

## Spinning ASIO is leaking like a sieve

It's expected and acknowledged that the federal government's main spruiker, now former marketing maven Scott Morrison, is known as the Prime Spinister.

It's another thing for Australia's super-secret agency ASIO to spin like a top while leaking like a sieve. Maybe it should be renamed SPINIO.

In the space of just a few days last month, national media outlets were beside themselves, regurgitating leaks from ASIO about:

- a supposed ex-Chinese spy seeking asylum in Sydney; and
- a supposed Chinese "plant" attempt, when a Victorian member of the Liberal Party was allegedly offered \$1m by Chinese "agents" to stand for federal parliament.

There's a lot of facts – as opposed to leaked information, which is all that was available early on in these ASIO-generated sagas – to come to light about both alleged "spying" incidents. For certain, many politicians and commentators who rushed in will end up with egg on their faces.

CLA says: if ASIO is permitted to leak willy-nilly in order to "spin" media coverage to suit its own purposes and cover up its own mistakes, then it must be subject to normal reporting procedures. Currently, the media cannot say a single word about any ASIO operation or operative without running foul of security law, and facing jail terms of up to 10 years.

There's no doubt that ASIO's double-leaking aimed to silence or sedate the public outrage about a secret trial resulting in a secret prisoner being kept secretly in an Australian jail.

## Australia confirmed a police-security state

Australia is now officially confirmed as a police-security state.

So secret was the trial and jailing of a federal secret prisoner in Canberra's jail that the ACT's Minister for Corrections (he's also ACT Minister for Justice) knew nothing about the case until the story hit the media.

Even Shane Rattenbury (photo) was kept in the dark. Rattenbury, the sole Green in the Labor-led local ministry, is allegedly responsible for everything to do with the ACT's jail, called the Alexander Maconochie Centre.

Minister Rattenbury, days after the story broke, still did not know what the charges were against "Witness J". (The prisoner was also referred to as "Alan Johns" in his ACT Supreme Court appeal against jail privileges being withdrawn.) In other words, Minister for Corrections Rattenbury – as the ACT's official government jailer – has locked up someone without knowing who, or why.

Apparently, a protocol arrangement between state/territory jails and the AFP/spooks allows the feds to direct state-territory jails concerning extraordinary prisoner rules and regulations, beyond the norm. That's how the AFP was able to dictate that it be told of "unusual" visitor requests, as judge John Burns described them, an ACT government aide revealed.

Now the hunt is on to find out how many other secret prisoners, arraigned and convicted in secret trials for secret offences, are in other jails throughout Australia.

And – the question must be asked – are there any secret federal jails or detention centres?

It appears that there was an earlier tranche of such "federal detainees" in the ACT jail: they were connected with people smuggling and the use of possible under-age crew members. No further details are known.

### Notice of AGM of CLA:

This is formal notice that the Annual General Meeting of Civil Liberties Australia Inc will be held by electronic means, and by posted papers for those without e-facilities, from 2 Feb 2020 (call for motions) and between 10 March – 23 March 2020 (voting period). Annual and other reports, and ballot papers, will be sent to members electronically (and by post, with return-paid envelope, for those without e-access).

## How many secret trials and prisoners are there?

The revelation that we Australians live in a secret police and court state has raised many questions.

CLA asks:

- How many 'secret' prisoners are there in Australia currently?
- How many have there been in the past 20 years?
- How many other secret cases have been run in other State/Territory Supreme courts, or in Federal courts?
- Where, and when?
- What are the offences that people have been charged with, under what laws?
- What has been the length of sentences of people sentenced in such 'secret' trials?
- Has anyone taken before a court in a 'secret' trial been acquitted? (Where and when and in what circumstances).
- Are there similar 'secret' cases pending: where and when over what?
- Who is making the decision to prosecute?
- Are the trials jury trials?
- Is the presumption of innocence maintained or is the onus reversed?
- Are there any restrictions/constraints on legal representation/defence?
- What appeal mechanisms are available?
- Who IS aware of Australia's secret prisoners?
- Is there a separate secret prison/detention centre in Australia, or offshore (and/or, is the federal govt building one?), and
- What is the basis of the secrecy requirements in an open democratic society?  
– (questions devised with CLA member John Richardson)

## Innocent Macklin suddenly front page news

The existence of the secret prisoner only came to light when the mystery prisoner asked that Canberra-based author and former journalist, Robert Macklin (photo: ABC), be allowed to visit to advise him\* on publishing an account of 'life in jail'.

The request caused the jail boss to tip off the AFP about the possible visit and the manuscript, and so the federal



police raided the inmate's cell and his brother's home, before freezing his restricted jail access to email and phone.

Macklin told the *Guardian* he was shocked that Australia had allowed a case to be so shrouded in secrecy. "I didn't think we had secret trials in Australia," he said. "It worries me that we do."

The trial – presumably in the ACT Supreme Court – was so secret no media knew about it. <https://tinyurl.com/us2c79u> NOTE: We are all assuming it is a male: it might be a female, or even "other".

Don't forget about the totally innocent Macklin. He was suddenly dragged into the national spotlight for having done nothing....and certainly nothing wrong.

In a nation of free speech, an author should have the right to visit someone in jail without Big Brother involvement of jail officials and federal spooks and police...and maybe federal Ministers.

### Irresponsible governments fail to act

Ten years ago, the Australian Law Reform Commission reported on Secrecy Laws and Open Government in Australia.

It followed a 15-month inquiry that identified 506 secrecy provisions in 176 pieces of Commonwealth legislation, including 358 criminal secrecy offences.

It is well past time that secrecy laws, all laws connected with terrorism and anti-bikie crackdowns, and laws relating to ASIO, ASIS, the AFP and other federal (and state) spook/security apparatuses were thrown into a heated melting pot. All such laws should be precised, balanced against real-world experiences in Australia over the past 20 years, then measured acutely against the civil liberties and human rights of Australians.

The result, CLA believes, should be a set of principled and appropriate laws for the citizens of Australian, not for the benefit of secret and almost totally unaccountable federal police and spook agencies.

### Where is SIC when "reporting freely" is needed?

In our March 2019 CLArion, we reported that the chair and deputy chair of the Security and Intelligence Committee (SIC) – federal parliament's spook body – were claiming "the ability to report freely and fairly on national security is a vital part of our democracy".

They issued a media release with those precise words, in quotes, in it.

We'd like to know what the chair (Liberal Andrew Hastie) and deputy chair (Labor's Anthony Byrne) are doing to correct the problem that a secret trial, secret sentencing and secret jailing has taken place "under their watch".

And that a journalist/author is not permitted to visit a prisoner at the prisoner's request.

### Williams, Walker severely critical of terror laws emphasis, extent and equity

Prof George Williams, Dean of Law at UNSW, criticised a pattern of rushed legislating on security in a revealing article in *The Saturday Paper* last month.

"They've passed laws that are not fit for the statute book," Prof Williams said.

"There's always a sense of political urgency to this, there's political point-scoring.

"The lack of scrutiny, of checks and balances, means in Australia really, the quality of these laws depends on the work of parliament.



## ASIO officers broke law on warrant

"Whilst operational staff complied with ASIO's operational planning procedures, these procedures were inconsistent with other ASIO policies and were insufficient to ensure that ASIO acted lawfully."

**Karen Middleton** The agency's watchdog, tasked with unravelling the breach, has echoed growing concern about flawed and confusing new anti-terror laws.

"And when parliament is in agreement that these laws simply must be passed and the drafting and quality of the laws can be secondary, you end up with our current predicament of a vast number of counterterrorism laws being enacted, many of which are poor quality and over-broad."

The article, by Karen Middleton, also quoted Australia's first Independent National Security Legislation Monitor (INSLM), barrister Bret Walker, who said the volume and hasty drafting of (terrorism) legislation was a problem.

Walker criticised the over-emphasis on terrorism.

"Why would we do for terrorism what we don't do for domestic violence?", he asked, referring to powers of detention, control and questioning, and noting that family violence claims many more lives than terrorism.

The article began by explaining how frequently ASIO acted unlawfully.

Note: Prof Williams is a long-term member of CLA.

### Terror laws need reining in, CLA CEO says

More Australians are starting to understand the need to rein in 20 years of excessive "terror" laws, CLA CEO Bill Rowlings said in an interview with Sydney Criminal Lawyers (SCL) last month.

The Coalition government – with the nod of approval from Labor – had had a field day this century, establishing the metadata regime, enacting draconian espionage laws, and cracking open encrypted data for intelligence agencies to skim through.

SCL's special writer Paul Gregoire wrote: "Mr Rowlings recommends that 'now that the terrorism panic has passed', there needs to be a nationwide moratorium 'on giving new powers to police and security services, until after a complete review of all anti-terror and anti-bikie and anti-protest laws' is undertaken.

"There's a strong economic argument for winding back the excessive expenditure on police and security manpower and equipment," CLA's CEO said subsequently.

"Aged care, mental health, hospitals, arts and culture...all have declined dramatically over the past 20 years, because of unbalanced and excess spending caused by politicians – not the people – being afraid." <https://tinyurl.com/yy8dtlnm>

### MPs learn about deadlines...and miss, twice

The federal's parliament's press freedom inquiry has learned that deadlines affect quality of reporting.

In doing so, it has failed two deadlines...so far. And we're still counting.

Deputy chair of the SIC\* committee, Labor's Anthony Byrne, said: "The ability for the committee to make targeted recommendations is reliant on time, and the committee would rather report later to ensure that occurs." (media release 21 Nov 210)

Memo Mr Byrne, and chair Andrew Hastie: That's the type of pressure that journos face on a daily basis...but they can't ask for an extension of time, like you have. Welcome to the real world, for a change.

SIC was originally supposed to report by 17 October, but missed that deadline. It was then due to report by 28 November, but has apparently missed that deadline too, because on 21 November it issued a media release saying the committee "(undertook) to present a report in the week before Christmas at the latest." Which year, it didn't specify.

In CLA's opinion, this is the parliament's worst committee.

It has members from the Liberal and Labor parties only (no Nationals, no Greens, no Independents).

It has a long history of being dominated by insiders with military, police, security and Canberra (spook) community backgrounds. It has never had any member clearly identifiable as representing human rights and civil liberties concerns as his/her main viewpoint.

CLA believes at least half this committee's membership should be drawn from non-spook backgrounds, particularly people who are known and long-standing advocates for freedoms, rights, liberties and transparent government.

SIC: "Security and Intelligence Committee" – CLA's onomatopoeic shorthand for the parliamentary joint committee on intelligence and security.

## Ex-ASIO boss reveals his selective vision

Retired ASIO chief Duncan Lewis (photo) has accused the Chinese government of using "insidious" foreign interference operations to "take over" Australia's political system.

Anyone in political office could be a target, the former spy chief told the political journal *Quarterly Essay*.

Lewis claimed Chinese authorities were trying to "place themselves in a position of advantage" in political, social, business and media circles, *The Sydney Morning Herald* reported, citing the interview.

"Espionage and foreign interference is insidious. Its effects might not present for decades and by that time it's too late," he said. "You wake up one day and find decisions made in our country that are not in the interests of our country." In the interview, Lewis warns covert foreign intrusion into the heart of Australian politics is "something we need to be very, very careful about".

CLA hopes his warning was heard in the halls of power. Many people believe that the USA undertakes overt and covert intrusion into the heart of Australian politics on a daily basis, And, of course, Australia undertakes overt and covert intrusion into the heart of the politics of many nations, particularly in the Pacific region.

Just look at the bugging of the East Timor Cabinet room by Australia, from which event two men, Witness K and lawyer Bernard Collaery, are undergoing trial in the ACT, mostly in secret. <https://tinyurl.com/t6fz864>

CLA reminds people that, until very recently, ASIO and the security apparatus were totally focused on terrorism and danger from the "left" of politics. Now they admit terrorism is not (and has never been, CLA says) the major threat to Australia...and that right-winger extremism is now the ASIO and police focus.

CLA believes that ASIO should be much more balanced in its activities and its assessments generally, an issue which Lewis



appears to confirm is a problem. But we can never know, because oversight of the security agency is political, forming a reinforcing, closed loop.

The Chinese reacted to the furore, and summed it up, by saying Lewis and crew were "acting hysterically".

## China hits back, and calls out 'hypocrisy'

In an opinion piece published in *The Australian* last month, senior Chinese diplomat Wang Xining accused MPs of having double standards and showing disrespect.

"It is cynical that in a country boasting freedom of speech, different views from another nation are constantly and intentionally obliterated," Mr Wang wrote.

"Understanding truth succumbs to being politically right. A people said to be audacious and adventurous like kangaroos are scared of stepping out of the comfort zone of ideas and thinking." <https://tinyurl.com/t6fz864>

## Kirby warns that Christian Porter's religious bill would threaten secularism

The government's proposed religious freedom bill would increase religious intolerance and anti-religious hostility, threatening secularism in Australia, the eminent rights advocate Michael Kirby has warned.

In a letter to the *Australian Law Journal*, Kirby (photo) suggested the push for legal protections for "religious freedom" was "a product of hostile religious assertions of a minority of conservative politicians" after the marriage equality legislation passed in 2017.

The former High Court judge said the current proposal, released as a draft bill in August, was an "unbalanced law that will sustain nastiness and hostility that we can well do without.

"Passages of scripture can be found for just about every prejudice known to mankind," Kirby said. "They have even been invoked against natural or innocent features of human nature or conduct such as left-handedness and masturbation.

"There is a need for considerable caution in elevating every religious opinion to an enshrined legal right to hurt and harm others."

Attorney-General Christian Porter has said he would introduce the bill to parliament this year. But human rights and LGBTI groups, as well as employer bodies and state anti-discrimination commissions oppose it, and key crossbench Senators are not expected to support it. <https://tinyurl.com/vfcbet6>

## CLA suggests how to improve parl. behaviour

Introduce a yellow and red card system for warnings and suspensions, and instal a decibel meter in the houses of parliament, CLA suggested when invited to comment on how behaviour of MPs in federal parliament might be improved.

The House Procedure Committee initially asked for ideas on how to improve question time in the House of Representatives. CLA's submission, No 37, is here: <https://tinyurl.com/vnd4nxo>

CLA also proposed an easily-implemented, no-cost method of providing vastly more information to citizens. Simply, release all the Question Time briefs – known as Possible Parliamentary Questions – prepared each sitting day by countless public servants for Ministers, just in case the Minister gets asked a question on a topic in his/her portfolios.



There are thousands of such factual, unbiased, non-political answers to possible questions prepared and/or updated for every sitting period of parliament.

It would be the simplest of changes to make those pre-approved answers public at the end of each parliament sitting period.

### **'Politicians cause declining trust': ex-Lib deputy Julie Bishop**

"Politicians have themselves to blame, and when you make promises and then don't keep promises, the Australian public have a reason to be cynical," former Foreign Minister and Deputy PM Julie Bishop said last month.

Ms Bishop was disturbed by Pew Research survey results showing 19% of Australians said it would be good to be ruled by a strong leader without parliament or courts and 12% liked the idea of military rule.

Australians would welcome a conversation on how decisions were made in the nation "within an ethical framework, a principled framework", Bishop said. <https://tinyurl.com/t7qhset>

Hear, hear, says CLA. Let's bring ethics and principles back to politics, starting with the two main parties.



ABOVE: Then Foreign Minister Julie Bishop in 2017 at ANU with then-ANU Chancellor and former Foreign Minister Gareth Evans. In 2019, Evans is retired, and Bishop is ANU Chancellor.

– Pic: Stuart Hay, ANU.

### **ALRC has two key reviews under way**

Two important issues are at various stages of inquiry by the Australian Law Reform Commission.

- **Review into Australia's corporate criminal responsibility regime:**

The ALRC released a discussion paper on 15 November 2019 which sets out proposed reforms and asks questions to assist the ALRC to prepare formal recommendations. Submissions on the Discussion Paper are due by 31 January 2020. The ALRC is due to report on 30 April 2020. <https://tinyurl.com/rt8ryyp>

- **Review into the Framework of Religious Exemptions in Anti discrimination Legislation:**

The ALRC is due to report its findings in December 2020. <https://tinyurl.com/rpq4wjh>

### **Health record reports blips**

Thirty-seven data breaches involving the federal government's controversial digital health records system were reported in 2018-19, with a wrong parent given access to a baby's My Health Record.

The Australian Digital Health Agency annual report, released on Melbourne Cup Day, revealed all but three of the data breaches were made by Services Australia, formerly the Department of Human Services.

Most involved "administrative errors" but three cases involved "unauthorised access to an individual's My Health Record", including one resulting from "an incorrect parental authorised representative being assigned to the child".

An ADHA spokesman said the breach was a manual error that occurred while processing a form used to register a newborn for Medicare and My Health Record. The other two cases of unauthorised access were by clinicians suspected of Medicare fraud. The total is down five on the previous 12 months.

About 90% of Australians are on the My Health Record database. <https://tinyurl.com/y6zaprr4>

### **Centre Alliance tries to up age of responsibility**

Centre Alliance MP Rebekah Sharkie has introduced a bill to federal parliament – the Crimes Legislation Amendment (Age of Criminal Responsibility) Bill 2019 to increase the age from 10 to at least 14.

Raising the age would mean that Australia complies with international obligations under the United Nations Convention on the Rights of the Child.

Raising the minimum age of criminal responsibility to 14 would also remove the need for courts to consider the confusing and complex "doli incapax" legal presumption, which assumes a child under 14 does not possess the knowledge required to form criminal intent.

### **E-petition aims to wind back draconian second attempt at anti-protest laws**

Six Tasmanian organisations, led by Civil Liberties Australia, last month launched a parliamentary e-petition against draft anti-protest laws proposed by the state government.

Within a matter of days, it had reached 2000 signatures, becoming the most signed e-petition since the Liberal government took over in 2014.

"These proposed laws are illiberal, unjust and dangerous and we urge all non-government legislators to vote against them," Tasmanian Director of Civil Liberties Australia and lead petitioner, Richard Griggs, said.

"The laws are undemocratic and illiberal. They shield businesses from public criticism and elevate economic interests of organisations over the civil liberties and rights to free speech and assembly of individuals.

"They are also unjust. They would impose harsh criminal and financial penalties on people who peacefully assemble on public land to protest. The laws would effectively silence Tasmanians afraid of taking part in public meetings and rallies for fear of breaking the new law", Mr Griggs said.

Petition: <http://www.parliament.tas.gov.au/EPetitions/House/CurrentEPetition.aspx?PetNum=79&IIndex=-1>

Groups behind the petition are Civil Liberties Australia, Tasmanian Aboriginal Centre, Equality Tasmania, Australian Lawyers Alliance, Bob Brown Foundation, Respect the Mountain and Residents Opposed to the Cable Car

Mr Roland Browne, the Hobart lawyer who led the legal challenge to the High Court on the first version of the anti-protest laws, also attended the launch of the petition (see report under 'Tasmania report; below) The High Court overturned the first attempted laws as too draconian.

The petition's sponsor is Cassy O'Connor, Leader of the Tasmanian Greens.

### **Minister quizzed over open-slathe data transfer**

Tasmanian CLA Director Richard Griggs writes that there are many unanswered questions about the transfer, secretly and without public announcement, of Tasmanian driver licence photos to a national police and security ID database.

On behalf of CLA, he has formally asked the Minister for Infrastructure and Transport, Michael Ferguson, these questions:

1. How many photographs have been transferred from Tasmania to the national database and when is the transfer scheduled to be completed?
2. What information is being transferred? i.e. photo, name, address, other information?
3. What security measures are in place to guard the national database against hackers and identity fraudsters? Specifically, will the servers and backup servers for the database be based solely in Australia? If not, which other countries will be involved?
4. Is Tasmania the only state and territory that authorised the transfer via regulation as opposed to legislation? A report from the Commonwealth Parliamentary Joint Committee on Intelligence and Security says that both SA and Queensland used legislation but Tasmania opted for regulations:
  - a. QLD: Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018;
  - b. SOUTH AUSTRALIA: Public Sector (Data Sharing) Act;
  - c. TASMANIA: 2016 Vehicle and Traffic (Driver Licensing and Vehicle Registration) Amendment (Identity Matching Services) Regulations 2017

Copy of Commonwealth Parliamentary Joint Committee on Intelligence and Security reports (refer page 16): <https://tinyurl.com/w9p8u68>

### **‘Whatever it takes’ is no way to run any police force: Barns**

What do we know from the misconduct of Victoria Police in the Lawyer X scandal? That police forces too often have a ‘whatever it takes’ attitude to the law.

Trampling on rights, ignoring the principles of the rule of law, these are the hallmarks of police forces in Australia. And politicians encourage them by caving in to every demand by police for more powers.

In addition to police abuse of powers we have security agencies like ASIO which have gone rogue in the post 9/11 world.

Their proposal for a national biometric database which will enable surveillance 24/7 of everyone among other ills, has been enthusiastically embraced by the Hodgman Government.

- from an article by Greg Barns *Mercury* Hobart 191104. Barns is a former head of, and longtime spokesperson for, the Australian Lawyers Alliance

### **Good news corner: TT is re-born**

The Tasmanian Times has undergone a re-birth, after about a year ‘off-air’.

Founder in 2002 and long-standing editor, manager, etc, Lindsay Tuffin, has given his blessing to the new team.

The TT is an online journal-magazine which provided the only non-structured news output in Tasmania apart from the ABC.

*“It is absolutely vital that Tasmania has at least one, preferably more, news voices independent of mainstream media control,”* CLA CEO and former newspaper editor, Bill Rowlings, said.

The TT is now headed by a new editor, Alan Whykes. He used to have the great good sense to be a member of Civil Liberties Australia, but he has decided he prefers to be seen publicly to be independent of NGOs like CLA in his new role.

We wish him and the TT, and all the stories that sail in her, the very best for the future.

He said in an article 12 Nov 2019: “We are still in a ‘soft’ reopening mode and will be for a while. Our target is to have the rejigged Tasmanian Times at absolutely full sail by about March 2020.”

**Film premiere:** CLA member Eve Ash’s Hobart premiere of her new film, *‘Man on the Bus’*, with Director Q&A hosted by barrister and writer Greg Barns, is on Monday 9 December, 6pm. Details [here](#) Click on session time to buy tickets. The film is uplifting about relationships, love, truth, lies and acceptance. It has been chosen for an encore season after previewing at the International Jewish Film Festival last month. Melbourne and Sydney screenings run to 8 December.

### **Shots and stunning cost Vic Pol \$3m plus**

Victoria Police are under fire for failing to properly investigate officers who shot two people at a Melbourne nightclub in 2017.

The pair, Dale Ewins and Zita Sukys (photo), will receive about \$3m compensation from the VicPol budget, it has been reported. This is on top of a secret sum paid to the owner of the Inflation nightclub.



Vic Police claim their officers acted in self defence: it was a fancy dress night at the club, and Ewins was wearing an outfit which included a fake gun. Critical Incident Response Team police surrounded the pair and opened fire...despite having been told it was a fake gun.

Victoria Police Deputy Commissioner Shane Patton said last month that an investigation conducted by police after the shooting found the officers “acted in self-defence”.

Mr Ewins was shot in the back, hit with a stun gun discharge three times and forced to the ground, while Ms Sukys was shot in the leg. <https://tinyurl.com/tjmfkdx>

### **Coroner upstages Premier, police chief**

A NSW coroner wants pill testing at music festivals in NSW, police sniffer dogs banned, illegal strip searches of children ceased, and personal use of small amounts of drug legalised in NSW.

Deputy NSW coroner Harriet Grahame was investigating the deaths of six young people aged from 18 to 23 at NSW music festivals over the past two years. She recommended several major law changes.

Grahame said there was “compelling” evidence to support pill testing, which could “prompt behavioural change”.

“Drug checking is simply an evidence-based harm reduction strategy that should be trialled as soon as possible in NSW,” she said.

Ms Grahame said high-visibility and punitive policing operations at festivals had “inherent dangers and few if any benefits” and “drug detection dogs” should be scrapped.

She indicated that the “detection” dogs – mainly a PR tool – were misnamed: “The fact is that in 2018–19 ... strip searches

after drug dog indication, drugs were found in 28.3% of cases," she said. In other words, the dogs were wrong in more than 7 out of 10 instances.

Anachronistic Premier Gladys Berejiklian and gormless NSW Police Commissioner Mick Fuller each said they would continue their disastrous approach to drug use by children and youths at music events.

The parents of the dead children, who were the cause and the subjects of the coronial inquiry, called on the two state "leaders" to listen to experts instead of continuing with drug policies and regimes proven to cause deaths. – <https://tinyurl.com/y2z54hbs> and <https://tinyurl.com/y37jgaf>

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**Two-party system:** *The belief of the two traditional parties that minor parties and independents undermine good government by introducing additional ideas and raising issues best ignored.*

– from the booklet, **A Cynic's Political Dictionary**, by CLA member Bill Godfrey of Tasmania. If you would like to buy one or more booklets (\$9 posted) for your spouse, friend, or colleague this Christmas, contact the CLA secretary for Godfrey's email details.

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### Archaic sex laws remain as reform bill just fails

The SA House of Assembly last month voted 24–19 to defeat a bill to decriminalise sex work in the state.

There was a conscience vote of MPs. The bill appeared to founder on the bloc vote of the religious right of the opposition Labor Party. Liberal Premier Steven Marshall voted in favour.

The private member's bill, co-sponsored by the Attorney-General Vickie Chapman and Greens MLC Tammy Franks, had previously passed the Legislative Council.

"Absolutely deflated but not defeated," Ms Franks said. "We have the most archaic laws in the country." <https://tinyurl.com/tejfbcz> ...and a legal/justice system that needs a royal commission of inquiry, says CLA.

"I feel for those sex workers in our community who will still be treated as second-class citizens, and will still be able to be prosecuted for their work," the AG and deputy Liberal leader, Vickie Chapman, said.

### Research paper drives at cost of refusing bail, with remand increase clogging jails

The Victorian parliamentary library has released an important research paper, entitled 'No bail, more jail?'

Subtitled 'Breaking the nexus between community protection and escalating pre-trial detention,' the paper is the work of Dr Marilyn McMahon, from Deakin U's School of Law.

She says Victoria is experiencing an 'incarceration crisis' caused by an unprecedented growth in prisoner numbers. The key driver of this growth is the increasing number of persons who are denied bail and remanded into custody.

At 31 May 2019, 38% of adult prisoners in Victoria were being held on remand.

The increasing number of persons detained in prisons in Victoria is a matter of concern. What is often not recognised is that the growth is primarily due to the number of persons who

are denied bail and detained in prison ('remanded into custody').

The 'incarceration crisis' in Victoria is intimately related to changes in bail laws and associated practices, McMahon (photo) says.

She notes that the increase in the remand population is gendered, with higher rates for women—nearly half the women in Victorian prisons are now being held on remand. The most common alleged offences of females on remand were drug offences (20%), burglary (15 %) and other property offences (23%).

Seventeen per cent of the women who entered remand in Victoria in 2017 were Aboriginal or Torres Strait Islander,

There are set provisions for deciding on whether someone gets bail: factors when determining 'unacceptable risk' are the nature and seriousness of the offence; the character, antecedents, associations, home environment and background of the accused person; the history of any previous grants of bail to the accused person; and the strength of the evidence against the accused.

Independent Member of the Victorian Legislative Assembly, Ms Suzanna Sheed, countered the narratives of 'extremely dangerous' by describing several cases, including that of a 37-year-old mother of five who spent 68 days on remand for allegedly stealing a handbag from Myer; she was subsequently convicted and released on a good behaviour bond: S. Sheed, MLA (2018) 'Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill 2018', *Debates*, Victoria, Legislative Assembly, 4 Sept, p. 3107.

The Productivity Commission estimated that the cost per prisoner per day in Victoria in 2018 was \$323.82\*.

<https://www.parliament.vic.gov.au/component/jdownloads/download/36-research-papers/13893-no-bail-more-jail-breaking-the-nexus-between-community-protection-and-escalating-pre-trial-detention>

### Qld Police: where private info is open slather

Queensland police officer Neil Punchard, who pleaded guilty to leaking details of a domestic abuse victim to her violent former partner, is trying to keep his police job by appealing his suspended prison sentence.

Punchard pleaded guilty to nine counts of computer hacking and his sentence included a recorded conviction which would allow Qld Police reasonable grounds to dismiss him.

He remains a police officer, being paid a salary but not on full duties.

Even as Punchard appeals, the state's Crime and Corruption Commission is undertaking an inquiry to explore the scope of public sector data misuse, which is apparently blatant and widespread in the Qld Police (and in other police forces in Australia).

Police often claim data breaches are the actions of rogue individuals or instances of voyeurism, rather than the result of documented systemic failures to protect citizens' data.

Police employees illegally accessed data more than 200 times last year in Qld. The rates of data misuse among police is more than 26 times the rates of other departments with responsibility for protecting large amounts of private personal information.

The CCC has compiled a table showing that in 2018-19 there was one data breach for every 75 police.

That compares with one in 322 employees at the transport department and one in 1993 education department staff. <https://tinyurl.com/s2omuue>



## Do police break more laws more often than your average citizen?

Police probably break more laws, on average, than anyone else in the community, CLA believes.

If video footage reveals one police officer bashing/kicking/ beating a youth, the other three police officers holding down the youth have broken the law by not arresting their fellow officer for assault, CLA says. But when are the aiding and abetting threesome ever charged with dereliction of duty? Not even if the assaulting officer is charged – a most infrequent happening – do the others face charges.

From the first day or week “on the job”, young police trainees are taught by old hands that they, the police, are bosses of the streets, not public servants like anyone else employed by the government.

Why do police think they are above the rest of the community, and that laws don't apply to them? For every police hero, and there are many police who act heroically, there are probably hundreds of police who break the law every day, throughout Australia.

CLA salutes the heroism, but notes it is time for ministers and governments to rein in rampant police self-perceived exceptionalism...and continuous law-breaking.

### Police killings continue

NT Police have apparently shot and killed an Aboriginal man, 19, in a remote community.

The police killing took place in Yuendumu, 300km NW of Alice Springs, on a Saturday night last month.

Police were apparently trying to arrest Kumanjayi Walker for breaching parole conditions on a suspended sentence while he was attending the funeral of a close relative. The community claimed there was an agreement he would be arrested on the Monday, after the funeral ceremonies.

NT Police acting deputy commissioner Michael White – who should have made no comment, CLA says – said the man was shot after he lunged at police while armed with an edged weapon. An officer was injured, allegedly. <https://tinyurl.com/vpxbx8b>

“We need national leadership on this injustice. Police violence is killing our people and must end,” said Cheryl Axleby, co-chair of the National Aboriginal and Islander Legal Service (Natsils).

“Police must not investigate police. We call for the police officers involved to be immediately suspended pending an independent investigation,” she said. <https://tinyurl.com/qtvyzuf>

NT Police constable Zachary Rolfe has been charged with murdering Walker.



New NT Police Commissioner Jamie Chalker (photo), barely days into the role (see briefs, below), said WA Police assistant commissioner Nick Anticich, who is on secondment with NT Police, would lead an NT Professional Standards investigation into Walker's death.

The NT Ombudsman will also oversee the investigation. The new NT Independent

Commission Against Corruption head, Ken Fleming, was also to oversee matters...but apparently, and unwisely, commented on the case in its early days. <https://tinyurl.com/uj23k48>

Walker is the second Aboriginal person to die by police shooting in the past two months. In September a 29-year-old Yamatji

woman, Joyce Clarke, was shot outside a house in Geraldton WA. She died later in hospital.

In earlier editions of the CLArion in 2019, CLA has highlighted the problem of increasing killing of citizens by police in Australia.

### Australian briefs

**Chalker gets the nod:** Jamie Chalker is the NT Police Commissioner. He returns to the police after being CEO of the Dept of Housing and Community Development. He had reached assistant commissioner and acted as deputy and in the top job before leaving police for Housing in 2016.

**Mental health attracts huge response:** The Royal Commission into Victoria's Mental Health System has received more than 2500 submissions from organisations and individuals, including people with lived experience, carers and families and the workforce. One was from CLA member Reg Murray. The submissions were lodged in a period just under three months earlier in 2019. They are available here: <https://tinyurl.com/y53x68wv>

**15 govts agree secret trade deal:** Fifteen governments have ended their text based negotiations for the Regional Comprehensive Economic Partnership (RCEP) agreement and will sign the agreement in early 2020. The 15 are Australia, China, Japan, South Korea, NZ, Indonesia, Malaysia, Thailand, the Philippines, Myanmar, Cambodia, Laos, Vietnam, Singapore and Brunei. India has withdrawn. Despite the negotiations being concluded, governments are keeping the text secret until after it is signed in 2020. CLA is one of the organisations campaigning for immediate release of the text of the agreement. The Australian Parliament will be asked to rubber-stamp the agreement, without any ability to change a word of it.

### Comments by CLA's members and others (mostly in letters to the editors)

#### Labor should lead

Congratulation to David Smith MP on his excellent lead letter (Canberra Times, 28 October). The only thing that detracts from his statement is that Labor in opposition and in government has been complicit in the excessive terror laws being passed by the parliament. Labor has been so scared of being wedged on national security that they have not stood up for people's rights. I hope the indications Labor is finally standing on principle have concrete results. – Dr Kristine Klugman OAM, President, Civil Liberties Australia

#### Distressed woman's cries don't bring help, just rebuke

Yesterday at Dickson shops I heard a woman crying out in a distressed manner. I went to check on her and she was with two police, a male and a female, and another man. She was obviously disturbing the peace. The police were telling her that if she didn't comply by leaving quietly they would call a paddy wagon and take her to a cell. I said it was not appropriate to threaten a woman in such mental distress. The young woman called me aside and explained that this had been going on for some time and that mentally disturbed people had to obey the law and that I should go away. I got the impression that they were worsening the situation and that they were poorly trained in this area. Have we reached a time when the police pose a dangerous – sometimes lethal – threat to mentally disturbed people? – Pauline Westwood, CLA member, Canberra

#### Civil liberties up in smoke?

Why are cigarette imports by post, but not cigars, now treated as prohibited imports? Is the cigar exemption a special rule for Cormann and Hockey, Australia's best-known cigar smokers?

Where is evidence of any cost-benefit analysis, or respect for individual lifestyle choice, in this selective ban? Tobacco "control" is the canary in the coal mine for civil liberties more generally. Obviously if tobacco taxes were reduced from the astronomical level of 905% by value, the incentive for revenue evasion would decrease considerably. Prohibitionists – wowsers – only respect the law when it can be used to bludgeon other citizens into conformity with their concepts of bourgeois purity. Why isn't there a 905% tax on church candles which also produce smoke and fumes? If "second hand" tobacco smoke is the threat it is claimed to be, why are experts saying that thick clouds of bushfire smoke are only a health hazard after years of sustained exposure? – Mark Jarratt, CLA member, Launceston, Tasmania.

### CLA members...eagle-eyed, a sense of injustice, current and historic

'Today in History' (16 Nov 2019) says that Australian bushranger Ben Hall takes part in the shooting of Sgt Edmund Parry at Collector, near Goulburn, NSW in 1864. Ben Hall did not take part. He was in the hotel – reputedly entertaining a housemaid – when his young gang member, John Dunne, shot the unfortunate and brave Sgt Parry. Ben Hall had not killed anyone in his 27 years when, unarmed, he was shot in the back by a gang of police near Forbes on 5 May 1865. – Estelle Blackburn (photo), CLA member, Phillip ACT. For info: [https://en.wikipedia.org/wiki/Estelle\\_Blackburn](https://en.wikipedia.org/wiki/Estelle_Blackburn)



### Australia has become the secret state

Welcome to Australia's de facto state of emergency. Your excellent reporting ('Why police raided secret prisoner's cell', *Canberra Times* 19 Nov 2019) reveals the story of the prisoner known as 'Alan Johns', held in Canberra's Alexander Maconochie Centre. But the authorities won't let us know the man's real name, what he is in prison for, or what his sentence is. 'Alan Johns' is allowed only limited contact with family and friends and is not even allowed to know the details of the special orders that apply to his imprisonment. Authoritarian regimes around the world at least have the decency to declare a 'state of emergency' before they raid the offices and homes of journalists, lock up whistleblowers, implement mass surveillance of their citizens, grant sweeping powers to security agencies with the approval of rubber-stamp parliaments, and imprison people incommunicado after secret trials. In Australia we are denied even that. – Dr Kristine Klugman, President, Civil Liberties Australia.

[Comment to the President, from CLA member Pauline Westwood, on this letter](#) (which was so good, the *Canberra Times* ran it twice, on a Saturday and the following Monday):

*Once again you have nailed it. Kafkaesque secret imprisonment, draconian isolation. People are sleep walking their way to fascism, still thinking our biggest problem is to be swamped by so-called boat people, while their freedoms are whittled away one by one.*

**MEMBERS:** please send us copies of letters you send to the media. Email: [secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

### When those in power get it wrong...

I have just read an article in relation to the UK Hillsborough football tragedy:

*"What typically happens when those with power over our lives get it wrong is that justice is evaded for as long as possible. This is where establishment arrogance and backside-*

*covering, for want of a better phrase, comes (sic) into play. Suddenly, the goal posts shift and everything we hold dear about the rule of law and punishment become amorphous and re-moulded to fit a new story or perception. Blanket denials become cast-iron, irrefutable facts. Hillsborough's story is an example of what happens when those in charge screw up spectacularly and then refuse to carry the can until they are exposed, after decades of perseverance, for their crimes."* – (from 'Book of Disasters' – Third Edition" (2018)

I think the author (unknown) expressed the oft-repeated process very well. – Gordon Fyfe, CLA member.

## CLA report – main activities for November 2019

Activities at HQ during the month were curtailed due to the ill health of and an operation on, the President, as well as illness of the CEO. The scheduled November board meeting was postponed to 1 December for those reasons. A report on the December board will be in the next CLArion in 2020.

**WA report** by Margaret Howkins, CLA Director in WA:

- Sent official CLA submission to Margaret Quirk MLA, Chair of WA Joint Standing Committee of the CCC advising detailed improvements/amendments for the 2003 Corruption, Crime and Misconduct Act. This included the CLA-developed 'Principles of Independent Investigation'.
- Completed AO size (very large) poster, ready for CLA's attendance and poster presentation at the ANZSOC Criminology conference for 12 Dec in Perth.
- Attended demo/filed petition supporting Voluntary Assisted Dying Bill (legislation being held up by a single fanatical MP in Legislative Council) Survey: 88% very vocal public support in WA for the Bill.
- Mailed 16 letters to cross-party politicians and senior police bureaucrats on behalf of two male prisoners at WA's Acacia jail. They asked for support to produce an educational DVD warning young people directly of consequences of drug abuse. Very poor response so far.
- Sam Coten (CLA youth spokesperson) has returned from six months in Italy, and has completed his WA Law degree.
- Attended the WA premiere of Eve Ash's film 'Man on a Bus', and 'chaired' a Q & A session after the movie. The audience were attending Perth's Jewish Film Festival and clearly enjoyed the production. Loads of questions asked. I spoke at the finish inviting new members to join CLA to work towards an urgently needed Bill of Rights in WA.
- WA shadow premier and shadow police minister have responded to CLA's letter to them (and my letter to the *West Australian* about police killings of civilians) by offering a meeting with me in 2020 (it's an election year!).
- Paul Montani, who started JUSTICEwa and organised a huge wrongful convictions conference in Perth in March 2012, died of bowel cancer in late-November. VALE: a devoted crusader lost.

### Tasmania report

by Directors in Tasmania, Richard Griggs and Rajan Venkataraman:

- Harsh anti-protest laws tabled in State Parliament propose tough sentences of imprisonment for those who peacefully gather on public land to protest. We have participated in the campaign against these laws by:
  - writing a parliamentary e-petition against the laws – petition is here: <https://tinyurl.com/r8hlpc8>



- speaking at rally organised by the Bob Brown Foundation on 25 Nov Parliament Lawns (photo: Richard Griggs speaking – pic: Bob Brown Foundation): some 600 people attended.
- lodging submissions with MPs in the State Lower House.
- The State Government has been revealed to be uploading drivers licence photos to a national facial recognition scheme. No State or Commonwealth legislation exists authorising the transfer. We have joined the efforts to highlight this breach of privacy principles through writing an opinion piece published in the Hobart Mercury 23 November 2019, and reproduced on CLA website here: <https://www.cla.asn.au/News/our-images-fly-interstate-after-secretive-private-debate/#gsc.tab=0>
- Campaign for a Tasmanian Human Rights Act: The campaign committee has decided to cease attempts to write a Bill for a Tasmanian Human Rights Act. As an alternative we asked the Tasmanian Law Reform Institute to update its 2007 report with data and evidence that has emerged in the intervening 12 years. We wrote terms of reference for the TLRI which they have accepted. Also, recently the TLRI were successful in receiving funding from the Law Foundation to perform the work. It is expected the report will be finalised and published in advance of the next State Election, due in 2022. This offers a concrete positive step towards a Tasmanian Human Rights Act being written and passed in the next term of state parliament 2022-2026.
- Tasmanian prisons: A strong community campaign is running against the state government's proposed opening of a new prison in Westbury in northern Tasmania. Meanwhile, the Tasmanian Auditor General has highlighted that the Tasmanian Prison Service is under-resourced and over budget and has failed to plan for increases in prisoner numbers resulting from changes in government policies. CLA has pointed out the linkage to the government's 'tough on crime' policies including the abolition of remissions and suspended sentences, and the tightening of bail laws (see letter to the editor in the media report).

## MEDIA:

### November 2019

'Face it, we need better privacy laws' (Griggs): Opinion piece, *The Saturday Mercury*, 23 November 2019.

'The secret is out' (Klugman): Letter to the Editor regarding the "Alan Johns" case in Canberra, *The Canberra Times*, 22 November 2019.

Launch of petition against Tasmanian anti-protest laws (Griggs): Wide coverage in Tasmanian print and electronic media, 21 November 2019.

Tough on crime policies and the need for a new Tasmanian prison (Venkataraman): Letter to the Editor, *The Hobart Mercury*, 9 November 2019.

'Dutton broadens ID-checking and move-on powers at airports' (Rowlings): Quoted in article on the blog of Sydney Criminal Lawyers, 1 November 2019.

### October 2019

'Tree of Liberty' (Klugman): Letter to the Editor, *The Canberra Times*, 16 October 2019.

'Calls to review 'excessive' protest laws in wake of Extinction Rebellion arrests' (Rowlings): Quoted in article, *The Sydney Morning Herald*, 13 October 2019.

'Protest is part of the process' (Klugman): Letter to the Editor, *The Canberra Times*, 13 October 2019.



**Publishing:** CLA has published 21 articles and four CLArion newsletters on the CLA website since mid-August: see them here: <https://www.cla.asn.au/News/>

**FORUMS: DFAT dialogues** – report by Director Jennifer Ashton 30 Oct 2019

The Department of Foreign Affairs and Trade (DFAT) met with representatives of rights and liberties organisations – including CLA, whose Director Jennifer Ashton attended – to debrief on their recent dialogues with Vietnam (29/8) and Laos (28/8), both held in Australia.

"DFAT is undergoing budget austerities, judging by the lack of refreshments that have been a highlight of previous meetings," Jennifer reported. "But then, what do you expect for a department that cannot account to Senate Estimates about what 'negative globalism' actually means.?"

"Representation at debriefs is never as large as in preparatory meetings, when significant numbers of representatives of Vietnamese and Lao diaspora organisations are keen to have input into the dialogue.

"However, it was notable that representatives of Khmer Krom associations had travelled overnight from Melbourne by car to participate. Although the relevant dialogue had dealt with ethnic minorities, the situation of the Khmer Krom, who are not a recognised minority, was not adequately covered. DFAT undertook to look at this issue between dialogues.

"Generally there were no major breakthroughs but it is important, in my view, that the dialogue continues. It is one window of opportunity to talk about critical human rights issues and (hopefully) achieve gradual change. Certainly, this is the case for Vietnam and Laos. How Australia's dialogue with Iran will evolve is another matter which CLA will follow with interest," Jennifer reported.

\* In this DFAT is not alone. Many scholars and international NGOs are scratching their heads about definitions.

NB: In November, DFAT admitted that a similar human rights dialogue, with China, had fallen into abeyance. CLA had attended the previous China dialogues and found them extremely valuable opportunities of frank exchange. For example, CLA's President Dr Kristine Klugman was able to have a direct exchange of views with a top Chinese judge on human rights at a dialogue in Canberra.

## SUBMISSIONS by CLA:

### October 2019

- Religious Freedom: consultation on draft Bills – submission to the Attorney-General's Department (Venkataraman) 2 October 2019.

- Northern Territory: *Firearms Legislation Amendment Bill 2019* – submission to the Economic Policy Scrutiny Committee (Rowlings) 8 October 2019.
- Inquiry into the practices and procedures relating to question time – submission to the House of Representatives Standing Committee on Procedure (Rowlings) 31 October 2019.

#### November 2019

- Tasmania's anti-protest laws – e-petition to the Tasmanian Parliament (Griggs) 19 November 2019.

## INTERNATIONAL

### NZ to set up Criminal Cases Review Commission

NZ has passed a law to establish a Criminal Cases Review Commission (CCRC) to investigate claimed miscarriages of justice.



"...our justice system can very occasionally get things spectacularly wrong, even with rights of appeals, and there needs to be a chance for the innocent on the right grounds to seek a final review.

"The CCRC is an important mechanism to enhance the independence, timeliness,

quality and fairness of investigations into miscarriages of justice," Justice Minister Andrew Little (photo) said.

"If the Commission finds there is a miscarriage they will refer the case back to the Court of Appeal to reconsider whether the convictions should stand or fall."

The CCRC will be an independent crown entity (statutory authority, in Australian terms), with between three and seven commissioners, including a chief and deputy chief commissioner, supported by specialist staff. At least one commissioner must have knowledge or understanding of te ao Māori and tikanga Māori.

The CCRC will be able to apply for a court order to access privileged information.

"Access to the necessary information will be vital for the CCRC to perform its function most effectively. It is anticipated that the CCRC will be able to access most of the information it needs through consent and cooperation, but it is important to have this power to ensure the Commission has access to all relevant information required to investigate and review convictions and sentences," Little said. <https://tinyurl.com/rrmwkou>

### Binding vote for Kiwis over euthanasia, plus cannabis and abortion

New Zealand is to become the first country in the world to put euthanasia to a binding public vote after its lawmakers passed a bill laying out what the country's assisted dying regime would be.

The Kiwis will also vote on allowing cannabis, and possibly decriminalising abortion, at the 2020 election.

The euthanasia law, which would allow terminally ill people with less than six months to live to choose assisted dying if approved by two doctors, passed its final reading in parliament by 69 votes to 51. It was a conscience vote, meaning that most lawmakers did not vote along party lines.

But after two years of debate as it progressed through parliament, the fate of the law is still uncertain; it will come into

effect only if the people of New Zealand approve it in a referendum at the country's 2020 election. A second referendum question, about recreational cannabis, will also be on the ballot paper – in what will also be the first time that a nation has put the issue to a binding public vote.

A third public vote, on decriminalising abortion – a matter parliament is considering – has not been ruled out. <https://tinyurl.com/tjbsu5s>

### 'Not needed, it's an intrusion on rights to privacy and liberty': kill bill, says Edwards

The NZ Privacy Commissioner, John Edwards (photo), is standing up for personal liberty and privacy, against his government, asking for a proposed new control order bill expanding powers over returning NZ terrorists from Syria to not proceed.



"In his written submission Mr Edwards considered the bill unnecessary, given the tools already available to the law enforcement and intelligence agencies," Charlie Dreaver of RNZ reported.

"If agencies do not have enough evidence to take a criminal case, the remedy is to gather more evidence, not to reduce the standard of proof required to achieve penal sanctions and restrict individuals' liberties without due process," he said.

The bill is an "obnoxious" piece of legislation, Edwards told a parliamentary committee.

A control order allows electronic monitoring of movements, restricts access to the internet, prohibits associations with specific people or places, and/or requires the person to report regularly to the police.

Mr Edwards was unhappy about the effects this could have on the rights of individuals.

"This bill represents an extraordinary and unprecedented intrusion on individual's rights to privacy and liberty. It is in my view an affront to the principles of due process and the principles on which our criminal justice system are based," he said. <https://tinyurl.com/rabpgch> – Tim Vines

### ODD SPOT: Covering your tracks...can it be stealing?

The Indiana Supreme Court has a conundrum to rule on: is it illegal for a person to remove an unlabelled tracking device from his car, when the police secured a warrant before applying the device?

Warrick County Sheriff's put the device on Derek Heuring's car, suspecting he was a drug and ice dealer. It worked for a week, then stopped. The police waited 10 days, then searched Heuring's premises where they found the device. So they charged him with the crime of theft for taking it.

Heuring's lawyers say the police did not have "probable cause" (what we call "reasonable suspicion") to conduct the search, which would then be deemed illegal. That would rule out the other drugs and drug gear the cops found while looking for their tracker.

Many jurisdictions await Indiana's ruling. <https://arstechnica.com/?p=1603367>

PS: The US Supreme Court ruled in 2012 it was legal for police to put a GPS tracker on a car...even without a warrant.

## Cafe chain used facial recognition system to bill customers

Indians are up in arms after revelations that a cafe chain called Chaayos is using facial recognition software to bill customers.

Nikhil Pahwa, the editor of Indian media watchdog MediaNama, posted a video on Twitter after he said staff took his picture to bill him without consent. "This is unnecessarily intrusive and there was no opt-out option," Mr Pahwa said.

Chaayos defended its system, saying it was committed to protecting customers. "We are extremely conscious about our customer's data security and privacy," the company said. The chain also said that customers could opt out of the facial recognition feature and use their phone numbers to pay bills.

But Mr Pahwa said that the facial recognition system was mandatory requirement for joining the chain's loyalty program. He said his picture had been taken despite the fact he was not in the loyalty scheme. <https://tinyurl.com/twrwsx2> – ML

## Dr Google – and all the staff – will see you now!

Someone deep inside the Googleplex has blown the whistle on Project Nightingale, the secret transfer – unknown to the patients and doctors – of the personal medical data of up to 50 million Americans from one of the largest healthcare providers in the US to Google

Ascension, the second-largest healthcare provider in the USA, is transferring patient personal details and health data, including medical history, to Google, whose staff can access the database. The data has not been 'anonymised' by removing personal information in a process known as de-identification.

Some 10 million files had moved across when the Google employee tipped off the Wall Street Journal.

Google wants to become the dominant player in healthcare data and analytics. In 2017, the transfer of 1.6m patient records at the Royal Free hospital in London to the company's artificial intelligence arm DeepMind Health was found to have an "inappropriate legal basis" by the UK's watchdog on data. <https://tinyurl.com/tbj3trx> and <https://tinyurl.com/t7gnr3d> – ML

## Criminal justice reforms to free miscreants from wasteful detention

In New York State landmark criminal justice reforms are due to go into effect on 1 January 2020.

People charged with misdemeanours and non-violent felonies will in most cases be released without cash bail, pending their trials. In another reform, prosecutors will be required to disclose evidence to the defence within 15 days of an indictment instead of shortly before trial, a practice that prompted many a guilty plea before court proceedings even got underway.

Similar reforms in New Jersey and other states have reduced jail populations without endangering public safety.

Reform is crucial to shrinking New York's jail population and closing the notorious jail at Rikers Island. <https://tinyurl.com/soo5p2a>

## Beware algorithms: they see things in black and white

A health care algorithm in US hospitals discriminates against black patients, according to new research.

The algorithm prioritises less-sick white patients and screens out black patients from a program meant to help people who need more intensive care.

Under the AI's estimate, for instance, 18% of patients who deserved to be in these programs would be black; but the research authors estimated that the real number should be closer to 47%.

Predictive algorithms can have the same sort of biases that their creators do, despite being designed to be "neutral." These biases exist even in medicine, where systematic racial and gender discrimination toward patients remains commonplace, according to *Gizmodo*.

"This is an extremely important study that indicates why we should not blindly trust AI to solve our most pressing social and societal problems," Desmond Patton, a data scientist at Columbia University's School of Social Work who isn't unaffiliated with the new research, told Gizmodo. <https://tinyurl.com/y4dolbcw>

## God(s) freed from morning school duties

Humanists UK, which campaigns for secularism and non-religious belief, is offering British schools a morning assembly program that's entirely secular and free of religion.

All UK state schools must provide an act of daily worship of a "broadly Christian character" under the 1944 Education Act. But the Humanists' alternative model takes a god and gods out of daily school assemblies, focusing instead on respect for individuals, the environment and justice for the developing world.

The group says its 200 inclusive assemblies will cover 30 diverse themes. Teachers can also choose from a calendar of 250 events and anniversary dates relevant to themes ranging from anti-bullying to environmental action.

The program, called Assemblies for All, promotes no particular religion or belief, and is suitable for all pupils regardless of their religious or non-religious background, the group claims. <https://tinyurl.com/y2t6h9h5>

In a landmark decision, two parents last month won the right to have their children's primary school provide an "alternative", non-religious assembly. <https://tinyurl.com/shto5xf>

## Palm oil dispute costs lives of two journalists

Indonesian police have arrested a palm oil executive for allegedly ordering the killing two activist journalists mediating a land dispute between his company and local residents.

Maraden Sianipar's body was found last month in a ditch near a palm plantation in Labuhan Batu in North Sumatra province.

Police found the remains of his colleague Maratua Siregar in the same area a day later. Both had been stabbed many times.

North Sumatra authorities said they had arrested businessman Wibharry Padmoasmolo for allegedly masterminding the plot by paying nearing \$4500 to four men to commit the killings. <https://tinyurl.com/qn7p9n5>

## ODD SPOT: The maths of hate

The UK has a very popular "reality tv" show called Strictly Come Dancing\*. Born out of the fabulous Aussie film "Strictly Ballroom", celebs are paired with professional dancers and dance off to win the weekly elimination. About as intellectual as bear baiting but the sheeple love it.

\* Australia's version is Dancing With The Stars.

Recently, for the first time in the UK, there's been a same sex (male) dance couple competing, heavily promoted and advertised and no reference made to either's sexuality. Some 10.5 million viewers watched the opening show and praised it for its inclusivity...but 189 complained.

So that's about 0.0018% of the UK population who deliberately planned to watch something that would offend them and then complained to the BBC that they were offended. Good to know that (officially) only 0.0018% of the UK population are bigots with a double digit IQ and the ability to tie their shoes laces without bending over. I'm heartened by that :) – report from a CLA special UK correspondent, LE

## Suicide rate soars among people released on supervision

The number of people who took their own life while on supervision after leaving prison has increased sixfold since 2010 to a rate of one every two days, a new UK report shows.

There were 153 self-inflicted deaths among those on post-custody supervision in 2018-19, compared with 24 in 2010-11, Ministry of Justice data analysed by the charity Inquest reveals, although this is partly down to improved recording.

The suicide rate among people leaving prison in 2018-19 was 212 per 100,000, while for people serving community orders and suspended sentence orders (who are under supervision but have not been jailed), the rate falls to 132 per 100,000, Inquest said. The rate for prisoners is about 83 per 100,000.

Among the general population it is about 14 per 100,000.

An in-depth review of the deaths of people under post-sentence supervision is under way, with a report due by March 2020.

<https://tinyurl.com/tgvcmog>

## International brief

**Barrister shot dead in courtroom ‘accident’:** A prominent South African barrister was shot and killed in court when a shotgun presented as evidence in the trial went off. Senior state advocate Addelaid Ferreira-Watt died after the freak shooting at the Ixopo Regional Court last month. The gun was dropped, blasting her in the left hip. “It is alleged that the weapon was brought to court as evidence in a house robbery case when it accidentally discharged in court,” a police spokesman said.

<https://tinyurl.com/sze37zu>

## DATES:

**1-4 Dec, Hobart:** Polar Law Symposium, discussing polar law, polar marine resources, native peoples and human rights, the Antarctic treaty system, and developments in international law.

<https://tinyurl.com/yxa35azb>

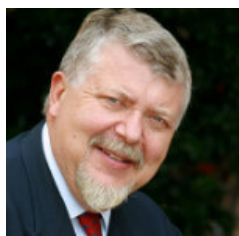
**02 Dec, Brisbane:** Launch of the Australian Law Reform Commission’s final report on The Future of Law Reform in Australia. Speakers, ALRC President judge Sarah Derrington, former High Court judge Michael Kirby. Cwllth Law Courts, Brisbane. 4.30-6pm. <https://tinyurl.com/vk3gxe2>

**02 Dec, Adelaide:** Academic symposium, Histories of Fascism and Anti-Fascism in Australasia, 9am-5pm, Flinders U. Victoria Sq. Details: Organiser Evan Smith: [evan.smith@flinders.edu.au](mailto:evan.smith@flinders.edu.au)

**10-13 Dec, Perth:** ANZ Society of Criminology conference: ‘Justice Reimagined’. Perth Convention Centre. Details: <https://tinyurl.com/y4wzjmce> See the PIP (STOP police-investigating-police poster display).

## 2020:

**7-9 Jan, Paris:** 6th annual Global Law Conference, Speakers include: Justice Stephen Gageler, High Court of Australia – Collective decision-making in common law and civil law courts; Judge Iulia Motoc, European Court of Human Rights – The Modern Justiciability of Human Rights; Dr Matt Collins, President, Victorian Bar – Press freedom in the 21st century: the internet, jury trials and anti-terror laws; and Pierre Baume, Barrister, Victorian Bar – To die or not to die – I now choose to die! Details: <https://tinyurl.com/wg68dlm>



**10-13 Feb, Western Sydney:** 3rd Advancing Community Cohesion Conference – The Way Forward, Western Sydney Uni Parramatta campus, organised by CLA member Prof Sev Ozdowski (photo). Details and rego: <https://tinyurl.com/y52j6zqp>

**21 March, Canberra:** Start, 60th year of the ANU College of Law celebrations. Details: <https://tinyurl.com/y46hwot9>

**16-17 April, Wellington NZ:** ANZSIL Oceans and International Environmental Law workshop. Details: <https://www.anzsil.org.au/event-3515188>

**16-18 April, Melbourne:** National Treaties Summit conference, gathering of First Nations representatives, leading academics, politicians and supporters to engage in a national dialogue of agreement-making and treaty. Venue: U. of Melbourne. Details <https://tinyurl.com/r4qx42n>

**13-15 May, Darwin:** Inst of Patent and Trade Mark Attorneys of Australia. Info: <https://tinyurl.com/y3eqnug9>

**23-26 June, Brisbane:** Asia Pacific ministerial conference on Indo-Pacific natural disaster risk reduction, hosted by DFAT. Details: <http://tinyurl.com/y5qb9ysy>

**2-3 July, Canberra:** State of the Pacific conference, ANU. Details: <https://tinyurl.com/vcls8z>

**2-4 July, Canberra:** 28th ANZ Society of Intntl Law conference, ANU. Details: <https://www.anzsil.org.au/events>

**21-25 Sept, Sydney:** 22nd triennial meeting Intntl. Assn Forensic Sciences with 25th symposium of the ANZ FS Society, Convention Centre. Register/details: <https://iafs2020.com.au/>

**19-21 Nov, Hobart:** Australasian Association of Bioethics & Health Law Conference, Hobart Function Centre, 1 Elizabeth St. Info: <https://tinyurl.com/y25tn84z>

## 2022:

**10 May 2022, Adelaide:** 50th anniversary of the death by drowning of law lecturer Dr George Ian Ogilvie Duncan, thrown into Torrens River by a group believed to be police officers. Led to SA enacting the first homosexual law reform act in Australia.

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*CLArion* is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA’s Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au) The cut-off day for this edition of the *CLArion* was Tuesday 26 Nov 2019.

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