

Australia Day letters propose Royal Commission, pardons by Obama

In two Australia Day letters for 2016, Civil Liberties Australia has called for a Royal Commission into the state of justice in South Australia, and asked US President Obama to pardon Julian Assange, Edward Snowden and Chelsea Manning.

Australia Day letters are one of the significant CLA initiatives each year.

This year, a two-page letter to the Premier of SA, Jay Weatherill, outlines why he needs to hold a Royal Commission to restore confidence in the rule of law by the citizens of his state.

The CLA letter points to unconscionable forensic failings in the state over 30 years, which have not been corrected by the parliament, the executive government, the bureaucracy or the legal or medical profession. All organs of the state stood idle while the rule of law disintegrated.

To read the full letter, which explains the background, go to: <http://www.cla.asn.au/News/premier-please-hold-royal-commission/>

The letter to President Obama points out that the USA has benefited at least as much as it has suffered from revelations by the whistleblowing trio, Australia's Assange of WikiLeaks (right), in-house security IT contractor Snowden and US serviceperson Manning (in beret). All revealed information the US wanted to keep hidden.

The three sets of revelations have actually strengthened the state of justice in America, forced other disclosures to the benefit of the people, and allowed the USA to hone its security systems and their governance.

In Assange's case, CLA has asked for a form of pardon that would prevent any future action by a grand jury. A pardon of Assange would allow him to go to Sweden to answer the peculiar charges of sexual misbehaviour that hang over his head.

If pardoned, Snowden could return from Russia to the USA, and Manning would be freed from a near-lifetime sentence in a military brig. Details: <http://www.cla.asn.au/News/australia-day-pardon-assange/>



NOTICE to Members: The **AGM** of Civil Liberties Australia, which is held electronically (and by post for those without email) will take place between 7 Feb and 30 March.

CLA's 'Better Justice' campaign produces first tangible result

The ACT government is planning to adopt a new fines regime very similar to the one proposed by Civil Liberties Australia in December 2015 under our 'Better Justice' initiative.

Instead of an alleged offender having to go to court, police would issue criminal infringement notices for seven more offences under the ACT's Criminal Infringement Notice Scheme:

- level-two drink driving offences (0.05 to 0.079) for first time offenders,
- fighting,
- offensive behaviour,
- failure to obey a move-on direction by police, and
- low-level offences of damage to property, minor theft or making off without payment, where the amount involved is \$500 or less.

The basis of the ACT's move is in line with CLA's proposal, but doesn't take enough advantage of online options.

Driver penalties could include a default disqualification period, a fine and demerit points, according to ACT Attorney-General Simon Corbell. "The key objective is to lessen the burden on the Director of Public

Prosecutions and the courts in prosecuting low-level criminal activity and allowing the police to focus on more proactive policing activities,” Mr Corbell said.

Of 703 level-two drink driving offences before the courts between 1 July 2012 and 31 August 2015, fines ranged between \$50 and \$3000, with a median of \$300, while 85 resulted in good behaviour orders.

The criminal infringement notices are designed as an alternative to court proceedings but do not operate as a substituted form of prosecution and trial. Payment of an infringement notice is not an admission of guilt.

While CLA supports the concept – we proposed it – we believe AGs should rule out entirely what has flowed from a similar system in the USA: <https://www.eff.org/deeplinks/2016/01/no-cost-license-plate-readers-are-turning-texas-police-mobile-debt-collectors-and>

CLA’s Better Justice strategy: <http://www.cla.asn.au/News/cla-releases-better-justice-strategy/>

ODD SPOT: Eyewitness trial ‘certainty’ is not reliable indicator

The Innocence Project in the US reports that eyewitness misidentification was a factor in 72% of 325 cases in which judgments of guilt were subsequently overturned based on DNA evidence. By far, eyewitness misidentification was the most frequent contributing factor in these wrongful convictions. ...all the jury sees is how confident the witness is during the trial. The initial level of confidence has a strong relationship with accuracy (but, research shows) the level of confidence expressed at trial does not. <http://tinyurl.com/o6j2ott>

Supreme Court issues new forensics ‘rules’

Another vitally needed Better Justice initiative – stronger supervision by judges of expert and forensic evidence in courtrooms – appears to be under way under a “harmonisation” plan formulated by Australia’s chief justices.

The Tasmanian Supreme Court issued a new practice direction – an instruction on how courts are to operate – on 5 January. It lays down an ‘Expert Witness Code of Conduct’.

Basically the new code (<http://tinyurl.com/j6f2jox>) tightens up the need for formal statements, insists the “experts” prove their expertise, and forces even experts representing opposite sides to work together if better justice will be the outcome.

Civil Liberties Australia has asked other Australian court jurisdictions when they will be following the Tasmanian lead. So far, we have no replies. <http://tinyurl.com/j6f2jox>

Former judges to act as journo ‘shields’ are named



The two former judges appointed by the government to argue on behalf of journalists in secret court proceedings are John Muir (left) of Queensland and Kevin Duggan of South Australia.

They will step in when government agencies seek access to journo’s phone and internet records, becoming a “public interest advocate”, with a remit to also protect journalists’ sources.

Under controversial data retention laws passed last year, the government can access many more phone and other records from telcos. <http://tinyurl.com/jppfsw5>

AHPRA wants to be in for their chop

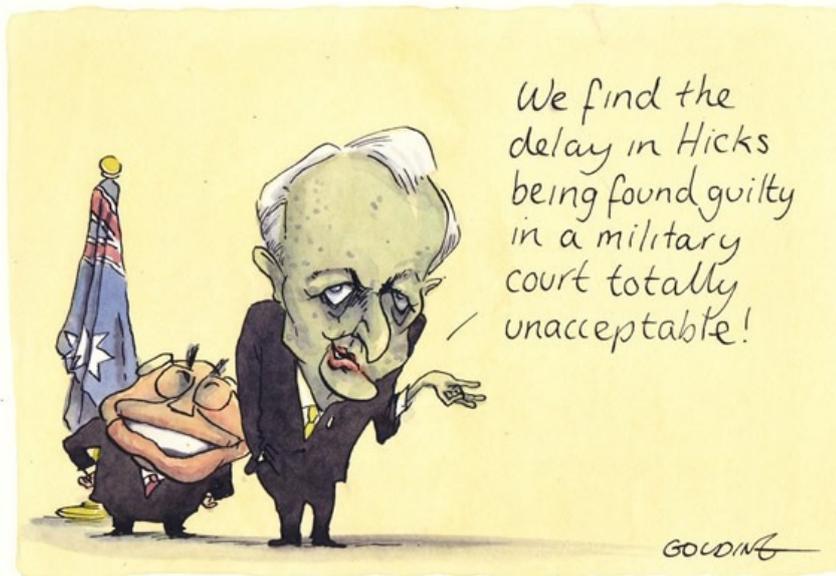
The government agency overseeing doctors, dentists and chiropractors wants warrantless access to Australians’ phone and web metadata to investigate whether medicos are sleeping with their patients.

The Australian Health Practitioner Regulation Agency (AHPRA) is one of 61 agencies which have applied to the AG George Brandis for ongoing access as ‘enforcement agencies’ to gain warrantless access to telecommunications data. Under the government’s mandatory data retention laws, AHPRA got the boot, but they want their access back.

Brandis insisted data retention would only be used to gather evidence on serious crimes, but no such provision exists in the new law. For example, the data is being sought by a range of other agencies,

including the National Measurement Institute, which oversees food and packaged goods, including lamb chops. <http://tinyurl.com/h5lzoo8>

Hicks...nine years on, no apology, no compensation, for wrongful jailing



The 9th anniversary of David Hicks being convicted and jailed for a crime he did not commit is on 31 March.

His was the first Guantanamo military tribunal conviction (and the first US war crime conviction since World War II)...for a crime that didn't exist.

Left: How cartoonist Golding saw Prime Minister John Howard and Attorney-General Philip Ruddock at the time.

Hicks received a seven-year jail sentence in 2007 for the charge of

“providing material support for terrorism”, suspended for all but nine months because of time already illegally detained in Guantanamo Bay, the Cuban torture hellhole of the US government.

Flown at the cost of \$0.5m by executive jet to Australia, Hicks served seven months in Yatala Prison, Adelaide. Both the jet and the prison term were totally the responsibility of the Howard government.

No Australian government has yet apologised to Hicks, or paid him compensation, for jailing him illegally at the behest of the US government, even though they were warned in advance that Hicks' supposed crime was no crime at all. The US government finally admitted that to be so after a ruling by the US Court of Appeals in 2010.

ODD SPOT: Parliament is 20 years out of date

The last “significant report” tabled by any Senate Standing Committee of the Australian Parliament was in 1997. Don't believe us? Check it out on the parliamentary website. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Significant_Reports The page lists “significant reports” up to 1997...so apparently nothing significant has been reported on by Senate Standing Committees for 20 years. The Australian Parliament's website is atrocious, and getting worse.

Xeno proposes pay-per-blow scheme for whistleblowers

South Australian Senator Nick Xenophon is suggesting offering corruption whistleblowers a “lump sum or income protection” to protect their current job, and their future employment prospects.

US whistleblowers can share in fines paid by organisations they help to prosecute.

“We need to break the culture of silence that can pervade all organisations -- governments, corporations, unions and even sporting clubs when something is not quite right,” Senator Xenophon said.

“Whistleblowers just don't come forward in this country because doing so invariably leads to their job and career being destroyed.”

Public sector whistleblowers have some protection since 2013 under the Public Interest Disclosure Act. It is supposed to protect people's identities, provide a strong basis to launch legal action in response to any threats or actual reprisals against them – or against suspected whistleblowers – and give immunity to civil, criminal or administrative liability for the disclosure. – *Crikey*

However, says Civil Liberties Australia, most people feel the act is fairly toothless, and not helped by a hands-off Ombudsman process which avoids looking in nooks for corrupt crooks.

ODD SPOT: Kevin 07? No, it's Andrew .7 robbing the poor to pay the rich

The then-high-flying Kevin Rudd was known as Kevin 07 in 2007 when making his bid for a life of travelling the world on Air Force VIP planes as Australian Prime Minister.

Now Trade Minister Andrew Robb has become Andrew .7 (point 7), which is what the World Bank calculates will be the benefit to Australia of his much-trumpeted Trans Pacific Partnership deal.

The World Bank says that, by 2030, the TPP deal will have delivered a 0.7% benefit to Australia's economy. Annual boost to growth would be about 0.05%, says *The Age's* economics editor, Peter Martin. But of course, there will have been a major transfer of benefits to the relatively small number of National Party-voting agriculturalists and cattle wrestlers at the expense of picking the pockets of a huge number of urban dwellers, otherwise known as wealth redistribution.

It's a classic case of Robbing the poorer to pay the richer. Of course, the TPP also gives up Australia's sovereignty and finality of our High Court by allowing overseas tribunals of non-judges to overturn quality legal decisions. <http://tinyurl.com/z34uvwf>

Stiglitz says TPP threatens health, environment laws and Paris accord

As Australia's parliament considers the Trans Pacific Partnership treaty, Nobel prize-winning economist Joseph Stiglitz wrote last month that the TPP faces an uphill battle for US ratification, as it is opposed by all leading Democratic presidential candidates and many Republicans.

He says the TPP severely constrains environmental, health, and safety regulations, and even financial regulations with significant macroeconomic impacts. <http://tinyurl.com/hvrj8wv>

Meanwhile, just two months after the Obama administration rejected TransCanada's bid to build the Keystone XL tar sands pipeline – seen as a landmark victory for the movement to keep fossil fuels in the ground, according to the *Huffington Post* – the Canadian corporation announced it would retaliate by using an ISDS clause in NAFTA, a TPP-like trade deal, to sue. <http://tinyurl.com/joen7qk>

ISDS: Investor State Dispute Settlement; NAFTA North American Free Trade Agreement

Also last month, public health experts wrote in the *NZ Herald* that the TPP seeks to establish "a predictable legal and commercial framework for trade and investment" which gives global corporations power to sue governments over regulation like action to reduce carbon emissions. <http://tinyurl.com/h2p7ypo> CLA has repeatedly pointed out how dangerous ISDS tribunals are.

Shadowy CAS is 'comfortably satisfied': 'Aussie Rules' in turmoil again

Nothing highlights the dangers of ad-hoc tribunals like the wrongly named Court of Arbitration for Sport. The "court" is not a court, but the creation of the International Olympic Committee.

CAS and the IOC are based in Switzerland, like FIFA, the international soccer governing body.

The IOC and FIFA are notorious for bribery; Switzerland is famous for hiding illegitimate money.

As the IOC begot CAS, the "father" of CAS is therefore Joao Havelange – <http://tinyurl.com/h7j4n5g> – soon to turn 100, who served nearly forever on the IOC (48 years) and FIFA (17 years president).

It is he, so allegations go, who taught FIFA's president Sepp Blatter all he knows about bribery issues.



Blatter (left, with Havelange) has said commercial bribery was not a crime in Switzerland during the years that Havelange, with Blatter regularly by his side, allegedly benefited from preferential treatment payments from people wanting to do product and media business with the IOC and FIFA.

Havelange had a remarkable ability to resign from positions just before possibly being called to answer formal bribery or corruption allegations.

The CAS (tribunal) which has recently "ruled" Australian football club Essendon's players guilty – after they were found not guilty by an equivalent Australian "judicial" body – is made up like the TPP's ISDS tribunals. It has "arbitrators/mediators", selected by participants, who may have no judicial experience whatsoever or, indeed, expertise in the subject matter of the case.

In the Essendon AFL case, the CAS (that is, a three-person tribunal) was “comfortably satisfied” there was enough circumstantial evidence to suggest the players took one banned substance in 2012.

There is no possible way anyone can tell you what “comfortably satisfied” means as a standard: it has no relevance to commonly accepted legal standards in the British tradition. Basically, it means whatever you want it, or interpret it, to mean.

“Comfortably satisfied” could mean that the three tribunal members believe their decision is so firmly based on wholly circumstantial evidence that no-one could ever prove their decision wrong. Which is probably the best that can be said for the CAS (tribunal) finding based on normal rules of evidence, which were flouted by the tribunal because there has never been any proof the Essendon 34 took an illegal drug.

After all, another, Australian tribunal – the AFL’s own anti-doping tribunal – was satisfied the wholly circumstantial evidence meant the Essendon footballers should be found NOT guilty because there was, and still is, no proof they took thymosin beta-4.

Reports say the 34 players will still be able to appeal the verdict through the Swiss Federal Tribunal because the CAS is based in Lausanne, Switzerland.

How final justice in a game called “Australian Rules” ever came to rest on the whim of the Swiss, with their poor record for integrity and their appalling background with bribery in sport, is a mystery for which the AFL bosses should answer. <http://tinyurl.com/jckhhwg>

Who was the CAS for the Essendon case?

The Australian representative on the Essendon CAS tribunal was 70-year-old James Spigelman, a superannuated NSW chief justice who now chairs the Board of the Australian Broadcasting Corporation. The ABC competes against other broadcasters for rights to show football codes on TV in Australia. Should possible conflict issues have permitted Spigelman to sit on the three-person panel considering an Australian football issue which impinges on the marketability of the code in this country?

The ex-judge is primarily interested in the arts, though he claims to support South Sydney RL team. He has never publicly displayed much interest in Australian Rules football. His CAS appointment does not appear to stem from football, particularly AFL, expertise.

Apart from the home-grown Spigelman, one of the other two CAS tribunal members was Romano Subiotto. It might surprise you to know that he “regularly advises companies (including manufacturers of) pharmaceutical products (Amgen, Boehringer Ingelheim, Debiopharm, Lundbeck, Merck & Co. Inc., Millenium Pharmaceuticals, PhRma, Sanofi)...and (on) sports (FIFA Marketing, the IOC)”. He also has been involved with representing drug company Aventis.

But his connections to drug companies and FIFA Marketing apparently involves no conflict of interest in the Essendon 34 case, where a Chinese drug supply company was allegedly part of the “problem” and AFL’s image in Australia would possibly influence how FIFA marketed soccer in Australia.

The CAS (tribunal) Essendon chair, the Hon Michael Beloff, is a barrister with a vague claim to being a judge because he is on the appeal court list for the Channel Island of Jersey (pop. 100,000; 11 judges on its court of appeal, which sits six times a year!)

Beloff is a London barrister who also chairs the IAAF ethics commission. Now, tell me again, what was the latest international sporting body to face serious corruption allegations, having ignored flagrant cheating by some nations and athletes for over a decade? That’s right, the IAAF. So, how effective is the IAAF ethics commission, do you think?

The members of the earlier AFL tribunal were: David Jones (retired County Court judge), John Nixon (retired County Court judge) and Wayne Henwood (barrister with Owen Dixon Chambers). They found that a case against the players could not be proven to the requisite standard of the tribunal, which is “comfortable satisfaction”.

That’s two judges and a barrister for not guilty under the AFL tribunal, while the CAS tribunal verdict was two barristers and a judge, guilty! The winner is...lawyers!

Marina Hyde, *Guardian*: “Anyone who thinks that sport is truly about the athletes and the fans will note that these irrelevances are the only two “stakeholders” absolutely nowhere to be seen, and unlikely ever to get a look-in.” <http://tinyurl.com/z83dvqz>

Police state? ABS to keep all names and addresses – how convenient

The Australian Bureau of Statistics announced it would retain, indefinitely, the names and addresses from the 2016 census.

ABS claims retaining the details can “enable more efficient survey operations, reducing the cost to taxpayers and the burden on Australian households.”

It claims the data will be secure and names and addresses will be kept separate from other personal and household information. ABS says it has conducted a privacy impact assessment with the Australian Privacy Commissioner before making its decision.

The Australian Privacy Foundation points out, according to *Crikey*, that people were given the option of having their data kept by the National Archives of Australia in 2001, and 54.4% opted for it. Then before the 2006 census, the ABS then tried to keep the data indefinitely, but after public outcry announced it would only attempt to make changes again “if it was acceptable to the Australian community”.

You can bet that spooks and police will be able to access the data, and mix and match all of it any way they please, Civil Liberties Australia says. – original report from *Crikey* 22 Jan 2015.

Here’s a ‘heads up’ on Clive’s brainwave

Noted terrorism academic Clive Williams seems to have been caught up in January’s silly season media in an article he wrote for *Fairfax* on ‘brain fingerprinting’.

“Brain fingerprinting has two potential national security/law enforcement applications: detecting knowledge of a specific crime, terrorist act, or incident stored in the brain, and; detecting a specific type of knowledge, expertise or training that may be relevant to terrorism or crime,” Williams said.

The erstwhile Clive did not mention that the new technique he was promoting would be a form of forced testimony which would negate the right to silence. <http://tinyurl.com/hmhdxww>

Bikies forced to pay up

From next month, NSW cyclists must carry photo ID at the risk of a \$100 fine.

NSW roads minister Duncan Gay (left) has announced that fines for cycling offences, currently \$71, will be increased from 1 March 2016 for not wearing a helmet (to \$319), running a red light (\$425), riding dangerously (\$425), holding on to a moving vehicle (\$319) and not stopping at a children’s or pedestrian crossing (\$425).

The fine for not having ID is \$106.

Vehicles travelling less than 60km/h must give cyclists 1m room or pay a \$319 fine and lose two demerit points. Those passing at more than 60km/h must give 1.5m room.

The increased penalties on traffic light and pedestrian crossing offences bring fines for cyclists into line with those for car drivers. About 11 cyclists a year die in NSW, and another 1500 have accidents serious enough to take them to hospital. <http://tinyurl.com/obqifu6>



Surveillance rises 60% in four years

Excerpts covering surveillance camera growth:

“...(Queensland) agencies operated 32,230 fixed surveillance cameras in 2015, an increase of almost 60% compared to 2011, when agencies reported operating 20,310 cameras. The follow-up review noted a trend of existing camera installations increasing in size.

“In 2015, 80% of agencies reported that they actively informed the community about their use of camera surveillance. Each privacy element had been addressed by around half of the agencies in their surveillance camera policies, procedures and practices.

“The review noted over 4000 requests for footage had been received by agencies in the previous 12 months. Almost 75% of the agencies operating camera surveillance cameras reported receiving at least one request for footage...Only approximately 40% of agencies reported having policies and procedures fully implemented to manage requests for footage.”

– with thanks to Roger Clarke, review of agency adoption of recommendations made under the Information Privacy Act 2009 (Qld), Office of the Information Commissioner, Queensland, December 2015: <http://tinyurl.com/hceeyk7>

Shutdown would drive deaths underground

Leading Canberra emergency doctor David Caldicott has slammed government threats to shut down music festivals if drug overdoses continue.

Dr David Caldicott of Canberra's Calvary Hospital said a proposal advocated by NSW Deputy Premier Troy Grant and backed by Premier Mike Baird was based in the regressive ideology of drug prohibition, which he likened to the "ideological equivalent to climate change denialism".

"These festivals will go ahead, they just won't go ahead in any sort of supervised environment," he said. "You'll get what happened in the US in the 1980s – unsupervised raves and a vast number of people getting hurt and killed." <http://tinyurl.com/h9bb993>

Major bungle causes huge change in police-Aborigine interactions

WA is to introduce a special police unit to handle witnesses and suspects from remote indigenous communities, and produce pre-recorded cautions in every Aboriginal language, as the NT does.

The moves follow a dramatically mishandled investigation into the death of Joshua Warneke, 21, in Broome six years ago. He was walking home after a night drinking with his mates when Kiwirrkurra man Gene Gibson hit him from behind with a pole.

But errors and mistakes when police interviewed Gibson's two years later forced prosecutors to drop a murder charge and accept a guilty plea to manslaughter.

WA Police Commissioner Karl O'Callaghan said last month that two officers would be disciplined, and possibly demoted. "The two made a series of judgment calls about the ability of suspects and witnesses to understand the interview process which were wrong, and in my view, showed a lack of diligence rather than training," Callaghan said. Nine other officers have been investigated as part of the bungled police process.

Aboriginal suspects or witnesses in future will get an interpreter, which was one of the recommendations of the Corruption and Crime Commission report on the case handed to the WA Parliament in November 2015.

The police review's findings are being considered by the director of public prosecutions and the attorney-general as to whether further legal action may be launched.

Police Minister Liza Harvey said: "We have a very busy state, we have over 6000 officers, they investigate millions of incidences a year ... we're not always going to get it right, but I don't expect we would get it so horribly wrong."

<http://tinyurl.com/hy8emfo> and <http://tinyurl.com/z4mwryt>

Jurisdictions search for new judges

Tasmania and the ACT are both looking for new Supreme Court judges.

Tasmanian judge David Porter has resigned, effective 21 May, after serving since May 2008, He has been chairman of the Medical Complaints Tribunal, president of the Australian Bar Association, the Law Society of Tasmania and Tasmanian Bar Association, editor of Tasmanian Law Reports, and director of the Tasmanian Legal Practice Course.

In the ACT, the government has decided to up the number of Supreme Court judges from four to five. It has already advertised the new position, as well as an opening for one or more magistrates.

Ex-Chief Minister has a short memory

Former ACT Chief Minister Jon Stanhope has suffered 'FOI blackout' in trying to find out about the decision to change the name of the Canberra electorate of Fraser to "Fenner".

Documents released to him under freedom of information were almost entirely blacked out, which Stanhope finds appalling.

He opposes the decision to strip former local federal MP Jim Fraser of recognition in the Canberra seat named for him in 1974. The name is to be changed to Fenner, so that "Fraser" can be used for a Victorian electorate to recognise former Prime Minister Malcolm Fraser.

Mr Stanhope says the decision is an insult to the memory of the former Canberra MP and his family, and a move he believes would be opposed by the deceased Malcolm Fraser and scientist Professor Frank Fenner.

Critics say Stanhope's own government, between 2001 and 2011, was itself pretty good with the black highlighter when releasing FOI documents. <http://tinyurl.com/hr8ewcn>

Another state moves to expunge

The Queensland government has tasked the Qld Law Reform Commission to recommend how historical convictions for consensual homosexual conduct can be removed from a person's criminal record.

"This is about doing what is right, what is fair and what is just for all Queenslanders," Attorney-General Mrs Yvette D'Ath said. "It delivers on a significant election commitment we made to the people."

The QLRC will consult widely and seek the views of the LGBTIQ community, the public and legal stakeholders as part of the review, reporting to government by 31 August 2016. <http://tinyurl.com/gw7bdmg>

Lawyers want judicial commission

The Queensland Law Society has called for the state government to establish a judicial commission as a part of a protocol for judicial appointments in Queensland.

Society president Bill Potts said that maintaining an independent judiciary was one of the pillars of our democracy and central to the separation of powers. "To maintain public confidence in the administration of justice, all processes surrounding the judicial system should be open, transparent and independent," he said. <http://tinyurl.com/zwxjtjg3>



Murder laws too harsh, says criminal law chief

NT Criminal Lawyers' Association president Russell Goldflam (left) last month called on the NT's outgoing Attorney-General John Elferink to reform mandatory sentencing for murder.

Saying he has been campaigning for change since 1999, Goldflam called for public debate on how murder laws could be improved. "My view is that in the NT there's a very serious problem," he said.

The NT Criminal Code states all people convicted of murder be sentenced to life behind bars. Judges are forced to set a minimum non-parole period of 20 years.

Mr Goldflam said Australians convicted of murder spent an average of 13 years in prison, so that the NT had the nation's harshest murder

laws. AG Johan Elferink said he would not be altering the murder laws. <http://tinyurl.com/j3gdw5t>

Civil Liberties Australia believes mandatory sentences are an abuse of parliamentary power: sentencing is a judicial responsibility, and should be left to the judges, who have seen and heard all aspects of the evidence.

Gun control cop charged with stealing guns

The police officer in charge of regulating all guns in the NT has been charged with stealing firearms from the NT Police.

Sgt Peter Ruzsicska will appear in Darwin Magistrates Court for a hearing starting on 1 March. He has pleaded not guilty.

Ruzsicska headed the Firearms Policy and Records Unit when he was charged in August 2015 with six counts of stealing firearms. But police did not release his name or his position, saying only that a 53-year-old officer was charged "for an alleged stealing offence". He has been suspended since August.

<http://tinyurl.com/zqrk7sn>

Australian briefs

Australia's reputation declining: Human Rights Watch last month severely criticised Australia's asylum-seeker policy as "abusive", saying that the country's standing globally had seriously diminished. HRW's yearly report said that Australia was failing to respect international standards for asylum seekers which was taking "a heavy human toll". The report also blasts new counter-terrorism laws, which had bipartisan backing from the major parties, as "overly broad and vague", as in other Western nations. <http://tinyurl.com/zwnmm8o>

'Prison staff at risk:' Prison staff are at risk in SA as over-crowded prisons set new records for the number of drugs, fights and fires behind bars, the state Opposition has said. The latest prisons annual report showed 280 assaults over 12 months, almost 40 up on last financial year. Fires on prison grounds reached 250, compared to seven five years ago, and there were more than 1,000 drug-related incidents. <http://tinyurl.com/hq5kupa>

Smith heads CCC: Forbes Smith last month became CEO of Queensland's Crime and Corruption Commission. His experience includes being an investigator during the Fitzgerald Commission of Inquiry, with the Criminal Justice Commission, the Crime and Misconduct Commission and the then-National Crime Authority. He served as the state's Energy and Water Ombudsman since 2011 and as Deputy Queensland Parliamentary Ombudsman between 2006 and 2011. <http://tinyurl.com/h8kjjd5>

Short-term solution begs long-term question: The Queensland Law Society last month welcomed the government's commitment to \$2.7 million in additional funding for nine community legal centres (CLCs) across Queensland until June 2017 under a short-term solution. "Commonwealth funding for legal aid has been reduced. CLCs particularly face a Commonwealth funding fiscal cliff in 2017. The Society pleads with the federal government not to proceed with its plan to slash funding to Queensland community legal centres in 2017," Qld Law Society president Bill Potts said. <http://tinyurl.com/hxeba7q>

CLA report – key activities for January 2016

Networking :

Shane Rattenbury MLA re CLA Better Justice project, retirement of ACT Legislative Assembly members and upcoming administrative appointments, police pursuits policy, repeal of Andrews bill federally, inquiry into terror laws, sentencing inquiry.

Hayat Khan re web management, membership renewal notices.

John Purnell re submission requests from AG Corbell, McKenzie friends, Forensics directive (Tasmania and nationally)

Darren Halpin (ANU) re survey of national associations engaged in public policy

Don Aitkin re Better justice project

Keith McEwan re submission Aboriginal deaths in custody

Bill Stefaniak re magistrate matters

Letters:

Letter to Canberra Times editor re failure of the Awards Committee to shortlist Prof Gillian Trigs for Australian of the Year (published)

Letter to Chinese Ambassador to Australia Ma Zhaoxu re Chinese legislation on domestic violence

Australia Day letters: (see website)

To President Barack Obama, requesting he pardon whistleblowers Julian Assange, Edward Snowden and Chelsea Manning

To Premier of South Australia Hon Jay Weatherill to hold a Royal Commission into the administration of justice in SA

Other:

History of civil liberties in Australia, continued writing and editing

Preparation of CLA annual report

Submission requests – states and territories:

- Queensland: Crime and corruption amendment bill 2015.
- ACT:
 - Privacy tort law, by 5 Feb 2016
 - ACAT appointments system
 - Fifth residential judge to the Supreme Court of ACT
 - Reforms to the Discrimination Act 1991
 - Appointment to the ACT Magistrates court

Submissions lodged:

- Inquiry into revenge porn, SLAC References Cttee, deadline 14 Jan 2016, reporting date 25 Feb 2016.
- Inquiry into the criminal code amendment (firearms trafficking) bill 2015, deadline 7 Jan 2016, reports by 2 Feb 2016.
- Crimes legislation amendment (proceeds of crime and other measures) bill 2015, SLAC legislation cttee, deadline 8 Jan 2016. Cttee reports on 3 Feb 2016. NOTE: CLA assisted Family and Friends of Drug Law Reform to prepare their submission.
- NSW: Inquiry into reparations for the stolen generations in NSW, deadline 10 March 2016.

INTERNATIONAL

Malaysian PM receives mysterious \$1bn gift; returns most of it

Nearly \$1 billion – \$976m – transferred into Malaysian prime minister Najib Razak’s personal bank account was a gift from the royal family of Saudi Arabia, and there was no criminal offences or corruption involved.

So says Malaysia AG, Mohamed Apandi Ali, a member of Najib’s ruling party.

The Saudi royal family revelation is the latest twist in a scandal over the mysterious funds transfer and the troubles of indebted state fund 1Malaysia Development Berhad (1MDB), whose advisory board Najib chairs.

“I am satisfied with the findings that the funds were not a form of graft or bribery,” the AG told a news conference last month, issuing a statement that said Najib had returned all but about \$100m to the Saudi royal family because it had not been used.

The scandal has shaken investors in south-east Asia’s third-biggest economy and rocked public confidence in the coalition led by Najib’s United Malays National Organisation (UMNO) party, which has held power since independence in 1957, *The Guardian* and *Reuters* reported. <http://tinyurl.com/jnmh7r2>

Former Malaysian deputy PM, Anwar Ibrahim, is in year two of a five-year sentence, for what many people believe is a trumped-up sodomy conviction, which has removed him as an election opponent.

Binney blows the cover on excess snooping uselessness

The “snooper’s charter” legislation extending the mass surveillance powers of UK intelligence agencies will “cost lives in Britain”, a former US security chief is warning parliamentarians.

William Binney, the former technical director of the US National Security Agency, told MPs that bulk collection of communications data tracking everyone’s internet and phone would swamp intelligence analysts with too much data.

He is particularly critical of a previously secret GCHQ surveillance system disclosed by the whistleblower Edward Snowden called Black Hole, which was built in 2008 and helps list everyone in the world who has ever visited a website.

“This approach costs lives, and has cost lives in Britain because it inundates analysts with too much data. It is 99% useless. Who wants to know everyone who has ever [been] at Google or the BBC? We have known for decades that that swamps analysts,” says Binney, who turned whistleblower after 36

years in which he conducted and led signals intelligence operations and research for the NSA. <http://tinyurl.com/jv2g8be>

ODD SPOT: Police turned out for a spell

A 10-year-old Muslim boy has been questioned by Lancashire police after mistakenly writing in an English lesson that he lived in a "terrorist house". The primary school student had intended to write that he lived in a "terraced" house but teachers did not realise he had made an error. <http://tinyurl.com/zcm7koe>

New laws force data handover, crack down on domestic violence

China has passed a new law requiring companies hand over technical information and help with decryption when police or state security agents demand it for investigating or preventing terrorist cases. Human rights groups have warned that the law will give even more intrusive powers to the Chinese government, which already has broad, virtually unchecked authority to monitor and detain citizens and to demand information from companies and Internet services.

However, the same groups were mollified by a law passed at the same time to crack down on domestic violence in China. <http://tinyurl.com/q3nmq8p>

Stop the stopping, it's illegal

A key clause in the UK Terrorism Act 2000 is incompatible with the European convention on human rights, the master of the rolls, Lord Dyson, has declared in a court of appeal judgment last month.

The case involved a man, David Miranda, detained at Heathrow airport for carrying files related to information obtained by US whistleblower Edward Snowden.

Dyson's decision will force the British government to re-examine the local act.

Dyson said that the powers contained in schedule 7 of the Terrorism Act (2000) were flawed. Schedule 7 allows questioning of travellers to find out whether they appear to be terrorists. They have no right to remain silent or receive legal advice, and they may be detained for up to nine hours.

"The stop power, if used in respect of journalistic information or material is incompatible with article 10 [freedom of expression] of the [European convention on human rights] because it is not 'prescribed by law'," the master of the rolls said. <http://tinyurl.com/hvrxdef>

Arguing that you don't care about the right to privacy because you have nothing to hide is no different than saying you don't care about free speech because you have nothing to say.

– Edward Snowden (right)



“Your rights matter because you never know when you are going to need them.”

Unlikely bedfellows cuddle up to battle ISIS

The Obama Administration's top terror officials acknowledged 'complicated first amendment issues' after trying to woo top private sector IT executives to their side at a California meeting last month.

Industry chiefs attended from Microsoft, Apple, Facebook, Twitter, Intel, Dropbox, Yahoo, Pay Pal, YouTube and LinkedIn.

Top officials present included National Security Agency director Michael Rogers, White House chief of staff Denis McDonough, FBI director James Comey and director of national intelligence James Clapper. The Obama administration wants technology companies to be able to find terrorists on social media and chat apps for them, current and former US officials told the *Guardian*. This would involve piecing together communications networks and message content to map terrorist cells.

The US government also wanted to know how to devise a social media campaign to discredit ISIS.

“After the meeting wrapped up, the nation’s top spies demonstrated their skills of evasion. Attendees slipped out various side doors. Others exited the building. None were available to comment,” the *Guardian* reported. <http://tinyurl.com/gw9v9w4>

Medical records now easier to access

The Obama administration has issued new guidelines that make it easier for patients to get access to the doctor and hospital records, usually within 30 days of asking for them.

The medical providers no longer have a right to ask the reason a person wants the records, and can’t deny copies because a patient might be upset by what’s in the files.

They can’t prevaricate by not mailing or emailing the records but insisting they be picked up in person; and they can’t deny access because a medical bill has not been paid. They can charge a fee for the cost of copying, but not for searching for the data and retrieving it. <http://tinyurl.com/ju2p3sa>

ODD SPOT: Soft-hearted software second guesses time servers

For 12 years, a 2003 software glitch has miscalculated sentence reductions for good behaviour of Washington State prisoners in the USA: 3200 have been released prematurely. The median bug error was 49 days. One prisoner got an extra 600 days cut from his sentence. "That this problem was allowed to continue is deeply disappointing, totally unacceptable and, frankly, maddening," Washington governor Jay Inslee said. "I have a lot of questions about how and why this happened, and I understand that members of the public will have those same questions." <http://tinyurl.com/gl6vs7o>

Bobbies lose out to spook investigators?

British police could be stripped of their role in leading the fight against terrorism and replaced by a national agency directly answerable to the home secretary, under plans put to Theresa May.

The Guardian says the key question will be whether the National Crime Agency should take over from police, who are expected to vigorously resist the change and argue that the current system is the “most effective way of countering the threat” of terrorism.

Scotland Yard would view the loss of its lead role on terrorism as a humiliation. May will make a final decision on whether to go ahead with the review, to be undertaken by a panel of experts, early this year.

<http://tinyurl.com/h43snqx>

Broaden FOI reach, campaigners request

UK campaigners are calling for private contractors running public services such as prisons and healthcare services to be subject to freedom of information requests.

The government’s review of the Freedom Of Information Act is considering whether there is a greater need to protect areas of policymaking from FOI requests. However, the Campaign for Freedom of Information says the act does not go far enough because private companies are only required to provide information when it is explicitly written into their contracts.

The calls echo those from the Labour party’s deputy leader, Tom Watson, who has set up an alternative review to look into ways the act can be strengthened.

The campaign lists examples where requests for information were refused because it was held by private firms, including:

- the number of staff at HMP Birmingham and the number of attacks at the prison, held only by G4S;
- the value of penalty fares issued on the London Overground and Docklands Light Railway by private sector inspectors. <http://tinyurl.com/zpx7dpt>

International briefs

US CJ wants lawyers to deliver better justice: Calling for “a change in our legal culture,” US Chief Justice John Roberts devoted his 2015 report on the state of the federal judiciary to a plea that lawyers “avoid antagonistic tactics, wasteful procedural maneuvers and teetering brinkmanship.” <http://tinyurl.com/zdczweq>

World photo ID database expands: US international airports are to use facial recognition technology on foreign visitors after a successful pilot program, according to a new privacy disclosure from the Department of Homeland Security. The "1-to-1 Facial Comparison Project" operated at Washington Dulles International Airport between March and May 2015. It is now being rolled out to all US airports of entry. The technology will confirm the identity of travellers with electronic passports, which include a computer chip containing, among other data, a digital photo of the holder...as Australian passports do. <http://tinyurl.com/zqagane>

This is a frightening development: Vigilant Solutions, one of America's largest brokers of vehicle surveillance technology, provides a deal to law enforcement agencies in Texas: a whole suite of automated license plate reader (ALPR) equipment and access to the company's massive databases and analytical tools—and it won't cost the agency a dime. Even though the technology is marketed as budget neutral, that doesn't mean no one has to pay. Instead, Texas police fund it by gouging people who have outstanding court fines (there's a 25% 'tax' that goes to Vigilant) and handing Vigilant all the data they gather on drivers for nearly unlimited commercial use. <http://tinyurl.com/jzlca7u>

Colorado makes spliffing profit: The US State of Colorado reported \$60m in marijuana tax revenue for the first 10 months of 2015 after it became the first state to legalise cannabis. Sales and licence fees comprised the revenue, up from \$36.5m for the previous period. *New Matilda* did not say whether the figures were in US or Australian dollars. <http://tinyurl.com/jezcs82> and <https://www.coloradopotguide.com/marijuana-laws-in-colorado/>

ODD SPOT: Police take to Apple to warn about Eve teasing

Nearly 600,000 Indian men – 'Eve teasers' – who have sexually harassed or taunted women received a new year's eve text message, including on Apple iPhones, from police warning them to be on their best behaviour. "You and your phone are still under observation. Hope your conduct is upright now. We wish you a Happy New Year," said the police SMS in the state of Uttar Pradesh, which holds 200m of India's 1.2bn population. At the same time, 500,000 women who had complained about harassment were also sent messages, assuring them police are available to help should they need it. <http://tinyurl.com/o2tw9lg>

Apple bites over draconian surveillance proposals: Apple has told the British government that proposed over-the-top, online surveillance laws could weaken the security of personal data for millions of people and paralyse the tech sector. Lending support to Apple's view, Microsoft also said an international approach would keep people more secure than competing measures from different countries. Critics say the Investigatory Powers Bill constitutes an assault on personal freedom. The draft laws could weaken data encryption, sanction interference with its products, force non-UK companies to break the laws of their home countries, and spark similar legislation in other countries that could paralyse firms under the weight of dozens of contradictory laws, Apple said. <http://tinyurl.com/h3dv7ak>



Pu 'released' into house arrest: Chinese free speech champion Pu Zhiqiang (left) was handed a three-year suspended sentence just before the new year, ending the high profile civil rights lawyer's detention since May 2014. Now in a form of house arrest, he had been facing eight years for seven sarcastic posts on Chinese social media questioning government policy. A Beijing court handed the 50-year-old lawyer a three-year suspended prison sentence for the alleged crimes of "inciting ethnic hatred" and "disturbing public order". <http://tinyurl.com/zuc5tv8>

Saudis welcome 2016 with 47 executions: Saudi Arabia killed 47 people for terrorism-related offences on 2 Jan 2016 at a dozen sites across the kingdom: 43 were beheaded, and 4 died by firing squad. In 2015, the Saudis executed 157 people, up from 90 in 2014. <http://tinyurl.com/hemq4nr> Amnesty has issued its report on 2015 executions: <http://tinyurl.com/hkok26c>

Murder rate spikes: Homicides in England and Wales rose by 71 to 574 in the year to September 2015, an increase of 14% fuelled by rises in knife and gun crime, official statistics show. The rise ended a

decade during which the murder rate in England and Wales has been falling despite population growth. Statisticians say a 36% rise in sexual offences, including the highest number of rapes since 2003 – at 33,341 – reflect a greater willingness of victims to report such crimes rather than a real surge in attacks. <http://tinyurl.com/hhykh58>

‘Worst of the worst’ number down to 93: It’s worth remembering that [according to studies](#), only 5% of prisoners sent to Guantanamo were captured by Americans on a battlefield. The rest were either unvetted Northern Alliance prisoners (like Australian David Hicks, allegedly sold by the NA to the Americans); men abducted elsewhere (as far away as Bosnia, Thailand and the Gambia); or men bought with \$5000 bounties paid to needy Afghans and venal Pakistanis. – source: Roger Fitch Esq, the correspondent we share with the *Justinian* legal blog. Guantanamo was set up in Jan 2002 to deal with the “worst of the worst” (Donald Rumsfeld). It once held 779 prisoners. At Jan 2016, 93 detainees remain. Before coming to office, President Obama promised to get rid of it.

Primarily, free speech is suffering arrested development: Omar Ali Ewado, deputy general secretary of the Union of Primary School Teachers in Djibouti, has been sentenced to three months in prison for publishing a list of victims who have disappeared after a massacre, allegedly led by the security forces. Ewado is also president of the Human Rights League of Djibouti. Arrested on 29 December, he is now locked up in the central prison in Gabode. <http://tinyurl.com/zgwpfay>

DATES

3 Feb, Canberra: TPP Forum at Parliament House, hosted by Melissa Parke MP, Senator Nick Xenophon, Kelvin Thompson MP and Senator Peter Whish-Wilson, 11.30-12.30, Committee Room 1R1 Parliament House, Canberra. RSVP to cate.anderson@aph.gov.au to secure an entry pass.

6-7 Feb, Canberra: Current issues in sentencing, Prof Kate Warner (Gov of Tasmania), John Curtin School, details <http://tinyurl.com/onazvsj>

26 Feb, Perth: Law Summer School 2016:, Technology and the Law: Looking into the Future, 7.15am-5pm, Uni Club, UWA, Crawley. Speakers include: Prof Gillian Triggs, Prof Richard Dawkins, Roger Susskind. Details: <http://tinyurl.com/q2vqr6f>

26 Feb, Brisbane: Bar Assn of Qld annual conference, Sofitel. Details: Helene Breene, Director, CPD 07 3238 5107 or email: CPD@qldbar.asn.au

15 March, Europe: Applications close to 2016-17 European Master’s Program in Human Rights and Democratisation. Course involves EIUC and 41 participating universities. Details: <http://eiuc.org/education/ema> or email: ema.secretariat@eiuc.org

17 Mar, Sydney: Catholic intellectual Prof John Haldane’s first public lecture, Notre Dame Uni, Broadway campus. Details: ies@nd.edu.au

24 March, Canberra: Police technology forum: emerging technologies, info security, comms systems, surveillance Hyatt Canberra, . Details: 02 9080 4307

14-15 April, Canberra: **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

10 Dec, World: This year is devoted to a year-long UN campaign to celebrate the 50th anniversary of two landmark international covenants on human rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which were adopted by the UN General Assembly on 16 Dec 1966.

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)

ENDS ENDS ENDS

Upcoming elections...in the normal course of events

NT	27 August 2016
ACT	15 October 2016
Australia	By 14 January 2017, likely in Sept/Oct/Nov 2016
WA	11 March 2017
South Aust	17 March 2018
Tasmania	Before 24 March 2018
Queensland	2018
Victoria	29 November 2018
NSW	24 March 2019

ODD SPOT: Some good new descriptors, heard/read this past month:

Wowsers and curtain twitchers (people likely to be against gay marriage, and having fun generally)

Chew toy issue (trotted out by a politician or candidate to deflect interest from the real problem)

Strumpet (any woman disliked, and so disparaged, by US presidential candidate Donald Trump, including candidates, Presidents and Prime Ministers, and – particularly – journalists)