

Criminal Lawyers Association of the Northern Territory (CLANT)

Sixteenth Biennial Conference June 2017

“Justice on the Sniff of an Oily Rag”

Papers and Presenters

THE HON WAYNE MARTIN AC
CHIEF JUSTICE OF WESTERN AUSTRALIA

“Unequal Justice for Indigenous Australians – An Inconvenient Truth”

Abstract: Chief Justice Martin (WA) will address the distinction between formal and substantively equal justice and, in that context, assess whether the courts, the legal profession and government justice agencies (particularly police and corrective services) are fulfilling the promise of justice for all. The Chief Justice will draw upon recent decisions of the High Court and the Court of Appeal (WA), and other recent cases concerning Indigenous Australians, including those affected by foetal alcohol spectrum disorder.



Bio: The Hon Wayne Martin was admitted to legal practice in Western Australia in 1977. In 1993 he was appointed Queen’s Counsel. At different times he has served as Chairman of the Law Reform Commission of WA and the Administrative Review Council, and as President of the Law Society of WA and the WA Bar Association. In 2006, he became the 13th Chief Justice of the Supreme Court of Western Australia. In 2012, the Chief Justice was recognised nationally when he was appointed a Companion in the General Division of the Order of Australia. The Chief Justice currently holds many positions as Chairman or Patron, and is also the Lieutenant Governor of Western Australia.

THE HON JUDITH KELLY SC
JUDGE , NT SUPREME COURT

“Criminal advocacy from the consumer’s perspective”

Bio: Judith Kelly was appointed as a Judge of the Supreme Court of the Northern Territory in 2009. Justice Kelly came to the Territory in 1977, working as a secondary school teacher until 1982. She completed her law degree in Brisbane in 1985 and was admitted to practise in the Northern Territory on April 1, 1986. She began work for the Darwin office of Morris Fletcher & Cross, (later Philip & Mitaros, now Clayton Utz) where she became a partner. As a solicitor Judith Kelly had a commercial litigation practise with a focus on banking and insolvency, insurance, construction and admiralty law. After joining William Forster Chambers in 1996 she retained a commercial focus practising mainly in the areas of contract, partnership, building, property, tax and insolvency matters as well as some professional negligence, insurance, native title, administrative law, maritime, probate and family provision matters. She was appointed as a Senior Counsel in 2008.



DR JOHN LOWNDES
CHIEF JUDGE, NT LOCAL COURT

“Delivering Justice in the Lower Courts on the Sniff of an Oily Rag”

Abstract: Lower courts constituted by Magistrates’ Courts around Australia and the Local Court of the Northern Territory tend to be under-resourced and often the recipients of the bread crumbs from the “fiscal bread basket”. The lower courts are often left to administer justice “on the sniff of an oily rag”. The purpose of this paper is to stress the imperative for all courts, and in particular the lower courts, to be provided with adequate resources - human, material and financial - so that they can properly perform their functions, and operate effectively without any undue constraints which may hamper their institutional judicial independence.



Bio: John Lowndes was appointed a magistrate of the Northern Territory in 1990. In April 2013 he was appointed Deputy Chief Magistrate and four months later was appointed Chief Magistrate of the Northern Territory. Since May 2015 he has been the Chief Judge of the Local Court of the Northern Territory. He holds a number of tertiary qualifications: a combined Arts/Law degree, a Diploma in Jurisprudence and a Diploma in Criminology and a Masters of Law (Hons Class 1) from the University of Sydney. He also has a Doctor of Philosophy from Charles Darwin University. He is a former President of the Association of Australian Magistrates (AAM) and the current President of the Commonwealth Magistrates and Judges Association (CMJA).

DAVID MORTERS
SENIOR CROWN PROSECUTOR, NT

“ICAC – Suggestions for Structure”

Abstract: There have been several highly publicised incidents in recent times involving the activities of Northern Territory public servants and members of government which gave rise to a call for the establishment of corruption watchdog along the lines of those established in all other Australian jurisdictions with the exception of the Commonwealth. As a consequence the Giles government commissioned former Chief Justice Brian Martin to provide a report as to the possible structure and powers of such organisation. The recommendations in that report are presently being considered by the Gunner government with a view to establishing an ICAC in early 2018. The purpose of this paper is to provide suggestions about some of the powers and resources that should be invested in this body to enable it to achieve its essential objectives of transparency and accountability in the exercise of public functions.



Bio: David was first admitted in 1993 having obtained degrees in Economics and Law in Sydney. He undertook further postgraduate study in Accounting and in 2013 was awarded a Masters in Forensic Accounting. After a short period of employment post admission in private practice he took up a position as the national fraud manager for an insurance company. In 1999 he moved to Canberra and commenced employment as a prosecutor at the ACT DPP. In addition he has prosecuted in NSW, Queensland and now the Northern Territory. In Queensland he managed the central region which serviced District and Supreme courts in Rockhampton, Mackay, Gladstone, Emerald and Long Reach. In October 2011 he commenced with NT DPP. He predominantly conduct complicated trials in the NT Supreme Court and appears on appeals in the NT CCA. He has developed an interest in the management and conduct of fraud prosecutions and has performed the role of adviser to police fraud investigators in



both the ACT and NT. He prosecutes most of the indictable frauds in the NT including most recently frauds committed against the government pensioner concession scheme and corruption allegations against a former Ministerial chief of staff. In his spare time he is a keen cyclist, surfer and snow skier.

PRISCILLA COLLINS, SAM BOWDEN & WENDY MORTON
CEO NAAJA, FREELANCER & EXECUTIVE DIRECTOR NTCOSS

“Making Justice Work”

Abstract: Making Justice Work (MJW) is a Northern Territory campaign to do just that, make justice work for Territorians. We stand on the shoulders of previous NT law reform campaigns such as Territorians for Effective Sentencing. NT law reformers come in all shapes and sizes, have wined and dined king makers and committed acts of civil disobedience (including handing themselves in to police after committing property crimes like stealing pencils from NTU!), all in the name of a fairer justice system. We will share stories of where we didn't quite hit the mark and the actions we reckon made MJW soar.



Bio: Priscilla Collins is Eastern Arrernte from Central Australia and mother of 6 children. She is the CEO of the North Australian Aboriginal Justice Agency (NAAJA) and the Deputy Chairperson of National ATSILS. Cilla is committed to law and justice reforms towards gaining justice for Indigenous people and keeping their culture, tradition and law strong. Before NAAJA, Cilla was the CEO of the CAAMA Group, the largest Indigenous owned and operated multimedia organisation in Australia. She has held positions on the NT Indigenous Affairs Advisory Council and was a Board Director on Indigenous Business Australia, Chairperson of the Indigenous Australian Indigenous Communications Association, Board Director of Imparja Television, National Indigenous Television Service and Indigenous Screen Australia. In 2011 Cilla won Northern Territory Businesswoman of the year for the community and government sector. In 2014 she was featured in a book called “The Climb” written by Geraldine Doogue and recognised as one of the top 14 women leaders in Australia.

Bio: Sam Bowden has been a freelancer in the Darwin community sector since 2014. Current projects include coordinating the Making Justice Work campaign and the Darwin Homelessness Response Group. From 2009 to 2014 Sam was Coordinator of Ruby Gaea Darwin Centre Against Sexual Violence. Prior to her role at Ruby Gaea, Sam was a frontline worker for disability, HIV, youth and women's services in Darwin and Sydney. Sam has been involved in national and Territory law and policy reform and awareness raising campaigns for issues spanning violence against women, HIV, abortion and LGBTI people's rights. Sam is a founding member of the Darwin based LGBTIQ rights group, Rainbow Territory. She is from the south coast of NSW and has lived in Darwin since 2005, she holds a Bachelor of Arts and a Master of International Public Health.

Bio: Wendy Morton is the Executive Director for Northern Territory Council of Social Service (NTCOSS) and has been in this role with the organisation since 2005. She is primarily involved in law reform campaigns, policy development, community education and sector development. Prior to that role Wendy spent 8 years as the Disability Discrimination Advocate and Outreach Worker at Darwin Community Legal Service. She has a Bachelor of Arts and a Graduate Diploma in Community Welfare. NTCOSS is the peak body of the social and community not for profit sector in the NT and an advocate for those who are most disadvantaged. The membership of NTCOSS includes very small NGO's to the large organisations, those working in urban and remote locations and both Aboriginal and non-Aboriginal organisations.



BRENDAN MURRAY
VIC

"An Applied Rights Based Approach to Education for Children in Custody"

Abstract: It is in the minds of young (and older) offenders that education must seek to develop individual and collective defences against re-offending. However, before one can consider the development of the mind towards a more peaceful operation amongst society, basic rights must be upheld within custody and within areas of justice so that the endeavour of striving towards a more peaceful society can be pursued. If these rights are upheld and strengthened within youth justice facilities, then educational transformation becomes possible, and the defences against re-offending can be constructed in the minds of children held in custody.



Bio: Brendan Murray has recently become an Education Consultant after a fallout with the Victorian Government over the treatment and punishment of children detained in an adult prison. His particular expertise is in the area of education for children detained in custody. Brendan Murray was the Executive Principal of Parkville College. Brendan has worked within the welfare and education sectors for approximately 25 years and he believes that the protection and upholding of basic rights of human beings leads to a safer and more harmonious society. Brendan holds a Masters Degree in Education. He has been awarded the Victorian Secondary Teacher of the Year Award, a federal government Closing the Gap Award and a Distinguished Alumni Award from Monash University.

LEANNE LIDDLE
DIRECTOR, ATSI JUSTICE UNIT AGD

"Delivering on the ATSI Justice Agreement"

Abstract: The NTG has established an Aboriginal and Torres Strait Islander (ATSI) Justice Agreement to deliver better justice outcomes for ATSI Territorians. In close collaboration with the ATSI community, expert-driven evidence-based strategies are being developed to; 1) address the high levels of ATSI people incarceration and assist in the reduction of recidivism in the NT Justice system and 2) provide a framework for Justice agencies and the ATSI community to work in partnership to address the complex issues that result in the current levels of disadvantage of ATSI people. This presentation will highlight the process engaged, as well as identify some of the challenges we as Territorians face to deliver on the agreement.



Bio: Leanne is an Arrernte woman born and raised in Alice Springs. Leanne has qualifications in Science, Law and Management, but she believes her most important and valuable knowledge was from her grandmother and great-grandmother who taught her traditional land management skills including the use of fire. Leanne has served in senior public servant roles for years, as well as being the first Aboriginal Policewoman in South Australia where she worked for 11 years as a Senior Constable. Leanne has worked for the UN in Geneva, New York and Paris and as a director for Bush Heritage Australia. She currently is the ATSI Justice Unit Director with AGD based in Darwin.



JENNA DENNISON
**COMMIT PROJECT MANAGER, CORRECTIONAL SERVICES, DEPARTMENT OF ATTORNEY-GENERAL
AND JUSTICE**

“HOPEFUL & COMMITTED: Swift, Certain and Fair Justice in the NT”

Abstract: It is 12 months since the COMMIT Program officially commenced in the NT. The COMMIT Program is based on the principles of ‘swift, certain and fair’ justice and is available to offenders who are sentenced to a suspended sentence of imprisonment. Probationers receive swift, predictable and fair sanctions for each breach of a condition of a suspended sentence with the ultimate aim of achieving behavioural change by sending a consistent message about personal responsibility and accountability. This paper looks at the development, implementation and future of the COMMIT Program, which indeed runs on the smell of an oily rag. It also addresses the expansion of the ‘swift, certain and fair’ justice model to other areas of the criminal justice system.



Bio: Jenna graduated from University of New South Wales with a Bachelor of Psychology (Honours) and later returned to complete a Juris Doctor. She moved to Darwin in 2012 and commenced with the Solicitor for the Northern Territory. In 2013 Jenna seconded to Correctional Services and has worked on a range of projects focusing on legislative and policy reform. These projects have included the Correctional Services Act 2014 and the development and implementation of ‘swift, certain and fair’ justice models for offenders in the NT.

JONATHAN HUNYOR
CEO, Public Interest Advocacy Centre

“The Unfit and the Impaired”

Abstract: This hypothetical will consider how the criminal justice system deals with risk and protection of the community for people with mental impairment and other risk factors, such as chronic addiction. A panel of eminent practitioners will grapple with the legal, ethical and practical issues that arise.



Bio: Jonathon Hunyor is the CEO of the Public Interest Advocacy Centre in Sydney. He has practised law for 20 years in NSW and the NT. From 2010-2016 he was the Principal Legal Officer at NAAJA and before that the Director of Legal Services at the Australian Human Rights Commission. He is a University Fellow at Charles Darwin University and in 2015 was Gorged by CLANT.



DR OLAV NIELSSEN
PSYCHIATRIST

“A comparison of the outcome of mentally ill offenders released from prison and those found not guilty due to mental illness and released from secure hospitals in New South Wales”

Abstract: There is a high level of community anxiety about the release of mentally ill offenders whose offences have been found to be due to the effects of severe mental illness, and who have been committed to secure hospitals (Forensic patients), especially those who have committed homicide offences. However, there is less concern about the potential for further offending of mentally ill people sentenced to terms of imprisonment for violent offences (Mentally ill offenders). This paper will look at a comparison of the outcome of Forensic Patients granted either conditional or unconditional release in NSW compared to the 8-10 year outcome of a cohort of people with psychotic illness found guilty of serious non-lethal violent offences in the years 2006 and 2007 and sentenced by the District Courts of NSW. The paper will address the conclusion that despite the differences in the samples, the forensic hospital system, which offers optimal treatment of psychotic illness, intensive rehabilitation, graded release to the community, intensive support around the time of release, and ongoing supervision of adherence to treatment and abstinence from drugs achieves far lower rates of recidivism than the standard post release care offered by the criminal justice system in NSW.



Bio: Dr Nielssen is a psychiatrist in private practice in Sydney, with appointments to St Vincents Hospital, and Sydney, New South Wales and Macquarie Universities. He conducts a weekly clinic at Matthew Talbot Hostel for the homeless. He was a member of the NSW Mental Health Review Tribunal for ten years up to 2016, and was a psychiatrist at Justice Health for fifteen years up to 2008.

ALISTAIR WYVILL SC & MELDA KAMIL ARIADNO
BARRISTER & PROFESSOR

“The enforcement of fishing laws in Indonesian and Australian waters – a comparative analysis”

Abstract: This session will examine the rules of international law which apply to the prosecution of foreign fishers in Indonesian and Australian waters and, in the light of those principles, compare the respective countries’ enforcement laws and policies.

Bio: Alistair Wyvill has practiced as a barrister for almost 30 years both in the Northern Territory and in the United Kingdom. He has acted for the defence in a large number of fishing prosecutions. He was senior counsel in the High Court appeal brought by a West Timorese fisherman convicted of being in possession of his fishing vessel in the Indonesia Exclusive Economic Zone above the Australian Continental Shelf: *R v Muslimin* (2010) 240 CLR 470. He recently successfully defended a fishing company in relation to charges in the Tasmanian Supreme Court connected with alleged fishing in the New Caledonian Exclusive Economic Zone.



Bio: Melda Kamil Ariadno Professor Ariadno is a Professor of Public International Law, Head of the International Office and Chairperson of the Center for International Law Studies at Universitas Indonesia, Jakarta. She is



the Editor in Chief of the Indonesian Journal of International Law. She has published extensively in both Indonesia and English, including in relation to the Law of the Sea and the regulation of fishing. She is the author of the text: *Indonesian Responsibility for High Seas Fisheries: A Legal Analysis*. She is currently researching Indonesian government policy in the handling of illegal fishing by foreign fishing vessels in the Indonesian Exclusive Economic Zone.

**CHARLIE ROZENCWAJG SM
MAGISTRATE, VIC**

“The threat to delivering quality justice in the era of modern pragmatism”

Bio:

- Graduate BA/LLB Monash Uni
- Articles with union firm JN Zigouras and Co
- Partner in groovy Carlton practice of Coates and Rozencwajg for 8 yrs
- Followed by 18 yrs at the Vic Bar
- Appointed magistrate in 2004
- Supervising magistrate in the criminal portfolio for last 10 yrs



**DAVID DAVIDSON
SENIOR STATE PROSECUTOR, WA**

“Crown Disclosure Best Practice”

Abstract: The topic will cover the ever changing more onerous disclosure requirements on the State (Crown) and defence for that matter. Covering recent Court of Appeal decisions in WA and around Australia. The topic will also cover the complexity of disclosure with increasing utilisation of forensic agencies and data analysis in serious criminal matters. Amongst all of this extra responsibility is the Government’s significant cut backs to all agencies.

Bio: David Davidson has a Bachelor of Science, Grad Dip in Education, Bachelor of Laws and Masters of Laws from the University of WA. David started off his legal career in a large law firm doing planning and commercial law. Then worked in general practice for 3 years as a defence criminal lawyer, family law and general commercial litigation. David then worked as a Principal Legal Officer at the Commonwealth Director of Public Prosecutions both in Perth and Canberra for almost 6 years. For the last 11 years David has worked at the State Director of Public Prosecutions as a Senior State Prosecutor and when called upon Practice Manager. David worked extensively for 3 years in the Kimberley as part of Kimberley Sex Abuse Taskforce. David is an active member of the Law Society of WA and is the Convenor of the Criminal Law Committee and Mental Health and Wellbeing Committee and has been published multiple times on various topics. David has pre-approval to commence his Doctor of Laws on Disclosure.



**SIMON OWER SC
BARRISTER, SA**

“Outlaw Motorcycle Gangs, Secret Intelligence and Character Cancellations of Visas under s 501 of the Migration Act”

Abstract: Section 501 of the Migration Act permits the Minister for Immigration to cancel a non-citizen’s visa on character grounds and may exercise the power personally rather than delegating it to a member of his department. Provisions of the Migration Act provide for certain information to be given to the Minister by a gazetted agency such as the Australian Crime Commission and which the Minister may not divulge to any other party. In 2013-2014, the Commonwealth government commenced using these provisions in a systemic way against non-citizens alleged to be members of outlaw motorcycle gangs. So far, the attempts at judicial review of these decisions have been only mildly successful, with those that have been upheld leading to the Minister immediately remaking the decision again. There is, however, a constitutional challenge on foot in the High Court to the relevant provisions (*Graham*), which has just been initiated. This paper will address: 1) The background and operation of the provisions 2) The grounds of review that have successfully been argued in relation to the decisions and 3) The scope of the constitutional challenge.



Bio: Simon practises in most areas of civil and commercial law, with an emphasis on commercial disputes, public and administrative law, and matters involving equity, trusts and deceased estates. Simon is also a Nationally Accredited Mediator. Simon commenced practice as a barrister in 2002 and was appointed senior counsel in 2016. He was Associate to the Honourable Justice Sackville of the Federal Court of Australia in 2000-2001. Simon has appeared as both lead and junior counsel in the High Court of Australia and various Full Courts and Courts of Appeal. He appears regularly in the Supreme Court of South Australia, the Federal Court of Australia and the Federal Circuit Court of Australia. In addition to his commercial practice, Simon also has a strong commitment to acting in human rights and pro bono matters, with a particular interest in migration law, environmental matters and criminal appeals.

**REX WILD QC
BARRISTER, NT**

“The CLANT Players: (un) Certain (verbal) Admissions, the Trials of John Bryan Kerr, Melbourne 1950”

Abstract: This is the 12th in a series of play readings presented to the CLANT Bali Conference by the CLANT players and Rex Wild. It is based on the three trials of John Bryan Kerr conducted in the Supreme Court of Victoria in 1950. He was charged, and eventually convicted, with the murder of Elizabeth Williams at Albert Park in December 1949. He served 12 years of his 20 year sentence, following the commutation of the then mandatory death sentence. At all times, from his arrest until his death in 2001, he denied his guilt - **except** in an unsigned handwritten statement made by the lead detective. This was Frederick *Bluey* Adam, a well known identity of the fifties and sixties. The play reading will dwell upon the nature of this document and Adam's part in the trial. Much of the material for the presentation comes from Gideon Haigh's excellent book on the subject, *Certain Admissions*, and permission to use it at the Conference has been gratefully received.



Bio: Rex Wild QC was admitted to practise in Victoria [1968] and the Northern Territory [1992]. He was a Solicitor in Victoria until 1973, and then a member of the Bar. He has been a member of the NT Bar from 1993. He was appointed Silk in 1991 [Vic] and 1996 [NT]. He was the Director of Public Prosecutions in the NT [1995 - 2006]. He remains a member of both Bars, but on *the Retired List*. He is a CLANT Life Member of CLANT.

DR THALIA ANTHONY
ASSOCIATE PROFESSOR OF LAW, UNIVERSITY OF TECHNOLOGY SYDNEY

“The Stories We Tell: Comparative Insights into Aboriginal Pre-Sentence Information”



Abstract: This paper will convey findings from research on Canadian *Gladue* Reports, which provide an avenue for First Nations communities to communicate issues in relation to offenders, their background and needs. *Gladue* Reports seek to improve the sentencing process by providing courts with a fuller set of information regarding the material facts relevant to an Indigenous offender and a broader set of community-based sentencing options. They aim to promote individualised justice for Indigenous offenders, inform condign sentences, and expand Indigenous voices in the sentencing process. Through interviews with judges and report writers, comparisons of standard pre-sentence reports with *Gladue* Reports, and analysis of judgments that

rely on *Gladue* Reports, this paper conveys how Indigenous storytelling can impact on the stories told by the judiciary in relation to the Indigenous offenders, and the impact it can have on sentences and sentencing outcomes.

Bio: Dr Thalia Anthony's expertise is in the areas of criminal law and procedure and Indigenous people and the law, with a particular specialisation in Indigenous criminalisation and Indigenous community justice mechanisms. Her research is grounded in legal history and understandings of the colonial legacy in legal institutions. She has developed new approaches to researching and understanding the role of the criminal law in governing Indigenous communities and how the state regulates Indigenous-based justice strategies. Her research is informed by fieldwork in Indigenous communities and partnerships with Indigenous legal organisations in Australia and overseas.

KATHLEEN DALY & ELENA MARCHETTI
PROFESSOR GRIFFITH UNIVERISTY & RESEARCH PROFESSOR UNIVERSITY OF NEWCASTLE

“Desistance and Indigenous Sentencing Courts”

Abstract: In recent years, the concept of desistance from crime has undergone significant change. From the 1970s onwards, the dominant approach to research and policy has centred on desistance *as an event*, defined as the absence of offending for a period of time and measured by criminal justice responses such as arrest or conviction. This mainstream method typically utilises quantitative measures to evaluate what types of interventions ‘work’ better than others to reduce re-offending. In the early 2000s, a second approach has emerged, one we term the ‘new desistance’ framework. It centres on desistance *as a process*, not an event. Rather than asking ‘what works’, it asks ‘*how change works*’, often drawing on interview or ethnographic studies of people’s everyday lives. In our paper, we first sketch the elements of the new desistance framework and show its promise in rendering a more holistic view of people’s efforts, often zigzag and faltering, to move away from crime and criminal justice capture. Then, we relate the new desistance framework to Australian Indigenous people we have interviewed to learn of their experiences as defendants in Indigenous and mainstream sentencing courts, within the broader social contexts of their lives. Finally, we consider the implications of our research for criminal court sentencing and mainstream analyses of re-offending.



Bio: Kathleen Daly Kathleen Daly is Professor of Criminology and Criminal Justice, Griffith University (Brisbane). Kathy's recent work is on conventional and innovative justice responses to sexual and violent victimisation in different contexts of violence; and on redress and reparation. Her book, *Redressing Institutional Abuse of Children* (2014, Palgrave Macmillan), was awarded the Christine M. Alder Book Prize from Australian and New Zealand Society of Criminology (ANZSOC). She is currently undertaking a comparative analysis of redress for historical institutional abuse in 20 countries. She has worked for many years with Professor Elena Marchetti on the practices and impact of Australian Indigenous sentencing courts. Fellow of the Academy of the Social Sciences in Australia, the American Society of Criminology, and ANZSOC, Kathy was past president of ANZSOC (2005-09) and received its Distinguished Criminologist award in 2015 (co-recipient with Professor Janet Chan).



Bio: Elena Marchetti is a Professor in the Griffith Law School, Griffith University, Australia. She is also the Deputy Chair of the Queensland Sentencing Advisory Council. Elena was awarded a four-year Australian Research Council Future Fellowship grant in 2014 to undertake research exploring how Indigenous-focused criminal justice programs can be more aptly evaluated to reflect the ethos of the programs. Prior to this, Elena was the lead Chief Investigator (with Professor Kathleen Daly and Dr Jackie Huggins) of a five-year Australian Research Council Discovery Projects Grant, for which she also received a five-year Australian Research Fellowship, to research the efficacy of Indigenous sentencing courts in sentencing partner violence offenders. Elena's other research interests include Indigenous and feminist critiques of justice processes, and access to justice for minority groups. She is the author of a number of articles, chapters and reports in the areas of Indigenous justice, and intersectional race and gender analyses of legal processes.



JEANETTE KERR
ACTING DEPUTY CEO, OPERATIONS FOR TERRITORY FAMILIES

"A descriptive analysis of the characteristics, seriousness and frequency of Aboriginal intimate partner violence in the Northern Territory, Australia: a strategy for targeting high harm cases"

Abstract: This research examined almost 62,000 cases of Intimate Partner Violence (IPV), between about 23,000 unique couples, reported to the Police in the Northern Territory of Australia (NT) over a five year period between 2009 and 2014. This study provides the first descriptive analysis of the characteristics, frequency and severity of IPV incidents reported to the NT Police and establishes a sound evidence-base for the articulation of government and police policy, strategy development and resource deployment.



Bio: Jeanette Kerr has served in the Territory for 28 years as a Police Officer. She has served in Katherine, Tennant Creek, Alice Springs and Darwin in a range of operational, criminal investigation and public safety roles. Jeanette reached the rank of Assistant Commissioner before taking up a position with Territory Families in 2016. Jeanette holds a number of degrees including a Master of Leadership and Management and in 2013, she was awarded a Wakefield Scholarship to attend Cambridge University (UK) and completed a Masters degree in Criminology.



PRISON SONGS

(Special lunchtime screening)

Prison Songs is a groundbreaking documentary that gives voice to Aboriginal and Torres Strait Islander people. Shot entirely behind bars, this funny yet achingly sad account of eventful lives is delivered via the musical performances of real inmates.



RORY PETTIT
SENIOR SOLICITOR, NAAJA

“Facebook detectives and dodgy identifications – challenges for s137”



Abstract: This paper discusses the ever-increasing incidents of investigations into (and in particular, identification of) those suspected of crimes by witnesses on social media. Often these will occur prior to Police involvement, and consistently raise the difficult question for courts of whether the resulting evidence should be admitted or excluded – usually under s137 – due to the real questions of prejudice and unreliability raised. In the context of social media identifications, courts have come to markedly different conclusions about the prejudicial nature of such evidence (compare *Bayley* to *Crawford*, cited below), and there remains a level of uncertainty about the direction in which the case law is headed. As a platform for discussion, the presenter will refer to a recent

voir dire hearing in the NTSC during which he argued for exclusion of a Facebook identification. The other relevant cases referred to are *Bayley v R* [2016] VSCA 160 *R v Crawford* (2015) 23 SASR 353.



Bio: Originally from Canberra, Rory Pettit graduated from Sydney University Law School in 2011, and began work as a criminal defence lawyer at a private firm in Western Sydney the same year. In mid-2012 he joined the Aboriginal Legal Service in NSW, where he spent the next three years, appearing regularly at most of the metropolitan Local and District Courts in Sydney. He also worked as an instructor as part of the ANU's graduate legal diploma program in 2014. In mid-2015, he moved to Darwin to join the NAAJA Criminal team, where he happily remains.

DAVID DALRYMPLE
CROWN PROSECUTOR, NT

"Identification Evidence and DNA"

Abstract: "I take from my pocket this bunch of keys. You see that they are various sorts and sizes, made to fit a considerable variety of locks. Suppose you were now to arrest every man in New Zealand who possessed a bunch of keys, can you suppose for a moment that you would find another man whose keys correspond in type and detail with mine to the extent of, say, one quarter of their number? You might occasionally find one or even two which corresponded, but would you expect to find more? The proposed illustration may at first sight appear to go too far, but if the accepted scientific facts respecting finger-marks are true facts, that illustration presents a fairly close analogy". That is an extract from a jury direction in *Krausch* (1913) 32 NZLR 1229 which was endorsed by Spigelman CJ (in *R v Tang* (2006) 65 NSWLR 681 at [143] and *JCG* (2001) 127 A Crim R 439 at [92] and [93]) as a guide for directing juries in relation to DNA evidence. The paper will canvass a number of recent cases, and will attempt a status report on the adoption by forensic laboratories in different Australian jurisdictions of the statistical evaluation system, 'STRmix'.

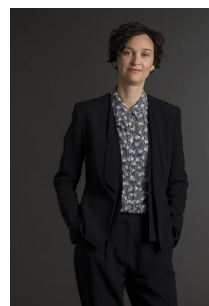


Bio: David Dalrymple is a long time Northern Territory criminal lawyer, currently employed as a Crown Prosecutor at the NT DPP and who also previously worked for many years as a defence lawyer. He has maintained an interest in forensic DNA since the 1990's.

TRACEY STEVENS
BARRISTER NSW

"The Devil Dingo: The role of narrative in court proceedings and reflections on the UNSW Jury Study 'Juror's Notions of Justice'"

Abstract: The Chamberlain trial remains a telling demonstration of how a narrative of guilt overwhelmed a jury and a nation. This paper identifies the tensions between the necessary construction of a narrative in court and the limits placed on it by the rules of evidence, practice and procedure. These tensions are explored through discussion of the findings of the 2014 UNSW Jury Study and some key criminal cases.



Bio: Tracey Stevens is a barrister at Maurice Byers Chambers in Sydney. She has a practice in criminal law, coronial inquests, administrative law, medical negligence, care and protection, adoption and family law. Tracey previously worked as a solicitor and advocate at the Crown Solicitor's Office NSW, Legal Aid NSW and the Northern Territory Legal Aid Commission in Alice Springs. She has lectured in criminal law and torts at the University of Sydney and UNSW. Tracey is a serving board member of ACOSS (Australian Council of Social Service) and the Human Rights Innovation Fund of Amnesty International Australia.



**TOM PERCY QC
BARRISTER, WA**

"Forty Years On"

Abstract: In his paper Tom Percy examines the changes in the Criminal Law over the past 4 decades; from technological aspects to the evolution of the common law and the modern trends in legislation. From the war on drugs to the war on terror Tom looks at how far we have come since his admission to practice in the late seventies, including how the High Court has shaped the face of the modern criminal trial through cases such as *Dietrich*, *McKinney*, *Longman*, *Edwards*, and *Domican*. Ultimately he poses the question: Are we any closer to the ideal of a fair trial 40 years on?



Bio: Tom Percy was admitted in Perth in 1978 after graduating from UWA. He joined the Independent Bar in 1984 and was appointed silk in 1997. He practices primarily in the area of criminal trials and appeals. In his spare time he is a keen cricket and football fan, and likes to go to the races. He is a regular contributor to the *Sunday Times* and has a weekly radio segment on 6IXPerth. He is the Head of Chambers at Albert Wolff Chambers in Perth which he founded in 2003, and has attended every CLANT conference since 1995.

**FELICITY GERRY QC & DAVID WOODROFFE
BARRISTER & PRINCIPAL LEGAL OFFICER NAAJA**

"Anunga 40 Years On"

Abstract: Just over 40 years ago Forster J set out in *R v Anunga* some examples of minimum standards on questioning Aboriginal people. He emphasised (perhaps in a somewhat old fashioned way) that the focus should be on courtesy. Since then the minimum standards have been subsumed into police guidelines but without reference to courtesy. They have become more rigid and less capable of adapting to particular people. Courts in the Northern Territory are still excluding poorly conducted police interviews. In addition, whilst 'Achieving Best Evidence' has been a mantra for witnesses for over a decade and there are Indigenous protocols for lawyers, video interviews with witnesses are still not conducted with the sort of standards required by the toolkits produced by the Advocate's Gateway and exclusionary provisions have not yet been invoked in relation to poor quality witness evidence.

Bio: **Felicity Gerry QC** is a Senior Lecturer in the School of Law at Charles Darwin University, where her research focuses on Women & Law, Technology & Law, and reforming Justice Systems. She leads the *Indigenous Justice and Exoneration Project* and is on the Management Committee of *The Advocate's Gateway* which produces toolkits for advocacy with vulnerable people. She is admitted in England and Wales, Australia, Hong Kong(ad hoc) and Gibraltar (ad hoc). She has been recognised in the *Legal 500* as "well respected for national and international appellate issues" and "Fearless and independent minded" and in *Chambers and Partners* as "a vastly experienced advocate noted for her experience in serious sexual cases, homicides and frauds".



Bio: **David Woodroffe** is the Principal Legal Officer of NAAJA's Darwin Criminal Section. He is a descendant of the Jingilli Modburra Clan Group, whose traditional lands are at Newcastle Waters 300 kilometres south of Katherine. Of his decision to study law, David says: 'I wanted to study law for my family, so that in some way I could ensure that injustices such as the Stolen Generation would never happen to Aboriginal people



and my family again'. David was admitted to the Supreme Court of the Northern Territory in 1999 and has worked for over 14 years for Northern Territory and Western Australian Aboriginal Legal Services. He has earned a reputation for representing Aboriginal people with fearlessness, dedication, intelligence and integrity.

**KATE WILD
JOURNALIST**

"Ten Things I Hate About You"

Abstract: This paper will look at the two top issues that annoy/frustrate lawyers about journalists and their reporting of the law, and the two top challenges journalists face with lawyers and reporting the law. There are plenty of NT cases to draw on to entertain and provoke. The Rosalie Lalara case, the Xana Kamitsis trial and the Jack Sultan-Page case are all case studies. The presenter will speak as a journalist about the value to the community of lawyers and journalists understanding the way each profession works and finding ways to work together. The NTRC is one example that could be touched on to illustrate the value of legal advocacy joining with media attention to deliver change.



Bio: Kate Wild's consistent coverage of the abuse of juveniles in the Northern Territory detention system laid the groundwork for a 2016 Four Corners program that sparked the establishment of a Royal Commission into the juvenile detention and child welfare systems in the NT. As National Reporter for the ABC in the Northern Territory she filed investigative stories for all ABC platforms from 2014 to 2016. Kate returned to Sydney in August 2016. She will contribute to coverage of the NT Royal Commission. In the role of National Reporter for the NT Kate reported for multiple current affairs programs plus online, TV and radio news and features. Kate has 20 years experience in long form documentaries and current affairs as well as entertainment programming. Her skill and creativity have been recognized with a Logie and three Walkley Awards, honours she shares with highly accomplished colleagues.

**KATE WYVILL
ACTOR, DIRECTOR, PLAYWRIGHT**

"Performance in the Courtroom"



Abstract: Are acting methods any use to barristers? Absolutely. Advocates, like actors, need to communicate with their audience in a way that captivates them, and engenders a sympathetic reaction, so the audience is engaged and carried along with the argument. The art of the actor is the same. In this introduction to performance in court, we will look at the mechanical aspects of speaking performance: nerves, breathing, voice quality and how to improve it, the pause, awareness of the body and gestures. We will also explore what is required for a meaningful communication, to ensure that the argument is received as intended.

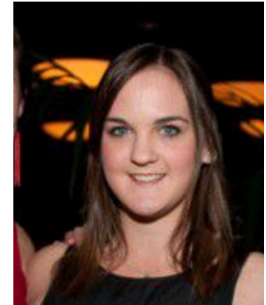
Bio: Kate is a playwright, actor, stage director and producer. She trained as an actor at the Q Theatre, NSW. Recent theatre credits in Darwin include; God of Carnage, Glass Menagerie, Mr Takahashi & Other Falling Secrets. Produced scripts include; Going Potty, The Wardrobe, Marbles and I'm The Queen of Sheba. Kate teaches acting to students and adults and court performance skills for legal practitioners. She is the NT representative for the Australian Writers' Guild.



**BETH MORRISROE
LAWYER**

“Burning the Rag: A Reconsideration of Rule of Law in Community”

Abstract: “Justice on the sniff of an oily rag” is a concept with which all NT practitioners are well acquainted. Most people at this conference have tried, or continue to try, to accomplish justice with limited resources. To accomplish justice, we aim to act in accordance with the inherited tradition of rule of law. This presentation challenges the Judeo-Christian tradition of Australian rule of law. It argues that it is no more applicable to Aboriginal persons in Central Australia than Sharia or any other kind of foreign law. Perhaps, rather than continuing to sniff the rag, we should burn it and start all over again?



Bio: Beth has practiced exclusively as a criminal lawyer since her admission in Canberra. She spent several years working in Alice Springs as a criminal lawyer with CAALAS followed by one year in Darwin working as a Senior Criminal Lawyer with NAAJA. She is a confirmed PhD candidate at the University of Western Australia. Beth is passionate about advocating for the rights of Aboriginal Australians and challenging traditional western perceptions of justice.

