16-19 Oct, Fremantle: Nat. Conference, Australian Lawyers Alliance. Esplanade Hotel. Details: <https://tinyurl.com/muffmazzp>

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

2025:

February, Hobart (postponed from Sept 2024): '*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/>

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

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 September 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 28 July 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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