

PM go-round provides new opportunities

A great sigh of relief expired across Australia. Malcolm Turnbull had replaced Tony Abbott as PM.

For more than a year, this newsletter has chronicled how the nation was being terrorised into reflecting the image of a prime minister whose strengths were negativity, anglophilia, jingoism and instilling fear in the Australian community.

There's now more hope, and the chance of achieving a civil society with better justice and a fairer go.

A new prime minister comes with no guarantees, no matter which party. But at least there's a refreshing chance to reframe the public debate.

We're asking members: what one (or two) issues/areas do you think it's now worth attempting to rectify that we wouldn't have had a chance to fix just a month ago? What are your priorities for attention?

Please send your ideas of what we might concentrate on to: secretary@cla.asn.au

Civil Liberties Australia is working behind the scenes to steer public discussion and towards better justice: we expect to start activating some concrete initiatives in the new year.

Time for reform of law and justice?

We've had a national justice system since federation.

It has had virtually no national review, and little renewal in general: the same wigs and robes and gowns still appear in courtrooms which look and act at times precisely as they did in 1900, or even 1800.

Legal reform has tinkered at the edges. Banks used to involve passbooks, handing money over a counter to a clerk, writing into the passbook the deposit and adding up and initialling the balance. Now people withdraw from an ATM, and transfer cash, electronically, instantly, hands off.

Imagine if as much change had been introduced to the legal and justice system as has been brought in to banking.

A renewal could achieve significant savings: at one end, one fewer person in jail is \$300 a day saved; at the other, universities are pumping out law graduates at roughly double the numbers needed. In between is a shambles of archaic strictures and structures inhabited by ghosts, myths and mandatory memories of the past where both the good and the bad are preserved because "that's how it has always been".

NOTE: 2 Oct is Wrongful Conviction Day!

ODD SPOT: Evan Whitton writing on the law...

Lord Reid said at least 90% of decisions could have gone either way in the 27 years (1948-75) he was on England's highest court. That suggests the judges were wrong in nearly 50% of cases. Hence barrister A. P. Herbert: "*In other trades to be wrong is regarded as a matter of regret; in the law alone it is regarded as a matter of course.*" Judges placed 21st in a 2011 *Reader's Digest* poll concerning Australia's most trusted professions. They were less trusted than paramedics, nurses, farmers, vets, police, teachers, bus/train/tram drivers, hairdressers, chefs. <http://tinyurl.com/oyza2qo>

Government actively discourages change

The federal government ignores major reports despite citizens providing copious public input.

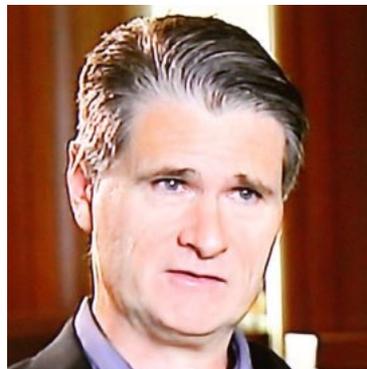
The 550-page Harper panel review into competition policy cost \$3 million and was delivered to the government in March 2015. There has been no formal response.

"For too long now, under governments of both political persuasions, major reports seem to be left to languish if they no longer suit the immediate political agenda," Productivity Commission (PC) chairman Peter Harris commented last month.

"The outcome is minimal change despite initial promise. Reports like Harper, or closer to home the (PC) report on Access to Justice in Australia, now 12 months old, deserve a serious response, even if it is to reject, but explained with logic and thoughtfulness."

"The issues involved in these reports are not second order. They are social or economic first order matters." <http://tinyurl.com/q96lp3f>

How safe will your info be, kept by govt edict?



Crikey's Bernard Keane (photo) gave an example last month of how data retention can hurt individuals.

"The continuing fallout from the massive Office of Personnel Management hack in the United States illustrates the profound dangers of mass data retention.

"While American intelligence officials still aren't clear on just how much data, relating to more than 21 million Americans, was taken by hackers, OPM has admitted that 5.6 million fingerprint records had been stolen. You can, of course, change your telephone number or your email address, or even your credit card, if their security is compromised. No such luck when it comes to fingerprints." – Bernard Keane, *Crikey*.

Data creep becomes a flood

The parliament's Law Enforcement committee wants to add the Australian Taxation Office to the agencies able to access data under Australia's recently-approved data retention legislation.

The data retention legislation restricted the type of departments and agencies which would be able to access the stored data to 'criminal law enforcement agencies'. This included police and related agencies, but locked out a variety of other agencies such as the ATO who had previously been able to access data stored by telcos such as Telstra, Optus, Vodafone and so on.

But the Australian Border Force Bill, passed in May, almost instantly added the new Australian Border Force agency to the list. And now, by September, the Joint Committee on Law Enforcement is proposing the ATO also be given access to all Australians' retained data.

The thin edge of the wedge has just started sliding down the slippery slope, Civil Liberties Australia says.

<http://tinyurl.com/o4btj3n>

In-house data snooping demands jail time

Vodafone Australia has admitted an employee hacked a journalist's phone records in an attempt to uncover her sources for stories, but the telecommunications company denies any "improper behaviour", despite internal emails suggesting it deliberately misled authorities about systemic privacy breaches.

In 2011, after a series of stories by *Fairfax* journalist Natalie O'Brien detailing grave security lapses in Vodafone's Siebel data system, a Vodafone employee accessed her phone call and text message records in an attempt to uncover company whistleblowers.

Civil Liberties Australia says that, if the telecommunications interception laws mean anything other than a tool to facilitate surveillance, then someone should go to jail for this. <http://tinyurl.com/q5vvljc>

Australians gulled over 'war on drugs'

"What Australians have been told about ice is really misleading and wrong and the solutions you are being offered will make the problem worse," Johann Hari said last month.

"Methamphetamine addiction is a real tragedy but we have to step back and look at the facts. Only 15% of people who use ice will become addicted – that's about the same rate as alcohol."

The British journalist, drug reformer and author says the government is lying: the solutions being proposed will worsen the problem, not fix it.

He was speaking after the now Minister for Rural Health, Senator Fiona Nash, claimed ice "destroys brain function, mental wellbeing, general health, employment, relationships, lives and families" and that legalising it would be "madness". Nash was responding to calls from the head of Geelong's ice taskforce to decriminalise the drug, and administer it to addicts in supervised clinics.

Hari, 36, whose international bestseller *Chasing the Scream* charts the 100-year war on drugs, said Nash's claims were overblown and indicative of the ongoing hysteria surrounding the drug debate. He slammed the government's recent \$1 million "dob in a dealer" national hotline, saying it "was distraction therapy for a government on the ropes" designed to "scare the living daylight out of parents". <http://tinyurl.com/nf97z36>

Judge tries to curb AFP's property grabs

The Australian Federal Police's use of "draconian" proceeds of crime powers have suffered a major blow in a ruling by a Victorian Supreme Court judge.

The Age last month reported that Justice Terry Forrest found that "fundamental notions of fairness" required the AFP to first show that property it wanted forfeited – but where no charges had been laid – was either proceeds of or an instrument of crime.

Judge Forrest said that the state or its agents should provide evidentiary basis for such "extraordinary interference with proprietary rights" before the owner was required to "answer anything at all".

A leading QC, un-named, told *Fairfax Media* that the ruling represented a "huge blow" to the previous procedure adopted by the AFP under the Commonwealth law – described earlier by a NSW judge as "draconian" – when it sought to forfeit property suspected of being the proceeds of crime but where no charges had been issued. <http://tinyurl.com/nu3egah>

Do your job, vote, parliament told

A Senate report has warned that a plebiscite on same-sex marriage would be too expensive and too potentially harmful to children and other vulnerable people in the gay and lesbian community.

The majority report from non-Liberal committee members, released last month, recommends that parliament instead holds a conscience vote to change the Marriage Act.

"This issue of marriage equality involves people, and people will be attacked through very nasty and very aggressive advertising campaigns," the chair of the committee, independent senator Glenn Lazarus, said. Holding a plebiscite would cost about \$160m. <http://tinyurl.com/p54kpga>

UN official won't visit: workers forced into silence

The UN's special rapporteur on the human rights of migrants, Canada's Francois Crepeau (photo), has cancelled a visit to Australia to investigate the plight of migrants and asylum seekers in offshore



detention centres on Nauru and Manus Island.

Mr Crepeau said that the Border Force Act, which makes it a crime for immigration and border protection workers to disclose information about offshore detention centres, "serves to discourage people from fully disclosing information relevant to my mandate". Under new Australian law, such people face up to two years in prison for recording or disclosing information they obtain from their work. <http://tinyurl.com/prfew5j>

AFP still putting Australian lives at risk: claim

Federal police have put more than one person at risk of the death penalty every day for the past five years by co-operating with police forces in countries, mainly in Asia, that execute offenders.

So wrote Sarah Gill in a Comment piece in *Fairfax* online media last month. She is undertaking postgrad study at U Western Australia in law, policy and government.

Most of the 1847 names provided to foreign police were under investigation for drug offences in countries where the death penalty is widely imposed and sometimes applied: 27 Australian citizens are currently detained for drug offences across China, Hong Kong and Malaysia.

In the five years to 2015, the AFP knowingly exposed about 1800 people to the risk of execution by sharing intelligence with death penalty states. And to be clear, the risk to these individuals was neither theoretical nor abstract, but linked directly to provision of information that authorities acknowledge is 'likely to result in the prosecution of an identified person for an offence carrying the death penalty'.

In the overwhelming majority of cases, the assistance related to alleged drug offences.

<http://tinyurl.com/nw6jp35>

Sue Neill-Fraser appeal possible this year?

Tasmania is expected this month to pass the new 'Right To Appeal' law which will allow Sue Neill-Fraser to appeal her conviction for murder and sentence to 23 years in jail. She has served six.

The legislation passed through the lower house in September, and is due for its second reading in the upper house on 13 October. It could be law soon.

Called the 'Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Bill, it is virtually identical to the law passed in South Australia in mid-2013 which is now encouraging the overturning of historic wrongful convictions dating back as far as 40 years in that state.

Many legal experts believe Neill-Fraser's conviction is unsound: she was convicted on only circumstantial evidence, some of it of dubious value and inequitable presentation.

Her husband disappeared in January 2009 from the moored yacht, which they had recently jointly purchased, where he was working alone overnight to fix electrical wiring. No body has ever been found.

There were no on-water eyewitnesses or believable motives produced for the murder; the forensic case presented to the court was speculative, as was the claim by the prosecutor for how the alleged "murder" occurred. As well, DNA on a glove claimed to have been used to clean up a "murder" scene was wrongly attributed to Neill-Fraser, while the issue of a strong DNA sample on the yacht belonging to another female who claimed never to have been on board was not followed through in court procedures.

As in most cases involving a potential wrongful conviction, the police practice of identifying a suspect first and finding "evidence" to suit their suspicions is certain to come into question: it is often referred to as tunnel vision, where a theory becomes a "fact" in the minds of investigators, and information which doesn't suit the "fact" is ignored or even avoided.

Once the new law is passed, Neill-Fraser must convince a single judge that enough extra information and nuances have come to light that a full court (of three judges) should hear a new appeal. It is likely to be 2016 before any such case reaches the Tasmanian Supreme Court...and judges from interstate will almost certainly need to be involved.

Lorne learns about shadowy world of wrongful convictions

Lorne's film festival in Victoria will feature *Shadow of Doubt*, the 80-minute film about the wrongful conviction of Tasmania's Sue Neill-Fraser, on Sunday 15 Nov from 2.30pm.

It will be one of the main events of this year's festival, which runs 12-15 November with a theme of 'Making Waves', covering ocean or surf-related films, held at the Cumberland Hotel.

The film's producer-director Eve Ash and pro bono lawyer Barbara Etter (photo) will lead the panel discussion after the film, with about 350 people likely to attend.

They will hear about a 60-ish woman, six years in Hobart's Risdon Prison with 17 to go, for supposedly killing her husband when there is no body, no murder weapon, no believable motive, no eyewitness, no confession and no logic to a jury's circumstantial decision.

Lorne is a town of 1000 welcomes (that's the population!) about 140km south-west of Melbourne on the Great Ocean

Film pair seek shake-up on boat murder verdict

October 28, 2013

Read later



Philippa Hawker

Film and arts writer

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Finnaker Eve Ash (right) with legal consultant Barbara Etter. Photo: Justin McManus

Road. Tickets to *Shadow of Doubt* are available through www.lornefilm.com.au

PLAY IN PRODUCTION: A play focusing on the Sue Neill-Fraser case as a commentary on how the legal system works has had its first workshop in Sydney. A dramaturge is now refining the play, which could debut in Hobart next year or early in 2017.

Over-egged police forced to drastically reduce charges

Two alleged "worst of the worst" terrorists have had their charges significantly downgraded in Melbourne courts in the past month or so.

Terror financing accusations against pizza shop worker Hassan El Sabsabi, 24, have been dropped due to a lack of evidence. He will face two lesser charges in court on 4 Dec 2015 about giving money to someone going to Syria to fight. Earlier, federal prosecutors dropped terror charges against Harun Causevic due to a lack of evidence. He was originally accused of an Anzac Day terror plot, but is now on more minor weapons charges only.

The men were arrested in hi-vis, hi-profile, pre-dawn raids by hundreds of local and federal police and spy agents in made-for-TV scenarios that ran all day and all night on TV news broadcasts worldwide.

The minor charges will get nowhere near the national and world TV coverage. <http://tinyurl.com/pven4hv>

Holmes appointed CJ

Court of Appeal Justice Catherine Holmes is the new Chief Justice of Queensland.

She has been a Supreme Court judge since 2000 and was appointed to the Court of Appeal in 2006.

Admitted as a barrister in 1984, she worked briefly as a Commonwealth crown prosecutor and then at the private bar, becoming a QC in 1999. She served as a part-time member of the Anti-Discrimination Tribunal from 1994-2000 and deputy president of the Queensland Community Corrections Board in

1997. She was counsel assisting the Forde Commission of Inquiry into Abuse of Children in Institutions and served as an acting judge of the District Court of Queensland in 1999.

While on the Supreme Court, she undertook duties as the Criminal List judge and in the Mental Health Court. Justice Holmes conducted the 2011-12 Commission of Inquiry into the 2010-11 Qld floods.

She holds a Master of Laws, as well as Bachelor's degrees in Arts and Law, from the University of Queensland, a Bachelor of Economics from the Australian National University, and a Graduate Diploma of Legal Practice from what was then known as the Queensland Institute of Technology.

– joint media release Qld Premier Anastacia Palaszczuk and AG Yvette D'Ath, 7 Sept 2015

Boot camp costs \$2350 a day, 2 1/2 times as much as youth detention

A Liberal National Party 'boot camp' trial for juvenile offenders in Queensland has cost \$16.7m, more than eight times the promised cost, and failed its core purpose, to cut repeat offending, the Labor govt says.

AG Yvette D'Ath said today an independent evaluation by KPMG found the total cost of the trial had skyrocketed to \$16.7 million over three years. According to the report, the average daily cost to keep a young person at one of the four camps, at remote Lincoln Springs west of Ingham, was \$2350 a day, compared with \$999 for youth detention.

Former LNP AG Jarrod Bleijie highlighted the camps' ability to curb reoffending when he announced a \$2 million trial in November 2012. – AG D'Ath media release <http://tinyurl.com/oxmcqyk>

Silence of the generals is deafening

Governor General Peter Cosgrove and NSW Governor David Hurley are "covering up" or "turning a blind eye" to rape and abuse in the defence force, Senator Jacqui Lambie (Ind, Tas) claimed last month.

The former military police officer told the Senate the GG and now-NSW Governor David Hurley had done nothing to bring justice to victims of "gross abuse" during their stints as chiefs of the ADF. She renewed calls for a royal commission into defence abuse, while accusing senior military figures and governments of fighting against a proper investigation out of self-interest.

Governments wanted to avoid shining a light on the "wicked crimes" committed by rapists, some of whom were still serving in senior ranks, she said. <http://tinyurl.com/ncop2rx>

For all his public utterances, the Governor General has been silent on abuse and rape at Canberra's military training colleges in the period when he was in charge of one of them, Civil Liberties Australia says. Australia would be better served if our retired military officers showed as much moral courage as their chests indicate the rewards they received for apparently showing physical courage.

Educated elite demand their private room porn

The University of Melbourne's largest residential college, Ormond, has banned students from accessing porn sites, sparking a fiery debate on sexual freedoms and censorship.

The college has blocked access to adult sites on its wi-fi network, stating pornography does not allow people at a "formative stage of life" to develop a "healthy sexuality".

But some students have reacted angrily to the move, arguing they pay \$200 a semester for college wi-fi, and in the privacy of their own rooms they should be allowed to access legal adult sites. <http://tinyurl.com/qau8wlz>

Youth take to streets to end lockout

Young people are taking to Sydney's streets campaigning for society to "give us back our culture!" in an angry reaction to harsh lockout laws that close venues in the early hours of the morning.

Music is manufactured on big e-devices made mobile by shopping trolleys as colourfully-dressed people are turning daytime Sydney

into a party of protest. The mass movement is a reaction to laws brought in to shut down Kings Cross in a panicked reaction to 'king-hit' killings caused by cowardly one-punch assaults. The critics say their culture is captive, being held to ransom by fogeys who make laws hurting all youth, when only a few idiots are the problem.

Night ragers must enter venues before 1.30am, and there's no drink service after 3am. Kings Cross and Oxford Street in Sydney are ghost towns after midnight, the party people say, claiming the night is only halfway through at 3am. "Days are for sleep, not nights" is gospel when you're in your late teens or early 20s. It's a great development that young people are getting active, Civil Liberties Australia says.

Govt introduces public sex offender website

The NT has introduced legislation to Parliament to create a publicly-accessible website featuring the details and locations of convicted serious sex offenders.

Attorney-General and Minister for Justice, John Elferink, has tabled the *Sex Offender and Child Homicide Offender Public Website Bill 2015*, named 'Daniel's Law' in memory of Daniel Morcombe, a Brisbane victim of a child sex offender and a murder victim.

The website will list serious offenders – those being life and 15 year reportable offenders under the *Child Protection (Offender Reporting and Registration) Act*. The website will also include other reportable offenders who have absconded and whose whereabouts are unknown, and offenders who enter the NT and who have equivalent convictions in other jurisdictions. – AG media release 14 Sept 2015.

Eastman sues: payout could be many millions

David Eastman is suing the ACT government for wrongful imprisonment, claiming millions of dollars compensation under the ACT's Human Rights Act.

Eastman spent 18 years, nine months, and 12 days (6860 days) in jails in NSW and the ACT for an execution-style murder of AFP Assistant Commissioner Colin Winchester in 1989.

In 2014, an inquiry found his 1995 trial was a miscarriage of justice: subsequently, a full bench of the ACT Supreme Court



quashed the conviction, partly because the AFP and the DPP acted inappropriately and withheld information.

Canberra prosecutors intend to retry Eastman, but he has launched a stay application to halt the case – on the grounds he will not be able to get a fair hearing. The stay hearing is listed before acting justice David Ashley in February 2016.

Court papers, filed by Eastman's lawyers, Ken Cush and Associates, last month said the civil claim alleged deprivation of liberty, lost income, as well as suffering mental harm, damage to his reputation, and expending legal cost and time in fighting to reverse his conviction.

Eastman alleges the ACT is liable to pay him compensation for his unlawful detention under two sections of the ACT Human Rights Act. The case is listed for directions in late October. <http://tinyurl.com/p5wrl2y>

Civil Liberties Australia has estimated wrongly convicted Australians, like Eastman in the ACT and Henry Keogh in SA, could receive \$4-8m each when they win compensation cases. In both cases delays caused by government may have postponed fair appeal hearings by many, many years.

ACT moves to expunge gay sex crime record

The ACT government will erase the criminal convictions of men convicted of gay sex before it was legalised in 1976.

The scheme will allow people to apply to have their convictions erased permanently from their records.

NSW and Victoria moved last year to expunge criminal records for gay sex in 2014 with similar legislation already passed by Britain, where people apply to a public servant.

South Australia did the same in 2013, but there you apply to a magistrate. <http://tinyurl.com/ozcvud9>

State rocked by fallible forensics

In South Australia, nearly half a century of fallible forensics is coming home to roost.

The state's justice system is being rocked by appeals in cases decades old, based on what the appellants claim is faulty forensic work by the state's forensic pathology laboratory, and the chief forensic pathologist, Dr Colin Manock.

Henry Keogh's conviction was set aside in December 2014 by the Supreme Court, based on faulty forensic findings, after he had served nearly 20 years in jail. The state is trying to re-convict Keogh in a new trial where it is likely forensic experts who have already appeared for both crown and defence will give evidence that they believe the death in question was accidental, not murder.

The SA Supreme Court, in freeing Keogh, commented:

"A number of highly significant observations and opinions of Dr Manock materially misled the prosecution, the defence, the trial judge and the jury. In these circumstances, there has been a substantial miscarriage of justice".

In another case, that of Frits van Beelen, barrister Kevin Borick QC is asking the court to overturn a 1972 conviction because Dr Manock, was "unprofessional, incompetent and untrustworthy" and gave sworn evidence in court that he knew to be wrong.

Dr Manock (photo: todaytonightadelaide) attributed a time of death within a 30-minute period (a crucial timing in relation to van Beelen's innocence) based on his estimation of decay of stomach contents. A few years later, Dr Manock agreed in another case that an estimate of time of death based on stomach content analysis was "very unreliable". Van Beelen



was found guilty even though another person had confessed to the crime.

Several other cases are likely to soon come before the SA courts, with that of Aboriginal Derek Bromley notable. He was convicted of killing a person found dead, after five days, in the River Torrens. Dr Manock "identified" injuries to be body from blows and kicks just before the person died of drowning. A leading forensic professor later said there was no way anyone could know when injuries had occurred to a body after two days of putrefaction in water.

Bromley was convicted in 1984, and sentenced to 22 years in jail. He remains in jail 30 years later: he can't be paroled because of a lack of remorse – he refuses to admit to a killing he says he did not do. This is literally a case of 'Catch 22'.

As well as the wrongful convictions, lawyers and forensic scientists say the state has been blighted by cases which should have gone to trial, but were incorrectly attributed to accidental deaths. Exactly how many guilty people have never been called to account is not known.

In the case of one baby's death, attributed by Dr Manock to bronchopneumonia, the baby was found to have 15 broken ribs, 2 serious skull fractures and a fracture of the spine.

Dr Manock himself has said on the record he was involved in about 400 criminal convictions. Question marks now hang over many of them. It is believed he was involved in about 10,000 autopsies:

– By Bill Rowlings, CEO of CLA, with help from the new book, *Miscarriages of Justice: Criminal Appeals and the Rule of Law* by Dr Bob Moles and Bib Sangha, published by LexisNexis October 2015.

Australian briefs

Confiscated funds spent on ice treatment: Premier Anastacia Palaszczuk told the ALP State Conference in Brisbane recently that she plans to use confiscated funds for rehabilitation and treatment of ice users. "Net forfeitures over the past five years from proceeds of crime in Queensland totalled \$55.78m," she said. – Premier Qld media release, 29 Aug 2015.

Young and old stunned: A 75-year-old and a 16-year-old were among people targeted by NSW police with stun guns last year, according to government documents obtained under Freedom of Information. The reasons for stunning them have not been revealed. <http://tinyurl.com/op7lbqn>

Dark force might number 6000: Australian Border Force, the dark-clad government agency, will have 5000 to 6000 officers

(aka BooHeads), most trained for use-of-force operations. Several thousand are already trained to use guns, and eventually the agency will have about twice as many weapons-ready officers as in the agencies it replaced, according to a senior official. Created on July 1, the BooHeads are the enforcement arm of the merged Customs and Immigration departments. <http://tinyurl.com/pusq8ry>

You can be a police movie star!: NSW Police are starting to use an on-body camera to record video and audio evidence. The cameras do not record all the time; they must be officer-activated. A red light flashes while the camera is recording, and they can stream video live back to base command units. The footage is encrypted and securely stored on the camera, then wiped when downloaded to a police database. The camera can take still photographs, record audio only and operate in low light. <http://tinyurl.com/qx5tzah>

Your country is spying on you: The UK's Government Communications Headquarters has probably spied on you – on behalf of Australia – if you've used the World Wide Web according to *The Intercept*, which details a GCHQ operation called "Karma Police" which tracked web browsing habits of people in what the agency itself billed as the "world's biggest" Internet data-mining operation, intended to eventually track "every visible user on the Internet. In 2012, the secret program was gathering 50 billion records a day...and sharing the intelligence with its Five Eyes partners, including Australia. <http://tinyurl.com/nnrj472>

Smarter to avoid smart meters: Victorians have paid more than \$2 billion for the roll out of electricity smart meters but have received few benefits, an auditor-general's report has found. The greatest benefit from smart meters over the life of the program related to avoiding the costs of installing and manually reading older meters. "When the rollout was announced, the benefits were promoted widely," the report, tabled in State Parliament last month, said. "However, when the Government reviewed the program in 2011 it was clear there would be no overall benefit to consumers, but instead a likely cost of \$319 million." Customers complained the meters were mandatory. <http://tinyurl.com/nhhewfj>

CLA report – key activities for September 2015

Official correspondence out

Request for assistance from former Senator Penny Wright re case in Adelaide

Nick Cowdery re appointment of DPPs around Australia

Letters to all state Attorney-Generals re appointment of DPPs

ACT Minister Shane Rattenbury re appointments to ACAT, DPP

Tasmania's AG Vanessa Goodwin re censorship of mail to Risdon prisoner Sue Neill-Fraser (magazine articles)

Submissions

ACT Human Rights Commission restructure

ALRC Freedoms inquiry (Rajan Venkataraman)

China-Australia Free Trade Agreement – lodged and posted: <http://tinyurl.com/q99nzsx>

Death Penalty: Australia's international stance – jointly, with Amnesty-led coalition

Networking meetings

Roger Clarke The Australian Privacy Foundation re Better Justice, APF activities

Rob Wesley Smith re historical material, East Timor

Ben Aulich and Peter Woodhouse, from Ben Aulich and Associates, re DPP issues, components of Better Justice campaign for ACT

Lesley Vick and Ken Davidson re TPP campaign

ACT Minister for Justice Shane Rattenbury re Better Justice campaign, ACT prison, DPP issues

Melissa Parke, MP for Fremantle, re current issues (gene patents issue, drugs cross party parliamentary group, war powers). *Photo shows CLA CEO Bill Rowlings, Melissa Parke MP, CLA President Dr Kristine Klugman and CLA Vice-President Tim Vines.*



Media

Comment on wastewater methamphetamine testing – WA Independent

Australian Parliamentary Friends of the ABC re appointments of Director, Board, Panel ABC

Right to Appeal Bill in The Mercury, Tasmania

Draft extended terrorism laws, The Mercury, Tasmania

Other

Provide input into Victorian Department of Health consultation into proposed Abortion Clinic Access Zones legislation;

Provided answer to SA student on data retention laws

INTERNATIONAL

Drug price rise is warning for the world

An entrepreneur who acquired the rights to produce a life-saving drug then increased its price more than 50-fold overnight has claimed the profits would help create better medicines in future.

The price hike, and his claim, are a chilling preview of what could be possible under the secret Trans Pacific Partnership agreement, depending on what concessions Australia agrees to.

Protests emerged worldwide after a company owned by former hedge fund manager Martin Shkreli raised the price of Daraprim, which treats a dangerous parasitic infection, from \$19 per pill to \$1050 per pill.

Shkreli's startup company, Turing Pharmaceuticals, acquired Daraprim (generic name pyrimethamine) in August 2014. The drug was first developed in the 1940s and is used to treat toxoplasmosis, an infection that is not common but is particularly dangerous and can be fatal when it affects babies born to mothers who have become infected or adults whose

immune systems are critically compromised because they are suffering from Aids or some cancers.

The Infectious Diseases Society of America and the HIV Medicine Association sent a joint, open letter to Turing Pharmaceuticals last month, complaining that the sudden, steep price increase was “unjustifiable for the medically-vulnerable patient population” and that it was “unsustainable for the health care system”, according to the *NY Times*.

Civil Liberties Australia believes a drug developed in the 1940s should be at least 50 years off-patent by now, so that a competitor should be able to offer a cheaper alternative. Under the proposed TPP for Australia, examples of market abuse of inappropriately extended patent rights through monopoly over-charging could increase. <http://www.canberratimes.com.au/world/-gjsxm1.html>

How ‘Pharma’ screws the USA on drug prices

Articles reporting the above story, and a later claim by Martin Shkreli that he would not raise the price so high, have revealed interesting statistics:

The global pharmaceutical industry (‘Pharma’ or ‘Bib Pharma’) spent \$3.7 billion on lobbying activities in the USA between 1998 and 2012, according to OpenSecrets.org. That is four times as much as the defence and aerospace industries and almost twice the lobbying outlay of oil and gas companies.

The Centre for Public Integrity says the pharmaceutical industry employs two lobbyists for each member of the US Congress and spends \$143m a year to keep many of those members of Congress on its side.

Pharma’s most extraordinary win came in 2003, when Congress passed a law that at once expanded government health insurance for the elderly, known as Medicare in the USA, to include prescription drugs. The law also – this is true – banned the government from negotiating the prices they would pay the drug companies. That is, once a drug had been approved for coverage, the government was forced to pay whatever price the companies set.

Government to jail journos for ‘false news’

The Egyptian government arrested three Facebook users recently on charges of “incitement to violence”, accusing them of spreading materials in support of the violent extremist organisation ISIS.

Two students and a veterinarian were searched and then arrested after authorities found what they alleged to be pro-ISIS videos on their laptops: it is not known how they were selected for investigation.

Under a new law, just ratified by President Abdel Fattah al-Sisi, there’s a minimum five years jail for anyone who creates or uses a website to promote ideas or beliefs that call for committing “terrorist acts.”

The law also sets strict limitations on media: one article takes away the freedom of the press, prohibiting any individual or party from photographing or recording court sessions or publishing such information through broadcasts, print media, social media or any other means. Another penalises individuals who publish “false news” or data contradicting official government statements on terrorist attacks. <http://tinyurl.com/oq5b4rg>

Teen prosecuted for nude photos...of himself

A teenager in North Carolina has been prosecuted for having nude pictures of himself on his own phone.

Cormega Copening, now 17 but 16 at the time the photos were discovered, had to strike a plea deal to avoid potentially going to jail and being registered as a sex offender. The court ordered he had to be subject to warrantless searches by law enforcement for a year, in addition to other penalties.

Named in the media, he was suspended as quarterback of his high school football team while the case was being resolved.

Copening was prosecuted as an adult under US federal child pornography felony laws, for sexually exploiting a minor. The minor was himself. He was charged with four counts of making and possessing images of himself and one count of possessing a naked image of his 16-year-old girlfriend.

His girlfriend, Brianna Denson, took a plea deal after being prosecuted on similar charges for having naked, suggestive pictures of herself on her cellphone.

While the pictures were technically illegal, actual sex would not be – the age of consent for sexual intercourse in North Carolina is 16. <http://tinyurl.com/nhlebyz>

Police, DPP accused: ‘human flypaper’ scheme

People found to have made false accusations of sexual abuse should be prosecuted or offered medical care, UK broadcaster Paul Gambaccini has said.

Gambaccini, 66, was on police bail for a year after his arrest for suspected sex abuse before he was told there was no case against him. Speaking on BBC Radio 4, he said sex crime suspects should be given anonymity before they are charged and consideration should be given to how false accusers are treated.



Having returned to work on the BBC, Gambaccini also attacked Sir Bernard Hogan-Howe, the London Metropolitan police commissioner, and Alison Saunders (photo), the director of public prosecutions. “We need anonymity before charge, as recommended by the home affairs select committee, and we need to look at false accusers and how

we treat them,” he said. “False accusers need to either be prosecuted or offered medical attention.”

Gambaccini was arrested on 29 October 2013 and police handed papers to the Crown Prosecution Service on 10 February 2014 but it was 10 October 2014 before he was told that there was no case against him. His bail was extended seven times during that period.

He said he forfeited more than \$400,000 in lost earnings and legal costs during the 12 months before police and prosecutors told him there was no case against him.

The broadcaster lashed out at police and prosecutors during a home affairs select committee hearing in March claiming he was used as human “flypaper” with his arrest publicised in the hope other people would come forward to make allegations against him. <http://tinyurl.com/nvvaq8g>

Beheading, public display of body, is imminent

The public beheading and display of the body of Ali Mohammed al-Nimr could happen any day.

Just 17 when arrested after attending a protest in the midst of the pro-democracy Arab Spring unrest of 2012, he is now 21 and sentenced to death in Saudi Arabia.

Ali, the nephew of a high-profile Shiite cleric, was reportedly tortured, denied a lawyer before his trial and coerced into confessing to a range of charges, including joining a criminal group, carrying weapons and attacking police forces, according to UN human rights experts. He denies the charges.

His punishment is brutal, even by Saudi Arabia's standards. Not only was Mr al-Nimr handed a death sentence, but the method of punishment was determined to be "crucifixion", which means he will be beheaded and then have his mutilated body displayed publicly, possibly for three days.

Saudi Arabia executed 87 people in 2014, most by beheading in a public square. The Pope last month, while visiting the USA – another public executioner country – called for an end to the death penalty. <http://tinyurl.com/ger76pw>

US agencies need warrant to track mobiles

US federal agencies must now get a judicial warrant to use devices which track mobile phones.

Until recently, agencies such as the FBI and the Drug Enforcement Administration have been able to use "cell-site simulators" without applying for a warrant or establishing reasonable suspicion.

The simulators replicate cell towers to pick up location-identifying information that allow law enforcement to apprehend fugitives, conduct drug investigations or rescue a kidnapped child, the Justice Department said. But the new Justice Dept guidance pointed out they must be used in accordance with the "protections of the constitution".

The American Civil Liberties Union estimates at least 53 agencies across 21 states have been using the simulators: most have kept their purchases of the devices secret. <http://tinyurl.com/ohbh2o>

Virtually no limits of US govt reach into data

The US government may demand the emails of anyone in the world from any email provider headquartered within US borders, Department of Justice lawyers told a federal appeals court last month.

The case, between the US and Microsoft, concerns a search warrant that the government argues should compel Microsoft to retrieve emails held on a Hotmail server in Ireland.

Microsoft contends that the US DoJ has exceeded its authority with potentially dangerous consequences. Apple, the government of Ireland, *Fox News*, *National Public Radio*, the *Guardian* and others have filed amicus briefs with the court, arguing the case could set a precedent for governments around the world to seize information held in the cloud. Judges have ruled against the tech company twice. <http://tinyurl.com/oat6e4q>

ODD SPOT: Book sunk by censor

An award-winning Kiwi book – teen novel *Into the River* by Auckland author Ted Dawe – has been banned, potentially sparking new restrictions on books with sexually explicit content.

The interim ban makes it a crime to supply, display, or distribute the book. Individuals and organisations are liable to fines of up to \$3000 and \$10,000 respectively. The ban includes schools and libraries.

Dawe's book won the *NZ Post* Margaret Mahy Book of the Year and also the Young Adult Fiction category in 2013. It has explicit descriptions of sex and drug use, plus a street term for female genitalia.

It is the first time an interim ban has been imposed on a book since the current law was passed 22 years ago. President of the Film and Literature Board of Review Don Mathieson, who is a QC, issued the interim order, banning the book until the full board can consider whether it should be restricted. His interim ban overturns a decision by the deputy chief censor Nick McCully that made the book unrestricted last month, which itself overturned a review board order making the book R14.

Conservative lobbying group Family First, who pushed for the review and an R18 restriction, applauded the decision. <http://tinyurl.com/pzpn8fn>

Maldives spies on jailed ex-president's lawyers

Amal Clooney and her fellow human rights lawyer Jared Genser have accused the Maldives government of bugging them during a supposedly confidential jail meeting with the country's deposed former president, Mohamed Nasheed (*photo, being arrested: Maldives Police*).



Maldivian officials were fully aware of the secret discussion immediately after it took place. Nasheed was the Maldives' first democratically elected leader. He is now jailed in a high-security prison Maafushi island, serving a 13-year terrorism sentence after a snap trial for allegedly ordering the arrest and detention of a judge during his time as president. <http://tinyurl.com/qhoy4gp>

British bill would aid terrorist recruiters: claim

British PM David Cameron's counter-extremism bill, to ban non-violent extremists, risks provoking a backlash in Muslim communities and playing into the hands of terrorist recruiters.

So says David Anderson QC, the UK's independent reviewer of terrorism laws. He said the legislation to counter extremist ideology also risks legitimising state scrutiny of – and citizens informing on – the political activities of large numbers of law-abiding people.

His warning last month came as the PM's counter-extremism taskforce met in Downing Street and the House of Lords prepared to vote on rules banning extremist speakers from university campuses.

The counter-extremism bill, due for tabling later this year, aims at "suppressing extremist activity". It will include proposals for banning orders to outlaw extremist organisations, extremist disruption orders to restrict the activities of individuals, and closure orders to shut down premises used by extremists.

Civil Liberties Australia believes that, if it passes in the UK, it will be proposed for Australia too. <http://tinyurl.com/osx7haj>

Europe proposes better ISDS scheme

The European Commission proposes a major overhaul of the controversial investor-state dispute settlement (ISDS) mechanism, which grants foreign companies a privileged, extra-legal system for suing governments over regulations and laws they claim would harm their investments.

The EC wants the new approach included in the TTIP agreement currently being negotiated between Europe and the US. But the new proposals still grant exceptional legal privileges to foreign investors not enjoyed by domestic companies or the public, critics say.

The Commissioner for Trade, Cecilia Malmström, said in Brussels last month that she wants to replace traditional ISDS tribunals with a new Investment Court System (ICS). Under the ICS, disputes between companies and countries would be decided by three judges drawn at random from a pool of 15 – five from the EU, five from the US, and five from other nations – previously chosen jointly by the EU and US. The proceedings would be held in public, rather than in secret as with the current ISDS approach, which is based on ad-hoc tribunals formed of three specialist lawyers.

Unlike the current ISDS system, ICS judges would not be allowed to act as advocates for companies in other cases. This is to avoid conflicts of interest when ISDS lawyers acting for a company in one case are later part of a tribunal ruling on a different case, but involving the same company.

The ICS will also have an appeals process, involving the creation of a new appellate body consisting of six judges. The appellate mechanism will allow errors of law to be corrected—something not possible under ISDS. <http://tinyurl.com/pulfaqz>

ODD SPOT: Gbay man down to 34kg, dying

Roger Fitch Esq, writing on the Justinian legal blog in September: The Pentagon swiftly investigates claims of carcinogenic work conditions of Guantánamo personnel, especially lawyers, but it stonewalls urgent medical assistance for internees, eg the British resident Shaker Aamer and Yemeni, Tariq Ba Odah. Ba Odah has been on a hunger campaign for more than eight years, weighs 34kg and is near death. In its response to Ba Odah's motion, the US Department of Justice argued that releasing him would only encourage others, who might also undertake starving to death, just to get out of jail. As Marty Lederman notes, the government recognised but ignored the Geneva Conventions requirement that sick and dying prisoners be repatriated. According to a *NY Times* report, the US State Department opposed the government stance. <http://tinyurl.com/o3g3z5c>

International briefs

Britain assassinates by drones: British forces assassinated, for the first time using a drone aircraft and without trial, a British in Syria for allegedly plotting to kill the Queen, British Prime Minister David Cameron claimed last month. Reyaad Khan was assassinated and two other IS fighters were also killed in the attack, in Raqqa, five weeks ago. One, Ruhul Amin, 26, was also British. A third Briton, Junaid Hussain, 21, was killed by a separate US air strike. The Prime Minister said it was the first time Britain had directed a targeted attack against one of its own citizens when Britain was not at war. <http://tinyurl.com/nngsr9j>

Austrians to spy more widely on idle vice: The Austrian parliament will vote this month (Oct 2015) on whether to create 10 new surveillance agencies to spy on Austrian citizens. As well as the Federal Agency for State Protection and Counter Terrorism, which is currently a police department but would be upgraded to a surveillance agency under the proposed State Protection Act, additional agencies will be created for each of Austria's nine provinces, with the same powers, giving local politicians their own personal intelligence service. <http://tinyurl.com/njdaq9d>

Journos charged for encrypting copy: Three journalists were last month charged with "engaging in terrorist activity" on behalf of ISIS, because one of them used encryption software. A Turkish official said they used a complex encryption system on a personal computer that a lot of ISIL militants also utilise for strategic communications. It seems likely that "complex system" is nothing more than the PGP email encryption software, or perhaps the The Onion Router (TOR) system, both of which are very widely used, and not just by ISIL. <http://tinyurl.com/oqquzot>

Library afraid of collecting: The British Library has refused to host a digital archive of Taliban documents for fear the collection would violate British anti-terror laws. Documents in the unmatched cache mostly come from the 1990s, when the extremist group ruled Afghanistan and hosted al-Qaida leader Osama bin Laden. It includes everything from their official newspapers, magazines and books of sharia law to maps and poetry. <http://tinyurl.com/pvrh9bp>

Prisoner freed after gender complaint: Ashley Diamond, a US transgender inmate who sued the Georgia Department of Corrections after being denied a safe environment and medically necessary gender dysphoria treatment, was released last month after three years in prison, where she was housed with male inmates and sexually assaulted eight times. Diamond, 37, was released early from an 11-year sentence in Augusta State Medical Prison. <http://tinyurl.com/npv85h4>

Snowden did some good, says director: Disclosures by former National Security Agency contractor Edward Snowden had driven the intelligence community to become more transparent to citizens about how it does business, said US Director of National Intelligence James Clapper last month. He said "it forced some needed transparency, particularly on programs that had an impact on civil liberties and privacy in this country"...and then went on to criticise Snowden for also leaking some intelligence details. <http://tinyurl.com/oc27knp>

Solo voice for liberty: A Washington DC lawyer, Preston Burton, is the first of five amici curae – friends of the court – to be a public advocate at the Foreign Intelligence Surveillance Court. Burton's will present "legal argument that advance the protection of individual privacy and civil liberties; information related to intelligence collection or communications technology; or legal arguments or information regarding any other area relevant to the issue presented to the court," according to the terms of his appointment. Previously, FISC hearings were one-sided, with the judge listening to government representatives only. Before the Snowden leaks, all FISC opinions, as well as its entire workload, was secret. It usually approves warrants and the like 99% of the time. <http://tinyurl.com/qcd2dta>

ODD SPOT: Parents of wised-up kids threaten

blabbermouth mum: A California mum claims she has been threatened with a legal suit for "emotional damage, flagrant disregard to parental rights and facilitating the loss of innocence and child wonderment". Her crime? Telling her first grade son that Santa Claus was not real: he told virtually the whole school. Other parents apparently want the blabbermouth mum to pay for a "fully interactive Santa experience: hiring a Santa to hand out presents to children and sing songs". <http://tinyurl.com/p4psvx0>

UN deaf to whistleblowers: A UN investigator who reported the rape of a refugee in Sri Lanka was forced into a decade-long legal battle, which continues. Caroline Hunt-Matthes was ostracised and eventually ousted from the UN while on medical leave. Her case highlights one of the UN's dirtiest secrets: its staff are reluctant to report abuses or corruption within the organisation for fear of losing their jobs. "The bottom line is the UN is not a safe working environment," said Hunt-Matthes, who has left the UN and now works at a university in Geneva. "You can't report misconduct and be protected. What could be more serious than that?" Figures obtained by the Government Accountability Project, which supports whistleblowers, reveal that the UN ethics office received 447 approaches up to July 2014 from people alleging they have faced retaliation for exposing wrongdoing...with the UN finding only about 3% "proven". <http://tinyurl.com/pzkleon>

Lobby loses, but reveals spending: The American Israeli Public Affairs Committee spent \$42m lobbying to block President Obama's nuclear deal with Iran from being approved in Congressional voting. The sum indicates the extent to which major players – electronic and recording companies, big pharmaceutical concerns and the like – are prepared to expend on lobbying in the US and Australia. In this case, AIPAC lost. <http://tinyurl.com/qf7ynoh>

Japan endorses overseas war: Japan's parliament has endorsed a defence policy that could let troops fight overseas for the first time since 1945, loosening the nation's pacifist constitution. PM Shinjo Abe said the shift was vital to meet challenges such as from a rising China. But massive protests from ordinary citizens claim it violates the pacifist constitution and could ensnare Japan in US-led conflicts after 70 years of post-war peace. The US welcomed the changes but China, where bitter memories of Japan's wartime aggression run deep, repeatedly expressed concern. <http://tinyurl.com/nkgghkp>

Toilet killer faces trial review: Oscar Pistorius faces court again on 3 Nov in the South African supreme court of appeal. The Paralympic gold medallist killed law graduate and model Reeva Steenkamp, 29, in Feb 2013 by firing four shots into the locked door of a toilet in his home, claiming he thought an intruder was hiding there. Pistorius was convicted of culpable homicide, equivalent to manslaughter, in September 2014 and sentenced to five years jail. Judge Thokozile Masipa said the state had failed to prove Pistorius intended to kill when he fired. Prosecutors want the verdict changed to murder because, they argue, firing through the door when he knew someone was behind it meant Pistorius intended to kill, regardless of who was in the cubicle. A murder conviction would mean 15 years in prison. <http://tinyurl.com/o2cewd8>

Terrorism student 'terrorised' by uni: A postgraduate counter-terrorism student was falsely accused of being a terrorist after an official at Staffordshire University spotted him reading a textbook entitled *Terrorism Studies* in the college library. Mohammed Umar Farooq – enrolled in the terrorism, crime and global security master's program – was questioned in the library about attitudes to homosexuality, Islamic State and al-Qaida. His replies, Farooq said, were largely academic but he stressed his personal opposition to extremist views. However, the conversation was reported to security guards, because it had raised "too many red flags". The university has since apologised. <http://tinyurl.com/p6osjzh>

Sunk in the 'Harbour'? The "Safe Harbour" framework – supposed to ensure data transfers from the EU to the US are legal under European data privacy law – does not satisfy the EU's Data Protection Directive as a result of the "mass, indiscriminate surveillance" carried out by the US National Security Agency. That's the opinion of the Court of Justice of the European Union Advocate General Yves Bot, whose views are generally followed by the CJEU when it hands down its final rulings. <http://tinyurl.com/oal57eo>

DATES

2 Oct, world: Wrongful Conviction Day, supported by Civil Liberties Australia.

9-10-11 Nov, Sydney: *Law via the Internet 2015* conference 10-11 Nov at UNSW, preceded by annual meeting of the Free Access to Law Movement on 9 Nov at UTS. Call for papers: <http://www.lvi2015.org/callforpapers/> Register interest at: registration@austlii.edu.au

14-15 Oct, Sydney: Drug Trends Conference 'Trends and Solutions' Customs House, Sydney, organised by the National Drug & Alcohol Research Centre, UNSW. Details: <http://ndarc.med.unsw.edu.au/news/2015-drug-trends-conference-and-dpmp-symposium>

20 Oct, Melbourne: Sir Ivor Jennings, the Westminster Model and State Building in Asia, Dr Harshan Kumarasingham. Room 920, Level 9, Melbourne Law School, 1-2pm. Details: law-cccs@unimelb.edu.au or 03-8344 1011.

17 Nov, Canberra: New directions in men, masculinities and law: sources, methods and law's 'man question' – the example of wellbeing and work-life in corporate legal practice. Prof Richard Collier, Newcastle Law School, Newcastle on Tyne (UK). Venue: Staff library, ANU College of Law (private seminar – not open to the general public), 1-2pm. Details: coast.law@anu.edu.au

25-26 Nov, Canterbury NZ: Pacific Regional Security Symposium: Re-thinking Regional Security: Research and Policy Nexus. Three broad themes for the conference are hard security, human security and environmental security. More info: Email: Kirsty.ameriks@canterbury.ac.nz

25-27 Nov, Adelaide: 28th A&NZ Society of Criminology, Flinders U. Details – willem.delint@flinders.edu.au

30 Nov- 3 Dec, Adelaide: Law & Society Assn of ANZ conference 'Inside Out'. the edges and changing limits of law. Flinders U Law School. Venue: 182 Victoria Sq Adelaide. <http://tinyurl.com/qzs8sto>

2016

14-15 April 2016: National Law Reform conference, University House, ANU. Calling for papers: <http://tinyurl.com/oueoomn>

18-23 Sept, Auckland NZ: 23rd Intntl Symposium on Forensic Sciences. Details: www.anzfss2016.org

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