

Election candidates should address the national challenges for law and ‘justice’

There’s a federal election coming up before mid-year: what do citizens want from the political parties?

What we don’t need is a public ‘law-and-order’ auction of who can appear to be the toughest on crime: longer sentences, lower age of criminal responsibility and jailing for undeveloped kids, more police unaccountably stunning, shooting and bashing citizens, and a federal government unwilling to tackle the big problems – elephants in the room stuff – that continue to blight the nation.

Civil liberties and human rights advocates believe it is time to reverse the decades-long trend to centralising and expanding executive command, and to give more power back to the people.

1. Top of the want-list is a federal Human Rights Act

CLA had high hopes a principled Labor Party would honour its long-standing party platform commitment to give the people basic ‘bill of rights’ entitlements to a fair go as enjoyed by the citizens of NZ, Canada, the UK and the USA.

Instead, Labor under Anthony Albanese has merely “progressed” the notion of more people power by holding a parliamentary inquiry into our “human rights framework”. The committee, chaired by Labor MP Josh Burns and with prominent members including the late fellow Labor MP Peta Murphy (photo) and Independent Kylea Tink, recommended passing a Human Rights Act (HRA), as separately did the Australian Human Rights Commission, which even drafted a robust legal document, a Bill, ready to be voted on. CLA helped deliver the icing on the cake, as enacted in the ACT recently, the ‘No Rights Without Remedy’ model. Had a HRA with a right to remedy been in operation, Robodebt would never have cost the government nearly \$2 billion, not to mention lives lost to suicide and psychological trauma among citizens on a huge scale.



(Allied to the above, SA, Tasmania, NSW and the NT should also have state HRAs. WA, when it eventually gets more balance back into its parliamentary politics, will also be mature enough to have one, joining the ACT since 2004, Victoria since 2006 and Queensland since 2020. Some Australians have enjoyed rights protection for a total of 42 years, so we know HRAs can work in Australia without breaking the system).

2. Second highest priority for the rule of law in Australia is reform of the courts and evidence

From the High Court down, Australia’s legal system is anachronistic and functionally poor. Cases take too long, from magistrate first hearing all the way to HC appeals.

Governments throughout Australia do not allocate enough funds to properly allow timely legal judgements. Judges are not properly trained, and have no ongoing responsibility to stay on top of learning in their profession. Prosecution authorities scrape by on pittances, from public prosecution offices to segments within police responsible for prosecutions.

Wrongful convictions occur at alarming rates: 5-6% of the time in murder and like crimes, probably 8-10% for your average

crime. A criminal cases review scheme is needed desperately. Concurrently, basic sentencing needs reviewing: if rehabilitation is really the aim of imprisonment, are “lock ‘em away” sentences of decades in length without the chance of basic, further or even uni education of much use?

Together, the system – the Crown, DPPs, police – are constantly inadequate to deliver mandated disclosure of relevant documents needed by citizens in a timely manner to defend allegations of criminality. Forensic testing is in turmoil in places, state police forces are in charge of evidence-producing scientists, and the federal government has failed to set up a national regulatory authority.

There is also a need for a national-federal Judicial Commission to deal with complaints and allegations of misconduct, incompetence and/or incapacity against judges and magistrates. It is near impossible for such matters to be dealt with independently in the smaller jurisdictions.

There has never been a formal public inquiry into the state of justice in Australia...not one, in the century and a quarter existence of the federated but fractured strictures and structures of how Australia law works.

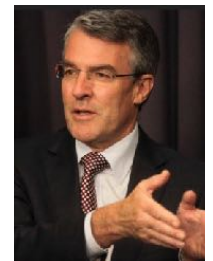
3. The inequity of how the law and culture treat Indigenous Australians must be rebalanced

From police officers in remote locations to Lord High Bureaucrats in state capital ivory towers, the legal system is skewed against Aboriginal and Torres Strait Islander Australians, particularly children.

As proven in a WA court this year, heads of government departments, agencies and institutions lie. They do so sometimes by a direct Trumpian fabrication, but also by obfuscation, deflection and omission.

When the top bureaucrats are operating in that manner, is it any wonder if lies and truth-denials permeate the system all the way through to jailers in juvenile jails and newly-sworn police officers in suburban stations and on postings in remote towns, mal-trained by stomach-enlarged sergeants of the old school?

No-one at any level, from federal Attorney-General Mark Dreyfus (photo) down, has tried to formally redress in both law and culture the overt and subtle, national racism that turns Australian society against its First Nations peoples.



A Royal Commission seeking to correct anomalies would probably be insufficient by itself to fix this problem. The entire structure of law affecting particularly Indigenous children and how they are treated by authorities has to change.

Racial discrimination laws try to balance the rights of Palestinian and Israeli peoples, the differences between Muslim, Christian and other religious sects, and the rightful ins and outs of straight, gay and in-between people. But nobody is trying to apply a fundamental, baseline fix to what has blighted Australia since the 1780s, the discriminatory white and ‘European’ attitudes of probably about 20 million-plus “Australians” to the first Australians.

Much work remains to be done. Australia has a ‘judgement’ system which is aged and festering, with unexamined blemishes, bunions and warts. The nation cannot boast a justice system super-fit for purpose.

Thorpe wants regular reports on prison deaths

Independent Senator Lidia Thorpe’s motion to have the Attorney-General provide quarterly reports on deaths in custody has successfully passed the Senate, despite government opposition.



Photo shows Senator Thorpe (centre) discussing a Human Rights Act for Australia with CLA President Dr Kristine Klugman (right) and National HRA Campaign Manager Chris Stamford.

The motion read: "That there be laid on the table by the minister representing the Attorney-General, statements which detail, by state and territory, the number of: deaths in custody, including breakdown by age groups and cause of death; ongoing coronial inquests; incidents of self-harm in custodial settings; and miscarriages and stillbirths in custodial settings."

It said the statements would be due "not later than the tenth day after the end of the preceding three-month period commencing 1 January, 1 April, 1 July, and 1 October".

The motion passed with the support of all non-government senators, but was rejected by Labor, with calls of "shame" heard coming from Senator Thorpe as the division was called.

Manager of Government Business in the Senate, Katy Gallagher, urged Senators not to vote for the bill, although she acknowledged the rates of incarcerated First Nations people, as well as deaths in custody, was "unacceptable".

"In 2023 the government established a national real time death in custody dashboard available on the Australian Institute of Criminology website," Senator Gallagher said.

"The dashboard provides information on all deaths occurring in the police and in prison custody as well as in youth detention, this important transparency measure is already in place.

"States and territories, not the Commonwealth, hold the information that Senator Thorpe is calling for in this motion.

"In addition, it is not a reasonable request, nor is it possible for the Attorney-General to table information about ongoing coronial inquests."

The Greens have successfully established a Senate inquiry into youth justice and detention systems across the country. <https://tinyurl.com/4cwh8jhu>

FOI access gets a boost from court

The Federal Court, deciding an appeal, has rejected the federal government's bid to refuse access to ministerial documents under FOI after their authors leave office.

Former Senator Rex Patrick of SA in 2020 had sought Morrison government documents relating to sports grants. The request has been the subject of appeals for four years, as first the Morrison government and then the Albanese government tried to ensure documents "owned" by taxpayers are kept from citizens.

Late in September 2024, a bench of three judges dismissed a federal government appeal against a single judge's ruling earlier 2024 in favour of Patrick. Federal (and probably state/territory) ministers can no longer assume their documents are automatically protected from FOI access after a change of government or change of minister.

The ruling should also end the common practice of ministers shredding documents in the last few days before they are physically obliged to hand over their offices.

Patrick, whose claim to be a "transparency warrior" is backed up by the number of his FOI requests, said the Federal Court

decision was "a massive win for ministerial transparency and accountability."

But the ruling came with some winding back of the original single judge's ruling...and it will now be interesting to see whether Attorney-General Dreyfus moves to change FOI law to protect basically the ruling duumvirate of Coalition and Labor Tweedledum and Tweedledee parties who are equally desirous of hiding their excesses and/or breaches of trust and principle from public view. <https://tinyurl.com/55d6a6ru>

Here come the 'Lambikins' – Rex Patrick plans to throw in his lot in with the Jacqui Lambie Network as a candidate for the next federal election. He was earlier aligned with the Nick Xenophon Team, SA Best, Centre Alliance and the Rex Patrick Team, serving as a Senator for SA from 2017 to 2022, after Xenophon stepped down to contest a House of Representatives seat, unsuccessfully.

It will be fascinating to see how former soldier Lambie, a sitting Senator from Tasmania, and former sailor-submariner and senator Patrick of SA get on as members of the 'Lambikins'.

Photo: Patrick and Lambie (party promo pic).



Committee lets more repressive laws through

The Parliamentary Joint Committee on Intelligence and Security (PJCIS*) has waved through the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024.

The bill amends and clarifies the intended operation of various crime-related laws, including:

- expressly authorises police, when executing search warrants, to seize digital assets, such as cryptocurrency;
- extends investigative and freezing powers under existing proceeds of crime laws to apply to digital currency exchanges;
- increases the value of the Commonwealth 'penalty unit' from \$313 to \$330;
- creates a position of Communications Security Coordinator in the Department of Home Affairs; and
- amends information-sharing provisions to ensure state-based oversight bodies for integrity agencies can access material that has been lawfully intercepted by the agencies they oversee. NOTE: the PJC for Human Rights does not agree with the PJCIS on this issue.

CLA calls it the SIC – Security and Intelligence Committee – because it always seems stronger on and more redolent of security than intelligence. Maybe it would be a candidate for the new AI?

'Basics' card denies human rights: committee

On 3 September 2024 the Parliamentary Joint Committee on Human Rights tabled its [Inquiry Report into Compulsory Income Management](#).

It received 30 public submissions, held two public hearings and took evidence from a wide range of stakeholders.

The committee considers there to be a considerable risk that compulsory income management – colloquially known as the

'cashless debit card' – impermissibly limits multiple human rights.

The committee's seven recommendations include that the government amend the *Social Security (Administration) Act 1999* to make income management voluntary, allow transitional provisions to ease the path to voluntary income management, and establish more pathways out of compulsory income management.

All documents are on the [inquiry homepage](#), including all submissions and the committee's report.

–*Scrutiny Update* 3 Sept 2024.

'TV news addicted to CCTV footage': Premier

Qld Premier Steven Miles last month claimed news bulletins were "addicted to CCTV footage of crime".

Their addiction hindered nuanced public discussions about youth crime in Queensland, he suggested in a podcast interview with Guardian journalist Amy Remeikis.

Miles claimed his government had a "real focus" on early intervention programs, but it was "harder to tell the story. In particular the TV media is kind of addicted to CCTV footage of crime. That's their bulletin now, and it's much harder, up against that, to tell a compelling story about that early intervention work, but we're doing it as well," Miles said. <https://tinyurl.com/yCy8sw3t>

...or addicted to embellished police news feeds?

But the real problem, CLA says, is that all news outlets from TV news to international journals, are addicted to the police feed of propaganda posing as "news".

The extent of the problem is best evidenced when there is a police shooting or bashing of an almost-certainly "innocent" citizen.

The first news is promulgated by police, who explain their officer(s) was forced to shoot the person with a gun, or a stun gun, had no other option, are now in counselling, and will remain in hospital (or at home), on full pay until "all evidence can be gathered".

Next out comes the police union, known as an "association of police officers", who say how traumatising it is for police in these circumstances, what a tough job they have, how they need at least 10% extra staffing (more police), etc. Such statements can't be based on "facts" or "evidence" because not even the police hierarchy has the real story at this instant-response stage.

The real story...?

Some six months or a year later, the story has died. There's no media-based follow-up because the media across the board is where the staffing boost is needed, at least 10%, preferably 100% or more.

Maybe two years or so later, a coroner will find that the pistol or stun gun shooting was "not appropriate in the circumstances", that other calming measures should have been used by the police in the first instance, that the police bosses should introduce better training for officers.

Ask Aboriginal Australians, or parents whose now-dead children had mental health problems, whether they have heard circumstances and facts like the tale above, many times over.

Police 'spin' warps truth and justice off-kilter

While Australia continues to allow police to investigate serious police behavioural questions, the quality and integrity of policing in Australia will never improve as it should.

When police are allowed – by the media, even if not supposedly by law – to place their version of events on the public agenda before anyone else, the truth will be the first casualty.

It is well past time Australia adopted a system whereby local police must remain silent as to commenting on any police-generated death or serious incident, beyond giving the basic factual information.

Any spin imposed by local or senior police should be subject to a charge in court by the Director of Public Prosecutions of "attempting to influence the court". Serious penalties, from a year in jail or longer, should penalise police who try to spin outcomes to personal or police force advantage.

Manipulation broader problem than just local

The more fundamental problem with media reporting is the lack of journalists employed by mainstream publications and online outlets in Australia, and elsewhere.

Today's journalist is much younger and less experienced than of old. They must produce Facebook and/or X versions to feed into their news organisation's output on top of the old-fashioned, detailed print report which used to be the sole demand on a journo's time and skill. And they are often responsible for shooting video and still photography at the same time...such multi-skilling not necessarily in their training.

With these demands, it's easier and much quicker to take a handout – which might include a prepared news story, photos and vision – from a police department with relatively plentiful and enormous public relations and equipment resources.

The result is that "local" news frequently comes imbued with police-speak propaganda. Overseas news likewise emanates often from handouts of well-resourced principal actors, like a state's armed forces, or big corporate communications departments, or from the chosen leanings of the major American TV and news entities.

The pumped-out material is seldom fact checked ("there isn't time"), and virtually never nuance-examined so proper perspective can provide an informed and balanced report.

Then later it is twisted and tailored by individual entities and actors with self-serving axes to grind to morph into "social media", the only news feed absorbed by masses of people.

News is no longer based on the facts as known. It is what the originating or perverting source wants you to know.

Auditor slams planning, response, deployment

Queensland's Auditor-General has found the Qld Police Service is not meeting current demand and has a short-term focus in addressing shifting community expectations, changes in technology, crime rates, population and economic uncertainty.

The audit further found there was a lack of strategic workforce planning and that the QPS had not evaluated its workforce needs and capabilities.

The report made five recommendations for the QPS around service planning and meeting demand for services, including:

- developing a robust model for forecasting demand for service,
- improving strategic workforce planning,
- improving responses to demand for service,
- improving the usefulness and transparency of its public performance reporting on responding to calls for service, and
- continuing to develop consistent rostering practices to improve how it deploys resources.

While this audit is critical of Qld Police, CLA believes probably exactly the same criticisms would apply to every police force in Australia. Police complaints about lack of resources hide an absence of astute planning and prioritising.

Upper House pushes government for HRA

Independent MP Meg Webb has convinced the Legislative Council to formally call on the govt to:

- start drafting a Tasmanian HRA immediately, and
- introduce it to parliament within the next three years.

Webb’s motion was tabled on 15 August. The motion highlights that the Tasmanian Law Reform Institute has twice recommended Tasmania adopt a HRA, in 2007 and in 2024.

The TLRI says that a Tasmanian HRA would “provide and promote specific, better and accessible protection of human rights”.

The ACT(2004), Victoria (2026) and Queensland (2020) already have human rights laws and therefore better protection for their citizens.

The ACT has recently enacted the first tranche of laws which will guarantee its HRA includes ‘No Rights Without Remedy’, the principle that people have mandated access to conciliation or, if that fails, a small claims tribunal for a legal ruling.



Police permanent snooping link invades privacy rights

Tasmania is almost entirely devoid of personal intrusion and surveillance laws protecting people’s privacy, CLA’s CEO Bill Rowlings told *ABC Radio Hobart’s* Lucy Breaden (photo) last month.

“There are no proper curbs on police use of Hobart Council CCTV cameras, nor monitoring or reporting regimes around how

often they do it, how the snooped material is used, and whether the allocation of police resources to watching ‘live’ TV of the streets is time, resources and cost effective,” he said.

Police in Hobart now have real-time access to footage from hundreds of city council CCTV cameras in a move labelled “intrusive and oppressive” by the Australian Privacy Foundation.

A CCTV partnership between Tasmania Police and the City of Hobart was announced last month but had operated secretly for about eight weeks when it was revealed.

TasPol have unfettered access to “view live, play back, record and download” footage from the council’s 330 camera views. The City of Hobart owns the cameras and associated data but police officers can access the footage at any time after a permanently “on” e-link was installed at Hobart police HQ, according to a *Guardian* report. <https://tinyurl.com/2e7ymyuu>

Throughout Australia, police are regularly accused of prying into personal police files of spouses, relatives and acquaintances to use data holdings against them.

Right To Information (called FOI elsewhere) requests have revealed about 30 complaints a year involving TasPol officers abusing their privileged access to police data. <https://tinyurl.com/3ehn5b82>

The Hobart permanent e-link takes the opportunity to follow a person on CCTV in real-time to a new level, using facial recognition technology.

The chair of the Australian Privacy Foundation, David Vaile, said 330 camera views was an “absolutely massive number. What’s the purpose? What’s the oversight and accountability mechanism? And why do they need it?” he said. “Is there an out-of-control rash of crime? Hobart is one of the safer cities.”

...and what was NOT announced

What TasPol did NOT reveal is that it has long-standing, secret plans to extend the “live” CCTV coverage of citizens throughout Tasmania, probably using facial recognition controlled by Artificial Intelligence.

The police plot was revealed, in research for this article and parliamentary questioning, in a Local Government Association (LGA) planning document. The Tasmanian govt has allocated \$4m to expand CCTV massively throughout the state’s local government councils. TasPol plans to link all – ALL – that “live” CCTV footage to a ‘big brother’ command and control centre in Hobart.

Thousands of cameras throughout Tasmania would be at the instant and “live” command of police.

LGA planning meetings are right now setting the priorities, in conjunction with police, for where the CCTV cameras are installed first.

Given TasPol control of CCTV feeds sits under the “anti-terrorism” badge, it is about 99.9% certain the local government, TasPol, and the Tasmanian Government have included facial recognition in the future secret plans they are yet to reveal to the state’s citizens.

TasPol has worst surveillance record in nation

Police in Tasmania have an awful track record with surveillance, the worst in the nation.

It includes years of damning Commonwealth Ombudsman comments on TasPol’s failure to report properly, as required by federal law.

There was also the Jeff Thompson fiasco, when police chose to secretly record his conversation with a criminal in Risdon jail.

But illegal, continuous recording by police went on for months because they failed to abide by the illegal warrant they had sworn, and remove the device.

In the Thompson case, TasPol’s permanent link to their HQ was capable of revealing and recording every conversation over about two months in a supposedly “secure and private” room at the jail used by lawyers to hold hundreds of confidential meetings and two-way briefings with their jailed or on-remand clients.

A long-term result of that TasPol surveillance abuse was the recent Bugg report on other inappropriate police use of surveillance devices in prisons.

“TasPol seem to have mastered the art of the beat-up announcements...but only close monitoring with at least three-monthly public reporting – including a cost benefit analysis and an examination of privacy issues – will tell whether this is better policing or just boosted media releasing to try to improve TasPol’s very poor image among Tasmanians,” CLA’s CEO Bill Rowlings said.

And, as noted above, neither the police, the state government or local government have revealed their full and future plans for secret surveillance of citizens.

From a special Hobart correspondent:

“Sadly, the Tasmanian Surveillance Devices legislation (*Police Powers (Surveillance Devices) Act 2006*) does not regulate various surveillance devices including optical surveillance devices, unlike several other jurisdictions.

“The surveillance devices legislation in Tasmania also excludes the operation of the relevant privacy legislation (the *Personal Information Protection Act 2004*) at s.5(6)(c).

“There are no robust guidelines nationally or locally to monitor whether and how police might abuse the use of AI and facial

recognition technology to track people and put them under surveillance. And Tasmania has no legislation actually regulating broader surveillance device use, like Victoria, NSW and SA have. Strangely, there is an offence relating to the use of listening devices in the Tasmanian *Listening Devices Act 1991*.”

Tasmania’s Law Reform Institute has been examining, and reporting on, the issue of privacy and surveillance laws but CLA argues that there is still significant room for improvement in Tasmania.

New mental health responses in the wings

The NSW Government has released a review of the NSW Police Force (NSWPF) response to mental health incidents in the community, developed by the NSW Police Force.

Police respond to more than 60,000 mental health incidents in the community every year, with the figure rising by around 10% annually since 2018.

In most cases there’s no criminal offence, no threat of violence and no weapon involved.

Last year, the NSWPF commissioned a review into its role and response to mental health incidents within the community, including:

- examining the demand on NSW Police in responding to mental health incidents;
- reviewing police officers’ training;
- defining the role of police in responding to mental health incidents;
- reviewing the current operational model;
- reviewing options for alternate response models.

Senior police travelled to the UK to consider its ‘Right Care, Right Person’ model which ensures the right agency – that being the agency that can help the most – responds to mental health related incidents. In incidents where a weapon or a direct threat to life is involved, police respond.

The NSW Police report notes that while police are best equipped to respond to incidents involving criminality and public order, health professionals are able to provide more appropriate care for people experiencing mental health crises.

It also acknowledges that police as the primary responder can potentially escalate a situation and that the high volume of police deployment to mental health related matters can also have flow on impacts to other community safety issues, limiting resources of police to respond to other matters.

The NSWPF and NSW Ministry of Health have set up a working group of senior officials to consider the findings of the report and to develop options for an alternative response. As well, NSW Police have newly established a Mental Health Command to strengthen engagement and enhance police interventions when responding to mental health incidents. <https://tinyurl.com/mke736nb>

Lia confuses kids’ rights with party ideology

The new Country Liberal Party’s government proposal to reduce the age of criminal responsibility to 10 will increase youth crime and see more Aboriginal children in jail in the NT, the federal Productivity Commission warned last month.



Chief Minister-on-training-wheels, Lia Finocchiaro (photo), has responded by calling critics “political commentators” bent on creating a “scare campaign”. The Australian Productivity Commission

is not considered a political body, being independent of governments, CLA notes.

The NT Labor government which was kicked out by voters at the August election raised the age of criminal responsibility to 12 in August 2023, in line with a recommendation of the Royal Commission into Youth Detention. But the Finocchiaro government is making 10-year-olds criminally responsible in one of the first acts of the new parliament.

The Productivity Commission is the federal government’s independent research and advisory body, which holds all Australian governments to annual public account in whether they meet their Closing the Gap commitments. In an article in *The Australian* in September, the PC said that “extensive global research now clearly shows that the younger a child is at their first contact with the criminal justice system, the greater their chances of future offending”.

“The apparent rationale by some governments for exacerbating already alarmingly high rates of Aboriginal and Torres Strait Islander children over-represented in custody, by reversing progress in increasing the age of criminal responsibility, is that it will increase community safety from youth crime,” the commissioner wrote. “In fact, the very opposite is true.”

Chief Minister Finocchiaro said she was “putting the rights of children first”. <https://tinyurl.com/3aucresx> (*NT Independent*, paywall).

The NT has about 120 children in juvenile jail (sentenced and/or on remand) at any time, with about 20 or more of them being under 14. Virtually all (98% at least) are Aboriginal kids. <https://tinyurl.com/4cepj5k9>

The UN Committee on the Rights of the Child recommends governments raise the age of criminal responsibility to 14. <https://tinyurl.com/s9s4pxvm> It also recommends no law should allow children under 16 to be legally jailed.

If only the NT Chief Minister *would* put the rights of children first, CLA says.

Police lodge human rights complaints

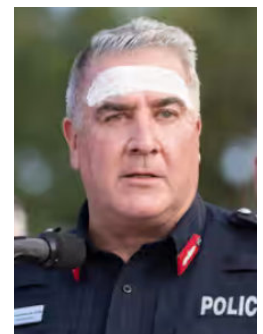
Three Aboriginal police officers have lodged a human rights complaint alleging racial vilification and unequal pay.

Sydney law firm Levitt Robinson has lodged a complaint against the NT government and Police Commissioner Michael Murphy with the Sydney-based Australian Human Rights Commission.

In a statement, the lawyers allege unnamed officers experienced racial vilification, derision and an unequal pay system as Aboriginal Community Police Officers (ACPOs) over 20 years.

ACPOs are uniformed sworn NT police officers who work closely with local Indigenous communities as part of their policing duties.

Commissioner Murphy (photo, at Garma) has reiterated his commitment to “cultural reform” within NT Police, after first making the promise at the Garma festival in August 2024, during a speech in which he also committed NT Police to observing human rights provisions.



The NT does not have a Human Rights Act – the ACT, Victoria and Queensland do – but it is open to the new Country Liberal Party government to bring the rights of its citizens in line with those in the other Australian territory, the ACT. <https://tinyurl.com/mvr8ecma>

'Cut the rhetoric, close the kids' jail': plea

A practising and senior NT lawyer has written an open letter to recently-appointed Attorney-General, Marie-Clare Boothby, urging her to backtrack on the "tough on crime" crackdown proposed by the Country Liberal Party in the lead-up to the August NT election.

He urged her to close the disgraced Don Dale kids jail and open the new, purpose-built facility slated to replace it as soon as possible. "Children are coming out of there more damaged, more traumatised, and more likely to offend: the (current) youth prison is crimogenic and inhumane," Clancy Dane wrote.

He urged the new government to abandon the idea of playing musical chairs with children's lives and futures by moving ongoing responsibility for jailed kids from Territory Families to Community Corrections. As well, he said, reverting to an earlier age of criminal responsibility as 10, down from the current 12, would not make the NT safer. The correct approach was to divert such children into intensive support.

And he pleaded with her to fix the backlog in NT courts. "The Local Court is in silent crisis," he wrote. "Justice is being denied to defendants, victims, their families, and the broader community alike.

"Enormous resources were spent less than a decade ago on a royal commission into the protection and detention of children in the NT. Valuable and hard lessons were learned. Let's not forget them," Dane wrote.

He is the principal lawyer of Territory Criminal Lawyers, which he says is the NT's largest specialist criminal law firm, and former vice president of the Criminal Lawyers Association of the NT. His appeal was carried in the *NT Independent* news outlet: <https://ntindependent.com.au/opinion-an-open-letter-to-the-attorney-general-about-youth-justice/> ...unusually, not behind a paywall.

Riches continues his ICAC 'gardening leave'

Michael Riches, the once-and-maybe-even-future NT Independent Commissioner Against Corruption, has had his "gardening leave" extended.

His original suspension in June until 22 September 2024, by the then-Labor govt, alleged "inappropriate behaviour" towards several female ICAC staffers. The investigation has been extended for an indefinite period, new Country Liberal Party Chief Minister Lia Finocchiaro said late in September.

The Office of the Public Employment Commissioner was investigating allegations by "several" female ICAC staff. The allegations emerged when ICAC Inspector Bruce McClintock was investigating Riches over his handling of domestic violence allegations against him made by his now ex-wife.

Then-Labor Chief Minister Eva Lawler said the OCPE would complete its investigation into the workplace allegations by 22 September, but the office has confirmed to the *NT Independent* that the three-month investigation "is continuing".

There was no explanation provided for why the investigation by an independent investigator hired by the OCPE was taking so long to complete. Riches would have been paid \$125,000 for the three months that he has not been in the job so far.



Inspector McClintock cleared Riches (photo) of "corrupt conduct" over domestic violence allegations, including a claimed \$20,000 pay-off he made to his then-wife to drop a domestic violence order application in May 2023.

Naomi Loudon is the acting ICAC. She is not conducting the investigation into Riches' behaviour because of a

declared, but unspecified, "conflict of interest".

– Christopher Walsh and David Wood, *NT Independent*, 24 Sept 2024 (behind paywall).

LATE NEWS: It has been revealed acting ICAC Loudon has appointed a "secret" judge to conduct the "secret" investigation into allegations that have been kept "secret". The judge is a "former Supreme Court judge from another jurisdiction", Loudon said. She did not say who the judge was, exactly what they would be doing, why it took so long to bring them in or when – if – the report would be released.

ACT signs on to OPCAT, formally

In late August, the ACT Legislative Assembly passed the *Monitoring of Places of Detention Bill 2024*.

The new law implements the ACT's international human rights obligations under the UN Optional Protocol to the Convention Against Torture (OPCAT). It sets up the functions, powers, privileges and immunities of the ACT National Preventive Mechanism (the NPM) to monitor and conduct oversight of places of detention (including both criminal facilities and civil facilities such as involuntary mental health treatment facilities).

NPM officers may visit places of detention, access documents and conduct private interviews with the aim of preventing torture and ill-treatment and protecting the human rights of those who have been deprived of liberty. They will try to identify any systemic issues and make reports and recommendations to the government for improvements.

The new law contains protections for people providing information to the NPM.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international agreement aimed at preventing torture and cruel, inhuman or degrading treatment or punishment. Under the agreement, State Parties (ie, jurisdictions in Australian law-speak) agree to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments.

Key features include:

- clear mandate and power to conduct independent visits and monitor all places of detention.
- access to information and the ability to conduct private interviews with detainees.
- protections against reprisals for those who cooperate with the NPM.
- strict confidentiality provisions to protect sensitive information, and
- the ability for the NPM to make reports and recommendations to relevant authorities with a view to strengthening human rights protections in places of detention. <https://tinyurl.com/mr3t5hkk>

All Australian jurisdictions, including federal, are meant to enact and abide by virtually identical legislation.

Rape cases fiasco continues

The Qld govt has said it will not commit extra funding to process DNA results from a backlog of 1000-plus rape cases in the state-run forensics laboratory.

Hundreds of sexual assault victims have been kept waiting more than a year so far for results from their alleged attacks.

Premier Stephen Miles said the government would continue to recruit more scientists and "explore" outsourcing samples to other labs. However, there will be no special attention to slash the backlog.

Two years after the state Labor government vowed to rebuild public trust in forensic services after the Sofronoff commission of inquiry found evidence had been mishandled for years, Lydia

Lynch reported ongoing problems in *The Australian* last month ('No new funding to clear rape-case backlog', 2 Sept 2024).

She revealed police were waiting on results from 1058 rape kits, 420 of which were submitted for testing more than a year ago. Almost half the 1058 cases have not had even an initial biological examination of screening for sperm and reporting the results to police.

ADF forensic scientist Kirsty Wright, who is a RAAF Squadron Leader reservist, first exposed Queensland's DNA lab disaster. She has called on the government to outsource more testing to

other labs. The lab can't keep up with new samples, implement recommendations from two major inquiries and conduct a separate historical review of 40,000 major crime cases...all tasks currently on the lab's must-do agenda.

Photo: Kirsty Wright (Credit: ADF Cpl Colin Dadd)



Auditor re-examining state's forensic problems

The state auditor is about to deliver a crucial report assessing whether Queensland agencies are delivering forensic services efficiently and effectively to support criminal investigations and prosecutions.

The report was to be tabled in state parliament by the end of September 2024.

Crucially, it is a follow-up analysis from the Queensland Audit Office's *Delivering forensic services* (Report 21: 2018–19). It is likely to indicate whether the Sofronoff forensic inquiry recommendations have been implemented, and whether they are working. Every indication is that the state of forensics in Qld is not progressing as envisaged more than five years ago.

As the audit office says, "Forensic services play a critical role in criminal investigations. Police, prosecutors, and the courts rely on forensic services to help them identify, exonerate, prosecute, and convict people suspected of committing crimes." <https://tinyurl.com/2s3n3cch>

'DNA lab failings inexcusable': Editorial

In an editorial, *The Australian* wrote:

"There are now 11,536 forensic samples from 3185 major crime cases – including murders and rapes – waiting for DNA results. The backlog in current cases means sexual assault kits that would typically be tested within two weeks are languishing untested for more than a year.

"Faced with delays, police are unable to properly do their job. There is a disincentive to move potential cases from investigation to prosecution. Suspects risk being held in custody on remand without a timely and proper process to prove their innocence or guilt.

"There are no excuses to justify the current shameful situation. Victims deserve justice and if Queensland cannot provide the service itself, it must send samples for analysis to other destinations that can do the job properly, and on time." the editorial said.

ODD SPOT: Double jeopardy in reverse

A man with an identical twin has been acquitted of burglary in the ACT Supreme Court because DNA swabs, as well as photographic evidence of an earring in the right ear and a moustache, could not exclude the possibility of his brother being the guilty person. Judge Louise Taylor ruled that 21-year-old Bronson Cross could not be convicted of committing offences at three homes, a McDonald's in Queanbeyan NSW and a petrol station. – 9 Sept 2024, *Canberra Times*, paywall.

Police hold 'lake' of dubious surveillance data

WA Police have already collected so much personal data on the state's citizens that even they – the police – are worried their surveillance database is too large, as it continues to mushroom weekly.

It is highly likely all police forces throughout Australia have the same problem, CLA says. One problem not highlighted so far is how questionable the data holdings are: very little of it is properly verified to strict legal standards.

WAPOL Commissioner Col Blanch has set up a committee to advise him how excessive the secret stash of private information is now, and how much more personal data should be added to it in future.

The ethics of the state's police using the "data lake" has already come under scrutiny in the Carnarvon child kidnap case, which was allegedly helped by existing data, and in the hunt for the shooter when Rebels bikie boss Nick Martin died in December 2020, Ben Harvey reported in *The West* last month – behind paywall, issue of 6 Sept 2024

BRIEFS

NACC probes six pollies

The National Anti-Corruption Commission last month announced it is investigating six politicians.

NACC says that, of 26 current corruption investigations, six concern current or former parliamentarians. Three more are focused on current or former parliamentary staff. The agency has not named any of them: they could be federal, state or territory MPs and staff.

Seven investigations are focused on the conduct of current or former senior executives in the public service, NACC said on its website, and eight involve law enforcement officials.

Some 494 matters referred to NACC since it began on 1 July 2023 are still awaiting assessment.

To 15 Sept 2024, NACC had received more than 500 new referrals in the 2023-2024 financial year – it excluded more than 400 of them because they didn't meet the threshold for further consideration. <https://tinyurl.com/tyr8ck45>

Capitalising the Bar: The Australian Bar Association will hold its national conference in the National Capital, Canberra, for the first time in 2025.

Progress depends on counter to Establishment

The Tas Integrity Commission was asked during Budget Estimates in parliament why investigations take so long. One case cited, an investigation into an MP, has taken 2 1/2 years, so far. Some reasons given were:

- lack of staffing
- legal challenge to its powers
- legislative changes needed.

Given it is 14 years old, you would think the TIC, long operating under board chair Greg Melick AO SC who is a doyen of the state and federal Establishment, could have sorted most of these issues out in nearly a decade and a half. Or, perhaps, the Establishment is the problem?

Charges up, cautions down for kids

In NSW, the youth diversion rate has fallen from 51.3% in 2022/23 to 46.8% in 2023/24, according to the Bureau of Crime Statistics and Research. The total number of legal actions against young people has remained stable, but their nature has changed.

From 2022/23 to 2023/24, youth court actions increased 10.0% (up 1060 additional court actions) while the number of cautions under the Young Offenders Act fell 10.5% (down 765 cautions)

and formal warnings fell 7.3% (down 225). Further info: Jackie Fitzgerald, Executive Director, NSW Bureau of Crime Statistics and Research E: bcsr@dcj.nsw.gov.au

LETTERS

One rule for the bosses in the Australian Public Service?

I do not understand why the 'Robodebt' senior public servants are not facing criminal charges. I have seen media comments that there has been no punishment as none is available for breaches of the Australian Public Service Code of Conduct. This is not true. I have acted for middle-ranking Commonwealth public servants who have been prosecuted to within an inch of their lives and also lost their jobs for what I considered to be trivial breaches. There's certainly not 93 of them and neither did anyone commit suicide. One rule for the bosses, another for the workers – Jennifer Saunders, solicitor, Canberra ACT.

Citizens become suspects

In Greek mythology, Panoptes was the giant with a hundred eyes. Port Arthur Prison famously featured a panopticon. Inmates believed they were being watched from the watchtower even when they were not. Made flesh, Panoptes now lives in Hobart but has sprouted 300 eyes. Once, I imagined we were all citizens; now I suppose we are all suspects. – Peter McQuillan, Mount Nelson, Tas.

CCTV "success"?

A safe corridor from North Hobart to the waterfront, exclaims the *Mercury's* (20/2/24, page 4) "Portal to boost crime..." article. A positive measure to enhance community safety, proclaims the Editorial at page 18. Safety? Absolute pish. At best, CCTV can



Officers examine live CCTV footage from Hobart's CBD.

only offer during or after the event footage of one being beaten, robbed or stabbed. How comforting? Maybe the artist Banksy could do a similar mural to that in the UK... "One (Nation) City under CCTV". Safety is having a policeman on the beat. – Max Watson, Sandy Bay, Tas.

Photo: Tas Police seem to think they can competently monitor Hobart City council's secret camera network on one blurry screen by observing 12 separate video feeds at a time. That way lies madness ...and the certainty of missing important "live" happenings.

CLA report for September 2024:

National:

Meeting with Natasha Blucher, Community Engagement Manager and Advisor to Sen David Pocock

Speakers Lecture Parliament House: Ms Niki Savva (question on federal Human Rights Act) 9 Sept

'Attended' IPAN webinar on AUKUS

Series of 100 or so emails to Labor Caucus MPs and academic-corporate-legal-etc people with whom we have met, providing them with newly-developed CLA papers on scoping the costs of a HRA for Australia, and international implications for Australia (reputation, trade, etc) of lack of a federal HRA

Strategy meeting with HRA campaign manager Chris Stamford began planning with major initiatives leading up to the next federal election.

SA

Dr Sarah Moulds said there was not much to report on the HRA4SA front. "We are working on a supplementary submission to the Social Development Committee. There is no clear end date for the SDC inquiry, and they are still very slowly taking evidence from witnesses.

"In SA, we are planning a couple of low key events for Human Rights Day on 10 December which we will upscale if the SDC reports before then."

Tas:

A new Rights Act waits in wings to help free up the island state's approaching gridlock. Tasmanian political power is on a knife edge in the new parliament. Five independents hold the balance of power in a 35-member Lower House. Liberals hold most seats but not a majority, so the prospects for a sudden election are high.

Groups who support a Human Rights Act for Tasmania – Labor, the Greens, some independents and influential Members of the Upper House – are keeping the light alive for introducing a rights-and-liberties based society, giving more power to the people under a 'No Rights Without Remedy' framework. Doing so would usurp the long and destructive Establishment political, bureaucratic and cultural neck-throttling hold on the state's prospects. CLA believes a HRA for Tasmania would free up Tasmania to start reaching for its undoubted but unrealised potential.

WA:

CLA is concerned that Corrections WA does not appear to keep statistics on proven and reported incidents of guard abuse and/or brutality, or on how many adult prisoners attempt/commit suicide, or of the health barometer of prisons in the state's jails. If such figures are not reported to the state's parliament, it is impossible for MPs to monitor what is happening behind slammed cell doors, or for the people to know what is being done, rightly or wrongly, in their name.

The problems with juvenile jail are at last – after decades of complaints by many people and organisations, including CLA – starting to be addressed because kids are suiciding more frequently.

But the problem is even worse in adult prisons. Within a year of being in prison, most inmates will have witnessed stabbings, rape, possibly inmate-on-inmate murder and major health collapses, like heart attack/failure. These occur because of over-crowding in filthy conditions.

As for supposed rehabilitation, which is meant to be what WA jails are for, there's a dire absence of resources for self-education. Prisoners are denied access to books, and to mental health support. Prison staff are simply indifferent to the extreme: they don't care, they don't want to help, and they don't want to know...which is why so many deaths are discovered "suddenly" in prisons.

The foundation of detention in WA is a "hide-away policy" of neglect and disrespect for human life, including the barest – "take 2 Panadol, come back in a few days if you still have the problems" – medical care under the current Labor government, which was similar under the previous Coalition incumbents.

CLA has received too many reports of the above being "the norm" in jails in WA to not believe what we are being told. Politicians are waking up that they have a problem when kids die in jail, inexplicably or by suicide. MPs will have a similar but bigger problem when the worsening prison system in the state starts to produce even more deaths in custody...which is why we need official figures regularly provided to the parliament and the people of WA.

INTERNATIONAL

Jury awards \$75m compensation for 10 years

A Chicago jury has awarded a wrongfully convicted man \$Aust. 75m for 10 years in jail.

Marcel Brown, 34, received the biggest miscarriage award in US history. He was sentenced to 35 years after police locked him in an interrogation room for 33 hours, interrogated him without respite, didn't feed him, stopped him sleeping and denied his repeated requests for a phone call. A federal jury said police coerced his statement and fabricated evidence.

The City of Chicago refused an offer to settle the case for about \$4.5m. <https://tinyurl.com/5d7ujf2w>

The largest Australian compensation has been \$7m for David Harold Eastman, after he had served 19 years wrongfully in jail, convicted of murdering AFP Assistant Commissioner Colin Winchester in 1989.

An inquiry in 2014 found Eastman's trial had been corrupted by "deeply flawed forensic evidence" and the failure by the ACT governments Office of the Public Prosecutor to fully disclose all relevant material to the defence, as prosecutors are obliged to do. <https://tinyurl.com/dd8s5pa9>

Time for a global human rights treaty for health

A group of scientists and lawyers is calling on the UN to initiate a global HR treaty so that people are treated more evenly and equitably worldwide in terms of their health.

Prime organiser is Eric Friedman of the O'Neill Institute for National and Global Health Law at Georgetown University in Washington DC, who represented another 12 similar viewpoints in his article in *The Lancet* medical journal of 21 Sept 2024.

They foresee global health equality, guaranteed by a human rights-like agreement, as the next stage following the UN Sustainable Development Goals (SDGs) which are meant to be achieved by 2030.

A rights-based treaty for health equity, known as the Framework Convention on Global Health, would bind together the sustainable development agenda and other initiatives, they say. <https://tinyurl.com/zux4navy>

Poor progress on cutting alcohol consumption

Writing in *The Lancet Oncology* journal, Talha Burki reports that the World Health Organisation (WHO) Regional Office for Europe has issued a warning that the region is failing to cut alcohol consumption quickly enough.

Two-thirds of adults in the WHO European region drink alcohol. About 11% have an alcohol use disorder: almost one in every 20 live with alcohol dependence (5.9%).

In Europe, alcohol is a leading cause of death with almost 800 000 every year. Every day, about 2200 people die from alcohol-related causes in the region. Average consumption works out at 9.2 litres of pure alcohol per year for every adult in the region. No other WHO region has greater per capita or total consumption of alcohol. <https://tinyurl.com/3a9v4t48>

WHO recommends: 1) increasing excise taxes on alcoholic beverages; 2) implementing comprehensive restrictions on alcohol marketing; and 3) reducing the availability of alcohol.

ODD SPOT: If the Australian tobacco tax rate of about \$2000/kg was applied to alcohol, a litre of whiskey at 40% alcohol by volume in Australia would be \$800 in tax alone, after the most recent tax increases. With a "tobacco rate" tax on petrol, a mere 50 litres of vehicle fuel would cost almost \$100,000 – that would "help" people stop driving their nasty polluting vehicles. Does anyone know why liquor, which causes more and wider suffering than tobacco – including domestic violence, assaults, etc – is taxed so disproportionately lowly in Australia and in the EU?

DATES

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

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: 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, 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. Details: E: pipsa2025@gmail.com

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

Election cycle for Australia:

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

NT: 26 August 2028

CLArion is the regular e-newsletter of Civil Liberties Australia Box 3080 Weston Creek ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or any other originating source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au) Closing date for this issue was 27 Sept 2024.

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