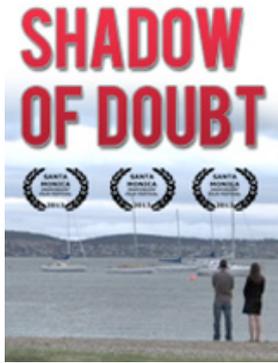


## Free screening: Australian justice on trial

Please come to a free screening in Canberra of the outstanding document, *Shadow of Doubt* – with an expert Q&A panel afterwards – at 6-8.30pm on Tue 10 Dec at the Coombs Theatre, ANU.

*If you are a member outside Canberra, please email any friends in Canberra to let them know they are welcome to attend...at no cost.*

Many people have had their faith in Australian justice shattered by seeing this 82-minute doco, which screened twice a day in a Hobart cinema throughout August, and has been seen at special screenings in Melbourne and Sydney in the months since.



The documentary covers the disturbing case of Sue Neill-Fraser, locked up in Risdon Prison in Tasmania for four and a quarter years, with 19 to go, for the 'murder' of her husband.

No body has ever been found; there were and are no witnesses; there was and is no hard evidence; the case is as flimsily circumstantial as any in judicial history, CLA believes.

But the documentary takes no side: it presents interviews with

the key players, and allows you to form your own opinion.

CLA believes the case most closely resembles the Lindy Chamberlain–Uluru–"dingo took my baby" trials 30 years ago, but the justice system in Tasmania appears not to have learnt from police, procedural, forensic, legal and administrative errors in that case.

You can ask direct questions of the convicted woman's pro bono lawyer, Barbara Etter, and the film producer/director Eve Ash, who will be at the screening, along with CLA CEO Bill Rowlings. Both Barbara and Eve are CLA members.

To secure your seats, please email: [shadowdoubt@cla.asn.au](mailto:shadowdoubt@cla.asn.au) ...or phone President Kristine Klugman on 02 6288 6137. The screening is free: please bring along family and friends.

## CLA turns 10

The film screening – above – is being held on the precise day of the 10th anniversary of Civil Liberties Australia.

The date, 10 Dec 2003, was when CLA's registration as an incorporated entity was stamped by the Registrar-General of the ACT.

Apart from the screening, the anniversary is a low-key affair. Instead, we have a history of CLA (and civil liberties in Australia) in production for publishing online in 2014.

Under our 'CLA Report for November' we list some of the highlights of the past decade.

## Fees up: first time in a decade

Since December 2003, CLA's subscription fee for membership has been the same: \$25 a year for members, \$10 a year for students.

With rising prices, the Board has decided we need to raise the fees to anticipate future increased expenditure. The new subs will be \$40pa for individual members, \$20 for students, concessional, or unwaged, and \$60 (\$40) for household membership.

You can beat the rise by taking out 1, 2 or 5 year membership before 31 Dec 2013 at the old price:

<https://www.cla.asn.au/Join/>

## What have we achieved – with your help – over CLA's first decade?

The battle is long and hard, the wins few, but with members' help we have achieved a few good things in our first decade, which was probably the hardest decade ever in Australia's history for civil liberties and human rights bodies (yes, harder than the world war years).

Because of the aircraft terror attacks on America, and bombings around the world, it has been a decade of raising fear levels by police, security and defence people and politicians. They have enacted awful laws aimed at terrorists only...but applying to all citizens, as if we were terrorists.

Against that background, here's a few of things you and CLA can be proud of:

- created the only national civil liberties (CL) organisation;
- started CL groups in Tasmania, WA, NT, helped to revive group in SA;
- planted Liberty Tree in the National Arboretum: it will be there for a century or more. Like CLA, it is described as pyramidal when young, growing wider with age;
- accepted in the national parliament as a significant voice for civil liberties (submissions, appearing before hearings, lobbying of MPs, many of whom now seek our counsel), and similarly in state and territory parliaments;
- maintained a high-quality monthly newsletter CLArion, which has not missed an issue or a publishing date in 10 years;
- developed and maintained an excellent, current web site;
- the board and members have written and generated about 680 articles, taken/collected about 1000 photos on CL issues;
- formed links with universities in internship programs: helped dozens of students become more aware, for their lifetimes, of the importance of civil liberties;
- improved annual reports of government departments and agencies through our critical analysis;
- raised important issues at DFAT/AG's NGO consultations (China statement on death penalty, where CLA was the first in the world to secure a public statement that China was changing its policy) – photo shows CLA President Dr Kristine Klugman with Chinese Ambassador to Australia, Chem Yuming, and Chinese Vice-Foreign Minister, Cui Tiankai – Howard Moffat photo.
- articles in many Fairfax, News Ltd, Lexis Nexis and online journals and blogs, authored by CLA board and members;



- established a credible media spokesperson on national issues, who is sought out by media and conference/seminar organisers;
- held regular quarterly board meetings;
- introduced electronic AGMs – we believe we are the first organisation in Australia to hold all aspects of our AGM electronically;
- maintained operating surplus over a decade, solely from members' fees and a few small donations;
- formed productive links with other CL and human rights bodies, particularly the A. Privacy Foundation;
- individual high-profile projects where we have had some success in moderating excesses: gene patents, bikies, terror laws, unexplained wealth, discrimination – federally, and in all states and territories
- attacked miscarriages of justice (Green case NT, Sue Neill-Fraser case Tasmania)
- members of CLA: we have outstanding members – some are 'names' but most are simply good Australians who see the danger of losing our traditional civil liberties, and are prepared to contribute financially, and sometimes practically, in helping fight for a fair go.

## Vines fears nano-edge of DNA wedge

Civil Liberties Australia is concerned emerging DNA technology that allows police to determine eye and hair colour of potential suspects will impinge on privacy and help create a national DNA database.

But forensic officer for Victoria Police Runa Daniel said information gained from the technology that uses phenotypic markers in DNA to help identify suspects would not be kept.

The Victoria Police Forensic Services Department and the Australian Federal Police are collaborating on the University of Canberra PhD project.

"Phenotypic markers are not useful for identification purposes and legislation does not allow for information gained from phenotypic markers to be stored on DNA databases," Dr Daniel said. "Phenotypic markers are only intended for use in police investigations like any other form of intelligence such as eyewitness statements. The use of forensic DNA intelligence tools and the storage of samples and information will be dictated by legislation."

But Civil Liberties Australia director Tim Vines said Australian legislation about DNA use and storage always lagged behind research breakthroughs. "What about incidental findings? Something like a genetic mutation? Do the police have an obligation to tell the suspect?"

He said DNA taken from a suspect that showed another family member was the more likely culprit was also problematic. "There are issues around potential stereotypes of certain groups and genetic profiling," Mr Vines said. <http://tinyurl.com/otwkknx>

## Indon spy boss gives the "game" away

Indonesia's former top spymaster has accused his own president of exaggerating the problem of phone tapping, saying intelligence agencies snooping on national leaders was "normal".

Former spy agency chief Abdulah Mahmud Hendropriyono has also punctured claims by Indonesian Foreign Minister Marty Natalegawa that Indonesia would never tap the phones of Australian politicians, insisting it was a routine part of "black intelligence".

Mr Hendropriyono, the head of Badan Intelijen Negara (BIN) until 2004, has been thrust into the Australian political debate because of a TV interview he gave that year, in which he admitted to bugging Australian politicians.

Mr Hendropriyono also revealed a previously hidden motive for giving the 2004 interview to the Nine Network's *Sunday* program. He publicly acknowledged the deepest secret of spook and police bodies – they constantly "game" the system to secure more funds, people and 'toys'.

"I have a very good relationship with my friends, the directors of ASIS and ASIO, and I would like them to be more alert, to raise the capability of their intelligence, and that is why I mentioned, 'I tapped you' ... Then your intelligence gets more budget for counterintelligence. That is the way of intelligence techniques," the refreshingly honest Man from BIN said. <http://tinyurl.com/numgn6s>

His website: <http://www.hendropriyono.com/>

## Never mind the principle, feel the pragmatism:

CLA last month called on PM Tony Abbott to rule out torture absolutely.

"If he doesn't he may be putting captured Australian soldiers and kidnapped civilians at greater risk of being tortured," we told people in a media release on 18 Nov 2013. "A PM can't half-endorse torture without there being consequences, any more than you can just torture a little bit," CLA's CEO Bill Rowlings said. Here's the media release:

### **Tony Abbott's policy on torture, when asked in Sri Lanka**

*"My government deplors the use of torture but we accept that sometimes in difficult circumstances difficult things happen"*

– PM Tony Abbott speaking in Sri Lanka 15 Nov 2013

### **Official Australian government policy on torture:**

*A person must not be removed from Australia to another country if there is a real risk that the person may suffer torture or cruel, inhuman or degrading treatment or punishment in that other country.*

*The prohibition on torture is an absolute right. This means it cannot be limited or qualified under any circumstance. For further information see the additional information sheet on [Absolute Rights](#). The CAT (Convention Against Torture: Australia is a signatory) explicitly provides that no exceptional circumstances whatsoever, including wars or other public emergencies, can justify torture. It also provides that an order from a superior officer or a public authority may not be invoked as a justification of torture.*

– official AG's Department's site: <http://tiny.cc/6o5m6w>

As the Australian PM has apparently indicated that the euphemistic "difficult things" have happened and are happening in Sri Lanka, it would seem impossible for Australia to return any Sri Lankan asylum seeker to Sri Lanka.

## AG plans to consult...but not widely

Australian civil liberties bodies are so concerned about media statements by Attorney-General George Brandis on his planned changes to the Racial Discrimination Act that they wrote to him, jointly last month, proposing he consults them.

Senator Brandis has said publicly that he will selectively consult, only with people and organisations he chooses. But, as the letter says, all civil liberties groups in Australia have long-standing, on the public record, interest in racial discrimination and anti-discrimination legislation.

No reply has yet been received.

## CLA calls for uniform anti-discrimination laws

Civil Liberties Australia has called on the SLUDGE (the Standing Council of Law and Justice, SCLJ, comprising all the attorneys-generals of Australia, and NZ) to make anti-discrimination law uniform throughout Australia.

There is no good reason that the law in this area is not uniform, and simple to grasp. However, states and territories continue to make small local tweaks for no overall gain. It confuses claimants and groups like religious bodies, forcing them to operate to about five different rules in the one nation.

The federal government should be legislating to ensure sensible, uniform laws rather than trying to hold back progressives in the community over an issue like same-sex marriage, where giving one group what they want does not take away anything from any other group.

**Jewish group also puzzled by Brandis approach:** The head of the Jewish national peak body, Peter Wertheim, is concerned Attorney-General George Brandis wants to amend sections of Commonwealth law that protect Jews and other minority groups against hate speech.

"We don't really know what's intended," said Mr Wertheim, the executive director of the Executive Council of Australian Jewry. "Obviously we're concerned about the tenor of [Senator Brandis'] announcements and we do wish to consult with the Attorney-General. The time for talking is before any bill is drafted, not afterwards."

Senator Brandis has signalled that as his first legislative act he wants to amend sections of the Racial Discrimination Act that make it unlawful to offend or insult another person on grounds of race or ethnicity. <http://tinyurl.com/odbkxbl>

## AG restores funding against native title claims

Attorney-General George Brandis has reinstated the funding to groups facing native title claims: it had been withdrawn by Labor.

There will be \$2.2m over two years to assist people who demonstrate that a native title claim is likely to have a significant impact on their interests, such as pastoralists, local councils, commercial fishers and miners who were unable to access funding. Reinstating funding would allow fair and equitable finalising of existing native title claims, a 1 Nov media release claims. Funding starts 1 Jan 2014. Info: Tracy Heffernan 0477 722 189.

## Hate your spouse? JEO him/her!

Strong evidence has emerged in Queensland that a provision under the *Mental Health Act* to enable police to intervene in cases of extreme mental distress is being seriously abused, the ABC's Matt Wordsworth reported last month.

*"Imagine police arriving at your door armed with a document ordering you to undergo a psychiatric assessment. Neighbours are looking on as you are told which hospital you have to attend. You may not know who asked for the order or why it was deemed necessary – only that it is involuntary."*

They're called Justices Examination Orders (JEOs), and in Queensland all that is needed to get one is the signature of a Justice of the Peace, a JP.

Queensland Health figures reveal there has been a 41% rise in the number of JEOs issued in the past decade, which concerns the Director of Mental Health for Queensland, Dr Bill Civil Liberties Australia A04043

Kingswell. He says JEOs were initially designed to be used by people in desperate circumstances dealing with a friend or relative who was seriously mentally ill.

"I think 1,039 JEOs in a year is too many and I think it's certainly too many when 60-odd per cent of them are false positives." The article suggests JEOs are being abused in bitter divorce disputes. <http://tinyurl.com/ktupqrrn>

## ODD SPOT: Bikies can't appear in court together...it's illegal

Three bikies waiting to testify in a trial in a Maroochydore Magistrates Court in Queensland were ordered by a police sergeant to disperse from the area or face possible jail.

The order is a sobering side effect of the Qld government's new anti-association laws.

"Basically, they were told they would be arrested if they didn't get out of the courthouse," Tony Jardine, of the Rebels' Sunshine Coast Chapter, said.

Two of the bikies said that they feared the technical breach of the new anti-association laws would result in their immediate imprisonment for a mandatory six months.

The incident flared into a verbal confrontation on the second floor of the courthouse, in full view of other members of the public, as the bikies argued that they were only there together to appear in the trial. Police responded that the bikies were gathered in a public place, which is now illegal.

The bikies then dispersed. <http://tinyurl.com/o8nzn5f>

## Qld charges bikies...using 'old' laws

In less than two months, more than 281 criminal motorcycle gang members and associates have been arrested and charged with more than 560 offences, the Qld Attorney-General said last month.

Unfortunately, Jarrod Bleijie did not reveal that most charges were under old laws, and that all charges could have been under old laws. There was no need for the Over-The-Top legislation recently passed in the Dark State, where laws are excessive one day, draconian the next.

As an example, AG Bleijie also announced last month that a new licensing regime which he and Premier Campbell Newman originally applied to the tattoo industry is now being expanded to apply to these industries also:

- Liquor
- Security (including locksmiths)
- Tow truck
- Building and construction
- Pawnbroking
- Second hand motor dealers
- Bookmakers

At this rate of expansion into the realms of the ne'er-do-wells, inclusion of Politics can be but a brown paper bag away. <http://tinyurl.com/qg8mtrk>

Comment on a blog:

*The average member of the public has less reason to fear the Hells Angels & comparable organizations than they do the supposed forces of law & order, INCLUDING the bloodsucking parasites in George Street (Brisbane). I've yet to encounter a bikie into highway robbery, stealing as a servant, misappropriation of public money, obtaining a benefit by false pretences or practicing intentional deception with intent to mislead voters yet I suspect all*

*these and more are considered perfectly acceptable by blue-uniformed revenue raisers, politicians, judiciary & bureaucrats. Personally I've never had any aspiration to own a Harley Davidson or to join one of their tribes, although I'd be far more inclined to trust one of the owners than I would one of blue-uniformed mob.*

Commenter: Yes Minister Location: Woop Woop  
Date and time: 22 Nov 2013, 1:04PM

<http://tinyurl.com/nepmw6q>

## Police get right to decide if you can drink



The NT's shadow Attorney-General, Michael Gunner (left), says it would be impossible for police to enforce a new government banned drinker plan.

Proposed Alcohol Protection Order (APO) laws would give police the power to impose drinking bans on people who commit certain alcohol-related crimes. Under the

draft legislation, they would then be banned from entering any licensed premises, including pubs, supermarkets, clubs and restaurants, and even sports venues where alcohol is sold.

Mr Gunner says the measure would be draconian. "It creates these extraordinary circumstances where no alcohol has to be involved," he said. "You are not necessarily breaching your order; they [police] do not have to know that you are on an alcohol protection order, only suspect that you are on an alcohol protection order to be able to fingerprint you, search you and seize what is on you."

Mr Gunner says people working in licensed premises will not be told who is banned, so enforcement would be completely up to police. <http://tinyurl.com/l69mxrv>

## Youths lose liberties...in the name of safety

Passenger and night restrictions will be imposed on young drivers under changes to provisional licence laws in South Australia.

The changes have passed State Parliament and will take effect next year.

Young P1 licence holders will be banned from driving between midnight and 5am unless granted an exemption. P1 drivers under 25 will be allowed to transport only one passenger aged between 16 and 20, excluding immediate family. The minimum provisional licence period will be increased from two years to three. <http://tinyurl.com/nmd9a34>

## Police investigating police: no penalties

The Victorian Deputy Coroner Iain West has released a disturbing video showing police smirking as a drunken man in their custody writhes in pain, and is then abandoned outside a police station in the cold (12C) and rain to eventually die in hospital later that morning.

Cause of death was "alcoholic liver disease in the setting of gastrointestinal haemorrhage" according to forensic pathologist Dr Paul Bedford of the Victorian Institute of Forensic Medicine (there is no suggestion the dead man was assaulted by police). However, Sally Bell, a gastroenterologist at St Vincent's Hospital, told the court that hypothermia, pneumonia, a subdural haemorrhage, hypoglycaemia, acute renal failure and hypertension also contributed to the man's

death.

CCTV footage from inside Dandenong police station shows Gong Ling Tang, 53, crawling from a cell. An interpreter present at the time said Tang had pleaded with police to be taken to hospital.

Three and a half years later, no police officer has faced any penalty. The Office of Police Integrity – in the un-blacked out sections of its report – severely questions actions of the police involved, and the police investigating the police involved.

<http://tinyurl.com/ods9gvb>

## Muslim women must uncover face for police ID

Muslim women must now remove a burqa or niqab to prove their identity to West Australian police after a new law passed that state's parliament.

The law is a response to public outcry when niqab-wearing mother-of-seven Carnita Matthews had a conviction for knowingly making a false statement quashed. She was originally sentenced to six months jail for falsely accusing a senior constable of forcibly trying to remove her niqab when pulled over while driving in Woodbine in Sydney's southwest in June 2010. She was later acquitted on appeal because the prosecution could not prove she was the woman who signed the statement while wearing the garment.

WA acting Police Minister John Day said that, after consultation with the Muslim and Sikh communities, the word "headwear" in the draft law was changed to "face covering".

The new law also makes collecting DNA from suspects easier for police, with "identifying particular" expanded to allow taking of dental impressions, hair samples and other body tissues. It also means a magistrate can issue a warrant when samples are needed from juvenile suspects in particular situations. <http://tinyurl.com/lmbhxw>

## State spring cleans the law book

Laws 150 years old are to be scrapped in a continuing WA legislative clean-up.

More than 40 outdated and redundant laws went last month during the state's 'repeal week'.

One law now dead is the 'Law relating to Dower', an 1836 imperial law from the UK. It meant a widow could not claim a dower (an income due to her after she has been widowed) from land or property that has been disposed of by her husband in his lifetime or in his will.

Other killed-off laws include those to establish cemeteries in many regional towns, and to prevent people being buried in the centre of Mandurah, now an outer southern suburb.

Burdensome laws relating to retail, motor vehicle and property industries as well as ports are also coming under parliamentary scrutiny. <http://tinyurl.com/ovarjot>

## Police chase death: hit car traveling at 25kmh

A woman killed on a Perth road was driving about 25km/h when a police car crashed into her while it was chasing a stolen vehicle, a court was told last month.

Constable Gareth Hopley, 28, is on trial in the Perth District Court charged with dangerous driving causing the death of Sharon Ann D'Ercole, a mother of three, in April 2012. His identity was originally suppressed but the Court of Appeal refused to extend the order at last month's hearing, *WA Today* reported.

Ms D'Ercole, 50, died from multiple injuries: her 16-year-old daughter, who was a passenger, can't remember the incident.

Engineer Grant Johnston told the court he estimated Ms D'Ercole was traveling at 25km/h at the time of impact and had just driven through a green light where the speed limit was 60km/h. He estimated the police car had been traveling at 75km/h at the point of impact, the court was told.

<http://tinyurl.com/mlp6yl4>

## Tribunal ups the 'anti' on vaccination group

A controversial group which claims vaccines cause autism and cancer will be forced to change its name after a tribunal found that it was likely to mislead parents into thinking it provided fair and balanced information.

The NSW Administrative Decisions Tribunal decided the name "Australian Vaccination Network" (AVN) was likely to mislead an ordinary member of the public into thinking it provided comprehensive information about vaccination.

The victory is the end of long-running legal battles between the AVN and various arms of the NSW government as they have sought to prevent it from spreading misinformation about vaccines. <http://tinyurl.com/owj7fe5>

In late November, days after the decision, the AVC had not changed its website...



**Australian Vaccination Network Inc.** Because every issue has two sides.

Consumer Warning: NSW Fair Trading has directed Australian Vaccination Network to change its name because it regards the name to be misleading. The Australian Vaccination Network is challenging this Direction and the challenge is currently before the NSW Administrative Decisions Tribunal.

## Arrest powers under scrutiny

Former Labor police minister Paul Whelan and former Liberal shadow attorney-general Andrew Tink will step in after Wollongong district court judge Paul Conlon called for an urgent review of police powers to make on-the-spot arrests.

Speaking recently, he said section 99 of the Law Enforcement (Powers and Responsibilities) Act covering the police power to arrest someone without a warrant focused on "preserving the safety or welfare of the [arrested] person", but failed to adequately consider the safety of others.

Expanding the NSW police powers would encourage officers to arrest people for spurious reasons and to hold them in custody even if they face only financial penalties, legal experts have warned.

The state government has proposed legislation to make it easier for police to make on-the-spot arrests. The move is in response to complaints criminals are using a lack of clarity around arrest powers to escape conviction and sue police.

The proposed powers would allow police to arrest a person on the basis of a subjective belief it is "reasonably necessary", after considering the "nature and seriousness" of the offence. The existing law applies a more objective standard. <http://tinyurl.com/ojq86an>

## Prisons bulge at the seams

Soaring rates of prisoners denied parole or having it cancelled are driving the crowding crisis in Victoria's prison system.

Over the past 12 months, denial of parole has jumped 43.6%, cancelled parole has risen 41.1% and the number of people on parole has fallen 22%.

Of Victoria's record 5756 prisoners across the system – up 750 from a year ago – 836 were in custody for breach of parole, a figure that has doubled in 12 months.

The statistics were revealed at a recent forum involving Corrections Victoria, magistrates, lawyers, security companies and prisoner welfare workers.

The principal legal officer for the Victorian Aboriginal Legal Service, Jillian Prior, warned the "perfect storm" of high prisoner numbers could result in deaths. She said it was a disgrace that Victoria had the nation's fastest-growing incarceration rate for Aborigines, which she blamed on government policy changes and "public perception". Ms Prior cited a 25-year-old man who spent 45 days in custody for theft of a \$45 bottle of alcohol before he was released. <http://tiny.cc/gcfx6w>

## Euthanasia advice planned for state capital

Voluntary euthanasia campaigner Philip Nitschke is planning to open a clinic in Adelaide.

Dr Nitschke has bought a property in the inner northern suburb of Gilberton. He plans to advise people who want to end their lives and will test euthanasia drugs.

Dr Nitschke says patients will not be visiting the clinic to die, but he will provide information on their options. <http://tinyurl.com/pskqneq>

## Law change allows for new acting DPP

Tasmania has amended its *Director of Public Prosecutions Act 1973*, allowing AG Brian Wightman to direct Daryl Coates to act as Director of Public Prosecutions for Tasmania.

"Until the recent amendment, the Act required the Solicitor-General to carry out the functions of the DPP whenever the DPP was unable to do so and there was no mechanism available either to direct another person to do so or to appoint an acting DPP."

Mr Wightman said the Director of Public Prosecutions, Tim Ellis SC, had been suspended from the position with full entitlements until the outcome of a charge against him is finalised. Ellis is facing the charge after a woman, 27, died when her car and that allegedly being driven by Ellis collided on the Midlands Highway in March this year – media release 7 Nov 2013

## AUSTRALIAN BRIEFS



**Two step down, chair to hand over:** Two long-standing board members of the Australian Privacy Foundation, Julie Cameron and Nigel Waters, have retired. Chair of APF, Roger Clarke (left), has indicated he will hand over to a new chairperson at the earliest opportunity. The announcements are contained in the chair's report section of the annual report, available here: <http://www.privacy.org.au/NL/NL-131031.html>

**Bikies one day, ballots the next:** The Queensland government has introduced a bill to parliament that, when passed, will make voter identification a prerequisite for casting a ballot, Tracey Arklay wrote in *The Conversation* last month. "This is a first for Australia and follows several American states and other western nations. For state polls, Queensland voters will need to present a current driver's licence, passport, recent public utility bill or an ID card issued by the government, such as a Medicare or seniors' card. <http://tinyurl.com/nmbqmue>

**Police numbers drop:** WA is cutting 200 police, with numbers due to fall to just over 5600 by the end of March 2014, Police Minister Liza Harvey said last month. Police numbers are forecast to grow to a total of 6250 officers by June 2017, in line with the government's election pledge, she claimed. CLA says police numbers are being cut – and will continue to drop – because the government's mandatory sentencing and jailing juveniles policies, along with a reluctance to parole people, are seeing vastly more people in prisons, and the money in the 'law and order' sector of the economy is running thin, draining resources from education and health. <http://tinyurl.com/o4ofmgb>

**Drug body loses funding:** The Abbott government has defunded the Alcohol and Other Drugs Council of Australia, according to Brian McConnell, head of Family and Friends for Drug Law Reform. "Axing all funding for ADCA without consultation and in pursuit of a false claim of fixing the debt shows up the Federal Government as unprincipled and evidence free," he said. "ADCA was established in 1966 and has been well-respected by all governments since that time. To defund it so swiftly and without explanation is incorrigible," he said. – media release, FFDLR, 25 Nov 2013.

**US Embassy promotes *Dirty Wars*:** The US Embassy in Australia attracted the attention of the US State Department and the *Washington Post* last month after giving away free tickets to an anti-American film at the Canberra international film festival. One of the films was a documentary called *Dirty Wars* which looks at US military involvement in the death of civilians in Afghanistan and other aspects of what it calls a 'covert war'. The embassy used its Twitter account to offer free tickets to the controversial film as well as several others. <http://tinyurl.com/ngytd5>

**Police chief gives new meaning to 'sworn' officer:** The WA Police Commissioner, Karl O'Callaghan, says he will not force a policeman to apologise after he repeatedly swore at a 24-year-old man during a confrontation over a traffic fine. A video shows the constable swearing and threatening to lock the man up after he was told by the 24-year-old to catch some real criminals. The commissioner says the 24-year-old's attitude was cocky and the constable lost his cool. "I don't expect him to apologise. I will make sure he gets some counselling," he said. Presumably, police will not in future arrest anyone for swearing: if it is not offensive behaviour for police to swear, how can it be for ordinary citizens to do so? <http://tinyurl.com/qgttn9m>



**Older drivers don't have to do driving test:** WA's Transport Minister Troy Buswell has abolished driving tests for motorists aged 85 and older. The tests for car licences will end from 16 December this year. However, licence holders aged 80 and older must still undergo annual medical checks. Mr Buswell says the changes are supported by road safety research showing older drivers don't cause a disproportionate number of major accidents. <http://tinyurl.com/neq7snr>

**NSW votes down same-sex marriage:** The NSW upper house last month narrowly voted down a bill to legalise same-sex marriage. Despite initial hopes the upper house would pass the legislation, MPs voted against it by 21 votes to 19 in the Legislative Council. <http://tinyurl.com/xwqs6w>

Civil Liberties Australia A04043

## CLA report – main activities for November 2013

- Tim Vines, national media spokesperson and CLA V-P, on panel for Q&A following a film
- *A World Not Ours* refugee film at the Canberra International Film Festival
- President and Secretary meeting in Brisbane with Terry O'Gorman Queensland CCL, for broad ranging discussion of national issues.



- Meeting also with Profs Anne and Neil Rees at the University of the Sunshine Coast re establishment of a new law course there from 2014. *Photo shows CLA President Kristine Klugman, Prof Neil Rees, CLA CEO Bill Rowlings. Photo: Anne Rees.*
- Article by CEO Bill Rowlings for Lexis Nexis on Rule of Law (due out in December)
- Organisation of venue and invitations for a showing of the documentary film **Shadow of Doubt** on a miscarriage of justice in Tasmania
- Meeting with new CLA members Julian Reynolds, John Myrtle

### CLA board meeting:

Major paper by CEO on miscarriages of justice around Australia

Status report on right to appeal legislation

Reports by president, secretary, media spokesperson, webmaster, treasurer,

Reports by Tasmanian and WA Directors

Plans for promotion and expansion in 2014: membership target set

### Meetings attended:

Dying with Dignity AGM

A. Building & Construction Comm. (ABCC) protest meeting with 'Vintage Red' group of former unionists

Drug Law Reform AGM

Cooperation with Australian Privacy Foundation and other CCLs: letters to Ministers, AG, AHRC on emerging issues

## INTERNATIONAL

### China to reduce death penalty executions

China has revealed a range of substantial reforms, including loosening its one-child policy, abolishing its labour camps and cutting death penalty offences.

The cuts to the death penalty were foreshadowed by a Chinese judge to Civil Liberties Australia president Dr Kristine Klugman in a CLArion report in July 2012: <http://tinyurl.com/os7m6w>

Chinese state media revealed the reforms last month in a 22,000-word report detailing the results of the third plenum, a closed-door annual meeting of about 400 top party leaders, that has historically been used as a launching pad for substantial reforms, *The Guardian* reported.

The plenum report detailed promises to explore ways of setting up an intellectual property court, reduce the number of crimes subject to the death penalty, and "build a more impartial, sustainable social security system, with an improved housing guarantee mechanism".

While officials promised to ensure "independent, fair use of judicial authority" and uphold the country's constitution – which promises freedom of assembly and freedom of speech – they also pledged to "strengthen public opinion guidance and crack down on internet crimes," suggesting that media and internet censorship policies will remain in place. <http://tiny.cc/io7m6w>

## NZ pays for keeping people inside

The NZ Corrections Department has paid out hundreds of thousands of dollars to prisoners kept inside after a sentence is complete.

About \$315,000 in compensation has been paid since 2005 – to 31 people – figures provided to *Radio New Zealand* show.

The Corrections Department says the cause for prisoners not being released could be human error, or incorrect information from other sources. <http://tinyurl.com/osj4kyk>

**ODD SPOT:** *"I no longer love blue skies. In fact, I now prefer grey skies. The drones do not fly when the skies are grey."*

- Zubair Rehman, 13 <http://tinyurl.com/kd5ug4c>

## States move to correct federal privacy failings

US state legislatures, facing growing public concern about collection and trade of personal data, have rushed to propose new privacy laws, from limiting how schools can collect student data to deciding whether the police need a warrant to track mobile phone locations.

More than 10 states have passed 20-plus privacy laws in 2013, from Oklahoma to California, the NYT reported last month. Many lawmakers say that news reports of widespread surveillance by the National Security Agency have led to more support for the bills among constituents.

In some cases, state lawmakers say, they have felt compelled to act because of the stalemate in Washington on legislation to strengthen privacy laws. "Congress is obviously not interested in updating those things or protecting privacy," said Jonathan Stickland, a Republican state representative in Texas. "If they're not going to do it, states have to do it." <http://tinyurl.com/khj7fmw>

## Stoning to death comes back into fashion

Afghan government officials propose reintroducing public stoning as a punishment for adultery, even though the practice has been denounced both inside and outside the country as one of the most repugnant symbols of the Taliban regime.

The sentence for married adulterers, along with flogging for unmarried offenders, appears in a draft revision of the country's penal code being managed by the ministry of justice, Human Rights Watch says. There are several references to stoning in a translated section of the draft, including detailed Civil Liberties Australia A04043

notes on judicial requirements for handing down the sentence.

"Men and women who commit adultery shall be punished based on the circumstances to one of the following punishments: lashing, stoning [to death]," article 21 states. The draft goes on to specify that the stoning should be public, in article 23. <http://tinyurl.com/6rjs4b>

## Yulia stays behind bars

The Ukrainian parliament last month voted down bills that would free jailed opposition leader Yulia Tymoshenko, ending the country's chances of signing a historic trade deal with the EU.

Watched by special EU envoys Aleksander Kwasniewski and Pax Cox, the Verkhovna Rada rejected all six bills that had been put forward on the treatment of convicts abroad after they failed to gain the support of President Viktor Yanukovich's ruling party.

Opposition lawmakers, who supported the legislation, shouted "shame" as the bills were rejected one-by-one in the 450-seat parliament.

EU leaders have made clear that Ukraine will only be able to sign a broad political and trade agreement considered the first step to eventual membership of the EU if it allows some form of release to Tymoshenko who was jailed in 2011 on abuse of authority charges. Her jailing is widely considered to be political. <http://tinyurl.com/od6xrdh>

## Dissident Nobel winner seeks retrial

Jailed Chinese Nobel peace prize winner Liu Xiaobo (right) will ask for a retrial.

This month marks the fifth anniversary of the Chinese writer and dissident critic's detention, on the eve of publication of a call for democratic reforms that he co-authored. He was subsequently jailed for 11 years for subversion and his appeal was dismissed.

Liu's lawyer, Mo Shaoping, said he agreed to a legal challenge during a prison visit recently by his wife, Liu Xia. <http://tinyurl.com/kxj4vm4>



## 'My brain made me do it'

US criminal courts are facing a surge in the number of defendants arguing that their brains were to blame for their crimes and relying on questionable scans and other controversial, unproven neuroscience, a legal expert has warned.

Nita Farahany, a professor of law who sits on President Barack Obama's bioethics advisory panel, told a Society for Neuroscience meeting in San Diego that those on trial were mounting ever more sophisticated defences that drew on neurological evidence in an effort to show they were not fully responsible for murderous or other criminal actions.

Lawyers typically drew on brain scans and neuropsychological tests to reduce defendants' sentences, but in a substantial number of cases the evidence was used to try to clear defendants of all culpability. "What is novel is the use by criminal defendants to say, essentially, that my brain made me do it," Farahany said following an analysis of more than 1,500 judicial opinions from 2005 to 2012. <http://tinyurl.com/m4xttd3>

## **G4S workers involved in corrupt behaviour**

The security and detention company, G4S, has launched an internal investigation after a UK judge referred a number of its employees for prosecution for forgery and contempt of court in a "truly shocking" case of what he called disgraceful behaviour.

In Her Majesty's High Court of Justice, Mr Justice Mostyn said three employees from G4S running Brook House immigration removal centre in Gatwick, East Sussex, had been involved in forging a document and contempt of court after giving witness statements during an immigration appeal involving allegations of torture at the hands of a foreign government.

In an excoriating judgment which has been referred the UK Attorney General and the Director of Public Prosecutions, Judge Mostyn said G4S employees Tamara Burns, Marilyn Bennett and Matthew Newman were involved in "corruptly redacting" an official certificate, an action which helped bolster the case against an immigrant who was being deported from the UK. <http://tinyurl.com/owqpsyc>

## **User rights need enshrining, founder says**

Online surveillance is undermining people's confidence in the internet, warns Sir Tim Berners-Lee – though he predicts that its outcome will be to enshrine users' rights in the longer term.

But he added that whistleblowers such as Edward Snowden, who triggered a raft of disclosures against the US National Security Agency and the UK's GCHQ surveillance agencies, were important: "I think we must protect them and respect them," he said at the launch of a new index showing web freedoms around the world.

Berners-Lee, 58, the British inventor of the world wide web, said: "One of the most encouraging findings of this year's Web Index is how the web and social media are increasingly spurring people to organise, take action and try to expose wrongdoing in every region of the world. But some governments are threatened by this, and a growing tide of surveillance and censorship now threatens the future of democracy."

He also said that those who have revealed secret surveillance deserved praise: "Countries owe a lot to whistleblowers – there's a series of whistleblowers who have been involved. Snowden is the latest. Because there was no way we could have had that conversation without them.

"At the end of day when systems for checks and balances break down we have to rely on the whistleblowers – I think we must protect them and respect them."

Jimmy Wales, co-founder of Wikipedia, said that as a result of the revelations about surveillance, the collaborative online encyclopaedia will begin encrypting communications with its users all over the world so that people cannot be spied on as they access information. <http://tinyurl.com/lo65xft>

## **'A sham in the shadow of a farce'**

The NZ Parliament last month endorsed the Telecommunications (Interception Capability and Security) Act 2013, which updates the Telecommunications (Interception Capability) Act 2004.

This carte blanche present to the Kiwi intelligence community authorises surveillance of that nation's phone and internet traffic. The new law follows revelations that security agencies across the world are spying on other governments, on individuals and businesses and have been since the beginning of cross border telecommunications. <http://tinyurl.com/lbym4pg>

The Member for Dunedin South, Clare Curran (Labour) said when the the bill was first tabled that it "contains no definition of the problem that is trying to be solved... the privacy of New Zealand's citizens counts, the civil liberties of New Zealanders count, and checks and balances count in all of our legislation, and they do not exist in this bill."

David Cunliffe, the Member for New Lynn (Labour) said the bill "as it currently stands, based on the information that we currently have, appears to be a sham in the shadow of a farce." <http://tinyurl.com/konkkbe>

## **USA: where spooks ignore law...and courts**

Yet another Foreign Intelligence Surveillance Court (FISC) judge has blasted US intelligence officials for disregarding the court's guidelines for domestic surveillance of American email metadata traffic, a program that ran for around a decade before ending in 2011.

"[National Security Agency's, NSA] record of compliance with these rules has been poor," wrote Judge John D. Bates in a 117-page opinion whose date was redacted. The opinion is just one of a series of documents released and declassified by the Office of the Director of National Intelligence.

"Most notably, NSA generally disregarded the special rules for disseminating United States person information outside of NSA until it was ordered to report such disseminations and certify to the FISC that the required approval had been approved. The government has provided no meaningful explanation why these violations occurred, but it seems likely that widespread ignorance of the rules was a contributing factor." <http://tinyurl.com/phjjsqu>

NSA is also known as the national spy agency. Ignorance and incompetence are likely to be fellow travellers, CLA believes.

## **It's all about iiii**

Singapore and South Korea help the Five Eyes (iiiii) – USA, UK, NZ, Canada and Australia – tap undersea tcoms links across Asia, according to top secret documents leaked by former US intelligence contractor Edward Snowden.

He has also revealed that Australia and NZ tap global satellite communications.

A top secret US National Security Agency (aka N Spy A) map shows that the iiii tap high speed fibre optic cables at 20 locations worldwide. This means they can trace "anyone, anywhere, anytime" in what is described as "the golden age" signals intelligence.

Pity they've never stopped a terrorist bombing anywhere, anytime, by anyone....like Bali and Boston. Apparently, the iiii's just don't have it.

Dutch newspaper *NRC Handelsblad* published the map last month. <http://tinyurl.com/o6xpayz>

## **UN endorses privacy over secret surveillance**

The UN General Assembly's human rights committee has unanimously adopted a resolution sponsored by Brazil and Germany to protect the right to privacy against unlawful surveillance, following months of reports about US eavesdropping abroad.

The symbolic resolution, which seeks to extend personal privacy rights to all people, followed a series of disclosures of US eavesdropping on foreign leaders, including Brazilian President Dilma Rousseff and German Chancellor Angela Merkel, that surprised and angered allies.

Brazil's Ambassador Antonio de Aguiar Patriota said the resolution "establishes for the first time that human rights should prevail irrespective of the medium, and therefore need to be protected online and offline".

Consensus adoption of the resolution means it will also unanimously pass the whole 193-member General Assembly in December. General Assembly resolutions aren't legally binding, but reflect world opinion and carry political weight. The United States did not fight the measure after it engaged in lobbying last week with Britain, Canada, Australia and New Zealand, which comprise the Five Eyes intelligence-sharing group, to dilute some of the draft resolution's language. <http://tinyurl.com/okqjb2e>

## Crime figures? Don't believe even 1% of them!



There were awesome scenes in the British House of Commons last month. MPs declared themselves dazed and horrified. Committee chairman Bernard Jenkin cried that he was "shocked". Liberal democrat Greg Mulholland was "amazed and appalled". Even the Home Office minister Damian Green (pictured) was said to be

furious, burbling that "thick red lines" had been crossed.

The cause of the mayhem, wrote Simon Jenkins in *The Guardian*, was a couple of police officers telling an otherwise somnolent public administration committee that only fools believed crime figures. Everyone knew they were fixed to meet ministerial targets. In the argot of the beat, the figures were "cuffed, skewed, nodded and stitched".

As Westminster was rocked to its foundations, police spokesmen began to spin. Derbyshire's chief constable suggested that any manipulation was "inadvertent". The Gwent chief confessed to a "perverse incentive" to mendacity. The Association of Chief Police Officers agreed that crime figures "simply cannot be relied upon", but did so as if discussing a random weather forecast.

Jenkins concluded by saying: All we can know for sure is that police crime figures have nothing to do with the case. They spread confusion and fear, and should be banned. They are politicians' toys for boys. MPs who are shocked by their falsity are hypocritical. <http://tinyurl.com/pohs3x3>

## ODD SPOT: UK unis abide by liberties and rights...to a degree

Universities can segregate students during debates as long as the women are not forced to sit behind the men, UK university leaders say. Segregation at the behest of a controversial speaker is an issue which arises "all the time" and banning men and women from sitting next to each other during debates is a "big issue" facing universities, according to Universities UK. They have issued guidance which suggests that segregation is likely to be acceptable as long as men and women are seated side by side and one party is not at a disadvantage. <http://tinyurl.com/phqcjgy> What, precisely, would be wrong with not accepting as speakers anyone who insisted women and men couldn't sit together as they freely choose, CLA asks? Or has the UK become Saudi Academia?

## Congress urged to put intent back into the law

A panel of four lawyers told members of the US Congress last month that one way to fix the nation's bloated and convoluted criminal code is to require prosecutors to prove intent, especially when it comes to regulatory violations.

Congress could accomplish this by passing one overriding law that requires proof of intent for any federal crime in which mens rea (criminal intent) is not currently a requirement, George Terwilliger, a partner at Morgan, Lewis & Bockius, testified during a hearing in Washington.

"This could eliminate any question as to strict criminal liability offenses being actionable, and would reintroduce to federal criminal law the fundamental and venerated principle that a criminal offense must include proof of intent to do a bad act," said Terwilliger, a former deputy attorney general under the George W. Bush administration.

This is something that Congress already appears to know. The House Judiciary Committee formed a task force to tackle this overcriminalization, and called on Terwilliger and the other lawyers to tell them how. Some examples of obscure criminal laws provided to the committee:

- A child who saved a woodpecker from her family's cat was fined \$535 under the migratory bird law; and
- a 66-year-old retiree who went to prison because he didn't have proper paperwork for orchids.

"The recent growth of the federal code in all areas of life has brought with it an ever-increasing labyrinth of federal regulations, many of which also impose criminal penalties without a showing of mens rea, or criminal intent," judiciary committee chairman Representative Bob Goodlatte (Republican, Virginia) said. The code has been gaining criminal statutes "at a rapid rate, about 500 a decade," Goodlatte has said. The code is up to some 4,500 crimes. <http://tinyurl.com/lk37od8>

## INTERNATIONAL BRIEFS

**Belgium looks to expand euthanasia options:** In Belgium, where euthanasia is legal for people over 18, the government is considering extending it to children and to adults with early dementia. Advocates argue that euthanasia for children, with the consent of their parents, is necessary to give families an option in a desperately painful situation. But opponents have questioned whether children can reasonably decide to end their own lives. Belgium legalized euthanasia for adults in 2002. Reported cases rose from 235 deaths in 2003 to 1,432 in 2012, the last year for which statistics are available. Doctors typically give patients a powerful sedative before injecting another drug to stop their heart. <http://tinyurl.com/tyjt5w>



### Creative Commons updates to new version:

After more than two years of community discussions and many drafts, the non-profit Creative Commons has released a new version of its popular copyright licence suite. These licences allow rights holders to release some exclusive rights associated with copyright while retaining others, in a

way that's easy for re-users, indexable by computers, and that stands up to legal review in many countries. Version 4.0

accomplishes some ambitious goals, but sticks to the spirit of earlier licences, so that it shouldn't disrupt existing uses. In several places, the text has been clarified to better reflect the way the public uses the licences in practice. <http://tinyurl.com/m33nbk2>

*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: [mailto:secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

## DATES

**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@unimelb.edu.au](mailto:Vesna.Stefanovski@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>

**10 Dec, Canberra:** FREE SCREENING, *Shadow of Doubt*, Coombs Theatre, ANU, 6-8.30pm, with expert panel involving pro bono lawyer Barbara Etter, producer/director Eve Ash...and a chance to ask questions about how a possible miscarriage of justice involved in the Sue Neill-Fraser (Yacht No Body) case is similar to the Lindy Chamberlain dingo-baby case. Book seats at: [shadowdoubt@cla.asn.au](mailto:shadowdoubt@cla.asn.au)

**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:

**14-15 Feb, Surfers Paradise:** Queensland Australian Lawyers Alliance (ALA) conference, including International Air Crash Litigation (Joe Wheeler, Shine Lawyers), Marriott Resort. Details: <http://tiny.cc/8w3o3w>

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

**7-Mar, Gold Coast:** Bar Association of Qld annual conference, Sheraton Mirage. <http://tinyurl.com/oej464d>

**21-22 Mar, Brisbane:** Qld Law Society Symposium, Convention Centre. Info: <http://tinyurl.com/m6kdv62>

**16 May, Torquay:** Victorian Australian Lawyers Alliance (ALA) conference, at The Sands Resort. <http://www.thesandstorquay.com/welcome/index.mhtml>

**3-5 June, Tahiti:** Political, Economic and Legal Governance in Pacific States and Territories: 2014 Pacific Island Political Association Conference. University of French Polynesia. Info: [Kerryn.baker@anu.edu.au](mailto:Kerryn.baker@anu.edu.au)

**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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