

TPP: ‘free’ trade...or disaster by a thousand cuts?

The biggest ‘sleeper’ issue as the Australian Parliament resumes on 11 Feb is the Trans-Pacific Partnership agreement, the TPP (or sometimes, TPPA).

The coalition government plans to rush the agreement through parliament, but other parties are trying to stall the process to allow much wider discussion and debate.

The TPP is marketed by proponents as a “free trade” agreement involving Australia, the US, NZ, Canada, Mexico, Peru, Chile, Singapore, Brunei, Malaysia, Japan and Vietnam. Negotiations have been underway for nine years, and are secret. Opponents say it is a bid for US corporate control of trade, copyright, patent and social justice law.

Leaked documents and limited public information indicates the TPP is not mainly about trade in goods, according to [AFTINET](#), the main Australian opposition group. The USA is driving the agenda to suit its global corporations, who want changes to Australian laws to suit corporations but reduce peoples’ rights, the group say.

Surveys show only 11% of Australians are aware of the TPP. Yet it could savage fundamentals of how our society works.

For example, the TPP may change Medicare and the Pharmaceutical Benefits Scheme (PBS): you and I will either pay more for medicines, or cheaper generic medicines will not be available in Australia. It may similarly raise prices on baby formulas, so wide is the potential impact.

The TPP would give US companies the right to international legal tribunal hearings if Australia’s social policy got in the road of their marketing*: for example, cigarette companies could overturn Australian national policy on plain packaging warning on cigarettes.

The TPP could also seriously limit your rights to record and watch TV shows when and how you like. Similarly, software would be further restricted, probably meaning Australia would pay even more for software – by comparison with America - than we do now.

The impacts could extend to forcing genetically-modified (GM) seed and products here, which is why most farm groups are up in arms...but the government still will not listen.

There is a brief window of opportunity for Australians to pepper their federal MPs with pleas to refuse the TPP entirely. Please read up on the background, and write, email and phone your local MP. Both the Liberal and the previous Labor governments were planning to sign the TPP: their main reason for doing so is bowing down to US hegemony, exercised through trade demands.

CLA member Pauline Westwood’s bibliography of articles means you can read a fuller explanation of how dangerous the TPP is: <http://www.cla.asn.au/News/the-tpp-what-it-means-for-you/>

* It’s called the ISDS: Investor-State Dispute Settlement. It gives US and overseas corporations more rights to take the Australian government to court than Australians have.



Australia must revisit basic refugee principles

Protection of individual liberty is at the heart of Australian democracy. When there exist powers that have the capacity to interfere with individual liberty, they should be accompanied by checks and balances sufficient to engender public confidence those powers are being exercised with integrity.

– MJ (Mick) Palmer, July 2005, in ‘Principles’, a foreword to his Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: <http://www.safecom.org.au/pdfs/palmer-report.pdf>

Civil Liberties Australia believes the powers and ability to remove, turn back and detain people seeking refuge in Australia have escalated over the past nine years since Palmer’s statement...but there has been no commensurate increase in checks and balances.

It is time to address the other side of the refugee equation, CLA says, for the sake of the ‘heart of Australian democracy’.

How do you measure justice?

Civil Liberties Australia is investigating a stimulating initiative from The Netherlands which aims to measure justice.

Australia would seem to be a perfect location for cross-comparison of justice systems: there are eight state and territory justice systems, and one federal one.

Tillberg Uni was developing the measuring tool: <https://www.measuringaccesstojustice.com> Anyone who would like to be involved in a ‘measuring justice’ project in Australia is asked to contact secretary@cla.asn.au

CLA writes to all AGs on Right to Appeal:

The 2014 Australia Day letter of Civil Liberties Australia, to the Attorney-General Senator George Brandis, asks him to throw his First Law Officer support behind national Right to Appeal (R2A) law.

South Australia passed the legislation last year. SA AG John Rau has formally written to put the R2A issue on the agenda for the April meeting of the national Standing Council on Law and Justice (SCLJ, or SLUDGE, which is the new name for the old SCAG committee, which comprises all the AGs of Australia and NZ).

Rau and CLA want the new law mirrored in all other Australia jurisdictions.

It is a law which allows a convicted person to submit new material to a Supreme Court judge, asking for a retrial, if the judge believes the material shows a miscarriage of justice may have occurred.

Several cases are likely to come up in SA this year based on the new law, most notably the Henry Keogh case, due for its first re-hearing this month. Keogh has been in jail for 18 years on what most close observers of the case believe is faulty forensic evidence.

The law, if passed everywhere, would offer hope for Sue Neill-Fraser in her alleged serious miscarriage of justice case in Tasmania.

CLA believes she is innocent of the crime: a re-hearing of her case, able to take into account new facts found since she was convicted, would likely free her.

Elections may change ‘colour’ of nation

The Griffith by-election (Kevin Rudd’s old seat in suburban Brisbane) is on 8 February. Tasmania and South Australia go to the polls on 15 March. There will almost certainly be a new Senate election in WA before May is out.

The Tasmanian and SA elections have the potential to turn Australia almost totally blue: wall-to-wall Liberal governments in every Australian jurisdiction except the ACT.

Both have Labor governments at present, but both have the electoral handicap of long incumbency.

In the Senate election in WA, there is a good chance that the locals will decide there are enough "fringe" party representatives in the Australian Senate after the 2013 election. If so, they may give a lifeline to one of the very best Senators, Scott Ludlam of the Greens, who had been dumped under the first WA Senate poll handled incompetently by the Australian Electoral Commission.

Ludlam has been one of the parliament's most consistent supporters of civil liberties, human rights and freedoms, notably in the internet and cyber space, and in the area of war declarations.

See later for discussion of Tasmanian election.

Secrecy Whitlam started Abbott continues

Federal Attorney-General George Brandis has moved to block the release of secret archives that would reveal the Australian government's knowledge of Indonesian war crimes in East Timor.

The AG issued a public interest certificate that will prevent UNSW associate professor Clinton Fernandes from attending the Administrative Appeals Tribunal early in February.

Fernandes wants to counter the government argument before Justice Duncan Kerr that the ex-MP judge should reject the application for access to Australian diplomatic papers and intelligence on Indonesian military operations in East Timor more than 32 years ago.

Dr Fernandes will be unable to read, hear or directly challenge the government's arguments for continuing secrecy.

Civil Liberties Australia calls on Justice Kerr to 'read' the reports into the transcript of the hearings. That way, they should be available to public perusal.

In the latest round in a six-year bureaucratic and legal struggle to secure declassification of records about Indonesia's invasion and occupation of East Timor, Dr Fernandes is seeking full access to two Department of Foreign Affairs and Trade files that contain reports about a major military offensive across the island in late 1981 and early 1982.

Known as the "fence of legs", the Indonesian military operation involved more than 60,000 conscripted East Timorese civilians being forced to form human chains that moved across large areas of land with the military behind them to flush out pro-independence guerillas.

The operation ended with a massacre of several hundred East Timorese civilians. The use of civilians as human shields is also a war crime. <http://tinyurl.com/mr9wnha>

The secrecy over East Timor began when Prime Minister Gough Whitlam gave a 'wink and a nod' to the Indonesians that Australia would not protest too much if they invaded East Timor.

Since then, 40 years ago, secrecy and sculduggery has been the trademark of every Australian interaction with ET. As Whitlam might say now: It's time...for transparency and opening up the files.

Howard, Ruddock 'knew Hicks' trial unfair'

PM John Howard and Attorney-General Phillip Ruddock knew David Hicks would not get a fair trial, because their

department advisers told them so, lawyers claim that FOI documents show.

Documents released under FOI to Hicks' wife, Aloysia Brooks, reveal the advisers were saying exactly what Civil Liberties Australia and other rights organisations were saying: the US Administration was using illegal laws which could not be retrospective against Hicks.



Stephen Kenny

Hicks' solicitor Stephen Kenny says the FOI documents show Howard and Ruddock were misleading Australia. "The government actually knew that David Hicks wouldn't get a fair trial and that he had been mistreated and that their statements, especially in 2004 and 2006, were inconsistent with what they'd actually said," Kenny, a CLA member, said.

He is helping Hicks' bid for his US conviction to be overturned. After six years in Guantanamo Bay, Hicks was jailed by the Australian Government in Adelaide's Yatala Prison for nine months, and conveniently silenced before the 2007 election.

"(H)is appeal is now more important because it confirms what we knew and that was that the system was unfair and consequently, he should never have been forced to plead guilty to a crime that doesn't exist," Kenny said.

CLA has been saying for five years that Hicks should have been compensated by the Australian Government for how it mistreated him actively, as well as passively refusing him the direct and immediate diplomatic and consular support other illegally-detained Australians have received.

No sex please, we're Australian

The High Court will soon decide whether intersex Australians can be legally recognised as neither male or female.

The hearing will be the final decision in a claim initiated in 2010 by NSW resident Norrie, who had applied to the NSW Registry of Births, Deaths and Marriages for a certificate to register a change of sex from male to 'non-specific'.

The evidence before the hearing was that Norrie (who does not use a last name) did not identify as either male or female, Anna Chapman of Melbourne Law School wrote in *The Conversation*.

At birth Norrie's sex had been recorded as male, but as an adult Norrie had undergone medical procedures, and now self-identified — and was identified in the community — as androgynous. Statutory declarations from Norrie's doctors supported the registration of a change in sex to 'non-specific'. The NSW Registrar initially granted Norrie's application, but this was later revoked.

Norrie appears to be the first person in Australia to litigate for the right to be identified as being of 'non-specific' sex. This ground-breaking litigation squarely challenges the capacity of law to countenance sex and gender diversity. <http://tinyurl.com/nxuuq6y>

What cost 'tough on crime'?

Australian governments spent about \$14 billion on police services, courts and corrective services in 2012, the Productivity Commission has found, according to Jacob Saulwick, writing in the SMH.

Costs are increasing faster than inflation, at about 3.3% a year for the past five years. They exclude indirect costs: impact on the families and the children of the incarcerated,

increased need for welfare to support their families, difficulty for prisoners to find a job on their release.

The NSW government has said it would introduce several mandatory minimum sentences for violent acts – the 'one-punch' laws – committed under the influence of alcohol. This could increase the prison population by 50%, from 10,000 to 15,000, he suggests.

"... (It) would represent a 25-fold increase in the number of people jailed for assault. And it would be a 5000-person increase on the adult prison population in the state, which is about 10,000.

"Apart from anything else, that represents a lot of money. It costs about \$300 a day to keep a prisoner in jail. That means the NSW government spends about \$60 million a year on prisoners jailed for assault. On the hypothetical future numbers, that would rise to \$1.5 billion a year," Saulwick writes. <http://tinyurl.com/l57lzve>

Australia on track to become more open

Australian Information Commissioner, Professor John McMillan, is heading the internal government drive to prepare Australia to become a full partner in the Open Government Partnership (OGP).

Joining the OGP will move Australia closer to a strong global open government movement. The OGP is a multilateral initiative that aims to secure commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance,' said Professor McMillan.

'Australia will join almost 60 other countries in the OGP as diverse as the US, Argentina, Spain, Trinidad and Tobago, Jordan and South Korea,' Prof McMillan said. "Participation will also complement the substantial work undertaken in recent years in Australia to develop government information policy, promote innovation through open data and embrace the digital economy."

The Labor government committed to joining the global movement in 2013. The coalition government is expected to endorse the agreement in March 2014.

Like all international agreements, it has good bits and doubtful bits: however, Civil Liberties Australia hopes it leads to opening up all Australian government-collected data and resources, where possible, to free public use. Photographs are a good example: if government photographers accompany Ministers on outback or international trips, why shouldn't the photos they take (while they and the Ministers are being paid salaries by taxpayers) be available for public use? <http://tinyurl.com/kl5xyhc> and <http://www.opengovpartnership.org/>

Tribunal rebuke of ASIO is worrying indicator

ASIO illegally coerced a man into speaking with them and failed to inform him of his rights, a tribunal has found.

But ASIO claims it "acts lawfully at all times, including when conducting interviews", and has denied the tribunal's findings.

Three members of the Administrative Appeals Tribunal, including its president, Justice Duncan Kerr, chastised ASIO and the Immigration Department for how they treated a Muslim migrant who was deemed a security risk. The man moved to Australia in 2005 and applied for citizenship in 2011 to join the police force.

ASIO blocked his application, saying he held extremist Islamic views and was likely to engage in politically motivated violence. The tribunal backed ASIO, but rebuked the spy agency for wrongly forcing the man into two interviews.

The trio expressed "concern that prior to attending the two interviews, (the man) appears to have been informed that if he wanted to be granted citizenship participating in the interviews ASIO conducted was compulsory. If so, there appears to have been no lawful basis for that assertion. We also note (the man) was not advised that he could be accompanied to the interviews by another person, including a lawyer." <http://tinyurl.com/mx6kasu>

Because it is a secret agency, ASIO must abide by the rules even more stringently than other departments and agencies. Formal tribunal findings that ASIO did not do so is a worrying indication, Civil Liberties Australia says.

On the very rare occasions that ASIO's actions have been reviewed publically over the past decade, it has invariably broken the rules.

Sochi? Such was the law in WA a decade ago

As international condemnation grows around Russia's 'homosexual propaganda laws' in the lead up to the Sochi Winter Olympics, it's worth pointing out that Western Australia had almost identical laws just 13 years ago, writes Brian Greig in *WA Today*.

Greig, a former Democrats Senator, was a spokesman for Gay and Lesbian Equality in the 1990s and is now WA convenor for Australian Marriage Equality

"WA was the only state in Australia with such laws, ensuring that until 2001, our state had the worst anti-gay laws in the whole of western and eastern Europe, with the exception of Romania. All gay males were deemed to be criminals and the penalty for consenting sex in private was 14 years in prison...with or without whipping.

"Thankfully, WA's 'gay propaganda laws' were abolished in 2001. But my thoughts are with those GLBTI people in Russia now living under the shadow of an insidious law I have experienced personally and can never forget," he wrote late last month. <http://tinyurl.com/tjxmxh>

Civil Liberties Australia believes the article is well worth reading, even if only for the unexpected consequences that flow from bad and/or biased laws.

New laws tunnel into citizens' protest rights

Victoria's Coalition Government is preparing to pass draconian move-on laws this month to radically limit unions, activists and community groups assembling and protesting in public.

The laws are due to be rushed through Victoria's Parliament on 4 February.

They are a reaction to the ongoing picket that has been obstructing drilling on the East-West Tunnel toll road in the inner Melbourne suburbs of Collingwood and Carlton North, says Councillor Stephen Jolly, who represents the Langridge Ward where the work is taking place.

The *Summary Offences and Sentencing Amendment Bill 2013* expands the grounds under which police may require anyone to move-on from a public space, including "causing a reasonable apprehension of violence in another person", "undue obstruction to another person or persons or traffic", and "impeding or attempting to impede another person from lawfully entering or leaving premises", Adam Brereton writes in *NewMatilda* <http://tinyurl.com/mwv3mbj>



Prof John McMillan

Police fined over stun gun assault

Two senior constables guilty of assault with a stun gun have been fined \$3800 and \$3250, on top of \$1200 and \$750 internal WA Police fines.

Magistrate Richard Bromfield sentenced them

to eight months jail, suspended for six months, and described their actions as "a gross error of judgment" and "persistent and repetitive assaults" on a vulnerable victim, Kevin Spratt, in custody.

CCTV footage from East Perth watchhouse in Sept 2008 showed the officers using a stun gun on Mr Spratt nine times in just over a minute after he refused to be strip searched.

We choose not to name the officers because of the difficulty of following up and reporting appeals, which are possible. For fuller details, and the names: <http://tinyurl.com/khr7hwk>

WA Police arrested Spratt on a range of charges immediately after the trial of the two police officers concluded.



Riven Tasmanian vote unlikely to be solution

Tasmania continues to be split by logs.

Issues surrounding forests, wilderness, logging, "satanic" mills and the environment have kept Tasmania on the roil for three decades. There is no shame in that.

However, the overwhelming dominance of the "forestry debate" has taken time and energy away from equally important issues, among them a closer analysis of democracy and the justice system in the island state, Civil Liberties Australia says.

The state parliament was recalled for a day late last month for the lower house to pass 'removal of doubts' legislation for the Tamar Valley Pulp Mill Permit. The legislation's main purpose is to benefit corporate interests involved in liquidating assets of plantation timber and/or the proposed pulp mill. <http://tinyurl.com/meyk4lq>

"The parliament should send the message to these potential investors that this state is open for business but that our democracy is not up for sale," Tasmanian CLA director Richard Griggs says. "Parliament is overstepping the mark in their haste to attract big business. They are trashing the rule of law – the idea that one law applies equally to everyone, no matter how rich or poor.

"The parliament has deliberately written a new law for secretive un-named big businesses and a different law for every other developer and individual in Tasmania who receives a permit to build something.

"The message this sends to potential investors is very dangerous. It says that if you decide to come to Tasmania and invest here the parliament will do your bidding and meet your every desire. The parliament wants a pulp mill in the state no matter the social or environmental cost. You shudder to think of what kind of investor would be receptive to that type of message," he said.

Etter stands for Parliament

Barbara Etter, pro bono lawyer for alleged murderer Sue Neill-Fraser, is standing as a Palmer United Party candidate in the Tasmanian seat of Denison.

Ms Etter promised a strong focus on community safety, child protection and law and order issues.

Civil Liberties Australia A04043

"I have never been a member of a political party before but like many Tasmanians I have been driven to action because I am saddened to see this great state on its knees in an economic sense," she said.

"I am also concerned by the state being scarred by divisive and polarising issues and the need for a more honest, open and accountable government.

"I will provide a strong and much needed focus on important social issues including the need for greater integrity in government and a just and fair society."

Rally seeks inquiry into unsafe conviction

Meanwhile a fifth anniversary rally was held on the lawns of Parliament House Hobart on Saturday 25 January 2014 to demand an inquiry or re-hearing of the Neill-Fraser case.

She is in Risdon Prison, sentenced to 23 years, because her husband of 18 years, Bob Chappell, disappeared overnight on Australia Day in 2009 while alone on their yacht moored in Sandy Bay.

Despite no body, no admission, no direct evidence, no murder weapon, a bungled police investigation and trials of dubious legal quality assurance, she is now in her fifth year in jail.

Civil Liberties Australia issued a media release on 28 January calling on Premier and former Attorney-General Lara Giddings to institute an inquiry into the case "to restore confidence in the Tasmanian justice system".

We pointed out that Ms Giddings was Attorney-General when Chappell disappeared and the original "latex" trial took place, then Premier when the "rubbery" review occurred in the Court of Criminal Appeal, so all key events occurred "on her watch".

Police don't go by book: they don't have one!

Tasmanians for Transparency want AG Brian Wightman and Police Minister David O'Byrne to suspend all public complaint against police investigations under way by Tasmania Police, the Ombudsman or the Tasmanian Integrity Commission.

Investigations should be suspended because there is no standard to hold the police to, spokesperson Matthew Holloway said. "The Tasmania Police manual has been unavailable to the public since March 2012...subject to being amended and updated," he said. "The police are in breach of Section 93 of the Police Service Act which provides a statutory obligation to publish the manual."

"Access to the manual is absolutely essential for any person making a complaint about police conduct or misconduct to access all information about police procedures that may impact on a complainant's allegations.

"Current police investigations of complaints across all agencies need to be suspended pending release of the Tasmania Police manual...the failure for police to supply a manual detailing police procedures opens the possibility of a potentially biased investigation." More info: media release at <http://tinyurl.com/k2llw7d>

Police 4, public 0

Queensland police are to carry a scorecard to reduce crime by 10%.

The average number of traffic fines, random breath tests, street checks and calls for service per officer will be assessed on the scorecards along with budgets and overtime.

Police Commissioner Ian Stewart said the scorecards were a way of "demonstrating to the public they are getting value for money" from the police service. <http://tinyurl.com/l2p4u6s>

Or not, of course.

Bikies one year, children the next

The Queensland government's new year target when parliament sits on 11 February is children.

The Newman govt plans to beef up the Youth Justice Act to:

- remove "detention as a last resort" principle to give the court more discretion during sentencing;
- making bail breach an offence if a young person commits a crime while on bail;
- name and shame repeat offenders;
- make all juvenile criminal histories available in adult courts to give a magistrate or judge a complete understanding of a defendant's history; and
- transferring juvenile offenders to adult centres when they turn 17 years if they have six or more months of sentence remaining – media release, a/g AG, 16 Jan 2014.

Mr Freedom makes a good start

New human rights commissioner, Tim Wilson, wants Qld's anti-bikie legislation repealed, arguing "Bikies have just as much right to freely associate as other Australians".

The statement, posted on his blog before starting his new job, puts him at odds with the Qld Liberal government and, by association, the federal Liberal government which appointed him.

Mr Wilson says the Qld anti-bike laws are "inconsistent with an individual's right to freely associate and should be repealed". "These laws are a demonstration of the worse consequences of what happens when people are treated as groups under the law, and not as individuals." he said.

The laws adopted by the Queensland Liberal government under Premier Campbell Newman in October 2013, formally the *Vicious Lawless Association Disestablishment Act 2013*, name 26 bikie gangs as criminal associations and impose mandatory six-month prison sentences for participants found to be knowingly associating together in a public place.

"The imprisonment of people for free association that are not otherwise engaged in criminal activity is deeply, deeply disturbing. The fact that other states have and continue to look at replicating these laws is equally disturbing", Mr Wilson writes. <http://tinyurl.com/lv6o7ha>

Australian briefs

In the NT, Elferink's 'elves' work wonders: Offenders did almost \$4 million in community work in 2013 in the NT, Minister for Correctional Services John Elferink said. Prisoners and offenders on community work orders went out daily to work on more than 400 community work projects across the Territory, totalling 260,104 work hours. Grounds maintenance, painting and minor construction jobs are just some of the jobs offenders work on every day, he said – media release 31 Dec 2013.

It's the law: Australia's legal industry is worth \$20 billion, and has 18,500 businesses employing just under 100,000 people, an *SMH* report said last month. <http://tinyurl.com/jw3vrry>

Premier Cam does a Newflip: Campbell Newman, the man who spearheaded the Queensland government's 'war on bikies', has admitted he doesn't "particularly like" the laws which have polarised Queensland...but has no intention of 'backing down'. On radio last month, he produced what is being called a Newflip (like a backflip) when he said that, while he knew it would "surprise" some people, he wasn't a

fan of his government's anti-association and related legislation and didn't "like having to do this". "If people are sceptical about that statement, I'm the guy in 2012 when asked 'should Queensland follow the lead of NSW and ban bikies wearing colours', I said 'no'." <http://tinyurl.com/mhomwvw>



Be warned: expanding 'seggies' menace in Qld:

A new group of blue colours-wearing riders – the seggies, a bikie-like group – is expanding on the walkways of Queensland. Police are adding two more Segways on the Sunshine Coast to the existing ones at South Bank and Cairns. Acting Police Minister John

McVeigh said: "The extension of a three-month trial period will also allow police to extensively test the capabilities of the Segways during the peak period." You have been warned: the 'seggies' – who are fast, loose, tall and intimidating – usually travel in a pack and cause alarm to innocent walkers going about their business. <http://tinyurl.com/lt9rde3> Photo shows Segways in action in Hobart 2013.

Fardon kept on 'very tight leash': Serial sex offender Robert Fardon remains in a "state of jail" despite having served his sentence. "We have done more than any other government to keep Fardon behind bars but our legal advice is that we just can't win in the High Court," acting Qld AG David Crisafulli said last month, announcing the abandonment of their HC case. Fardon remains on a 24-hour curfew and can only leave his front door with permission for "essential trips" accompanied by an escort and wearing a GPS tracker. "...It's now a matter of keeping him on a very tight leash..." the a/g AG said. – media release 15 Jan 2014

Scan 'em, pardner: Violent pub patrons could face lifetime bans, says Queensland Attorney-General Jarrod Bleijie. He "suspects" that measures to crack down on alcohol-fuelled violence will be introduced early in 2014. He is considering lifetime bans for violent patrons and identity scans for everyone. <http://tinyurl.com/ltl7pnm>

LETTER: See refugees as assets

Dear Editor: Over the next four years, Tony Abbott will waste \$9.4 billion to deter people smugglers. In colonial times, NSW Governor William Bligh wasted money deterring rum smuggling. Bligh was replaced by Governor Lachlan Macquarie. He legalised and taxed smugglers.

Memo Mr Abbott: Like Macquarie did, legalise and tax smuggling. Shut offshore and onshore refugee prisons. Turn a cash outflow (of \$9.4 billion) into a cash inflow.

In Indonesia, airlines would collect and remit \$10,000 Refugee Entry Fees. On arrival in Australia, refugees get a Temporary Entry Permit. That permit would be revoked upon evidence (in open court) of terror or criminal links. If such evidence can't be produced to a magistrate within three months, an Australian Citizen Certificate is issued. No exceptions. No delays.

Extra ASIO staff (to meet that deadline) is funded from Refugee Entry Fees and the huge savings from shutting refugee prisons. See refugees as assets, not vermin: problem solved.

Yours sincerely, Graham Macafee, CLA member, Canberra

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CLA member Bill Stefaniak (left) was made an AM in the Australia Day honours, for "significant service to the community". He is a former ACT attorney-general and minister for police. Bill has had long involvement in the Army reserves, sports and other community activities, locally and internationally. He is now Appeal President of the ACT Civil and Administrative tribunal, a role similar to senior magistrate.

Letters:

- To nine Australian Attorneys-General on the Right to Appeal law
- To 41 new members of House of Representatives, introducing CLA and right to appeal campaign
- Continued to canvass support for SNF from prominent citizens

Campaign:

Circulated critique of Tasmanian Court of Criminal Appeal to various judges for comment

Fifth anniversary of Yacht No Body (Sue Neill-Fraser) case

Supported rally in Hobart supporting appeal for her

Meetings:

Information Commissioner Prof John McMillan, a CLA member;

Pauline Westwood, Rick and Barbara Godfrey, CLA members, on the Trans-Pacific Partnership

Board Members Saskia Vervoorn and Tim Vines on TPP, membership

Working on strategy to raise more substantial support from corporate sector, and history of civil liberties Australia for web and book.

Events:

CLA attended the NSW Council for Civil Liberties rally against mandatory detention in that state.

CLA member Dr Emmeline Taylor has a new book out: **Surveillance Schools: Security, Discipline and Control in Contemporary Education (Crime Prevention and Security Management)** RRP \$62.99 <http://tinyurl.com/l7wdvtf> or check with CLA by email: secretary@cla.asn.au

Sympathy: CLA extends its sympathies to Kate Taylor and Richard Griggs on the death of Bethany Griggs.

INTERNATIONAL

TPP groupies weasel their words

A secret draft of what would be Australia's biggest trade agreement shows it will be toothless in enforcing environmental agreements...and is full of weasel words.

This is in stunning contrast to the mandatory language in the intellectual property section, where groups members, particularly the USA, want to enforce their claimed copyright, Civil Liberties Australia says.

The draft environment chapter prepared by the 13-nation group as part of the Trans Pacific Partnership agreement, published by WikiLeaks, proposes virtually no enforcement mechanisms: those that are suggested are opposed by each of the 12 nations other than the USA.

A summary on the WikiLeaks website says the draft uses the 'get out clause' approximately 43 times, with statements like: "Where possible and appropriate, the Parties shall seek to complement and utilise their existing cooperation mechanisms

and take into account relevant work of regional and international organisations."

The word "may" is also found 43 times in the 23-page draft. Governments are urged to "...make every effort to arrive at a mutually satisfactory resolution...", "...take measures to prevent...", "...make best efforts...", "...exercise restraint in taking recourse...", and retain "the right to make decisions...". WikiLeaks says other favourite words are "enhance" (12), "consider" (12), "encourage" (11), "address" (10), "endeavour" (9) and "seek" (9). <http://tinyurl.com/jw4r8a8>

Weasel words: an [informal term](#)[1] for [equivocating](#) words and phrases aimed at creating an impression that something specific and meaningful has been said, when in fact only a vague or ambiguous claim, or even a refutation, has been communicated. http://en.wikipedia.org/wiki/Weasel_word

Metadata collection fails on all fronts

According to leaked copies of a forthcoming report by the Privacy and Civil Liberties Oversight Board (PCLOB), the US government's metadata collection program "lacks a viable legal foundation under Section 215, implicates constitutional concerns under the First and Fourth Amendments, raises serious threats to privacy and civil liberties as a policy matter, and has shown only limited value...

"As a result, the board recommends that the government end the program."

The metadata program, which compels at least Verizon (and likely other telcos as well) to routinely hand over all phone records to the National Security Agency, was first disclosed as the result of the debut leak by Edward Snowden in June 2013.

Three of the five members of the board (who are all lawyers) went so far as to declare the entire program illegal.

However, the Board does not have the authority to do anything beyond make recommendations to Congress and to the president. <http://tiny.cc/u8249w>

ODD SPOT: FBI creeps

The FBI's creeping advance into the world of counter-terrorism is nothing new. But quietly and without notice, the agency has finally decided to make it official in one of its organizational fact sheets. Instead of declaring "law enforcement" as its "primary function," as it has for years, the FBI fact sheet now lists "national security" as its chief mission. The changes largely reflect the FBI reforms put in place after 11 September 2001, which some have criticized for de-prioritizing law enforcement activities. Regardless, with the 9/11 attacks more than a decade in the past, the timing of the edits is baffling some FBI-watchers. <http://tinyurl.com/ltwjrh3>

Prisoners down, crime rates down

Most US states reduced their imprisonment rates over the past five years...and crime also dropped, a report by Pew Public Safety Performance Project shows.

They report prison and crime declines from each of the 50 US states and conclude that prison decline has little impact on crime rates.

The states with the largest decrease in their prison population, including California, New Jersey, Rhode Island, New York, Colorado and South Carolina had on average a 12% decrease in crime. The states with the largest increase in their prison population including Alabama, Kansas, West Virginia, Louisiana, Arizona and Illinois had on average a 10% reduction in crime.

The chart also allows users to compare states. For example, Louisiana had a 5% increase in prison population and an 18% reduction in crime rates, while Wyoming had a 5% reduction in prison population, with a 20% reduction in crime. <http://tiny.cc/e73v8w>

Access the infographic <http://tiny.cc/s53v8w>

Judges split over NSA's surveillance



Judge Richard Leon

Pic: Suffolk Law Review

Two US judges have ruled in diametrically opposite ways on the lawfulness of NSA spying.

Judge William Pauley in New York deemed the collection of millions of Americans' phone records lawful and vital for the war on Al Qaeda.

"The question for this court is whether the government's bulk telephony metadata program is lawful. This court finds it is," said

the 54-page ruling last month. <http://tinyurl.com/n54hfjy>

Ten days earlier, Judge Richard Leon in Washington District Court ruled NSA's bulk collection of phone records breaches citizens' privacy to a degree that is probably unconstitutional.

The Washington District Court ruling was stayed pending appeal: if upheld it will bar the NSA from indiscriminately gathering metadata on millions of private calls.

"I cannot imagine a more indiscriminate and arbitrary invasion than this systematic and high-tech collection and retention of personal data on virtually every single citizen," Judge Leon said. <http://tinyurl.com/kxgg9sr>

UN adopts 'fair rights' resolution

The UN general assembly has voted unanimously to adopt a resolution, introduced by Germany and Brazil, stating that "the same rights that people have offline must also be protected online, including the right to privacy".

Brazil's president, Dilma Rousseff, and the German chancellor, Angela Merkel, were among those spied on, according to the documents leaked by Edward Snowden.

The resolution called on the 193 UN member states "to review their procedures, practices and legislation regarding the surveillance of communications, their interception and collection of personal data, with a view to upholding the right to privacy under international human rights law".

It also directed UN Human Rights High Commissioner Navi Pillay to publish a report on the protection and promotion of privacy "in the context of domestic and extraterritorial surveillance ... including on a mass scale". <http://tinyurl.com/n45j8ru>

Legal aid cut to no purpose

Declining crime rates in Britain will deliver savings of more than \$145m a year on the government's criminal legal aid bill without the need of further cuts, according to an economic report commissioned by the Law Society.

Last month criminal barristers and solicitors staged a mass walkout in protest at British Ministry of Justice proposals to reduce the annual legal aid budget by \$400m a year.

More than half of the MoJ's cutbacks – \$220m – are due to come from reducing the cost of lawyers attending police stations, representation in magistrates court and in cases in crown courts.

The report, by Oxford Economics, is a critique of the Legal Aid Agency's "steady state" forecasts for criminal legal aid expenditure. The Oxford economists have built an "alternative forecast based on plausible assumptions of future trends in crime and the criminal justice system".

The study points out that "crime has been on a steady downward trajectory for the last decade". Assuming further drops in crime and therefore reduced demand for criminal legal aid, the Oxford Economics study says, the MoJ's annual bill could be \$152m lower by the year 2018-19.

The work was commissioned by the Law Society of England and Wales, the Criminal Law Solicitors Association, the London Criminal Courts Solicitors Association, the Legal Aid Practitioners Group and the Big Firms Group whose solicitors will lose up to 17.5% in cuts to fees under the MoJ proposals. <http://tinyurl.com/npp3b2r>

ODD SPOT:

Drone operators away with the pixels?

"What the public needs to understand is that the video provided by a drone is not usually clear enough to detect someone carrying a weapon, even on a crystal-clear day with limited cloud and perfect light. This makes it incredibly difficult for the best analysts to identify if someone has weapons for sure. One example comes to mind: 'The feed is so pixelated, what if it's a shovel, and not a weapon?' I felt this confusion constantly, as did my fellow UAV [unmanned aerial vehicle] analysts. We always wonder if we killed the right people, if we endangered the wrong people, if we destroyed an innocent civilian's life all because of a bad image or angle." – Heather Linebaugh, writing in *The Guardian*. <http://tinyurl.com/pw3p5bf>

US prisons hoard 'death' drugs

US prisons are stockpiling life-saving medicines to use in executions, while hospitals face shortages of the same drugs. Death rows in Florida and Ohio have both bought up supplies of midazolam – a sedative used in surgery and to treat seizures – to carry out executions by lethal injection.

Ohio has also bought quantities of hydromorphone, an opiate pain-killer, which it is planning to use today along with midazolam in its new lethal injection protocol.

The American Society of Health-System Pharmacists has warned that the US is facing current shortages of both midazolam and hydromorphone, leading to concerns that patients may be denied potentially life-saving drugs while prisons stockpile them in order to kill.

Executioners in Florida and Ohio not only already hold stashes of the drugs, but are expected to seek further supplies as they reach their expiry dates, potentially worsening the existing shortage. – Reprieve media release 16 Jan 2014

Jailhouse Lawyer has Kiwi Corrections on hop

A NZ Ombudsman's report has found the Department of Corrections violated the rights of serial offender Arthur Taylor, the man who riles the Kiwi establishment under the title Jailhouse Lawyer.

Last month the nation's justice system granted him legal aid to sue the Corrections Department for mistreatment. Taylor (right) made numerous complaints to the Ombudsman's office over his treatment at Auckland's High Security Prison in Paremoremo.



An investigation found that without the necessary paperwork, prison staff had placed Taylor in segregation for up to nine months and routinely denied him his daily allowance of one hour exercise.

The report also found that, after making threatening comments to staff, Taylor was moved into a cell that lacked power or running water, and was deemed unsuitable for keeping prisoners.

Corrections Minister Anne Tolley did not respond directly to the report, saying only that Taylor is a highly dangerous, disruptive and manipulative criminal. He has more than 150 convictions.

In another win for the Jailhouse Lawyer, a visiting justice has backed his claim to be moved to Rimutaka prison so he can have contact visits from his children and also complete a rehabilitation program recommended for him by the NZ Parole Board. <http://tinyurl.com/lgk9x9y> and personal email from the Taylor Team.

INTERNATIONAL BRIEFS

Human rights expand in China: Chinese President Xi Jinping is living up to his 2013 promise to relax China's one-child policy and close down its labour re-education camps, or laojiao. Senior Chinese politicians voted formally in late-December to loosen the one-child policy and - more significantly - formally abolish laojiao. The laojiao system had begun to wither since the first announcement, with tens of thousands of prisoners from hundreds of horrific camps quickly paroled. By the end of January 2014, many camps are shut or are being converted into regular jails. <http://tinyurl.com/ljqloo5>

Firing squads may make comeback: With lethal-injection drugs in short supply and new questions looming about their effectiveness, lawmakers in some US death-penalty states are considering bringing back firing squads, electrocutions and gas chambers. Most states abandoned those execution methods over a generation ago, but to some elected officials, the shortages of lethal drugs, and the recent legal challenges around them, are beginning to make lethal injection seem too vulnerable to complications. <http://tinyurl.com/mc5zgt6>

Police 'union' needs radical overhaul: In the UK, the main Police Federation needs a "radical overhaul", including publication of "secretive accounts" reported to hold up to \$93m and details of officials' expenses and hospitality, an independent review has concluded. The call for a "fundamental reform" of the federation, which represents 127,000 police officers in England and Wales, comes from an external review panel chaired by a former Home Office permanent secretary, Sir David Normington. It was organised by the Royal Society of Arts and commissioned by the new leadership of the federation itself. <http://tinyurl.com/ko7xtfd>

Crime down: Crime has fallen 10% over the past year according to the authoritative Crime Survey of England and Wales, reaching the lowest level since measuring began 32 years ago. The fall is across most offences, including 11 fewer homicides (542). Violent crime is down by 13%. But there are "signs of increasing upward pressure" in specific austerity-related crimes: 4% rise in shoplifting, and 7% rise in theft from the person. Crime in England and Wales has now fallen by 58% since 1995. The current decline in crime is the longest sustained fall since the second world war. <http://tinyurl.com/ogzkske>

DATES

8-9 Feb, Canberra: 2014 sentencing conference, ANU. Finkel Theatre. More info/register: <http://law.anu.edu.au/conferences/sentencing>

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>

17 Feb, Canberra: Prof Christopher Hodges, U. Oxford, Regulation and Redress: the emerging EU model of influencing corporate behaviour, class actions, etc. 5.3--6.30pm, Sparke Helmore Theatre 1, ANU Law <http://tinyurl.com/krx67b>

17 Feb, Adelaide: Unmanned Aerial Systems (drones) conference. Flinders U. Contact: Kavitha Desai: kavitha.desai@flinders.edu.au. More info: <http://tiny.cc/haol7w>

19-28 Feb, Melbourne: "Forensic Interviewing" short course, RMIT, \$880. 5.30pm to 8.,30pm. <http://tiny.cc/o9wd7w>

21 Feb, Melbourne: Melbourne U Law School, 185 Pelham St Carlton: 2014 Human Rights Tertiary Teachers' Workshop, 9.30am--7pm. Info: j.tobin@unimelb.edu.au or 03 8344 6589.

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>

26-27 May, Sydney: 12th National Security Australia conf: Sydney Harbour Marriott. Info: <http://www.iir.com.au/conferences/defence/national-security-australia>

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

15-20 June, Gold Coast: National Judicial Orientation Program, cost: \$5900. Details: <http://njca.com.au/program/national-judicial-orientation-program-2014-2/>

3-5 July, Canberra: Theme: 100 years since start of WW One: *Towards International Peace through International Law* 22nd annual conference, ANZ society of Intntl Law (ANZIL), at ANU. <http://law.anu.edu.au/anzsil/conferences.html>

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:

14-15 Feb, Canberra: Nat Judicial College of Aust conf, ANU. Details: <http://njca.com.au/program/anu-njca-conference/>

June, England: 800th anniversary of Magna Carta
Date, Place TBC: 2nd Global Domestic Violence Conference

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