

Court orders Australian spy in from the cold

Australia must make available East Timor's star witness – a former Australian spy – in a high-stakes legal battle between the two countries over \$40 billion worth of disputed oil and gas reserves.

An "arbitral panel" of three jurists, part of the legal machinery for international disputes based in The Hague, has cleared the way for the former Australian Secret Intelligence Service officer to testify that he helped bug East Timor's cabinet room during negotiations over the Greater Sunrise oil and gas fields. The agreement was struck in 2006 with Australia over the reserves in the Timor Sea. East Timor wants it overturned because Australia did not negotiate in good faith.

In earlier hearings, Australia tried to block the ASIS officer from testifying, claiming his appearing would breach Australian national security laws.

The government cancelled his passport and Australia domestic security agency, ASIO, raided his house in December 2013.

ASIO also raided premises of East Timor's Australian lawyer Bernard Collaery in Canberra and seized more than a dozen documents, including a statement the ASIS officer had given alleging the spying activities.

Australia and East Timor signed the umbrella Timor Sea Treaty in 2002 shortly after East Timor gained its independence. <http://tinyurl.com/kfvrv24>

Here is a formal court vote: guess which country Judge ad hoc Callinan comes from?

Australia shall not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the pending Arbitration under the Timor Sea Treaty of 20 May 2002 between Timor-Leste and Australia, with any future bilateral negotiations concerning maritime delimitation, or with any other related procedure between the two States, including the present case before the Court.

IN FAVOUR: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Bhandari; Judge ad hoc Cot;

AGAINST: Judge ad hoc Callinan.

Government – and RSCPA – have carte blanche access to your data

If there's a media leak of government information, an agency that was so inclined – such as treasury, the attorney-general's department or the immigration department – could apply to a senior officer within their own department to access the journalist's telecommunications data.

This can reveal who they called or emailed, what time they contacted them and the location of the contacts. The phrase used to describe this type of information is "metadata", although it's a term fraught with uncertainty.

If there hasn't been a level of obfuscation or encryption used by the journalist and the source, it's a relatively simple task to track down the source using this information.

Remarkably, accessing this type of data doesn't require a warrant from a judge, and is merely approved by a senior officer from the applicant's own agency, and then sent straight along to the mobile phone or internet provider.

It's not just police or intelligence agencies that can request this type of data; almost any agency, including local councils and even the RSPCA, are able to access metadata without a warrant.

The act which permits this open access is the subject of an inquiry chaired by Greens senator Scott Ludlam. The Senate References Committee on Legal and Constitutional Affairs held hearings last month. The report is due for tabling by 10 June 2014.

ODD SPOT: How would you vote?

Would e-voting enhance or destroy democracy? That's one of the evocative questions in this article about things to consider before Australia moves to voting online. Unfortunately, the article did not have one of those polls at the end, which lets you know how some people think. <http://tinyurl.com/me5l8za>

Manus riot death refocuses debate over Australia's refugee handling

A new committee inquiry is examining what happened at Manus Island in PNG to cause a riot and the death of Reza Berati, an asylum seeker.

Civil Liberties Australia has made a submission to the inquiry, run by the Senate Legal and Constitutional Affairs References Committee. Members Joan Greig and Umberto Torresi, with some input from CEO Bill Rowlings, authored the submission.

Photo: Alleged bullet holes in a locker after the Manus Island riots.



Note that there are two Senate "Legal and Con" committees: the more powerful Legislation committee is chaired by the government's Ian Macdonald of Queensland: it deals with draft legislation referred from the Senate for consideration before a formal vote on the law.

But the Greens – currently Penny Wright of SA – currently chair the separate References committee, which means that inquiries which don't enjoy government support can often be considered.

The References committee is due to report by 26 June 2014. Submissions – including CLA's – should be available here once approved for publication by the committee: <http://tinyurl.com/l7e4utp>

'Children must be focus of refugee reforms'

A media report, under the name of Anglican Archbishop of Melbourne Philip Freier, says there are nearly 1000 children in detention in Australia and another 177 in grim conditions in Nauru.

Many of them are suffering acute psychological stress and other traumas.

There are 26 babies born to refugee parents in difficult living conditions at Christmas Island: they face removal to an even harsher life on Nauru or Manus Island.

There are 30,000 refugees now in Australia or offshore detention facilities. <http://tinyurl.com/mxtmt8k>

Civil Liberties Australia has warned of the risk to children in the submission to the above inquiry.

TPP...another pact where a \$1 pill costs us \$127

Reports about progress on negotiation the Trans-Pacific Partnership trade agreement are mixed, with some pundits saying the pact is dead.

If it dies a passing death this year, it will be because of US Congress intransigence, rather than for the reason that it is probably unfair, discriminatory, costly and anti-Australia in terms of health and copyright among other issues.

Under a similar agreement, a specialist cancer pill (Glivac) that sells for \$1 a tablet in India costs the Pharmaceutical Benefits Scheme \$127 a tablet in Australia, just because international pharmaceutical companies are permitted by trade agreement to gouge the Australian market.

No-one knows for sure what's in the draft agreement, because our government and the other dozen governments involved have kept the details secret from their own people for more than five years.

A report in December said *The Sydney Morning Herald* received an early look at the leaked draft, and notes that it focuses on the United States' federal and corporate interests, while largely ignoring the rights and interests of consumers.

"One could see the TPP as a Christmas wish-list for major corporations, and the copyright parts of the text support such a view," Matthew Rimmer, an expert in intellectual property law, tells the *Herald*.

"Hollywood, the music industry, big IT companies such as Microsoft and the pharmaceutical sector would all be very happy with this."

<http://www.theverge.com/2013/11/13/5099236/wikileaks-publishes-leaked-draft-of-tp>

Latest news on TPP negotiations: <http://tinyurl.com/ls7w5en>

'Dob in your mates', even after hours

'Dob in your mates' is now official Australian government policy as public service heads demand workers inform on colleagues who post political criticism of the Abbott government on social media.

The dobbing is urged even if the online comments are made anonymously, late at night, at home.

Guidelines from the Department of Prime Minister and Cabinet demand dobbing if a workmate knows the online identity of the the blogger. The policy clearly states it covers the use of social media in an official and unofficial capacity, whether for professional or personal use.

Public servants who breach the Australian Public Service Code of Conduct could be sacked. "If an employee becomes aware of another employee who is engaging in conduct that may breach this policy, there is an expectation that the employee will report the conduct to the department," the policy states. <http://tinyurl.com/ksvfzeu>

Govt spies on social media, and its own people

Federal government departments are cyber-snooping to monitor the social media lives of millions of Australians...including their own employees.

A dramatic public confrontation between the Immigration Department and a Sydney political activist over her Facebook page has resulted in accusations that mass-electronic surveillance is being used to keep tabs on political dissent.

Other large government departments including Centrelink, Defence and Social Services have done mass monitoring of social media activity.

The octopus Department of Human Services has its own software, developed by the CSIRO and operated by a social media team of 10 public servants.

The Department of Immigration and Border Protection hires private sector contractors who can monitor more than half-a-billion "pieces" of social media each day on sites like Facebook, Twitter, YouTube, Pinterest, Flickr and blogs.

Several commercially available social media-tracking platforms, some of them in routine use by public service media teams, can easily track the web activities of protest groups and their individual members. <http://tinyurl.com/l4drqdk>

Citizens' private data risked by sloppy security

The private records of millions of Australians – including doctor visits, prescription drugs, childcare and welfare payments – are at the mercy of cyber criminals because of flimsy IT security around a critical federal government website, according to a warning last month.

The risk would increase from mid-year when the government forces Australians to use the my.gov.au website to lodge electronic tax returns, potentially exposing financial and banking records to hackers.



Australian Government



The myGov site is claimed to be used by 2.5 million Australians to access Centrelink, Medicare, Child Support, Department of Veteran Affairs, e-health, and

other government accounts. If users link their different accounts, information accessible includes name, date of birth, phone numbers, email address, Medicare number, child immunisation records, dates of doctor visits and drugs prescribed, welfare and childcare reimbursement payments.

Sydney software architect and IT security consultant Troy Hunt said the controls used to protect the site were "insufficient" and "irresponsible" and considerably weaker than many other large websites such as Google, Twitter and note-taking app Evernote. He called on the government to introduce "two-factor authentication" to better protect the sensitive information. <http://tinyurl.com/ljpmzn2>

Health solution fails after 5 years, nearly \$500m

Health Minister Peter Dutton and the Department of Health are blocking public release of a report reviewing the troubled Personally Controlled Electronic Health Records project, PCEHR.

They claim there are not sufficient public interest reasons for the report to be released, despite the fact that Minister Dutton has stated the document contains "a comprehensive plan for the future of electronic health records in Australia," according to a Renai LeMai report in *Delimitter*.

The PCEHR project was initially funded in the 2010 Federal Budget to the tune of \$466.7 million after years of health industry and technology experts calling for development and national leadership in e-health and health identifier technology to better tie together patients' records and achieve clinical outcomes.

The project is overseen by the Department of Health in coalition with the National E-Health Transition Authority (NEHTA). NEHTA has possibly the worst federal statutory authority outcomes delivery record of any of them, which is quite some claim to infamy because the competition is so strong.

In July 2013 the Government revealed it had failed to meet its initial 500,000 target for adoption of the PCEHR system, with only about 400,000 Australians using it – that is, having signed

on, as the system is almost literally “useless” for what it should be doing.

Due to the problems, on 4 November new Coalition Government Health Minister Peter Dutton kicked off a promised review of the PCEHR project. On 20 December, only a month and a half after the review was initiated, Dutton issued a statement noting that he had received its report.

Since then nothing. And Delimiter’s FOI requests have twice been rebuffed. <http://tinyurl.com/la3uvap>

PCEHR project follows decade of failure

The PCEHR project should by now, after five years, be delivering seamless integration of all our personal health records, to improve diagnosis, prescriptions and particularly safety. It has achieved nothing whatsoever along those lines, despite five years of spending at about \$100m a year, Civil Liberties Australia says.

Even more importantly, the PCEHR project failure follows NEHTA itself delivering nothing but plans and strategies since its establishment in July 2005 as a combined federal-state body. It claims “NEHTA aims to develop Health Care in Australia by adopting eHealth systems”.

Civil Liberties Australia has been a close observer of NEHTA since its foundation, because of issues relating to privacy of health information. After watching the organisation closely for nearly a decade, we think it’s time the government took an old-fashioned axe to NEHTA...or maybe a delete button.

‘Intelligence’ appears to be lacking

Attorney-General George Brandis went to Washington last month and told America that he personally had a “bred-in-the-bone respect for due process and civil liberties”.

Civil Liberties Australia welcomes such a robust commitment to civil liberties by the Australian AG.

We note that he also said: “the more intelligence I read, the more conservative I become”. Therein lies a problem: he admits to not evaluating the “intelligence”, merely “reading” it. As the AG, he is meant to assess whether the intelligence is “intelligent”. In many cases, it will NOT be.

For example, remember how the US, UK – and Australia under PM Howard – went to war in Iraq on the basis of “Weapons of Mass Destruction” intelligence?

Senator Brandis, who used to be an independent thinker, needs to revert to his old habits rather than believing all the “intelligence” he reads. <http://tinyurl.com/pr5azta>

CLA has already defined intelligence for the AG’s Senate colleague, Fiona Nash, who specifically asked CLA for our definition during a committee hearing...but she refused to publish our definition, censoring our submission. Here is what we said:

What is intelligence? Firstly, it is not evidence...if it were, it would called evidence.

Intelligence is a broad sweep of guess, speculation, scuttlebutt, gossip, suspicion, hypothesis... A centralized database of intelligence is a most dangerous tool to the innocent and those not part of the power elite of the nation.

We comment further on the above:

The more that “intelligence” – this poor relation of fact – gets circulated, the wishy-washer it is at the edges. The less reliable it is, the more fuzzy it becomes, and the more dangerous that it gets things wrong: wrong person, wrong emphasis, wrong link...leading to potentially severe miscarriages of justice...some that you, me or the victim

will never even know about, which is what is most perfidious about this type of “intelligence”, or “criminal intelligence”.

Because it is just “intelligence”, swapped behind the scenes, with no-one able to monitor and check its accuracy, it can do enormous damage without ever being formally “used” in any traceable way. A wink or a nod can do as much damage, if not more, than an adverse formal finding: at least the formal finding can be challenged.

Spook chief to hang up his cloak



David Irvine, 67, will step down as director-general of the Australian Security Intelligence Organisation in September, after lingering six months beyond his contract while the government finds a replacement.

Described wrongly as “Australia’s top spy” (if he was, you wouldn’t know about him – the title probably belongs

to the unknown second-in-charge of ASIS, the offshore spy agency, which Irvine once headed).

Irvine began his five-year term at ASIO in March 2009 after six years directing the Australian Secret Intelligence Service, following an earlier career as a diplomat.

He has been more public than most predecessors in the ASIO role, but his term has been marked by botched building of the ASIO headquarters in Canberra, though that did not start under him. Plans of the ASIO building were reputedly in China before work started, and the huge cost over-runs and delay of occupation for many years may be attributed at least in part to the lack of security over early building design and planning.

In recent years there has been a general lowering of the esteem of spook agencies, here and throughout the West, due to the revelations of illegal or questionable internal spying on their own citizens in Australia, the US, UK, NZ and Canada by Edward Snowden. Agencies have been caught lying through their teeth for years, including to parliaments.

Within top echelons of government, ASIS is considered the far more professional agency compared to ASIO and other wannabes, like the Australian Crime Commission.

Irvine’s legacy is ASIS’s reputation, not ASIO’s. In fact, it is reported he was sooled on to ASIO to correct internal problems arising from too fast expansion (660 to 1860 staff in a handful of years) after the Howard government panicked following the 11 September 2001 aircraft attacks in the USA and spent crazy amounts on boosted numbers and toys for police and spooks, not to mention the military.

– special comments by Bill Rowlings, CEO, CLA

PC wants competitive legal aid...because fed govt is cutting back funding

People who can’t afford lawyers should be able to accrue HECS*-style debts under a government-backed loan scheme, the government’s Productivity Commissions says.

In a draft report on access to justice, the PC calls for feedback on the idea for people who do not qualify for public legal assistance. Repayments would occur through a proportion of their income, or from any damages.

The PC also says court fees should rise and community legal services and legal aid commissions should compete against other legal service providers.

“Even judges and lawyers have told us the formal parts of the system are too slow, expensive and hard to understand,”

presiding commissioner Warren Mundy said. Seventeen per cent of people with a serious civil legal problem don't do anything about it.

Australia's spending on legal assistance services is low compared to Britain, which spends around three times as much per capita. In a suggestion likely to provoke fierce resistance from community legal centres, the commission suggests such services be subject to competitive tendering to drive efficiency.

The federal government's contribution to legal aid commissions nationally has fallen from half of what the states chip in, in 1997, to about a third. State governments, by contrast, have increased their funding over the years. <http://tinyurl.com/q7spepv>

** HECS is the Higher Education Contribution Scheme, under which uni students pay for their education after they have qualified and begun earning a reasonable income.

Government fails to protest assassination

The Australian government has failed to formally protest after two Australian men were among five al-Qaeda militants killed in a US Predator drone strike in November 2013 in eastern Yemen.

One was Christopher Harvard of Townsville, according to reports. The other was a dual New Zealand national, known as Muslim bin John or Abu Suhaib al-Australi. They were not the main target of the attack, it is understood, just "collateral damage" as the USA describes people it kills unreasonably.

Australian citizens are entitled to be properly represented by their government: Civil Liberties Australia believes there is an urgent need to delineate and define what holding and carrying an Australian passport means, and what responsibilities the Australian government and the citizen have to each other.

<http://tinyurl.com/k3pr7zu>

New Matilda gets tough on crime 'toughness'

On 3 December 2013, the Australian Bureau of Statistics advised that the number of adult Australians locked up on its annual prison census night on June 30 had exceeded 30,000.

There were 30,775 people in prison last year, which doesn't include psychiatric patients or juveniles. That's 5% more prisoners than in 2012.

More than a quarter of all prisoners in Australia — 27% — are Aboriginal and Torres Strait Islander, which means that if you are an indigenous Australian you are 15 times more likely than a non-indigenous person to spend time in prison.

"You would think all of this would make news, but rarely does the media do more than run the statistics, and some do not even manage that.

"Prisons have become a hidden zone while law and order campaigns designed to win votes harden public attitudes," say Wendy Bacon and Marni Cornell, writing for *NewMatilda*. <https://newmatilda.com/>

Republican referendum mention in parliament

The member for Fraser (ACT), Dr Andrew Leigh, moved a motion recently to put a referendum for a republic back on the agenda:

That this House calls upon the Parliament to make it a priority to hold a referendum to alter the Constitution to establish the Commonwealth of Australia as a republic, so that every Australian child can aspire to be our Head of State. <http://tinyurl.com/n8I3yqa>

Unfortunately, he announced it the day PM Tony Abbott announced he would Sir-cumsise people again as Sirs and Dames.

ODD SPOT: How brave is this?

Andrew Leigh, MHR for Fraser, explaining how dissident he was when the Royals visited Canberra: *"In 2012, when Prince Charles and the Duchess of Cornwall visited Canberra, I was pleased to welcome them on the tarmac of Canberra airport, wearing my Australian Republican Movement cufflinks."*

Detectives go cold turkey

WA detectives are launching a cold-case re-examination of evidence from cases up to 30 years old.

They are filtering important evidence lost in storage or not properly examined at the time. Assistant Commissioner (State Crime) Craig Ward said: "Police hold hundreds of thousands of items in warehouse and other environments. Police are taking advantage of significant advancements in forensic science, and improvements in investigative practices."

He admitted that the police's material-handling practices in the past would be open to criticism, but said that the force was prepared for that. <http://tinyurl.com/mnkd8sa>

Smuggling recipe involves two cups of hemp

WA's corrective services minister Joe Francis wants to restore a police prisons unit after revelations about the prevalence of drugs in the state's jails.

Operation Ulysses, a six-month investigation that included police posing as prison guards, led to more than 40 people being charged with more than 100 offences. Among them was former Greenough Prison chef instructor Jeanine Wylie, who was jailed last month for smuggling cannabis in her bra for a bikie inmate and arranging to get him a mobile phone. <http://tinyurl.com/p7p7zqg>

Barrister Rayney continues defamation claim



Former barrister Lloyd Rayney can continue a defamation action against the publishers and editor of a book which included a chapter about his wife, Corryn's, murder. Justice James Edelman has ruled in the WA Supreme Court.

Mr Rayney is suing Pan MacMillan, which published *Mad, Bad and Mysterious; Murder, Rape and Pillage in Australia*. He

is also suing the book's editor and author of the chapter, Estelle Blackburn (pictured), a member of Civil Liberties Australia).

Mr Rayney claims the chapter implies he murdered his wife or procured someone else to do it. In 2012 he was found not guilty of her murder. Justice Edelman dismissed the publisher's argument that the defamation action was untenable and unreasonable and should be struck out. <http://tinyurl.com/mjukoct>

Searched dying supporters could die of fright

WA police last month denied targeting elderly members of Dr Philip Nitschke's right-to-die group in a search for an illegally imported so-called suicide drug.

Four members of Exit International in WA reported they have been visited by police and served with search warrants relating to the drug Nembutal in recent weeks. A WA Police

spokeswoman said officers were acting on the advice of federal police and Customs, which passed on information about any prohibited drug importation.

One 70-year-old Perth man who had his house searched said he had suffered anxiety and ill health since the search. "I am very, very tired and still suffering from the stress of five local police at my front gate with a search warrant for Nembutal," he wrote in a letter to Exit.

Dubbed "the green dream", Nembutal was prescribed as a sleeping pill before it was taken off the market in the 1990s. Importers of Nembutal can face criminal and civil charges, including a fine of up to \$170,000 under the Criminal Code Act 1995, *The West Australian* reported. <http://tinyurl.com/m2thvys>

WA prisons in dire straits

WA Corrective Services Minister Joe Francis has revealed an urgent review of all the state's \$1 billion jail facilities was under way, headed by Corrective Services Commissioner James McMahan.

Prime focus is a crisis at Bandyup women's prison, where up to 30 inmates have been forced to sleep on mattresses on the floor recently.

The total prison population rose to 5138 last month. <http://tinyurl.com/l9sv3mg> See also: Work camps idle: <http://tinyurl.com/jvsemyf>

Support groups continue to push for inquiry



All Tasmanian politicians have received a new request for an inquiry into the miscarriage of justice involving Sue Neill-Fraser, currently in the fifth year of a 23-year sentence for murder.

Fiona Peate, of the Free Sue Neill-Fraser Support Group, emailed the MPs at the end of April with a 10-point list of why the conviction, over a missing husband where no body has ever been found, is unsafe.

Bob Chappell, Neill-Fraser's partner of 18 years, disappeared overnight on Australia Day 2009 from the couple's yacht, *Four Winds*, moored in the Derwent River off Sandy Bay in suburban Hobart.

Civil Liberties Australia believes a tunnel vision investigation by police led to a finely-pitched prosecution case to a jury.

The jury convicted partly because it was never taken on board the yacht and therefore did not understand the supposed crime scene. Among other reasons for the wrongful conviction was that the jury was told – mistakenly by the prosecutor – that Neill-Fraser's DNA was found on a latex glove the DPP claimed was used to clean up the alleged crime scene. The DPP admitted his error publicly after the original trial, but by then it was too late for the wrongly-convicted woman.

The jury was also highly likely to have misinterpreted the facts that there was virtually no confirmed blood of the victim in the saloon of the yacht, or in the dinghy alleged to have carried his body.

In a case which combines all the awful maladventures of the Lindy Chamberlain dingo-took-my-baby case in the NT 30

years ago, and of the Graham Stafford case in Queensland 20 years ago, Australian justice is what should really be on trial.

For copies of the Peate letter, or a one-page summary of why and how the Neill-Fraser miscarriage of justice occurred, email secretary@cla.asn.au

Stafford can at last say he is free from danger of Queensland 'justice'

At last Graham Stafford is free of the stain of being wrongly charged, convicted and jailed for the murder of Leanne Holland more than 20 years ago.

Queensland will not proceed with an ex-officio indictment against Stafford, AG Jarrod Bleijie announced last month.

Stafford was convicted of the 13-year-old's murder in 1992 but the Court of Appeal set aside that conviction in 2009, after he had been released on parole after serving 14 years in jail.

The Office of the Director of Public Prosecutions subsequently announced that it would not proceed with a new trial.

Mr Bleijie said the Director of Public Prosecutions, a retired Supreme Court Judge and a senior Queen's Counsel reviewed all evidence and each advised that a new trial would not be in the public interest.

The original trial of Stafford was not in the public interest, either.

It was yet another of those worrying cases throughout Australia where the police, the prosecutors and the state got it totally wrong, and jailed an innocent man...or woman, CLA says. – media release, Qld AG, 11 April 2014.

'Research' produces more mandatory imprisonment and police bans

Queensland is cracking down on binge night-out drinking with a range of measures garnered from "research" involving an online survey.

Attorney-General Jarrod Bleijie said a draft "Safe Night Out Strategy" was developed after consultation with Queenslanders including an online survey that attracted more than 12,000 responses. "Rather than having a knee jerk reaction to this complex issue, we have taken the time to listen to Queenslanders."

As is usual in Queensland, part of the "solution" is mandatory: in this case compulsory alcohol and drug education in all Queensland schools from Years 7 to 12, as well as mandatory ID scanners in venues.

The solution features mandatory imprisonment for 80% of a sentence, and allows police to issue banning orders. <http://tinyurl.com/l8qgscd>

Bleijie plans to shape voting to government's liking

Queensland – becoming known as 'Banland' – may ban how-to-vote cards at polling booths.

AG Jarrod Bleijie has floated the idea of banning the cards and what he calls "political spruikers" at polling booths, even though a report into February's controversial Redcliffe state by-election did not recommend doing so.

Premier Campbell Newman was heckled and jeered during the by-election, which was won by Labor. <http://tinyurl.com/lvms08s>

Doctor outs himself over euthanasia drug proscribing

Victorian voluntary euthanasia campaigner Dr Rodney Syme has admitted in 2005 giving a dying man the drug Nembutal two weeks before he killed himself with it at his Point Lonsdale home.

The disclosure could trigger a test case for physician-assisted suicide in Victoria. No Victorian doctor has been charged in the past 50 years, but Perth urologist Daryl Stephens was charged with murder in 2000 after allegedly helping a woman with terminal kidney cancer end her life in a hospice. A jury found him not guilty.

Dr Syme said he gave Steve Guest Nembutal while he was dying from oesophageal cancer in July 2005, because he was suffering intolerable physical and psychological pain and needed control over the end of his life. Two weeks later, Mr Guest, 58, died from an overdose of Nembutal, which was formerly prescribed to aid sleeping, and which is also being increasingly traded on the black market in Australia.

In Victoria, it is a criminal offence to incite, aid or abet a suicide – maximum penalty five years' jail.

Dr Syme, 78, said after watching state parliaments reject 16 euthanasia bills over the past 20 years he was ready to "out" himself and be charged over Mr Guest's death because a court case could set a useful legal precedent for doctors who are too scared to help terminally ill people end their own lives. <http://tinyurl.com/ltkc7k>

ODD SPOT: Dark skin must lend itself to bars

Although only 15% of New Zealand's population, more than 50% of prisoners are Maori. In WA, where about 2.7% of the population is Aboriginal, about 42% of prisoners are Aboriginal. In the NT, Aborigines make up about 28% of the population, but more than 80% of the prison population. Some people think these statistics are coloured.

Jails continue to fill...particularly with Indigenous prisoners

Official statistics show that, nationally, end-of-year figures for 2013 produce an average daily imprisonment rate of 180 prisoners per 100,000 adult population.

Indigenous imprisonment is up about 10% year-on-year for combined men and women. Whatever the government is doing with its "Intervention", it is not reducing the number of Indigenous prisoners.

The NT had the highest general imprisonment rate (861 prisoners per 100,000 adults), followed by WA (255), Australian Bureau of Statistics figures show.

The ACT and Tasmania had the lowest imprisonment rates (113 and 121 prisoners per 100,000 respectively). It will be interesting to see whether the rate of imprisonment rises in Tasmania under the new (March 2014) Liberal government's promised introduction of mandatory sentencing.

During the December quarter 2013, the average number of prisoners in full-time custody each month in Australia was 32,166, comprising 24,484 (76%) sentenced and 7,682 (24%) unsentenced prisoners.

SA (34%), NSW and the NT (both 28%) had the highest proportions of unsentenced prisoners...which means the court systems are clogged in those states, and delayed justice is justice denied, CLA says.

In the December quarter 2013, there were 811 federal sentenced prisoners in Australia, a decrease of 16% from the December quarter 2012. Just over half (416) of federal prisoners were sentenced in NSW.

The number of Indigenous people in jail continues to rise. In the December quarter 2013, the average daily number of full-

time Indigenous adult prisoners in Australia was 8,881, made up of 8,040 (91%) males and 842 (9%) females. In the past year, Indigenous men in custody increased 9% (671 persons) and women 13% (95 persons). <http://tinyurl.com/kh3y76c>

Weekend detention on permanent vacation



Corrections Minister Shane Rattenbury (left) has announced that periodic detention would end in the ACT, the last Australian jurisdiction to use it, by 2016-17.

The ACT Periodic Detention Centre will close. Weekend detention – which in the ACT started Friday night and

continued until Sunday afternoon – was designed to keep offenders with good prospect of rehabilitation away from full-time imprisonment, allowing them to continue working, with the support of their family network and so increasing their chances of rehabilitation.

Mr Rattenbury said the ACT would shift to community supervision and mandatory participation in community programs to replace periodic detention. <http://tinyurl.com/kjtkueo>

Meanwhile, the Alexander Maconochie Centre (AMC), the ACT's prison which opened for prisoners in 2009, is to get a \$54 million expansion to create two new cell blocks within two years to solve overcrowding.

The project will add 110 beds, giving the Alexander Maconochie Centre a total of 476 beds by mid-2016, with surge capacity of an extra 32 beds, up from a current capacity of about 300 or so inmates (depending on categories of prisoners at any time).

Fairfax Media revealed in October 2013, when news of overcrowding broke, that the ACT government had buried a set of projections, produced by John Walker Crimes Trends Analysis in 2001, which predicted the kinds of prisoner numbers the AMC is now struggling to house. The government instead produced its own, much lower projections, which were used to justify the building of a smaller, cheaper prison. <http://tinyurl.com/l3bnl7c>

Australian briefs

Spend up, the gang's all here: \$10 million is being spent to set up a "strike team" in Western Australia to combat bikie gangs, Prime Minister Tony Abbott announced last month. It will target about 450 active members of 9 motorcycle clubs in WA, and report to the \$64 million National Anti-Gangs Squad, he said. The \$10m equates to about \$22,250 being spent to target each of the 450 bikies: perhaps the PM will get a "please explain on economic efficiency grounds" note from Treasurer Joe Hockey. <http://tinyurl.com/m74ntsb>

You have a right to refuse medical treatment: ACT magistrate Peter Dingwall has ruled paramedics have no authority to force people to receive medical treatment – if you resist an ambulance officer's attempts to impose unwanted care you cannot be convicted of a criminal offence. Mr Dingwall threw out five charges of assault, affray and obstructing public officials in the case of a man who was twice zapped by police after being put in a leg-lock by paramedics. The magistrate said the man had no legal obligation to accept treatment or undergo an assessment offered by the paramedics, and so could not have been guilty of the charge of resisting a public official in the performance of their functions. <http://tinyurl.com/n23xp43>

Forget 'jail is a last resort': Under the Youth Justice and Other Legislation Amendment Act 2014, Queensland has introduced a more draconian regime for child offending. Childhood offences, even if no conviction was recorded, will be referenced when sentencing someone in an adult court; children in jail will be automatically transferred to adult prisons when they are 17 and have six months or more left to serve; and judicial officers must expunge from their thinking any notion that jailing is a "last resort" option. <http://tinyurl.com/mvkahff>

Civil Liberties Australia - report for April 2014

Networking/members meetings

- Bill Stefaniak: Administrative Appeals Tribunal – Court Criminal Appeal critique
- Margaret O'Callaghan: justice issues in PNG and Africa
- John Purnell barrister: miscarriages of justice, judicial standards, child refugees and boat crew
- Jack Pappas (pictured right) barrister: miscarriages of justice, gender issues in rape trials
- Vintage Reds (retired unionists) meeting: pensions and super
- Forum on Refugees ANU
- Keith McEwan: re asylum seekers
- Congratulations by letter to NSW CCL Cameron Murphy's conferred life membership



Jack Pappas

Submissions in April – to the Australian Parliament:

- Inquiry into Manus Island riot, Senate Legal and Constitutional Affairs committee (main authors, Joan Greig and Umberto Torresi)
- Classification scheme amendment (Arved von Brasch)
- Section 18C rewording (Brandis, bigotry and discrimination (submission led by Richard Griggs)
- Review of the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014: effectively, submission on the Trans-Pacific Partnership (TPP) agreement and the Investor State Dispute Settlement provisions (Pauline Westwood)
- Unexplained wealth: Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Bill 2014 (Bill Rowlings, Anthony Dickson)

To Tasmanian Attorney-General, Dr Vanessa Goodwin: CLA concerns with new government policies to:

- (1) abolish suspended sentences;
- (2) create mandatory minimum sentences: and
- (3) crack down on 'illegal' protests

Project work:

Internet access for prisoners: CLA members Des and Janette Griffin conducting research
Letter to SA AG John Rau re right to appeal proposal to be put to AGs ministerial meeting
Civil Liberties Australia book: progressing, CLA members assisting with research

Membership promotion:

Posted 57 packs of CLA leaflets x 10 to selected CLA members for local distribution. Please advise if you'd like some leaflets to distribute to your colleagues, acquaintances or friends.

Media:

On **Privacy**: comment to *CNET Australia*, Claire Reilly:

"We find it strange that politicians of both major parties always take the side of the police and spook agencies, when the MPs are actually elected to look after the interests of their electors, the ordinary people," Civil Liberties Australia's CEO, Bill Rowlings, said. "It is not in the interest of Australians to have their privacy further invaded. The secret services have not once demonstrated that even their current intrusions into people's privacy have prevented any major incident in Australia...and they want to intrude further, much further. All MPs should represent the people first, the spooks second. Unfortunately, once elected, MPs tend to identify with the secret elite rather than with the common people," Mr Rowlings said.

Tasmania – Richard Griggs:

1. Offensive speech – interviewed and spoke in favour of speech that might offend (ABC radio)
2. Abolishing suspended sentences – spoke against this policy from the new Tas Government: <http://www.abc.net.au/news/2014-04-04/fears-over-plans-to-abolish-suspended-sentences/5368862> and costed the policy at \$20 million/year: <http://tasmaniantimes.com/index.php?pr-article/richard-griggs-clar-abolishing-suspended-sentences-could-cost-20-million-per/>
3. Vigilantes after sex offenders – on the dangers of publishing name, photos and home address details of released sex offenders: <http://www.abc.net.au/news/2014-04-26/fears-over-online-abuse-campaign/5413496?section=tas>

INTERNATIONAL

Brazil takes charge of internet and privacy

Brazil's Senate has unanimously approved groundbreaking legislation which guarantees equal access to the internet and protects the privacy of Brazilian users in the wake of US spying revelations.

President Dilma Rousseff, who was the target of US espionage according to documents leaked by former NSA analyst Edward Snowden, has signed the bill into law.

The legislation, dubbed Brazil's "Internet Constitution", has been hailed by experts, such as the British physicist and World Wide Web inventor Tim Berners-Lee, for balancing the rights and duties of users, governments and corporations while ensuring the internet continues to be open and decentralised.

To guarantee passage of the bill, Rousseff's government had to drop a contentious provision that would have forced global internet companies to store data on their Brazilian users on data centre servers inside the country. Instead, the bill says companies such as Google and Facebook will be subject to Brazil's laws and courts in cases involving information on Brazilians, even if the data is stored on servers abroad. <http://tinyurl.com/kp6vds7>

Inventor calls for web bill of rights

Tim Berners-Lee (see above) has renewed calls for an internet Magna Carta – bill of rights – to enshrine universal access and benefits to all people.

Speaking from a panel at the NETmundial conference in Sao Paulo, Brazil, last month, he said a bill of rights for the web was necessary to stop espionage and mass-surveillance and ensure equal access to all citizens.

He said the example set by Brazil this week in passing its Internet Bill of Rights, and by European legislation protecting

users, should encourage further discussion on the topic. He first called for a "Magna Carta for the Web" earlier in 2014. <http://tinyurl.com/mybvmqg>

Earth Mother lays down the law of nature

Bolivia is set to pass the world's first laws granting all nature equal rights to humans.

The Law of Mother Earth, agreed by politicians and grassroots social groups, redefines the country's rich mineral deposits as "blessings" and is expected to lead to radical new conservation and social measures to reduce pollution and control industry, John Vidal writes in *The Guardian*.

Bolivia will establish 11 new rights for nature, including the rights to:

- life and to exist;
- continue vital cycles and processes free from human alteration;
- pure water and clean air;
- balance;
- not be polluted; and
- not to have cellular structure modified or genetically altered.

Controversially, it will also enshrine the right of nature "to not be affected by mega-infrastructure and development projects that affect the balance of ecosystems and the local inhabitant communities".

"It makes world history. Earth is the mother of all", said Vice-President Alvaro García Linera. "It establishes a new relationship between man and nature, the harmony of which must be preserved as a guarantee of its regeneration."

The law is part of a complete restructuring of the Bolivian legal system after a constitution change in 2009. It is heavily influenced by a resurgent indigenous Andean spiritual world view which places the environment and the deity La Pachamama – World Mother, or Earth Mother – at the centre of all life. Humans are considered equal to all other entities.

The Bolivian government is expected to establish a ministry of mother earth.

Ecuador, which also has powerful indigenous groups, has changed its constitution to give nature "the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution". However, the abstract rights have not led to new laws or stopped oil companies from destroying some of the most biologically rich areas of the Amazon. <http://tinyurl.com/kzj5mrt>

European Court of Justice rules privacy is king

The European Court of Justice has invalidated the European Union's 2006 Data Retention Directive policy: the court said the right to privacy provides a fundamental barrier between the individual and powerful institutions, and laws allowing for indiscriminate, blanket retention are completely unacceptable.

The court said it is not, and never was, proportionate to spy on the entire population of Europe. The types of data retained under this hastily-enacted Directive are incredibly revealing about our lives, including daily activities and whom we have relationships with. It is right and overdue that this terrible directive was struck down.

The court is backing what civil liberties and privacy groups have always maintained: mass collection of metadata is an interference with the right to privacy, and access to this data cannot be justified under vague references to combating serious crimes or terrorism. If access to sensitive data is

granted, access must be subject to prior review "carried out by a court or by an independent administrative body."

Perhaps most significantly, this ruling not only demolishes communications data surveillance laws across Europe, but sets a precedent for the world. The widespread and indiscriminate collection of information has been, and always will be bad law, inconsistent with human rights and democratic values. <http://tinyurl.com/ltgwe57>

US court finds against drone strike secrecy



The US Court of Appeals for the Second Circuit last month rejected the US government's extreme claims of official secrecy over information about its targeted killing – drone strikes – program.

Photo shows a US Predator drone aircraft.

The court ordered release of a 2010 legal memorandum by the Office of Legal Counsel analyzing the potential targeted killing of an American citizen, as well as other information about records the government has previously refused to describe at all.

In doing so, the Second Circuit became the first court to order the release of a document related to the government's targeted killing program. It also became the second federal appeals court in the past year to hold that the government has pushed its secrecy claims surrounding the targeted killing program past their breaking point.

In last month's opinion, the Second Circuit panel held that the government's repeated public assurances that the targeted killing program is lawful, and its disclosure of a "white paper" that summarized its legal conclusions, had waived its right under the Freedom of Information Act to keep secret its legal analysis authorizing the killing of US citizens. <http://tinyurl.com/mhnrw8fd>

Of course, the killing of Australian citizens is neither here nor there, according to the US Administration and the Australian government, CLA observes.

When is an online rant criminal?

The US Supreme Court is expected to rule shortly on when online rants, from Facebook to YouTube, become worthy of criminal prosecution.

US authorities are routinely applying an old-world 1932 statute concerning extortion to today's online world, where words don't always mean what they seem.

The latest case involves a Pennsylvania man sentenced to 50 months in prison after being convicted on four counts of the interstate communication of threats. Defendant Anthony Elonis' 2010 Facebook rant concerned attacks on an elementary school, his estranged wife, and even law enforcement.

"That's it, I've had about enough/ I'm checking out and making a name for myself/ Enough elementary schools in a ten mile radius/ to initiate the most heinous school shooting ever imagined/ and hell hath no fury like a crazy man in a Kindergarten class/ the only question is ... which one?" read one of Elonis' posts.

Weeks ago, for example, another Pennsylvania man was handed up to a six-year term for a YouTube rap video threatening police officers.

In the Elonis case pending before the Supreme Court, the 30-year-old contends that the authorities never proved he intended to threaten anybody. But a US federal appeals court in September 2013 ruled that the standard of proof is whether

a reasonable person—the target of the rant—would deem the online speech threatening. The Third US Circuit Court of Appeals upheld Elonis' sentence and conviction. He appealed to the Supreme Court. <http://tinyurl.com/koo6f8r>

Students at school shocked by stun guns

A high school student in Texas suffered severe brain damage and nearly died last year after a deputy sheriff shocked him with a stun gun, a high voltage electronic weapon.

In North Carolina, civil rights lawyers filed a complaint with the Justice Department, charging the school system with violating the constitutional rights of minority children by subjecting them to discriminatory arrest practices and brutality by police officers assigned to schools. In one nightmarish case described in the complaint, a disabled 15-year-old was shocked with a stun gun three times during an interrogation at school, resulting in punctured lungs.

In New York, civil rights lawyers have sued the city of Syracuse on behalf of two students. One was shocked three times, not for threatening behavior but for lying on the floor and crying, they say, and another was shocked while trying to break up a fight.

Complaints about dangerous disciplinary practices involving shock weapons are cropping throughout the USA. The problem has its roots in the 1990s, when school districts began ceding even routine disciplinary duties to police and security officers, who were utterly unprepared to deal with children.

Amnesty International, which monitors this issue, estimates that since 2001 more than 550 people have died after being shocked by stun guns during arrest or while in jail. Police agencies in the USA, the report found, routinely use the shock weapons on suspects who present no danger but fail to comply immediately with a police officer's commands – *New York Times* editorial <http://tinyurl.com/kogastt>

ODD SPOT: USA is main spy threat to OZ

The biggest spying threat facing Australia is the USA, a top cyber security experts says. French-born, Sydney-based Jonathan Brossard, whose stable of clients includes the Commonwealth Bank, says the US may be a close ally but it would be wrong to think the US was not spying on Australia. "They are the biggest threat," he said. "Australia is part of the Five Eyes and all that and there is a strong belief that allies are not spying on us. I think that's pure bullshit ... I think we are completely owned by the Americans." he said. <http://tinyurl.com/kqg9xk7>

INTERNATIONAL BRIEFS

USA is spam central: A report from the security and spam monitoring company Sophos has revealed that computers inside the United States relay – by far — the most spam. Sophos doesn't measure the point of origin for the spam, but something more embarrassing and troubling: spam is relayed by compromised computers strung into vast networks called botnets. So what we really see here is the deeply insecure state of American computing, more than the number of ne'er-do-wells. According to the 2013 spam trend report by Kaspersky security, nearly 70 percent of email traffic flow is now spam. <http://tinyurl.com/kjp43rw>

What's a passport worth? Patrick Weil argues in the *Yale Law Journal* that the USA owes Edward Snowden his passport back. The debate raises issues for Australia of what is a

passport worth, in terms of what obligations apply to and from the Australian government and to and from the passport holder? Citation: *Citizenship, Passports, and the Legal Identity of Americans: Edward Snowden and Others Have a Case in the Courts*, 123 *Yale L.J. F.* 565 (2014) <http://tinyurl.com/m44c7vz>

NZ rallies against TPP

New Zealanders recently took the streets in a national protest against the controversial Trans-Pacific Partnership Agreement and the secrecy surrounding it.

More than 2000 people gathered near Auckland Town Hall and marched to protest outside the US consulate. The TPPA is being portrayed by critics as driven by the US to advantage global corporations, and bound to severely erode democracy in countries such as NZ, especially over issues of food and medicines, including putting NZ's national generic pharmaceuticals agency, Pharmac, at risk. <http://tiny.cc/lhhmdx>

Image: Del Abcede/PMC <http://tinyurl.com/ovyzo9h>



Philippines likely to divide, rather than multiply, in future:

The supreme court in the Philippines has approved a birth control law which requires government health centres to distribute free condoms and contraceptive pills. The decision is a major defeat for the Catholic Church which campaigned against the law for more than a decade. With a population of 100 million, the Philippines has one of the highest birth rates in Asia. <http://tinyurl.com/qebnq9f>

Facing up to privacy: On Facebook, you can now 'share' your location with friends...and a host of others, including advertisers, police and spooks. The sharing is opt-in, giving you choice, but personal privacy goes down the drain if you select the new feature. Your GPS is always on, meaning you can be surveilled by whomever. As a *news.com.au* commentator said: "The gradual and sometimes voluntary surrender of personal privacy is increasingly dangerous not only for personal security, but in the end, to the preservation of our rights and freedom." <http://tinyurl.com/mzbeu4v>

Join the police – go figure: A significant number of British police officers and government officials "despise" their role in the widespread practice of massaging official crime figures, according to a leading criminologist. Marian FitzGerald, a visiting professor of criminology at the University of Kent's crime and justice centre, said many ethically minded senior officers were "scandalised" and detested their part in what they consider to be the manipulation of police statistics. <http://tinyurl.com/nsz46ev>

DATES

2 May, Canberra: Differences between Timor-Leste And Australia in the Timor Gap, symposium, speakers include Prof Don Rothwell and barrister Dr Christopher Ward, 2-5.30pm. <http://tinyurl.com/l43w7jc>

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 annual National Security Australia conference: Sydney Harbour Marriott. Info: <http://www.iir.com.au/conferences/defence/national-security-australia>

27 May, Adelaide: 2014 Lowitja O'Donoghue oration by Prof Patrick Dodson, U. Adelaide, Bonython Hall, North Terrace: history of Recognition movement in the lead up to the proposed referendum on the recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution. Details: benjamin.waters@adelaide.edu.au

1 June, Melbourne: Re-Evaluating Intellectual Property Rights in the World Trade Organization, Prof Bryan Mercurio, Melbourne Law School, 1-2pm, Rm 608. Details: lawgeln@unimelb.edu.au

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, Sofitel Broadbeach, cost: \$5900. Details: <http://njca.com.au/program/national-judicial-orientation-program-2014-2/>

15-21 June, World: World Refugee Week

18-19 June, Canberra: State of the Pacific conference, ANU: <http://tinyurl.com/ovbvzw9> Research on the region, assembling academics, policy makers, civil society and the media.

28 June, Melbourne: Launch of Monash Law School 50th anniversary book, and dinner. Details: law-marketing@monash.edu

3-5 July, Canberra: Theme: 100 years since start of WW One: *Towards International Peace through International Law* 22nd annual conference, ANZ society of Intl 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/>

7 Aug, Melbourne: Reclaiming American Virtue: The Human Rights Revolution of the 1970s, by Dr Barbara Keys, Sen. Lect. School of Historical and Philosophical Studies, 5-6.30pm, Level 9 m Melbourne Law School. email emma.shortis@unimelb.edu.au



19 Aug, Sydney: Rights Talk...on the ageing and those suffering mental health issues, Prof Henry Brodaty (left), 12.30-1.20pm, AHRC L3, 175 Pitt St, Sydney. <http://tiny.cc/i3orbx>

31 Aug - 4 Sep, Adelaide: 22nd international symposium of the forensic sciences, ANZFSS. Info: <http://www.aomevents.com/ANZFSS2014>

28 Sept–1 Oct, Sydney: Aust. Political Studies Conf, U. Syd, Details: apsa2014sydney@gmail.com

1-3 Oct, Sydney: ANZ Society of Criminology, U. Sydney Law School. Theme: Testing the Edge: Challenging Criminology.

Details: <http://sydney.edu.au/news/law/457.html?eventid=10300>

11-12 Nov, Melbourne: 10th annual Islamic studies postgraduate conference: postgraduate students from any uni welcome. Contact Tessa Shaw: law-cilias@unimelb.edu.au

10 Dec, World: International Human Rights Day

15-16 Dec, Singapore: 'Researching State and Personhood: Law and Society in Southeast Asia', Centre for Asian Legal Studies, U. Singapore, focusing on research located in one or more of the following: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar (Burma), Philippines, Singapore, Thailand, Timor Leste and Vietnam. Details: lynettechua@nus.edu.sg

2015:

14-15 Feb, Canberra: National Judicial College of Australia conference, 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

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)

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