

**People will gather** on 26 January 2019 in Hobart's Parliamentary Gardens to commemorate the anniversary of the disappearance over that night a decade ago of Bob Chappell from the yacht Four Winds, moored in nearby Sandy Bay.

His wife, Sue Neill-Fraser has just passed her 10th Christmas in jail for murder despite there being no body, no murder weapon, no believable motive and nothing but a concocted detective's theory. CLA believes she is innocent.

Tasmanian police, the office of the director of public prosecutions and the Supreme Court of Tasmania have not been able yet to admit the errors of their ways and the core mistake of a jury inveigled by theatrical pseudoscience.

*RIGHT: Drawing by Sue portraying herself as a mouse at the mercy of the winds of the Tasmanian 'justice' system.*



## Bad year still produces some achievements

Some say it has been a bad year for civil liberties. And it has. But there have been a few bright spots.

In Queensland, we were one of the many groups which have helped push for a state human rights act: it is now tabled before the parliament.

Also in Queensland, abortion was decriminalised during the year;

CLA continued to lead the Tasmanian community in a push for a Human Rights Act in that state;

In WA, we alone have been responsible for keeping the need for a separate police complaints commission on the public agenda. Our efforts over many years against the serial injustices around proceeds of crime / asset confiscation laws is paying off, with a state inquiry under way and a national research project running out of the University of WA, to both of which we have contributed.

Working with Dr Bob Moles of SA, CLA is keeping the need for a 'Right To Appeal' law on the agendas of Victoria, NSW, Queensland, WA and the ACT. This law, first passed in SA in 2013, is enabling the formal request for a full court appeal by Sue Neil-Fraser, which is now dragging into its second year.

Nationally, CLA was prominent in achieving new laws against modern slavery. We have proposed adopting an innovative approach to help customers secure their rights against the big banks: we await the Royal Commission report. We have continued as one of the main voices in the long campaign to make governments live up to their model litigant obligations.

In the NT, a recent submission by CLA has put on the national agenda the need for medical help and checks for judges and magistrates as they near retirement age, which is the start of opening up the complex issue of how to assess how well courts are delivering justice.

CLA has made numerous inputs to religious discrimination inquiries with the ultimate national outcome in the balance, and also fought for public servants' rights to free speech (a court decision is eagerly awaited).

The new activity in the area of lessening the proceeds of crime legal injustices is a clear reminder that, sometimes, it takes years and years for the nub of an idea CLA has proposed to reach fruition. We planted lots of seeds in 2018, and it will be interesting to see if / when they bear fruit.

None of this work, mostly led by the CLA Board, would have been possible without the ongoing backing and support of CLA members. It takes courage and stick-to-it-ness to remain a strong civil liberties supporter when assaults of liberties and rights continue to come thickly and quickly from all sides. - Editor.

"With the world being in political turmoil, it is even more important for Australian citizens with a philosophy based on social justice to become involved in our fight for rights and protecting people's freedoms," CLA President Dr Kristine Klugman says.

## Aged Care RC runs late, loses original commissioner

The Aged Care Royal Commission is off to a shaky start, with one of the two appointed commissioners stepping down last month.

Former WA Supreme Court judge and before that WA prosecutor judge Joseph McGrath resigned for "personal family reasons". Ex-Australian Public Service Commissioner Lynelle Briggs remains, with recently retired Federal Court judge Richard Tracey (photo) being the replacement.



The Australian government claims the change will not affect the RC's timing but it is already late.

Prime Minister Scott Morrison promised that the RC would start in 2018, but its first directions hearing has been postponed from 7 December to 18 January. With hearings slated to begin in February, there will be little time for submissions once the full outline of the RC's workload is revealed publicly.

The ABC's Anne Connolly is reporting investigations are rising, and complaints are up nearly a third.

"There are now more than 80 nursing homes under sanction or found lacking by the regulator, the Aged Care Quality Agency. Complaints are up by 30% to the Aged Care Complaints Commissioner," she wrote.

A parliamentary committee report released last month recommended nursing homes should be forced to publish staffing ratios and qualifications. The industry has opposed doing so for years. <http://tinyurl.com/y8tl6ab6>

The Royal Commission will hold its preliminary hearing in Adelaide on Friday, 18 January 2019. This will be followed by hearings involving the appearance of witnesses in Adelaide in February and March, and in other locations around Australia in the following months. Details of upcoming hearings will be announced progressively during 2019.— media release, RC Aged Care 181217

## Institute critiques RC into Aged Care

The Australia Institute, one of the prime movers for a national inquiry, says:

"The Prime Minister and Attorney General's proposal comes up well short of best practice. In particular, the inability to take public complaints and make its own referrals; the lack of public hearings; the limited jurisdiction and insufficient funding means today's announcement is not good enough.

It needs:

- The guaranteed ability to hold public hearings;
- Sufficient funding to exercise its duties;
- The ability to take complaints directly from the public and make its own referrals; and
- A broad jurisdiction to ensure all corruption can be investigated. – AI media release 181213

## Greens push for action on rights rejected

The Coalition and the ALP recently voted against this motion: Senator McKim (Greens, Tas), moving:

1. The following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 1 July 2019:  
**The form and structure of a legislated Charter of Rights in Australia.**
2. That, in undertaking the inquiry, the committee consider:
  - a. the effectiveness of current laws and mechanisms for protecting human rights in Australia;
  - b. the operation and effectiveness of human rights legislation in Victoria and the ACT;
  - c. previous reviews and inquiries in Australia on the issue of human rights legislation;
  - d. the objectives of the legislation and rights to be protected;
  - e. how the legislation would apply to the making of laws, courts and tribunals, public authorities and other entities;
  - f. the implications of laws and decisions not being consistent with the legislation;
  - g. the implications of the legislation for existing statutory complaints processes; and
  - h. the functions and responsibilities under the legislation.

<https://parlwork.aph.gov.au/motions/9b3edd6d-10f8-e811-bc4b-005056a40008>

## ODD SPOT: Bell wants more Crown appeals

High Court judge Virginia Bell lobbed a hand grenade late last year into Australia's justice system over Crown appeals against sentences.

"The time may have come to recognise that Crown appeals against sentence should not be subject to the rigorous degree of restraint" which was promoted by a former High Court judge 40 years ago, she said.

Her reference was to the 1977 Griffiths case, in which then Chief Justice of the High Court – later Sir – Garfield Barwick firmly discouraged appeals against sentence by the Crown (<http://tinyurl.com/y93twkvv>)

Bell (photo) revealed in the speech that crime was on the rise... in the High Court, anyway.

In 1970, of the 87 matters determined by the High Court, only 3 were criminal cases. In 1990, 19% of the matters were criminal cases. And in the past decade, 23% of the matters have been criminal cases.

"The growth in sentencing appeals in the High Court is largely a reflection of the degree to which the sentencing of offenders



has been elevated into an arcane science. The court has not departed from its practice of refusing special leave to challenge a sentence on the ground of manifest excess or inadequacy," she said. – Bell J speech to the Aust and NSW Bar Assns conference 17 Nov 2018.

## Faith in Australian democracy plummets

Australians are among the most dissatisfied in the developed world with the state of their democracy and the prognosis is even worse: Generation X are the least satisfied at 31%. With the both sexes figure at 42%, women's dissatisfaction rating is 38%.

In 2007, 86% of people were satisfied with how Australian democracy was working.

A Pew Research Centre survey in 2017 found 70% of Canadians, Swiss, Dutch and German citizens were satisfied with their democracy. In that year, even in the wake of the Brexit referendum, UK citizens reported higher levels of satisfaction with democracy, 50%, as did US citizens at 46%.

Of developed nations surveyed, only the French (34%), Italians (31%), Spanish (25%) and Greeks (21%) were currently more dissatisfied than Australians.

Asked what the main problems were, Australian said that politicians "are not accountable for broken promises, that politicians "don't deal with the issues that really matter" and third that "big business has too much power" (or "unions have too much power" among Coalition voters).

## How 'Five Eyes' cooked the goose of Huawei

Under this headline, Chris Uhlmann and Angus Grigg last month revealed publicly that the spook agencies of Australia, NZ, the UK, USA and Canada have effectively cooked the commercial goose of Huawei, a private firm.

You can read the article here: <http://tinyurl.com/y75tvads>

The concerted attack on Chinese company Huawei was obvious over the past six months to any close observer of the media. Week after week, story after story tumbled out of gullible media outlets worldwide, in print, on radio and TV, and across social media.

The shadowy public relations campaign culminated in the arrest in Canada last month of Huawei's chief financial officer, Meng Wanzhou, daughter of Huawei's founder Ren Zhengfei. After some days in prison, she was granted bail as the US petitioned Canada's court system to extradite her to Washington on allegations that Huawei breached US-engendered sanctions on sales to Iran.

The Uhlmann-Grigg story, run in *Fairfax Media* in mid-December, is the clearest public warning that ghostly spook agencies now backdoor control the western world order. The story reveals the security agencies met in secret session, then decided that Huawei was dangerous – to them, and their control over the mushrooming cyber world.

Huawei was succeeding commercially in the e-comms manufacturing and networking worldwide. For 'Five Eyes' to regain the dominance its own companies have delivered for most of the past century, Huawei's business would have to be shut down, particularly anything to do with national phone and data networks.

So far, Australia, NZ and Britain have banned Huawei from their core e-comms systems. Stand by for further announcements, as pressure builds on vassal states of the West's Big Five to follow suit.

Huawei, with a sales base of a billion Chinese as a launch pad, has been too smart for its commercial competitors. Just watch sporting events to see how widespread Huawei sponsorship



and infiltration is: from Canberra Raiders rugby league team (photo: TripleM radio) in Australia to leading football teams in England, France, Spain, skiing bodies in Europe, and brand ambassadors everywhere.

The irony of the spook agencies' move is that, across the 20th century, they benefited from their home-grown companies running the world's communications systems: think of Bell-AT&T in the USA, STC in Britain, Ericsson in Europe, and many others who controlled the wires and the devices either end.

Now, when a Chinese company succeeds commercially, suddenly it is the five major western spy consortiums colluding to shut it down, because their nations can no longer compete commercially.

Dangerous times, when the world's commercial order is shaped by Five Eyes, over the heads of governments, Civil Liberties Australia believes. <http://tinyurl.com/y75tvads>

### AHRC claims successes

The Australian Human Rights Commission is claiming achievements over the past year:

- The national inquiry into sexual harassment has exposed the need for significant cultural reform;
- Elder abuse is firmly on the agenda of governments nationwide;
- The challenges faced by Aboriginal and Torres Strait Islander women and girls has been brought into sharp focus through the Wiyi Yani U Thangani (Women's Voices) project;
- The human rights impact of technology has become a significant focus; and
- The experience of violence around people with a disability in institutional settings has been highlighted. <http://tinyurl.com/y92rah2u>

### Commission excoriates Vets Affairs

The Productivity Commission has condemned Australia's care of defence force veterans, saying the system is "not fit for purpose" and should be rebuilt from the ground up.

A 700-page report recommends the most significant overhaul of the \$13.2 billion-a-year veterans' compensation and rehabilitation system in a generation, saying the current model often makes the problems of sick and injured soldiers worse.

The report found shockingly high rates of mental health issues among vets, with about one-in-three recently discharged ADF personnel reporting "high to very high psychological distress".

Productivity Commissioner Robert Fitzgerald said the system was an "outdated, legal and administrative maze" that created additional stress. "We think the time for tinkering with the system is over and it's time for more fundamental reform," Mr Fitzgerald said. <http://tinyurl.com/ydzd2srm>

### Suppressed! Your right to know

Civil Liberties Australia notes that Australians are being judicially prevented from being able to read locally about a noted person being convicted in December 2018 over sex offences.

This particular suppression order might cause a thorough overhaul of the discredited legal suppression process in Australia.

Like defamation law in Australia, most suppression orders are anachronistic. All overseas news outlets are free to report the current case, which is of international interest.

Though the court which made the suppression ruling is in Victoria, no Australian media outlet or anyone else in the nation is free to report what a jury unanimously decided, according to reports in America.

The stated reason that the conviction cannot be reported in Australia is that the person involved will face a further trial in March 2019. Publicity could affect a jury in that trial, the judge has decided.

But the trials involve separate incidents on separate occasions in separate locations. The person will be sentenced in February over the December conviction, before the second trial. Presumably, the sentence will have to be suppressed as well.

In most sex offence cases, a convicted offender is not permitted to go near children, must live separated by some distance from schools and the like, and is immediately recorded on a sex offender's register, which means travel is restricted as to travel.

This particular suppression order gives the appearance of being made as much because of the public profile of the person convicted as for reasons of the second trial.

It is for that reason – the public position of the convictee – that full reporting is more important than usual, CLA believes.

### Victoria's open courts aren't

Victoria introduced an Open Courts Act in 2013 which was meant to do just that: open up courts.

However, by 2017 the state had decided the new act needed review, and so appointed former Court of Appeal judge Frank Vincent to hold one.

He found that courts and tribunals needed much more 'education' about the principle of transparent justice, and more work was needed to ensure future orders were made only when necessary.

He recommended improvements to existing suppression laws, including:

- restricting suppression orders, so that they can't be made if other laws already prevent publication;
- allowing adult victims of sexual assault or family violence to disclose their identity after the offender has been convicted – including where they were abused as a child;
- requiring courts and tribunals to provide written reasons for making a suppression order;
- treating all suppression orders as 'interim orders' for the first five days, so that interested parties, including the media, can make submissions against the need for the order;
- allowing previous relevant convictions of youth offenders to be reported if the person continued to engage in serious offending as an adult;
- improving judges' understanding of suppression order laws with new programs and materials developed by the Judicial College of Victoria; and
- creating a central, publicly accessible register of suppression orders by Victorian courts and tribunals.

The Andrews government is said to support in full or in principle 17 of 18 recommendations, and one recommendation is under further consideration. <http://tinyurl.com/y8flgh59>

At least two of the above dot points appear to have been breached by the latest suppression order. It's time for the Victorian government to act, as this case proves, CLA says.

## Review to deliver after the donkey has bolted

Now that the Australian government – with Labor support – has passed draconian encryption laws, it will consider “arrangements for the protection and management of identity information in Australia”.

Some people think the government's approach is putting the cart before the donkey.

A review led by former Attorney-General department secretary Roger Wilkins and Prof David Lacey, a private identity crime victims advocate, is due to report “by the end of 2018”.

The Minister for Home Affairs Peter Dutton said that ID crime ‘costs more than \$2 billion annually’, with ID crime “one of the most common crimes in Australia”.

The Wilkins / Lacey review aims to work out how to:

- better protect Australians from the theft or misuse of their identity information,
  - help people to minimise and recover from the impacts of identity crime if they become victims,
  - provide better government services to individuals and business, and
  - achieve these objectives in ways that respect and promote peoples' privacy.
- media release, Minister Dutton <http://tinyurl.com/ya7kr4tq>

## Judge Street again runs foul of justice principle

A full bench of the federal court has again overturned a migration decision by the controversial circuit court judge Sandy Street, who failed to publish his reasons until after the time limit for an appeal had lapsed.

In May 2018 Street dismissed an Iraqi man's appeal against a negative refugee assessment, which had been upheld by the Immigration Assessment Authority (IAA).

He upheld the original decision and gave his reasons in court, orally *ex tempore* (at the time) but then failed to publish them in written form despite requests from the man's lawyers. Multiple emails and calls to his associates (assistants) at Street's office went unanswered.

Because of this, the appellant's lawyers missed the deadline to lodge a notice of appeal, forcing them to seek an extension.

A full bench of the federal court recently granted the Iraqi asylum seeker an extension, based on the thwarted attempts to obtain the reasons in time, and set aside Street's decision. It ordered the IAA's ruling be quashed and the man's case be redetermined according to law. <http://tinyurl.com/y7toesc9>

Judge Street, the fourth generation of an eminent NSW judicial family, is a serial offender against what most people would consider justice. CLA first wrote up problems with his decisions in September 2015: see <https://www.cla.asn.au/News/willow-helps-hit-virgin-for-a-six/>

The situation with judge Street is a compelling argument for why judges and magistrates should be subject to the proposed national integrity process for performance of their duties (not for their legal judgements).

## Robo-debt scheme is a sham, barrister says

Centrelink's robo-debt recovery scheme is an "elaborate sham", says a prominent barrister who wants to challenge it in the Federal Court, *Fairfax Media* reported last month.

Gavin Silbert (photo), who retired as Victoria's chief crown prosecutor in March, has accused the Department of Human Services of ignoring its legal obligations and acting like a bully towards some of the nation's most vulnerable people.



A potential legal challenge could have significant implications for future enforcement of the robo-debt program, which is trying to recover up to \$4.5 billion in welfare

overpayments with more than 1.5 million "compliance interventions".

Mr Silbert became embroiled in the dispute when someone he knew was issued with a demand to repay a debt of \$10,230.97, which the department claimed was overpaid by Centrelink between 2010 and 2013.

He has provided pro bono advice and helped prepare correspondence to the department, in which he repeatedly asked for an explanation on how the debt was calculated.

However, the department's compliance branch has ignored nine letters between May and November 2018 that requested additional information, and has provided no proof of the debt. Last month, it made threats to impose interest charges on the original debt. <http://tinyurl.com/ybpbw58h>

CLA says the Centrelink premise is akin to that of many government departments and agencies: ‘we're right, you have to prove us wrong’. Mr Silbert's criticism could usefully be applied to the Department of Veterans' Affairs, the Department of Home Affairs, ASIO, the AFP and the Australian Tax Officer, for starters.

## Spies checked for literals only, when strategy and tactics should be questioned

Australia's spies tapped the phones of at least two ordinary people, their ‘inspector's’ latest report reveals.

On one occasion, an ASIO spook wrote down the wrong number; another time, they continued to tap calls after a number was disconnected and sold to an innocent party.

The breaches are disclosed in the 2018 annual report of the Inspector General of Intelligence and Security.

But what is not disclosed is that the IGIS has absolutely no power to investigate whether ASIO played by the rules of the work – who/what they spied on – that ASIO chose to do, or whether their strategic approach and day-to-day execution was reasonable, or not.

ASIO, like other Australian spook agencies, decide their own workload. They are literally out of control.

– <http://tinyurl.com/yazczp62> report by Sally Whyte in the *SMH*.

## ‘Old-firm’ MPs wave through reams of security legislation

Since 2014, federal parliament's intelligence and security committee has cooperated on 15 national security bills and agreed on 300 amendments to legislation that have subsequently been adopted by the government, Fergus Hunter reported in *Fairfax Media* last month.

“According to Labor, the failure to reach consensus on this legislation is the first time in over a decade that the committee has not reached a bipartisan agreement.” <http://tinyurl.com/ycdrt622>

The media item ran just before Labor caved in, allowing the government's latest draconian and irresponsible encryption legislation clear passage through parliament last month.

The real problem is how many laws now entangle Australians and their communications. We must be one of the most internally watched nations in the world, CLA believes.

Fifteen security laws in four years (plus 300 amendments) is an indictment on our 'old firm' MPs, who operate to a fear-based agenda created by the Five Eyes international spook organisation, made up of spies and the like from Australia, the US, the UK, NZ and Canada.

Who runs Australia? Is it a handful of MPs operating to instructions from the shadowy, grey ghost entity with five eyes?

Certainly it is not all the groups elected to parliament. The Parliamentary Joint Committee on Intelligence and Security has Coalition and Labor ONLY politicians as members: they won't allow an MP from any other party to join their elite puppet show.

## Hostages are regular business, Symon admits

Paul Symon, director-general of our foreign spooks, the Australian Secret Intelligence Service (ASIS), let a cat out of the bag in giving evidence before the Parliamentary Joint Committee on Intelligence and Security last month.

The occasion was a rushed – very rushed, see note below – new law to give ASIS operatives more powers to use force and weapons overseas, and to train for doing so in advance.

Senator Penny Wong (Labor, SA) asked a question about the circumstances in which the new powers in the Intelligence Services Amendment Bill 2018 would be needed. Mr Symon replied:

“In the last two and a half years in particular, hostage-taking – both in war-like zones and in non-war-like zones, like West Africa – has led to a situation where, should a benefactor be willing to pay for a hostage's release, the question then becomes who should give effect to that handover. And there have been occasions where government has looked to ASIS in a deniable way to effect that handover.”

So, here is the horse's mouth denying long-claimed government policy, that “we” never pay hostage takers or terrorists, and that “we” never get our hands dirty in negotiations or paid transfers of kidnapped people.

Being able to lie to the Australian people is a prime consideration for our security services and our government, as Mr Symon made clear:

“(T)here are scenarios where either the hostage, the hostage's family, (or) the government would like deniability as we go through the critical moment of a hostage recovery,” Mr Symon revealed.

NOTE: How rushed was this law? ASIS produced a draft of the new law on 20 November; drafts were batted back and forth within government over a week. The Bill hit the parliament on 29 November. On the same day, in the Senate, Defence Minister Senator Marise Payne referred the Bill to the PJCIS. On Monday 3 December, the PJCIS held a committee hearing. On 4 December, the PJCIS tabled its Advisory Report on the Intelligence Services Amendment Bill 2018. The Senate passed the Bill on 5 December.

So, when someone in the government says something can't be done quickly, they are telling lies about that, also. <http://tinyurl.com/ycvdvuw6>

## Police and lawyer-snitch corrupt legal system

The Victorian Government has announced a royal commission into the convictions of some of the state's most notorious criminals, including drug lord Tony Mokbel.

Premier Daniel Andrews made the announcement after it was revealed convictions could be in jeopardy after revelations their cases may have been compromised by a supergrass lawyer.

It was revealed last month that Victoria Police tried to stop the Director of Public Prosecutions from telling Mokbel and six of his associates that a supergrass lawyer was informing on them at the same time she was representing them in courts.

The police chief commissioner and the barrister tried to prevent disclosing the arrangement, arguing it would place her and her children at risk of harm and deter future informers coming forward.

Mr Andrews said the \$7.5 million inquiry would look at how many cases had been directly impacted and if any changes needed to be made to the management of informants to “ensure this can never happen again”.

The revelations were uncovered following the lifting of a series of court suppression orders on Monday, released jointly by the Court of Appeal, Supreme Court and High Court.

After a legal battle spanning more than four years, the *Herald Sun* revealed the Director of Public Prosecutions, Kerri Judd, would send out notifications to former clients of informer 3838. The lawyer was a registered informer from 2005 to 2009.

After the convictions of the seven men for serious crimes, a report prepared by corruption watchdog IBAC had recommended the DPP consider whether the barrister's conduct led to a miscarriage of justice in any of the cases. The 2015 report found “negligence of a high order” when it came to how police managed informers. <http://tinyurl.com/y8w8ht4p>

## We need to protect protest

The very act of protest is itself under siege in Australia, the Melbourne-based Human Rights Law Centre pointed out last month.

“In Tasmania, NSW and WA governments have in recent times proposed or introduced laws directed to curbing protest rights, known as ‘anti-protest laws’.” the HRLC said.

“Common elements of the laws are vague and ill-defined offences, excessive police powers, disproportionately harsh penalties, and the prioritisation of forestry and mining operations over the rights of individuals to access public land and protest.” <http://tinyurl.com/yc52bj73>

The HRLC outlined 10 principles “guiding how protest should and can be protected and regulated”:

1. Protest activities are protected by the Australian Constitution and international law.
2. Any regulation of protest must be limited to what is necessary and proportionate.
3. As far as possible, protesters should be able to choose how they protest.
4. Laws affecting protest should be drafted as clearly and carefully as possible.
5. Laws regulating protest should not rely on excessive police discretion, and where discretion is necessary it should be properly guided by the law.
6. Lawmakers and governments (including police) should take positive steps to promote freedoms of expression and assembly.
7. Notification procedures should facilitate, not restrict, peaceful protest.
8. Lawmakers and governments should not prohibit protest based on its message, except in narrow circumstances where that message causes harm to other people.

9. Other human rights of protesters must be respected, including privacy, equality and freedom from inhuman or degrading treatment.

10. The use of force by authorities should only occur in exceptional circumstances and as a last resort.

## CCC wants inquiry into 'justice' system, prisons

The use of excessive force, overcrowding and inappropriate relationships inside Queensland's prison system has put it at risk of "significant corruption", according to a report from the state's corruption watchdog.

The Crime and Corruption Commission (CCC) has released a scathing report into corrective services which details a string of systemic issues. It found excessive use of force, misuse of authority, introduction of contraband and inappropriate relationships are all evident in Queensland's prisons.

CCC Chairman Alan MacSporran took the issues a step further saying the entire criminal justice system needed to be overhauled. "It's not just about what happens in prisons because that's just where you accommodate people," he said.

"There's a much broader issue that needs to be addressed in effect, the entire criminal justice system, the sentencing region, the diversion programs...and methods to reduce recidivism."

Current figures show Queensland prisons are at 125% capacity — all but one of the men's prisons and about half of the women's prisons are running above capacity. <http://tinyurl.com/yc6lg6vv>

## Legal offices are 'poisonous workplaces'

"There is no doubt that the pressure placed on lawyers to compete with others over unrealistic billable hours creates a poisonous workplace," the former President of the Queensland Court of Appeal, Margaret McMurdo said recently.

She also said judicial bullying was the major stress issue in the lives of barristers.

McMurdo (photo) was giving the Tristan Jepson Memorial Fund — Minds Count 2018 Lecture in late November in the Banco Court, Brisbane.

"It is a significant contributor to so many young lawyers abandoning the profession; or worse, becoming mentally ill. But it persists in far too many legal practices where the economic, not to mention moral benefits of keeping well-trained, efficient, loyal staff is insufficiently valued.

"Instead, they prefer to constantly train a new wave of young cannon-fodder who leave, burned out and disillusioned after a few years, a practice which does not make good business sense."

She said that the Victorian Bar Association's recent health and safety report clearly demonstrated that it was judicial bullying which was the greatest negative stressor in the lives of its members.

And it was at Magistrates and County Court level that the problem was worst.

"There is no reason to think a similar survey of Queensland barristers would have a significantly different result. I certainly recall many unpleasant moments in court in my long ago years as a barrister and, consistent with the Victorian survey, generally speaking, my experience then was that the higher the court the more courteous the judge.



"Of course, most judicial officers, in Queensland and elsewhere, behave courteously in court and abhor the behaviour of those few colleagues who do not. The bullies, however, can cause much unnecessary angst to practitioners, litigants and other court users.

"There should be a transparent, judge controlled complaints system to deal with judicial bullying allegations and there should be judicial education on the topic," Margaret McMurdo said.

## Police accountability: Court win stops excessive and invasive police checks

In a significant decision, the District Court of NSW confirmed that NSW Police do not have the power to conduct 'bail compliance checks', without a court order.

'This is an important win which clarifies the powers of NSW Police officers to monitor compliance with bail conditions, particularly curfews. It also clarifies the powers of police to enter private property,' said Jonathon Hunyor, CEO of the Public Interest Advocacy Centre (PIAC).

The case, Dargin and Green v the State of NSW, arose from concerns that police had been conducting excessive and invasive bail compliance checks, including late at night and multiple times in a night, without any reason to believe that a person is not complying with their bail conditions.

PIAC represented a young Aboriginal couple subjected to bail compliance checks at their house 50 times over three months in 2014, mostly between 9pm and 2:15am. One of them, who was not on bail, was heavily pregnant and had her two-year-old child living at the property.

At least six times, the police visited twice in one night. At no time was the PIAC client found to have breached his bail...and the underlying criminal charges were later withdrawn. <http://tinyurl.com/ydbyfuvm>

## NSW takes action to help the aged

NSW will introduce an independent ageing and disability commissioner from 1 July, with powers to issue search warrants and trigger investigations.

NSW Premier Gladys x z said the commissioner would have sweeping powers to extend the work of the NSW ombudsmen.

"The commissioner will have a specific focus. He or she will have the resources and the ability to go into premises to actually ensure that if there are complaints — or if the commissioner themselves wants to start a formal investigation — they'll have those powers." <http://tinyurl.com/ybhjva27>

## ACT to get integrity commission

The ACT will have a new integrity commission (probably ACT Integrity Commission, ACTIC) from July 2019, covering politicians, public servants and government contractors.

ACTIC will emerge after more than two years of inquiries and political negotiations.

Across all Australian jurisdictions, only the Commonwealth government is yet to have or to commit to a centralised agency.

There will be a commissioner and chief executive with a government-determined budget of about \$8m a year, as well as about 10 staff, including a counsel assisting and an investigative team.

The federal government will have to agree to change the ACT's Self Government Act if ACT Policing is to come under ACTIC's jurisdiction: ACT Policing is a business arm of the AFP, and operates under a contract between the AFP and the ACT government. <http://tinyurl.com/yc48yobv>

## MPs may be on a high in Canberra, even if losing their seats

Canberra cannabis could be a salve for frustrated MPs with houses in the national capital if they lose their seat in the upcoming federal election.

Local Labor backbencher Michael Pettersson (photo) has introduced into the ACT Legislative Assembly a bill to remove the possession of cannabis under 50g as an offence and allow individuals to cultivate up to four plants. It is expected to become law this year, with support of Labor and the Greens.



Canberra residents will be able to legally cultivate four cannabis plants each, but not hydroponically or with artificial light. There is to be no limit on the total number of plants per household, so houses shared by three federal MPs could have 12 plants. And there's no limit on the size of each plant in the proposed bill.

Mr Pettersson said his bill aimed to reduce the reliance personal consumers have on the black market and its drug dealers by allowing people to cultivate four cannabis plants. <http://tinyurl.com/ycbgflnp>

## Govt tries to break youth crime cycle

The NT government is introducing a \$5 million *Back on Track* diversion program to break the Territory's cycle of youth crime.

Courts in Darwin, Alice Springs, Tennant Creek, Katherine and Nhulunbuy will get more sentencing and diversion options. The program will address at-risk behaviour, consequences and restitution, life skills and cultural connection, family capacity and responsibility, re-engagement with education, and training and employment opportunities with Territory businesses.

The new funding is on top of \$18.2m each year into youth diversion and alternatives to detention. The new programs, to operate from mid-2019, aim to:

- see young people repairing the harm their offending caused by working in the community;
- teach them skills to become productive; and
- involve them in victim conferencing and agreeing to restitution for their victims.

The program will target two age groups:

For 14-17 year olds, 60 at-risk Territorians a year will be kept out of the youth justice system with individual support and mentoring through training and employment.

For 8-13 years olds, the program will engage up to 25 young people a year engaging in bad behaviour that risks their entering the youth justice system. Focus will be on building family capacity and responsibility on them to re-engage with mainstream education.

"We need to make sure young people get back on the right track – not become lifelong criminals," the Minister for Territory Families, Dale Wakefield, said. – media release 181204

## Tasmanian police operate 'outside the law'

Tasmania's deputy chief magistrate has expressed concerns Tasmania Police is "operating outside the law" regarding their disclosure of evidence to those accused of crimes.

Magistrate Michael Daley made the comments during the case of a 51-year-old man charged with a drink-driving offence dating back to October last year.

Glenn William Haas was charged with driving a motor vehicle while exceeding the prescribed alcohol limit at Ocean Beach, Trial Harbour, on October 15, 2017.

He was due to enter a plea to the charge in the Magistrates Court in Hobart on Tuesday morning. But the court heard disclosure of evidence had yet to be made.

His lawyer Craig Rainbird told the court they were ready to proceed immediately but could not because police had indicated documents requested would not be disclosed until closer to the hearing date.

The magistrate said the "bizarre nature" of the police disclosure stance made him "shake his head" and ordered police provide defence with the information. "My view of the police disclosure system is that it operates outside the law," Magistrate Daley told the court.

Last month, Magistrate Daly also criticised the police practice of charging defendants a processing fee to be allowed to see the evidence against them.

Under the current system a defendant receives limited information from police without paying a fee. When more information, such as witness statements are requested, a one-off \$53.90 fee is charged by Tasmania Police unless the case is funded by Legal Aid. <http://tinyurl.com/y9f4rlq>

## ODD SPOT: 'Service' mindset needs adjusting

A friend had to visit Hobart Police station recently where a poster on the wall proclaimed that a \$53.90 fee was to be paid in CASH only and EXACT change was required. "We also asked for a copy of our statement made regarding 'our' stolen property and we were refused," the friend said.

## Discrimination duel engenders division

Bronwyn Williams and Isla MacGregor from the women's rights group, Women Speak Tasmania (WST), have lodged federal and state anti-discrimination complaints against a former Tasmanian anti-discrimination commissioner, Robin Banks.

They claim that Banks criticised WST by writing in an email that its opposition to transgender reforms was "hateful" and cautioned organisers, the Women's International League for Peace and Freedom, against allowing WST to speak at a forum last month. The forum was cancelled.

Banks supports transgender legislation passed by Tasmania's lower house that allows people to change their official gender by a simple statutory declaration. Williams and MacGregor believe the proposed law would threaten women's services and safe places.

In a complaint to Equal Opportunity Tasmania — which Banks previously headed — they accuse her of "no platforming" them. – *The Australian* 181213.

Note: Isla MacGregor is a former member of CLA.

## Australian briefs

**Cops AND robbers:** NSW Police have found a way to move music festivals that they don't like to interstate venues: they just impose an exorbitant charge for over-staffing of police to attend, which forces organisers to relocate elsewhere. In a recent case, organisers were quoted \$16,000 for police attendance originally, then the quote was suddenly upped to \$200,00 for 56 police to attend, about 15 times the usual number at the previous five festivals at the same venue. <http://tinyurl.com/y9uqcqty>

**NT gets its own corruption body:** The NT now has an independent body responsible for receiving, identifying and investigating reports of corruption and misconduct by government, public bodies and public officers and anyone receiving government money, including contractors and grant recipients. The NT ICAC can investigate MLAs, courts,

tribunals, local government councils and independent officers, and can do so retrospectively. ICAC Commissioner is Kenneth Fleming; Bruce McClintock is the ICAC Inspector.

### From dogs to sport to MLC

**again:** In the December 2018 issue of *CLArion*, we gave the wrong example of the job that reported 'whisperer' of preference voting, Glen Druery, allegedly said that he would ensure that then-Member of the the Victorian Legislative Assembly, Fiona Patten, would NOT be elected to was the position of "dog catcher". It should have been "to a netball team". A reporter made the error. PS: Patten (photo) won re-election to the upper house: perhaps Druery might join a men's netball team? (Note: Patten is a CLA member).



**Crime down, family violence up:** Overall crime rates are down in Victoria over the 12 months to the end of September 2018, but the rate of family offences is rising. Recorded offences dropped 1.6% to 508,597 over the year, the Crime Statistics Agency reported. But family violence, sexual offences and child abuse reported to police rose 3.5%, from 75,371 to 78,001. The overall crime rate dropped for the second year in a row, down 3.9% to 7862 offences per 100,000 Victorians, a four-year low. The figures put paid to Minister Peter Dutton's scaremongering comments about the dangers of eating out in Melbourne. <http://tinyurl.com/ybhqumnw>

### Surprise! Big business had been doing little business

**down!** Resource companies Anglo American and Peabody and Australia's biggest miner, BHP, will in future offer payment terms of within 30 days to all Australian small and medium enterprises. "This change will benefit up to 700 local businesses around Australia," Barnaby Joyce said. He chairs the Industry, Innovation, Science and Resources committee which tabled a report last month after an inquiry into why big business was screwing small local firms. "Mining companies have essentially been using regional businesses as a bank," Mr Joyce said, "(We have) an obligation to make sure that in the region where the wealth is extracted, the greatest benefit goes back to the people who live in the same area." – media release, ISSR committee 181203

**Legal incompetence frees man from prison:** The WA Court of Appeal freed a man last month who spent 11 months in prison for committing a sex crime. They quashed his conviction; he will not face another trial. The court ruled his defence counsel ran his case so badly that a miscarriage of justice had occurred. Steven Scott Jeffery was convicted in 2017 of a sex attack on a teenage girl, who told a court she had been touched inappropriately while she sat at a lunch table surrounded by adults and other children. But Mr Jeffery vehemently denied the offence had taken place – even after a jury convicted him of the crime, and he was jailed for three years. He appealed, partly on the basis his experienced lawyers had run his case incompetently. Three judges agreed, and they were critical of Mr Jeffery's former lawyers – solicitor Nick Scerri, and the trial practitioner, who the appeal court does not name but *PerthNow* reports is veteran barrister Tony Elliott, president of the Criminal Lawyers' Association of WA. <http://tinyurl.com/ybmo66g6>

## Members' letters:

### Ever-steepening slippery slope to police state

The craven acquiescence by Bill Shorten and Labor to the politics of fear in passing the Morrison/Dutton, deeply flawed, encryption bill is appalling. The probability of an Australian citizen being killed or injured in a terrorist attack is absolutely minuscule compared to the danger of death or injury in a motor vehicle accident, a domestic violence incident or even the bite of a venomous snake, and yet we take another step down the ever-steepening slippery slope to becoming a police state. – Reg Murray, Glen Iris, Victoria

### Australia rebukes China with a steal fist

The Australian government, a self-proclaimed champion of a rules-based international order, has called-on China to stop seeking a competitive advantage by stealing trade secrets & confidential business information from other nations ("Shocking, outrageous": US charges Chinese hackers for industrial-scale theft", Canberra Times, 21 December 2018). That's the same corrupt & hypocritical Australian government that used our intelligence services to steal the resources of East Timor to the benefit of an Australian company & that today is abusing its power in a cowardly & wicked attempt to destroy the lives of patriots Bernard Collaery & Witness "K", who dared to expose its criminal behaviour. – John Richardson, Wallagoot, NSW

### CLA report – main activities for December 2018

We had a quiet period in the lead up to the festive season, anticipating and receiving a rush of the usual invitations from parliamentary committees for us to work on submissions during their holidays. The MPs and parliamentary staff go off on six weeks' rest, while they purposely time the due closing dates for the submissions to their newly-begun public inquiries to be in late January.

This ensures that the voluntary sector, which makes many if not most of the submissions to key inquiries, is fully occupied over the time many, if not most, of the MPs are enjoying their fully-funded "research" trips around Australia and overseas to locations near ski resorts.

When CLA takes over the government, MPs will be required to work 48 weeks a year, five days a week, 9am-5pm, with four weeks holiday. Any time they spend in political party business, including attending community functions with the aim of ensuring their personal re-election, will not be counted as part of their paid work. Nor will any travel that is not with a group of MPs, and organised by the parliament on strictly parliamentary business. They'll get a car, but no drivers in their home state and in Canberra, and their excessive allowances, such as \$100,000 plus for mailouts, will be removed. Come the revolution!

During December, some CLA board members have been thinking about more effective use of board expertise, interests, capabilities and their available time, given everyone is a volunteer who gets no monetary reward. The outcome could be a set number of key projects, led individually by board members or ordinary members with appropriate special skills. The concept is in early stages: input and ideas from members would be welcome.

We also expect improved CLA communication with university students in the new 2019 term, and more options and possible course-related activities to engage them.

As CLA operates to a calendar year for our financial year, December is also a busy time for finalising financials and

preparing for formal annual reporting requirements, as well as the usual reports to members.

**WA report:** (from Director Margaret Howkins)

- 80 Liberty Tree cards and CLA bookmarks sent to WA members of CLA. Also, 25 CLA letters of invitation to WA 'people who clearly care' inviting them to join CLA, with a number of immediate positive responses.
- responded to letters from inmates at Acacia prison who are carrying out important rehabilitation work 'inside' with distressed fellow prisoners.
- spoke with two independent candidates preparing to represent 'Better Mental Health Care' in the approaching federal election.
- have received kind and encouraging letters and Xmas cards from a range of members and potential members. "I am overwhelmed and grateful to know people care deeply about civil liberties and human rights in WA," Margaret reports.

*Photo: Margaret Howkins with former WA CCL President, Brian Tennant AM.*



## CLA AGM notice

Members, please keep an eye out for emails alerting you to progress in the electronic annual general meeting (and in the post, for non-email members).

In accordance with CLA's Constitution, the 2019 'electronic annual general meeting' or eAGM of Civil Liberties Australia Inc will be held during February and March 2019 (3 Feb to 25 March). This year's eAGM involves the election of office bearers as the current two-year term expires with this eAGM. The eAGM will also consider any major notices of motion and, as required by regulation, vote on the annual reports of CLA. Members will receive a detailed notice by email or by post with this newsletter.

To vote you need to be financial as at 3 March. Your membership status at that date currently will be (current or expired). If expired it will need to be renewed before 3 March.

## Media:

- 'Carry on the flame of post-war resolve', *The Mercury*, Hobart: Director Richard Griggs explains how Tasmania has not finished the job started in 1948, despite a Tasmanian Law Reform Institute recommendation for a local human rights act to be brought in more than a decade ago. 181210
- Director Rajan Venkataraman authored a major, two-page Opinion piece on the 'colour' of the federal Cabinet in *The Mercury*, Hobart, on 181214. Photo below.
- Troop call out and encryption: CEO Bill Rowlings explains why these laws further erode our civil liberties to Paul Gregoire of Sydney Criminal Lawyers: <http://tinyurl.com/ybsbxgk5>



- Modern Slavery: CLA member Prof Felicity Gerry explains why the new Australian Act needs more teeth: <http://tinyurl.com/yc4t4rvq>

## Submissions lodged:

19 Nov 2018 (Federal, Venkataraman) Legislative exemptions that allow **faith-based** educational institutions to **discriminate** against students, teachers and staff. Senate Legal and Constitutional Affairs Committee

25 Nov 2018 (QLD, Griggs) **Human Rights Bill 2018** (This would be the third in Australia, after the ACT and Victoria)

30 Nov 2018 (WA, Coten) Independent **review** of the Criminal **Property Confiscation Act 2000** (WA)

14 Dec 2018 (NT, Rowlings) Justice Legislation Amendment Bill 2018 (**judges age limit** to 70 from 72)

## INTERNATIONAL

### Police want to predict your criminal intentions

UK police want to predict serious violent crime using artificial intelligence, *New Scientist* says.

People flagged by the system would be offered interventions, like counselling, to prevent crime.

The system, called the National Data Analytics Solution, uses a combination of artificial intelligence and statistics to try to assess the risk of someone committing or becoming a victim of gun or knife crime, as well as the likelihood of someone falling victim to modern slavery.

West Midlands Police is leading the project, aiming to produce a prototype by April 2019. Eight other police forces, including London's Metropolitan Police, are also involved.

The system would analyse all people already known to police and try to identify those who needed interventions most urgently, says Iain Donnelly, the police lead on the project. Similar predictive policing attempts are being made in the USA, the Netherlands and China, *New Scientist* reported. <http://tinyurl.com/ycdpy43y>

### ODD SPOT: New law can limit defendant rights

In some US states, including Florida, a version of "Marsy's Law" strives to limit the amount of time during which a defendant can appeal, including by allowing only five years to appeal a capital conviction. Yet more than 165 people have been exonerated from death row, with many coming only after years and years of appeals. In Florida alone, 28 people have been exonerated. Limiting time for appeal could very well result in innocent people being left in prison — and even executed. — excerpt from an ACLU article on the dangers of new state legislation, called Marsy's Law, which is purporting to give victim's "equal" rights, but is in fact limiting the rights of defendants. <http://tinyurl.com/yby4zm9q>

### Sentenced aged 16, ineligible for parole until 67

Cyntoia Brown was 16 when she was sentenced to life in prison in 2004 for killing a 43-year-old man who had solicited her for sex.

Now 30, she has appealed for clemency to the Tennessee governor. Advocates have drawn on the girl's tragic backstory and argued she was wronged by the legal system.

Last month, the Tennessee Supreme Court ruled that the now-30-year-old must serve at least 51 years before she's eligible for parole, but will review her bid for clemency. <http://tinyurl.com/y8yuxrjc>

## International briefs

**Cost of not educating girls in Africa:** The World Bank estimates the cost of incomplete girls education caused through child marriage for 12 African nations making up half the continent's population was \$86 billion in lost capital wealth. By comparison, the official development assistance for the entire continent was \$56 billion in 2016. Whereas 75% of girls worldwide complete lower secondary education, only 40% do so in Africa. Clearly, the African Union's aspirations mid-century of prosperity, inclusion, and development of women's potential, can only be realised if the education of girls is made an immediate priority. – editorial, *The Lancet*, 181201

**Knives help raise homicide rate to 131:** The highest number of knife and offensive weapon offences since 2010 were committed in England and Wales in the past year, official figures show. There were 21,381 knife and offensive weapon offences before the criminal justice system in the year ending September, the Ministry of Justice said. It represents the highest number of offences dealt with since the end of September 2010, when they hit 21,851. London's homicide rate reached its highest level in a decade with the tally at 131 deaths, the highest level since 2008, with three weeks left of 2018. The capital's total this year includes at least 75 stabbings and 13 shootings. <http://tinyurl.com/y9o9xqg7>

**Gun deaths reach nearly 40,000:** A steady rise in suicides involving firearms has pushed the rate of gun deaths in the US to its highest rate in more than 20 years, with almost 40,000 people killed in shootings in 2017, according to new figures from the Centers for Disease Control and Prevention. In 2017, 39,773 people in the US lost their lives at the point of a gun. When adjusted for age fluctuations, that represents a total of 12 deaths per 100,000 people – up from 10.1 in 2010 and the highest rate since 1996. <http://tinyurl.com/y6w67epy>

**'Forever prisoners' rot by the seaside:** Guantánamo Bay, the American "terrorist" prison on Cuba, once held more than 650 men: only 40 remain, some of whom have been nicknamed "forever prisoners". Donald Trump, who campaigned on a promise to keep the prison open and "load it up with some bad dudes", has shut down the state department office charged with negotiating detainee release. <http://tinyurl.com/yak7clrq>

## DATES:

**All 2019, World:** UN International Year of Indigenous Languages

**27 Feb-1 March, Tokyo, Japan:** 6th Asia Pacific regional forum biennial conference, International Bar Association: 'Unified Asia'. Details - email [minjae.kim@int-bar.org](mailto:minjae.kim@int-bar.org)

**2-3 March, Canberra:** Angry? Biased? Burned Out? 2019 annual conference of the National Judicial College will examine emotion and bias in the court room, including how judges engage emotionally with their work, the impact on them and how to alleviate impacts. <http://tinyurl.com/y8qufoaq>

**5-7 April, Alice Springs:** Language and the Law III, translators and people for whom English is not a first language. NT Supreme Court in Alice. Details: phone 0447 286 342 or email: [supremecourtlanguage.conference@nt.gov.au](mailto:supremecourtlanguage.conference@nt.gov.au) or

**Mid-2019, probably Sydney:** 'Free and Equal in Dignity and Rights: A national conversation on human rights', organised by the Australian Human Rights Commission. Details: <http://tinyurl.com/yanftqn3>

**25-27 June, Noumea:** 'Democracy, Sovereignty and Self-Determination in the Pacific Islands', at Uni of New Caledonia,

run by the Pacific Island Political Studies Association. Details: [kerryn.baker@anu.edu.au](mailto:kerryn.baker@anu.edu.au)

**5-10 July, Rhodes, Greece:** Hellenic Australian Lawyers Assn 2nd conference. Details: <http://tinyurl.com/yc4d6wxo>

**July:** International Bar conference, Singapore

**22-24 August, Queenstown NZ:** Aust & NZ Bar Assns joint conference. Info: Camilla Williams [events@austbar.asn.au](mailto:events@austbar.asn.au)

## 2022:

**10 May, Adelaide:** 50th anniversary of the death by drowning of law lecturer Dr George Ian Ogilvie Duncan, thrown into Torrens River by a group believed to be police officers. Led to SA enacting the first homosexual law reform act.

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*CLArion* is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER 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 the original source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au)

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## ELECTIONS:

NSW:	23 March 2019
Federal:	likely in May 2019
NT:	22 August 2020
ACT:	17 October 2020
Queensland:	31 October 2020
WA:	13 March 2021
Sth Australia:	19 March 2022
Tasmania:	in or before 2022 for MHAs
Victoria:	26 November 2022