

## Aust government should take a principled stand on PRISM

A federal election has spared the Australian government a grilling in parliament about how complicit we are in the wholesale citizen surveillance that the US inflicts on its own people and citizens of other countries.

Under no interpretation of the US or Australian constitution does a government have the right to pry into the private lives of its own or other peoples without reasonable cause.

No amount of threat invention, treaty stretching, law twisting or government spin can justify the excesses of PRISM, XKeyscore and other secret programs aimed at Americans or Australians.

By its now-revealed surveillance regime, America proves itself a morally bankrupt state that forgets its founding fathers created a nation on principle.

The US omni-surveillance reflects how defensive the nation has become, forced by its offensive commercial and real battles against much of the globe. With despotic hegemony, it fabricates inequity, as in the Trans Pacific Partnership, while using its war machine to subjugate states for oil and other reasons.

Australia does not have to be like America. If a partner nation exceeds international propriety and the rule of law, it is Australia's duty and right to break ties dragging us down to their level. The US cannot be allowed to steal the world's right to communicate freely and privately.

Civil Liberties Australia calls on the new Australian government to make a seminal statement before Christmas that we will stop being party to breaking international norms of behaviour and the global rule of law.

There is a vacancy in world affairs for a nation to occupy the moral high ground that once was a proud America's. By basing government on principle and respect for people and the law – as evidenced by a commitment to civil liberties and human rights – Australia could show a lead.

For a rundown on where the US surveillance state has reached, see Bernard Keane: <http://www.cla.asn.au/News/privacy-through-a-prism-darkly/>

## You are never safe from surveillance

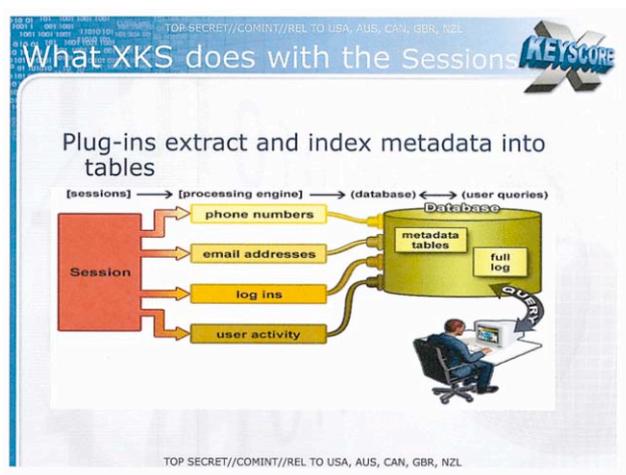
A top secret National Security Agency program allows analysts to search worldwide – with no prior authorisation – through vast databases containing emails, online chats and the browsing histories of millions of individuals, according to documents provided by whistleblower Edward Snowden.

The program is top secret, limited to the Five Eyes group of USA, Australia, UK, Canada and NZ. Australia actively participates.

The NSA boasts in training materials that the program, called XKeyscore, is its "widest-reaching" system for developing intelligence from the internet, *The Guardian* reported.

One of Snowden's most controversial statements, in his first video interview on 10 June, was: "I, sitting at my desk," he said, could "wiretap anyone, from you or your accountant, to a federal judge or even the president, if I had a personal email".

<http://tiny.cc/0cd90w>



## Greens promise to throw money at justice

The Australian Greens have released a justice policy for the 7 September election with these key elements:

- increasing legal aid funding by 50% in 2014 and maintaining the level for a number of years;
- doubling funding to community legal centres in 2014, and maintaining the level;
- doubling funding to Indigenous Family Violence Prevention Legal Services, and increasing funding to indigenous legal assistance services including Aboriginal and Torres Strait Islander Legal Services (ATSILS) by 50%;
- investing \$137.7m over four years to return court fees to 2010 levels, subject to indexation; and
- amending the application form for exemptions from court fees to remove ambiguity and exempting people being represented pro-bono.

## Liberals, Labor leave 'justice' out

The Liberal Party's platform doesn't mention "justice" but is strong on reverse gear for fishing boats from Indonesia, and 'strengthening terrorism measures', whatever that means.

Labor has also lost sight of "justice" as a general concept, but goes on at length about issues for lesbians, homosexuals, the disabled, and also about discrimination and domestic violence.

Presumably the absence of clear-cut 'justice' statements by the two main parties means both would continue their track record of generating fear in the community and throwing massive amounts of funding at people in uniform as the solution for problems usually founded on social justice issues, internal and external.

If Australia was not at war with anyone, and had an independent foreign policy, we would be at minimal risk of terrorism and could save billions from the forces' and police budgets.

## Sex party stirs the pot: make religions pay tax

The Australian Sex Party is pulling down the pants of the two major political parties over tax.

ASP President and Victorian Senate candidate Fiona Patten proposes legalising and taxing marijuana, and making

religions pay tax. Combined, the measures would raise \$5 billion extra in the first year, rising to probably \$20 billion annually in future years., Patten claims.

"The US states of Colorado and Washington have recently taxed and regulated marijuana to their great benefit," she said. Uruguay had recognised the benefits and has started the same process.

Ms Patten also proposed a scheme to tax religious institutions in Australia, netting a bare minimum of \$3 billion dollars in its first year, rising to \$10 billion. "A conservative estimate is that income tax exemptions alone to churches and religious organisations cost taxpayers nearly \$20 billion a year...the cost to taxpayers is staggering," she said.

## Immigration closes down freedom of speech

Michaela Banerji, a Canberra civil servant who wrote critical tweets about Australia's asylum seeker policy, has lodged an appeal with the Federal Court after losing her right to post her private opinions under an anonymous name.

She works for the public affairs area of the Department of Immigration, one of the most closed, restrictive, tightest controllers of what should be public information and media access, Civil Liberties Australia believes.

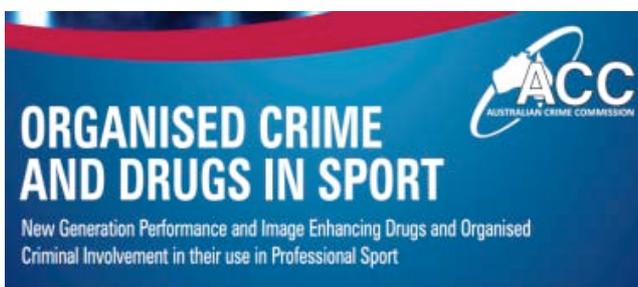
Her dispute is likely to become a test case on free speech for every civil servant in the country, Damien Carrick of the ABC's *Law Report* says. Read his commentary here: <http://tiny.cc/mmgk2w>

## Lawler gets off scot free: not one charge

If Essendon and its coach, James Hird, are guilty of bringing AFL into disrepute, what charges should (retiring) Australian Crime Commission supremo John Lawler face?

He helped shatter Australia's sporting reputation with his media conference bombast and bluster which resulted in world headlines like: **Australian sports darkest day!** and reports like this (The Guardian, UK) throughout the world:

*Doping is widespread across Australian professional sport, authorities have said, after a year-long investigation by the country's Crime Commission found athletes across major codes were involved along with coaches, administrators, sports scientists and organised crime...*



Mr Lawler produced a glossy report for the media (left). It's now seven months on. Not one person has been charged with being involved in organised crime in association with drugs in sport...or even organised crime in sport. Neither doping nor organised crime has so far been shown to be "widespread across Australian professional sport".

This is what we wrote in early August 2013:

*If Mr Lawler has brought Australia's sporting reputation into disrepute, how long can he keep his job when people in responsible football club positions have resigned (or been stood down for a year)? Why isn't the ACC board*

*demanding he step down, like the chiefs at various clubs have stepped down?*

Mr Lawler's retirement was announced on 28 August 2013, the day after Essendon coach Hird was given a year off for what was described as "bringing the game into disrepute". Mr Lawler finishes at close of business on 16 October 2013. Who replaces him is one of the most important appointments for the incoming government: it is hoped the new CEO will demonstrate an enhanced performance in the role.

## Organised crime? Criminals and drugs in sport?

Exactly what did Essendon and Hird do wrong: Here are the main official charges and comments by the AFL against them: "The AFL acknowledges that neither Essendon nor any of the individuals charged set out to implement a supplements program that would result in players being administered prohibited or potentially harmful substances." "There was a **risk** that Essendon players **could have been** administered substances prohibited by the AFL Anti-Doping Code and the World Anti-Doping Code and any such risk is an unacceptable risk." Source: Official AFL website: <http://tiny.cc/grqk2w> Emphasis is in the original.

## Measured by his own words...



Mr Lawler's speech-making has sometimes been 'perspirational': that is, one can be in a sweat about what he might come out with next.

Here's the opening of a speech he gave on 13 August 2013, before his departure was even hinted:

*Organised crime corrupts. To understand this statement, you need to understand a simple yet common idiom – 'it takes two to tango'.*

The speech contains what looks like suspicious new beat-up figures. A man who by calling was forced to associate with criminals, Mr Lawler had 'form' in the beat-up business: his "\$15 billion a year" figure for organised crime in Australia is plucked from the most rarified of thin air.

His 13 August 2013 speech is at: <http://tiny.cc/ohcw1w>

Here's some more excerpts, which point to his legacy and his management, judged by his own words. The words are all from the 13 August speech, but not necessarily in the order they were delivered:

*Building a culture of integrity is a key weapon against corruption and this is recognised by Australia's law makers. Another key response needs to be better management oversight, and if you go back to the Wood Royal Commission, it points to the failure of management. We in the ACC have had our own officers corrupted.*

## Hopes rise for national Right to Appeal law

Cases involving allegations of wrongful convictions which rely on newly or belatedly emerging evidence in a bid for a new appeal would be referred to a court and removed from political discretion under laws being drafted by WA's shadow attorney-general John Quigley.

The law would mirror legislation which came into force in South Australia in May. Civil Liberties Australia and Networked Knowledge of South Australia are actively campaigning for 'mirror' legislation in all states and territories.

Mr Quigley said last month he would draft the legislation, similar to the SA model, and seek shadow cabinet approval to introduce a private member's Bill.

Attorney-General Michael Mischin said he had sought advice from the State Solicitor's Office on the SA legislation. As well, nationally the Standing Council on Law and Justice is expected to consider the same type of legislation at its October meeting in NSW.

Under existing law in WA and most states and territories, petitions for a fresh appeal are lodged with the Attorney-General, who has a discretion whether to refer cases to the Court of Appeal. The SA model gives a court the power to grant a second or subsequent appeal in cases where there is material evidence which should be considered in the interests of justice.

Chief Justice Wayne Martin said his preference was for WA to strive towards an independent system for assessing claims of wrongful conviction. "I think it is desirable for there to be an independent review mechanism," he said.

The CJ's supportive comments are expected to materially assist passage of the new law, hopefully with bipartisan support, Civil Liberties Australia's CEO, Bill Rowlings, said. <http://tiny.cc/z9gj2w>

## PS bosses fails to see the light

The Public Service Commissioner Stephen Sedgwick says Australian public servants who leak to the media will be treated as common "data thieves".

Leakers could still face prosecution, despite upcoming changes to whistleblowers protection laws.

Mr Sedgwick recently told senior public servants that leaking would not be condoned under the new regulatory framework.

Official reports indicate 20,000 federal public servants observed serious internal misconduct in the latest 12-month reporting period: less than half of them made internal reports, usually because they distrusted the official process or feared reprisal. Of those who reported, 55% said they were left unhappy with the official reaction.

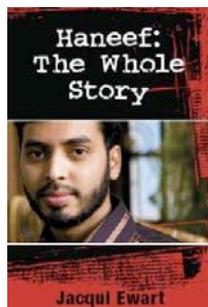
Commissioner Sedgwick – despite such evidence to the contrary – said he still believed internal reporting was the best way to deal with fraud, corruption or misconduct. <http://tiny.cc/5gej1w>

It appears senior public servants still do not get it: active reporting of the bad guys in the PS is in the interests of Australia...even though it might make the bosses look incompetent for allowing misconduct to go on under their noses. They should be encouraging whistleblowers, not trying to put the frighteners on them.

## ODD SPOT: Speaking of data thieves...who has 'stolen' the Haneef report?

The website [www.haneefcaseinquiry.gov.au](http://www.haneefcaseinquiry.gov.au) has disappeared. Googling cannot find where it has gone.

The infamous perversion of the course of justice by the AG's Department and spook agencies seems to have succumbed to a re-write of history by denying access to the facts! The CLA articles referencing the site, and a research paper from the Uni of



Wollongong which also links to the now non-existent site, refreshed our memory of how corrupt the political process became.

But, alas, future researchers won't be able to find out all about it. The government's politically correct data thieves have pulled another con job.

...if you want to buy the book: <http://tiny.cc/9zjk2w>

## AFP to abandon PROMIS for a new SPECTRUM

The Australian Federal Police are about to switch to a computer system developed by Israel security agencies for use in Gaza and the West Bank against Palestinians.

The \$145 million SPECTRUM will replace PROMIS, in use for more than 15 years, from about March 2017. The new system's life expectancy is also about 15 years. AFP is opting for an "off the shelf" version which they will customise. SPECTRUM appears to be an AFP-conceived name.

Elbit Australia, a subsidiary of Israeli defence giant Elbit Systems, signed the contract in June and \$35m of the total cost has already been paid. Elbit also supplies unmanned aerial aircraft: the AFP may chose to buy the company's drones and deploy them in the skies over Australia.



Photo shows an Elbit drone.

SPECTRUM, unlike PROMIS, will also manage AFP evidence and professional standards reporting.

Police Real-time Online Management Information System – PROMIS – is used to record crime and incidents and hold investigative and operational information. It has also seen service with the Australian Crime Commission and the NT police, but has not been suitable for supporting operations such as the AFP's deployments to PNG and the Solomon Islands. <http://tiny.cc/qjqk1w>

## NSW searches for propriety

A new parliamentary committee – the ministerial propriety in NSW committee – is looking to see how much is left in the state, and how to manage it.

Established late in August 2013, the committee will report by 31 October 2014...so the parliament obviously believes the search to corral propriety in NSW politics will have to be long and detailed.

The committee will report on ministerial responsibility to parliament, how to reduce conflicts of interests, the operation and enforcing of the Lobbying Act 2011, how various ethics codes interact and whether ICAC\* can hold ministers responsible under the existing code of conduct.

Notably, it is not inquiring into how codes and ethics operate in political parties in NSW. It therefore appears to be an inquiry into the top floor of the stables when the faeces and the fetid stench emanate from the ground floor.

Robert Borsak of the Shooters and Fishers Party is the chair. Others on it are deputy chair Luke Foley (Labor), John Kaye (Greens), Adam Searle (Labor)...and two government members who had not been nominated at the time of the announcement on 22 August.

Submissions to Beverly Duffy 02 9230 3367 [ministerialpropriety@parliament.nsw.gov.au](mailto:ministerialpropriety@parliament.nsw.gov.au) Terms of reference: <http://tiny.cc/n9na2w> ICAC: Independent Commission Against Corruption.

Note: it was Foley MP who supplied a medical moniker to the Obeid-Macdonald ICAC inquiry, which handed down findings in late July: "His nickname was that he was 'Obeid's left testicle'." – NSW Labor MP Luke Foley on Ian Macdonald. <http://tiny.cc/u5oa2w>

## Resources wasted as states go it alone

Australia continues to waste resources and under-utilise national expertise, as the example of a new NSW parliamentary committee demonstrates.

The new committee is about to undertake a task that would be much better handled by states cooperating to produce a national decision, so that sentencing becomes uniform.

A NSW joint select committee on sentencing of child sexual assault offenders of the NSW Parliament is inquiring into:

- (a) whether current sentencing options for child sexual assault remain effective; and
- (b) whether greater consistency in sentencing and improving public confidence in the judicial system could be achieved through alternative sentencing options, including but not limited to minimum mandatory sentencing and anti-androgenic medication.

There is no deadline given by which date the committee must report.

Civil Liberties Australia notes that it is envisaged the committee will consult other states and territories. If so, why not form a national committee with representatives from all parliaments to produce an answer for Australia, instead of for just one state?

There's nothing special about NSW pedophiles, that CLA is aware of.

## AG to scrap parole and suspended sentences

Attorney-General Jarrod Bleijie has ordered a review into Queensland's sentencing laws, saying the Government is looking at scrapping court-ordered parole and suspended sentences.

The move is the government's latest push to expand its 'tough on crime' agenda.

The Queensland Government has already been warned its juvenile justice plans would breach the UN Convention on Children's Rights. But Mr Bleijie says he is doing what Queenslanders want.

He says the review is due to community concern about crimes committed by offenders on parole.

"Out of 3,000 prisoners on court-ordered parole, 40% have not seen the inside of a jail cell," he said.

"We've got some 300 offenders every month who are returned to jail for breaching some form of parole. We've seen cases in other jurisdictions, so we're serious about it, I think we do have a problem."

Mr Bleijie says to keep a prisoner in jail costs taxpayers about \$80,000 a year.

Somewhere in Queensland, there's about \$20,000 a year per prisoner disappearing...average cost for each prisoner in Australia is \$100,000 a year (Productivity Commission ROGS 2013) <http://tiny.cc/iyzt1w>

## WA ups police numbers...again

More police are expected to be on the beat over the next four years after the state government announced \$282m to recruit an extra 550 officers and upgrade facilities.

The funding injection to WA Police also includes upgrades to infrastructure to house the officers.

Jointly announcing the funding with Police Minister Liza Harvey last month, Treasurer Troy Buswell said \$215m would be spent on the recruitment program and \$67m towards a capital works program, both spread over four years.

Mrs Harvey said 50 police officers would be recruited this year and in 2014 for a new rapid response unit in Perth's southern suburbs and 33 auxiliary officers will be signed up for general duties. She said the new recruitment would be in addition to the 100 police officers to be recruited by June 2014 as part of the government's previous growth program. <http://tiny.cc/a88f1w>

## Forget capital works, how about cleaning?

The Inquiry into Custodial Arrangements in Police Lock-ups in WA, being held by parliament's community development and justice committee, has been told that dried faeces remained on the floor of the Carnarvon police lock-up for more than six months.



LEFT: WA Today photo shows the committee in session.

Inspections officer Jim Bryden said that, despite the issue being raised with the station's officer in charge, the matter was not addressed until about six months later, when the matter was brought up with the police commissioner.

Custodial Services inspector Neil Morgan described the current system of inspections by his office as "strange in what is and is not covered," but he said it was a result of the jurisdiction outlined in the Inspector of Custodial Service Act. Custodial Services is responsible for inspecting lock-ups used to hold prisoners serving time for an offence rather than people under arrest. However its staff often inspect facilities which are used for both purposes and are often invited to inspect facilities not generally under their jurisdiction.

The inquiry is investigating access by detainees to medical and legal services and other third parties, training of custodial officers on cultural issues, the appropriateness of oversight

mechanisms, lock-up design, staffing and administration and procedures for lock-up staff and processes.

The committee will also consider whether current arrangements fully comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Optional Protocol to the Convention Against Torture. <http://tiny.cc/xmws1w>

## NT puts crime stats online, monthly

The NT government will boost transparency of Territory crime statistics by publishing them online each month, Attorney-General John Elferink said last month.

Mr Elferink said the crime statistics will be updated monthly, rather than the current quarterly release, and include the same data with more detailed information.

"The statistics will be released to the public via the new website, including additional police analysis and breakdowns by region and population-based rates. The website will be based on the model used by Victorian Police, and include safety messages as well as statistics."

Property crime in the NT is down by 8.2% in the past 12 months, and is the lowest it has been in the NT since 2004-05, he said. – media releases, 23 Aug 2013

## Australian briefs

**Let's declare peace on the world:** Marrickville Peace Group's have opened a petition to the Senate on the need for a War Powers Act in Australia, Jo Errey advises. It would allow for debate about Australia's staying at war, and make annual budgetary reporting on war expenditure to the Parliament mandatory. Here's the link to add your name: <http://tiny.cc/h3110w>

**Commissioner appointed:** Attorney-General Mark Dreyfus has appointed Professor Barbara McDonald to head the Australian Law Reform Commission's inquiry into Serious Invasions of Privacy in the Digital Era - AG media release.

**New cells for youth:** Alice Springs will get new holding cells worth \$350,000 at the court house for juvenile offenders. NT Attorney-General John Elferink said youth and adult offenders will be separated, and the cells will be brought up to similar standards across the country. "The cells will be used to detain youth waiting to appear before the court, providing them with a safe environment which complies with the principles outlined in the Youth Justice Act," Mr Elferink said – NT AG media release 14 Aug 2013

**New cells for youth 2:** WA's Corrective Services Minister Joe Francis has unveiled a \$1.3 million upgrade to riot-hit Banksia Hill detention centre. There are new security fences, refurbished cells and stronger bars on windows. A riot early in 2013 left 108 of 240 cells damaged. Juveniles were temporarily housed at the adult Hakea Prison. <http://tiny.cc/kw7c2w>

**Sloss, Croucher benched:** Melanie Sloss and Michael Croucher have been appointed Supreme Court judges in Victoria. Ms Sloss started in WA in 1980, moving to Victoria in 1985 and working in commercial, corporations, resources and mining, trade practices, tax, administrative and constitutional law. She was chair of the state Bar Council in 2012. Mr  
*Civil Liberties Australia A04043*

Croucher became a barrister in 1999 and practised mainly in criminal law and in occupational health and safety, confiscation of proceeds of crime, inquests, investigations and inquiries. <http://tiny.cc/cfie2w>

**AAT for NT?** The NT is considering a centralised Administrative Appeals Tribunal to replace more than 35 commissioners, tribunals, committees and boards which can hear appeals and review, uphold or overturn original decisions. A 2004 report identified 122 pieces of legislation allowing an appeals process, making it well past time to explore legislation that would best operate under a centralised appeals system, according to AG John Elferink. – media release 28 Aug 2013.

**Aboriginal jailing on the rise:** Law Council of Australia president-elect Duncan McConnel has told *The Age* that, 22 years after the landmark royal commission into Aboriginal deaths in custody, there had been no tangible reductions in indigenous imprisonment rates. Between 2000 and 2010, the indigenous imprisonment rate increased by 51.5 per cent. ABS data shows that in 2012, indigenous adults were imprisoned at a rate 15 times that of non-indigenous adults. Among juveniles and women, the disparity was even greater. [Indigenous justice 'needs intervention'](http://tiny.cc/indigenous-justice-needs-intervention)

## CLA report – for August 2013

### CLA board meeting:

Main items:

- lobbying for adoption of right to appeal legislation in States and Territories
- reports from State-based groups in Tasmania and WA
- campaign re 40th anniversary of abolition of death penalty in Australia
- web: redesign launched August 2013; statistics report; eAGM timetable and recommendations
- policy discussion on jury education/selection/operation
- development of 'Omnium', a resource on selected topics
- court reporting - correcting errors and bias
- CLA website, Facebook and Twitter
- Dropbox endorsed as CLA's preferred exchange option
- gene patents campaign: report and plans for 2014

### Correspondence

- Letter to Dr Vivienne Thom, Inspector General of Intelligence and Security, re investigation of the impact of PRISM surveillance on Australia and Australians;
- Letter to DFAT re terms being made public of Trans Pacific Partnership Agreement;
- Letters to all State and Territory Attorneys General re right to appeal legislation (with Networked Knowledge)

### Submissions

To NSW Law Reform Commission, on criminal appeals inquiry (with Networked Knowledge)

### Media activity

National Media Spokesperson, V-P Tim Vines, is overseas on leave.

### Tas media:

- interview ABC Tasmania about Greens voluntary euthanasia policy: <http://tinyurl.com/klpf2z3>

- open letter to Tasmanian State Parliamentarians in support of free speech in the forest debate, published in *Tasmanian Times*: <http://tinyurl.com/luzmchg>
- quoted in *Global Mail* article on high rate of surveillance by Tas Police: <http://tinyurl.com/l83vcys>
- quoted in Hobart *Mercury* article on unexplained wealth laws: <http://tinyurl.com/k2tn29j>



There was a gathering of Hobart CLA members in early August under Tasmania State Director Richard Griggs for yum cha reports and policy discussion: President and CEO attended.

Above: Former Tasmanian MP John Charles White listens as former Senator Margaret Reynolds discusses governance in non-government organisations at the Hobart CLA yum cha.

#### WA media:

Commentary on radio on national ABC on the Banerji-Immigration freedom of speech case (see above) and on 6PR re the 'burkha law' under which police can force a woman to remove her head covering.

Vice-President and national media spokesperson Tim Vines addressed CEPS symposium: on-line surveillance and intelligence sharing: *Privatising Intelligence* (see presentation) <http://www.cla.asn.au/News/its-us-against-the-spook-world/>



Above: Tim Vines (left) is pictured with Duncan Chappell, chair of the international advisory board of the Centre for Excellence in Policing and Security (CEPS).

#### Networking with CLA members

Thomas Mautner on miscarriages of justice  
Bishop Pat Power on right to appeal, prison treatment/visits  
Rosemary Jennings re proof-reading CLArion  
Anthony Lamb farewell on return to Melbourne  
Drs Des and Janette Griffin re miscarriages of justice

## INTERNATIONAL

### UK authorities 'shoot' the messenger's mate

The partner of *The Guardian* journalist who has written a series of stories revealing mass surveillance programs by the US National Security Agency was held last month by UK authorities as he passed through London's Heathrow airport on his way home to Rio de Janeiro.

David Miranda, who lives with Glenn Greenwald, was returning from a trip to Berlin when he was stopped by officers

at 8.05am and informed that he was to be questioned under schedule 7 of the UK Terrorism Act 2000. The controversial law, which applies only at airports, ports and border areas, allows officers to stop, search, question and detain individuals.

The 28-year-old was held for nine hours, the maximum allowed before release or formal arrest. According to official figures, most examinations under schedule 7 – over 97% – last less than an hour, and only one in 2000 people detained are kept for more than six.

Miranda was released, but officials confiscated electronics equipment including his mobile phone, laptop, camera, memory sticks, DVDs and games consoles. <http://tiny.cc/x0e21w>

### ODD SPOT: Now here's a new news angle...

On July 20, two "security experts" from GCHQ visited *The Guardian's* London head office and watched as deputy editor Paul Johnson, executive director Sheila Fitzsimons and a newspaper computer expert used angle grinders and other tools to pulverise hard drives and memory chips storing encrypted files, according to the newspaper. <http://tiny.cc/m3l51w>

### Cloud hangs over communication freedom, courtesy of the USA

Whistleblower Edward Snowden's email service, Lavabits, abruptly shut down last month after its owner cryptically announced he refused to be "complicit in crimes against the American people."

Lavabit boasted of its security features and claimed 350,000 customers, but it is no more, apparently after rejecting a court order for cooperation with the US government to participate in surveillance on its customers. It is the first such company known to have shut down rather than comply with government surveillance.

"I have been forced to make a difficult decision: to become complicit in crimes against the American people or walk away from nearly 10 years of hard work by shutting down Lavabit," founder Ladar Levison wrote on the company's website.

Levison said government-imposed restrictions prevented him from explaining what exactly led to his company's crisis point. "As things currently stand, I cannot share my experiences over the last six weeks, even though I have twice made the appropriate requests."

Silent Circle, another provider of secure online services, announced last month that it would scrap its own encrypted email offering, Silent Mail. In a blogpost the company said that although it had not received any government orders to hand over information, "the writing is on the wall". <http://tiny.cc/dOfj1w>

### Private loss may help rein in US public excess

The US cloud computing industry could lose up to \$39 billion in the next three years as revelations about wide-ranging government surveillance frighten customers away.

If American cloud service providers lost 20% of their overseas business due to the National Security Agency's electronic surveillance revelations but retained their share of the domestic market, they would lose the money by 2015, according to US think tank the Information Technology and Innovation Foundation.

The global Cloud Security Alliance became aware of the antipathy to hosting data in the US by surveying 456 organisations around the world. Of the 207 respondents from outside the US, 56% were less likely to use US-based cloud providers after the revelations and 10% had cancelled plans to use American services. About a third said the revelations would not affect their choice.

The foundation said non-US cloud services were already reporting big increases in business. Switzerland's largest hosting company, Artmotion, reported a 45% increase in revenue in the month following Mr Snowden's exposure of the Prism surveillance program. <http://tiny.cc/tadg2w>

## US President says democracy is lost

The 39th US president Jimmy Carter is so concerned about the NSA spying scandal that he thinks it has essentially resulted in a suspension of American democracy.

"America does not at the moment have a functioning democracy," he said at an event in Atlanta sponsored by the Atlantik Bruecke, a private non-profit association working to further the German-US relationship. The association's name is German for "Atlantic bridge."

Carter's remarks didn't appear in the American mainstream press but were reported from Atlanta by the German newsmagazine *Der Spiegel*, whose Washington correspondent Gregor Peter Schmitz said on Twitter he was present at the event. The story didn't appear in the English-language section of the *Spiegel* website and was only available in German. <http://tiny.cc/dp9q1w>

## US drug agency gets intel from NSA, then lies about origins to build cases

Reuters news agency has reported that a secret Drug Enforcement Administration (DEA) unit uses information collected by intelligence agencies – including the National Security Agency (NSA) – to build evidence for criminal cases.

The origin of the information is concealed from defence lawyers to seemingly avoid the normal court procedures for a criminal defendant's right to discovery, Cyrus Farivar wrote.

According to the documents, which Reuters did not publish, the DEA's "Special Operations Division" (SOD) trains its own agents to "recreate" detective work. This is dubbed "parallel construction." The news organization said it interviewed many current and former DEA agents and officials who defended the practice, saying that it was "decades old" and was used "every day."

But people in the legal community are shocked that this type of wanton data sharing goes on unchecked. "There's nothing that allows lying to judges about the source of information in a criminal case," Jennifer Granick, an attorney and the director of Civil Liberties at Stanford University's Center for Internet and Society, said. <http://tiny.cc/trj1w>

## Serco: the company that runs Britain and – increasingly – Australia

From prisons to rail franchises and even London's Boris bikes, Serco is a giant global corporation that has hoovered up outsourced government contracts...and now the (UK's) National Health Service is firmly in its sights, John Harris of *The Guardian* wrote last month.

But it stands accused of mismanagement, lying and even charging for non-existent work, he wrote.

Its range of activities, in the UK and abroad, is truly mind-boggling, taking in no end of things that were once done by the state, but are now outsourced to private companies.

Amazingly, its contracts with government are subject to what's known as "commercial confidentiality" and as a private firm it's not open to Freedom of Information requests, so looking into the details of what it does is fraught with difficulty.

But the basic facts are plain enough. As well as five British prisons and the tags attached to over 8000 English and Welsh offenders, Serco sees to two immigration removal centres, at Colnbrook near Heathrow, and Yarl's Wood in Bedfordshire.

You'll also see its logo on the Docklands Light Railway and Woolwich ferry, and is a partner in both Liverpool's Merseyrail network, and the Northern Rail franchise, which sees to trains that run in a huge area between the North Midlands and English-Scottish border.

Serco runs school inspections in parts of England, speed cameras all over the UK, and the National Nuclear Laboratory, based at the Sellafield site in Cumbria. It also holds the contracts for the management of the UK's ballistic missile early warning system on the Yorkshire moors, the running of the Manchester Aquatics Centre, and London's "Boris bikes".

It is also an increasingly big player in a health service that is being privatised at speed, in the face of surprisingly little public opposition: among its array of NHS contracts is a new role seeing to "community health services" in Suffolk, which involves 1030 employees. The company is also set to bid for an even bigger healthcare contract in Cambridgeshire and Peterborough: the NHS's single-biggest privatisation – or, if you prefer, "outsourcing" – to date, which could be worth over \$1.7bn.

But even this is only a fraction of the story. Among their scores of roles across the planet, Serco is responsible for air traffic control in the United Arab Emirates, parking-meter services in Chicago, driving tests in Ontario, and an immigration detention centre on Christmas Island, run on behalf of those well-known friends of overseas visitors, the Australian government. (And the new Fiona Stanley Hospital, to open in October 2104, in Perth WA - ed).

*Below: Aerial photo of the \$2 billion Fiona Stanley Hospital in Perth WA. Serco Australia will run all facilities management and support services.*



In the US, the company has just been awarded a controversial \$2.2bn contract by that country's Department of Health.

All told, its operations suggest some real-life version of the fantastical mega-corporations that have long been invented by fiction writers; a more benign version of the Tyrell Corporation from *Blade Runner*, say, or one of those creations

from James Bond movies whose name always seems to end with the word "industries", Harris wrote. <http://tiny.cc/tnik2w>  
Civil Liberties Australia believes that firms like Serco and G4S – <http://en.wikipedia.org/wiki/G4S> – need much closer monitoring by the Australian community and governments than they are receiving. We invited suggestions for a way of ensuring community oversight where a government has passed its public responsibilities to these private firms.

### **ODD SPOT: Amazing what Googling turns up**

The US Justice Department recently won a court battle to keep an internet company from talking about federal demands for user data, arguing that even disclosing the company's name would damage national security. But then, after months of arguments, the department appears to have been foiled by its own redaction process, which left the name "Google" on one page posted in the US District Court for the Southern District of New York. As a commentator said: "Their incompetence gives one hope" <http://tiny.cc/ju2h2w>

### **Uruguay set to legalise marijuana**

Uruguay's House of Representatives has approved a bill to legally regulate marijuana.

Securing 50 out of 96 votes, the bill now goes to the Senate. If approved by the Senate, Uruguay will become the first country in the world to legally regulate the production, distribution and sale of marijuana.

President José Mujica of the Frente Amplio (Broad Front) put the marijuana legalisation proposal forward as part of a 15-measure package aimed at fighting crime and public insecurity. The bill allows three forms of access to marijuana: domestic cultivation of six plants, membership clubs similar to those found in Spain, and licensed sale in pharmacies.

It also prohibits sales to minors, driving under the influence, and all forms of advertising. <http://tiny.cc/xhm40w>

### **Leakers given a higher bar to hurdle**

In a new interpretation of the Espionage Act, a US federal judge has made it easier for prosecutors in leak cases to meet their burden of proof, while reducing protections for accused leakers.

Judge Colleen Kollar-Kotelly ruled that the prosecution in the pending case of former State Department contractor Stephen Kim need not show that the information he allegedly leaked could damage US national security or benefit a foreign power, even potentially.

Her opinion was a departure from a 30-year-old ruling in the case of US v. Morison, which held that the government must show that the leak was potentially damaging to the U.S. or beneficial to an adversary. In that case, Samuel L. Morison was convicted of unauthorized disclosure of classified intelligence satellite photographs, which he provided to Jane's Defence Weekly. He was later pardoned by President Clinton. <http://tiny.cc/0ia10w>

### **Holder sees the light on drug crime**

US Attorney-General Erid Holder announced last month that low-level, non-violent drug offenders with no ties to gangs or large-scale drug organizations will no longer be charged with offences that impose severe mandatory sentences.

The new Justice Department policy is part of a comprehensive prison reform package that Holder unveiled in a speech to the American Bar Association. He also introduced a policy to reduce sentences for elderly, nonviolent inmates and find alternatives to prison for nonviolent criminals.

"We must face the reality that, as it stands, our system is, in too many ways, broken," Holder said. "And with an outsized, unnecessarily large prison population, we need to ensure that incarceration is used to punish, to deter and to rehabilitate — not merely to warehouse and to forget." <http://tiny.cc/vjay1w>

### **Westminster may rein in royal veto**

The British Parliament will this month investigate Prince Charles's controversial and little-known royal veto over any new laws that affect his private interests.

The move follows revelations of a secret loophole that has forced ministers to seek permission from the prince to pass at least a dozen government bills.

The House of Commons political and constitutional reform committee will ask whether there is a risk that the requirement of royal consent, which is also granted by the Queen depending on the nature of the law being passed, "could be seen as politicising the monarchy".

Charles has held 36 meetings with ministers since the government took power in May 2010. He has met the prime minister, David Cameron, seven times, four different ministers in the Department for Communities and Local Government and held six meetings with ministers in the Department of Energy and Climate Change, which oversee areas in which the prince campaigns on planning and the environment respectively.

Neither Whitehall nor the prince's office, Clarence House, will elaborate on what was discussed in the private meetings. <http://tiny.cc/qycr1w>

### **Abolish sentences for theft: professor**

A UK professor proposes abolishing prison sentences for theft and other "pure property crimes".

Instead, Andrew Ashworth (pictured), Vinerian professor of English law at the University of Oxford, said courts should issue fines, compensation orders and community sentences for those convicted of theft, fraud or handling stolen goods. He said that this would mean 5000 fewer men jailed each year in the UK (about 8% of the 2012 prison population) and 700 fewer women (21%).



Depriving offenders of their liberty is a disproportionate punishment for a crime that only deprives victims of their property, Ashworth said. "The amount of censure should be proportionate to the seriousness of the wrongdoing," he said. "[The] priority should be to deal with such offences in the community, giving precedence to compensation or reparation for the victim and, where the offence is sufficiently serious, imposing a community sentence."

Offences that are threatening, violent or sexual – which would include burglary, blackmail and robbery – would be excluded. Ashworth said cases in which large sums of money are involved would be "sufficiently serious" to warrant the deprivation of liberty. <http://tiny.cc/4i7s1w>

## International briefs:

**Gee, your mail may be read:** People sending email to any of Google's 425 million Gmail users have no "reasonable expectation" that their communications are confidential, the internet giant has said in a court filing. Consumer Watchdog, the advocacy group that uncovered the filing, called the revelation a "stunning admission." It comes as Google and its peers are under pressure to explain their role in the National Security Agency's mass surveillance of US citizens and foreign nationals. <http://tiny.cc/p6qu1w>

**Kiwis don't support death penalty:** Only a third of New Zealanders would support the reintroduction of the death penalty. In a Curia poll – for TV3's *The Nation* – of 624 respondents, 38% were in favour of the death penalty, 55% against, and 7% were undecided. Among Labour voters, 35% favoured the death penalty and National voters polled at 44%. Least likely to be in favour were Green Party voters at 19%, but the most in favour of capital punishment were New Zealand First voters at 84%. <http://tiny.cc/a2xz1w>

**ODD SPOT:** Portugal has the lowest rates of drug abuse problems in the European Union. They are the only EU country to have decriminalised drugs.

**Oldies get to sit on juries:** People up to the age of 75 will be able to sit on juries in England and Wales, according to plans announced by the criminal justice minister last month. The proposal to raise the upper age limit of jurors from 70 to 75 is part of a drive to make the system more inclusive and to reflect modern society, the Ministry of Justice said. Damian Green, the minister, said: "The right to be tried by your peers is, and remains, a cornerstone of the British justice system laid down in the Magna Carta almost 800 years ago." <http://tiny.cc/ara41w>

## DATES

**11 Sept, Melbourne:** The Security Council: Dr Devika Hovell, London School of Economics, at Melbourne Law School, 12.45-2pm. Details: <http://tiny.cc/ym4fwv> or Vesna Stefanovski, (03) 8344 6589 or [vesnas@unimelb.edu.au](mailto:vesnas@unimelb.edu.au)

**19 Sept, Brisbane:** Judicial Independence in Times of Financial Cholera: Lessons from the Irish Experience, by Justice Nicholas Kearns, president of the High Court of Ireland. 5.30pm, Banco Court, RSVP by 16 September 2013 to [libsec@sclqld.org.au](mailto:libsec@sclqld.org.au)

**1-3 Oct, Brisbane:** 26th ANZ Society of Criminology conference, Convention Centre. Details: <http://tiny.cc/vvsaww> Email: [anzsoc2013@griffith.edu.au](mailto:anzsoc2013@griffith.edu.au)

**3-5 Oct, Brisbane:** Fourth Justice Environments Conference, organised by U. Western Sydney, QE2 Courts Brisbane. Court of the Future Network, in association with the French Institut des hautes études sur la justice (Judicial Research Institute). To register: [Fourth Justice Environments Conference - Registration Form](#)

**4 Oct, Brisbane:** Virtual Battlegrounds: Cyber Warfare and the Law of War: Dr Emily Crawford, U. Sydney, 12-1pm, Rm 1-W341, Forgan Smith Building St Lucia. <http://www.law.uq.edu.au/law-research-seminar-series> Info: Beth Williams 07 3346 9350 or [events@law.uq.edu.au](mailto:events@law.uq.edu.au)

**9 Oct, Parramatta:** Space, Technology and the Challenges for International Humanitarian Law, Prof Steven Freeland, 11.30-12.30, Moot Court, Bldg EO, Parramatta Campus UWS. Details: Cathy McFall [c.mcfall@uws.edu.au](mailto:c.mcfall@uws.edu.au) or 02 9685 9576

**11-12 Oct, Melbourne:** Democracy and Human Rights: Past Their Use-By Dates? Melbourne Law School, Friday PM/ Saturday AM. Contact Jean Goh [law-cccs@unimelb.edu.au](mailto:law-cccs@unimelb.edu.au)

**31 October, Brisbane:** Update on last 18 months of reform in Qld criminal law, by Qld DPP, Anthony Moynihan, 5-6pm Banco Court, L3, 415 George St. <http://www.law.uq.edu.au/current-legal-issues-series> Info: Hollie Spencer, 07 3238 5109 or email [cpd@qldbar.asn.au](mailto:cpd@qldbar.asn.au)



**15 Nov, Canberra:** Annual Geoffrey Sawyer lecture, by Prof Michael Coper (pictured), ANU College of Law. Public Law Weekend. Details: [cjpl@law.anu.edu.au](mailto:cjpl@law.anu.edu.au)

**17-22 Nov, Sydney:** AFP Specialist Response Group hosts International Negotiators' Working Group 2013 conference. Restricted attendees. Details: <http://tiny.cc/wesaww>

**3 Dec, Melbourne:** Atmosphere of the Lawscape: Bodies, Space, Justice: Professor Andreas Phipopoulos-Mihalopoulos (right), Director of the Westminster Centre for International Law and Legal Theory and a Prof of Law and Theory at U. Westminster in London. 6-7.30pm, Theatre G08, Melbourne Law School, Carlton. Details: Vesna Stefanovski [law-iilah@unimelb.edu.au](mailto:law-iilah@unimelb.edu.au)

**5-8 Dec, Canberra:** Law, Literature and Humanities Association of Australasia conference, Hedley Bull Centre, ANU. Rego: <http://law.anu.edu.au/conferences/registration-rates>

**11-13 Dec, Parramatta, Sydney:** Trans-Tasman Domestic Violence Conference, Rydges Parramatta Hotel, website: <http://www.gcadv.net/2013dvconference.htm> Call for papers (first closing 30 Oct 2012) or details and registration form, email: [chairman@gcadv.net](mailto:chairman@gcadv.net)

## 2014:

**Feb, Sydney:** 12th annual National Security Australia conference: venue/days not yet revealed. Info: <http://www.iir.com.au/conferences/defence/national-security-australia>

**16-18 July, Hong Kong :** Obligations VII – Divergence and Convergence. Jointly hosted by law faculties at U. Hong Kong and U. Melbourne, to be held in Hong Kong. <http://www.law.hku.hk/obligationsvii/>

## 2015:

**June, England:** 800th anniversary of Magna Carta  
**Date, Place TBC:** 2<sup>nd</sup> Global Domestic Violence Conference

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