

## **Bombshell as judge recommends quashing & pardon in Eastman case**

Acting Justice Brian Martin landed a time bomb in the lap of the ACT Supreme Court and the ACT Government with his recommendations to quash a murder conviction and grant the convicted murderer a pardon after 19 years behind bars.

David Eastman (pictured at the time of his original trial) was convicted in 1995 for the murder of Assistant Commissioner of the Australian Federal Police, Colin Winchester, in a Canberra suburb in January 1989.

After a six-month inquiry in 2013-14, Judge Martin found:

- a substantial miscarriage of justice occurred in Eastman's trial: he did not receive a fair trial, and was denied a fair chance of acquittal; and
- deeply flawed forensic evidence convicted him, as well as the prosecution failing to disclose all relevant material it held, which was its obligation.



"While I am fairly certain the applicant is guilty of the murder of the deceased, a nagging doubt remains," Judge Martin said.

"The case against the applicant based on the admissible and properly tested evidence is not overwhelming; it is properly described as a strong circumstantial case.

"There is also material pointing to an alternative hypothesis consistent with innocence, the strength of which is unknown."

A full bench of the ACT Supreme Court must now decide whether to endorse Judge Martin's strong

recommendations for quashing of the conviction and a pardon. Their likely endorsement would create a major dilemma for the ACT Government.

On one side lies justice for Eastman and correcting the miscarriage of the ACT's police-prosecution-court system in relation to him, while on the other is the Territory's contracted police force, the AFP, who do not want the man they still firmly believe killed their second-in-charge ever released from jail.

Eastman out of jail is a nightmare for the government.

They face the prospect of finding accommodation for him (having taken his government flat away while he was in jail); paying him millions in compensation; and avoiding troubles between Eastman and the police, and Eastman and other citizens.

This is a story with a long way yet to run.

## **Aussie spies share in spying on all of us**

Australian spies are helping the USA to secretly monitor telephone calls across the Philippines, leaked US intelligence documents reveal.

## **Are you looking to contribute to CLA work, and/or to further your studies?**

Would you like to get involved with some interesting and engaging work?

We are seeking 2-3 voluntary research assistants to help us prepare CLA's submission to the Australian Law Reform Commission's

**Review of Commonwealth Laws for Consistency with Traditional Rights, Freedoms and Privileges** (the [Freedoms Inquiry](#)).

The Role: Help survey the literature, collate data, analyse information, prepare text for written submission, and engage in peer review.

Supervisor will be Project Manager Rhys Michie.

You'll be part of a small team, communicating collaboratively with other CLA members (by email/ phone/Skype).

Background: 2<sup>nd</sup> year Law, Pol Sci or similar...or intense interest in the topic. An inquiring mind combined with a desire to effect change.

Benefits: Gain experience in the law reform process, expand knowledge of the law and politics, and help influence Australia's future freedoms.

Join us! If you'd like to be involved, please contact me, Rhys Michie, via [freedoms@cla.asn.au](mailto:freedoms@cla.asn.au)

According to top secret US National Security Agency documents disclosed by former intelligence contractor Edward Snowden, Australia's electronic spy agency, the Australian Signals Directorate supports a top secret NSA intelligence collection program codenamed MYSTIC, which harvests telecommunications "metadata" – in several countries, including the Philippines.

The previously top secret documents published by The Intercept news website reveal the MYSTIC program uses data collection systems that are installed in mobile phones for legitimate commercial services, but which also serve a "covert mission ... the provision of SIGINT [signals intelligence]".

However, the leaked documents also make it clear that MYSTIC intelligence is collected not by targeting individual suspects but through the bulk collection of telephone call data across entire networks and countries, as well as international telecommunications traffic.

It can be safely assumed that all your communications in Australia are tapped, or accessible at least to spooks from Australia or from another of the Infamous Five.

While Australia targets the Philippines, Indonesia, East Timor and PNG, the USA targets Kenya and Mexico and Iraq as well as others. Everybody in the supra-legal 'Five Eyes' network – the USA, Australia, NZ, UK and Canada – swaps spying "product" with everyone else.

Who is in charge of FIVEYS? It is not the people of the five countries, and it's probably not the politicians (see Senator spied on, below).

In control is an uber-elite controlling secret knowledge, which makes them potentially the most dangerous people on the planet. <http://tinyurl.com/nbjauy4> and <http://tinyurl.com/p8qnocc> See also: 'None so blind as an inspector who chooses not to see' below



*CLA's President Dr Kristine Klugman met with Senator John Faulkner in Parliament House last month. Surveillance reports such as these make you wonder whether such private meetings are also bugged.*

## Senator spied on in parliament house

Big Brother is watching even your elected Member and Senator of Parliament.

Senator John Faulkner claimed in parliament last month that he has been "spied on" by Parliament House itself.

Surveillance cameras in Parliament House were used to track a suspected whistleblower allegedly passing information to the Labor senator from NSW.

In a fiery public hearing of a Senate committee, Senator Faulkner confronted the head of the Department of Parliamentary Services, Carol Mills, over the use of CCTV images against DPS staff.

In a half-hour grilling, Ms Mills confirmed that a potential breach of the rules around the use of CCTV had occurred during a disciplinary investigation into a former staff member working in Parliament. She declined to elaborate on why the person was under investigation or whether the use of the images affected an elected official.

"All right, does it involve me? Does it involve people providing information to me?" Senator Faulkner asked.

"It may do Senator," Ms Mills replied.

"It may do? Does it involve a person or people... individuals providing information to me as I go about my work as a senator in this Parliament?" Senator Faulkner asked. "This is the most serious breach. I'm sure every senator around this table understands what has just been said. A serious breach that a senator in this Parliament has been spied on in that way as they go about the proper conduct of their duties. No one in this place is ever going to accept that.

"I hope you understand the significance of what we just heard. This is a serious issue of parliamentary privilege. I will stop my questioning at this point and I flag with the chair and the president ... I will be taking this matter forward as a matter of privilege immediately." <http://tinyurl.com/mktsjcx>

## Spying on MPs confirmed

Federal Parliament's internal security cameras have been used to monitor contacts between political staffers,

bureaucrats and journalists, according to former parliamentary staff.

Australian Federal Police investigators hunting leakers of government information have accessed images and information from the Parliament's closed circuit television cameras located throughout the building, including the corridors of the press gallery.

In one instance during the Rudd government, Parliament House security cameras were used to monitor the movements of a Labor staffer suspected of leaking cabinet secrets to a prominent journalist, Fairfax has reported, quoting former Dept of Parliamentary Services staff. <http://tinyurl.com/o6gcyz5>

## UN demands state pays for police bashing

The UN Human Rights Committee has demanded the Victorian Government live up to its international human rights obligations and compensate a 21-year-old woman brutally bashed by police, without reason, eight years ago.

The Victorian County Court ruled Corinna Horvath and other witnesses injured the same night in her home were entitled to \$300,000 compensation. Officers broke down her door without a warrant, handcuffed her and beat her up to a dozen times, leaving her unconscious and with a broken nose.

But the Vic govt wriggled away from its obligations, arguing successfully before the Court of Appeal that the state was not vicariously liable for police officers acting outside the realm of their duties. That defence did not apply to any other public servant at the time...and won't apply to police either from December 2014 under a new law.

Ms Horvath has received no compensation. One police officer declared bankruptcy, the others said they were unable to pay. The UN Human Rights Commission says Victoria must compensate Ms Horvath. The state must also review its legislation, and tell the UN how it is going to remedy the situation.

Tamar Hopkins, a community legal centre lawyer working on the case for Ms Horvath, said none of the police lost their jobs even though the county court found the police had lied and fabricated evidence. All were promoted and two remain with Victoria Police, she said.

The UN decision requires disciplinary proceedings against the police to be re-opened and says the state must appoint an impartial body to investigate human rights abuses - not, like in this case, leaving it to Victoria Police to deal with it internally. <http://tinyurl.com/lnuge5l>

## ODD SPOT: Death highlights NT's appalling record of violence against women

*"Aboriginal women in the NT make up only 0.3% of all Australian women: they account for 14% of all the female hospitalisations for assault in the entire country."* – from a recent media release by Bess Price, MLA for Stuart in the NT, revealing her sister had been killed overnight in an allegedly alcohol-fuelled incident in a Katherine town camp.

## Law reformers tackle disabled equality

The Australian Law Reform Commission has released a final discussion paper in its inquiry into disability and Commonwealth laws, Equality, Capacity and Disability in Commonwealth Laws (DP 81).

The paper proposes 50 changes to Commonwealth laws and frameworks to give disabled people equal recognition before the law – in particular, in relation to the right to make decisions that affect their lives, and to have those decisions respected.

Submissions are due to the ALRC on Monday 30 June 2014. The paper is free from [www.alrc.gov.au/publications/disability-DP81](http://www.alrc.gov.au/publications/disability-DP81). An Easy English Summary is at [www.alrc.gov.au/easy-english-dp-81](http://www.alrc.gov.au/easy-english-dp-81)

The ALRC will provide a final report to Attorney-General George Brandis by 31 August 2014. Further information on ALRC: [www.alrc.gov.au](http://www.alrc.gov.au)

## Fix the real problem – right of reply, CLA says

By all means alter the race laws – including the notorious section 18C – but also fix the real issue, which is ordinary people's ability to put contrary views in the media.

That is the core of Civil Liberties Australia's submission to Attorney-General George Brandis on how freedom of speech can be better guaranteed in Australia.

"The best defence of free speech is more free speech," CLA told the AG. The crucial aspect was giving ordinary people the ability to respond quickly and easily if they were insulted or offended in the media.

The government controlled all relevant communication law, so it could provide a way for people to state contrary view in a similar forum, with equivalent style and time and/or length, CLA said.

CLA also said that any redrafting should not weaken the protections of the existing law.

Conservative think tank the Institute of Public Affairs told AG Brandis to re-do the race laws properly or not at all. In its submission, the IPA warned Senator Brandis that, if he bows to critics and softens his attack on the laws, he would be better off leaving the law reform to a future, more courageous government. <http://tinyurl.com/lgh4bn6>

Meanwhile 800 people marched in Lakemba in Sydney last month, in one of the bastions of multiculturalism in Australia. Most were demanding the government leave the current s18C alone. <http://tinyurl.com/mkh46o5>

## None so blind as an inspector who chooses not to see

It is "quite wrong" to think that all Australians' phone and internet data is being collected and examined by Australian intelligence agencies, the only person whose entire job it is to keep watch on Australia's spooks said last month.

"I think this idea that it's all being hoovered up and stored with intelligence agencies – and they can browse it at their will – is quite wrong," Inspector-General of Intelligence and Security Dr Vivienne Thom said at the Law Society of NSW.

But then, she would say that wouldn't she?

The spook agencies have no need to "hoover". Dr Thom knows – but doesn't mention – that the law dictates Internet Service Providers must store your data so that spooks can access it later, whenever they want, with a warrant approved by the Attorney-General, who is a politician not a judge. Or, as is readily available to them, they can get their mates from state police or other crime-like agencies to provide the information they want...without the need for a warrant. Or, if they really want something, they can ask the USA or another of the Five Eyes partners.

Dr Thom was speaking about agencies she has oversight for, and not about the other Australian law enforcement agencies that can access telecommunications content and metadata without a warrant, such as state and territory police, local councils, Australia Post, the RSPCA and others.

Federal and state government agencies accessed private telecommunications and internet data 330,640 times during

criminal and financial investigations in 2012-13. This was an 11% increase in a year and a jump of 31% over two years.

Only somebody wilfully blind to facts could conclude that Australia is not becoming a spook and police state increasingly every year.

Dr Thom is reported as saying she only ever found "technical" breaches of the law by spooks. That's because she doesn't look for any other type of possible breach, like why the spooks have selected a particular target, and whether that selection was justified, CLA says.

To say that IGIS is a toothless tiger is defamatory towards tigers: even tigers with total dental decay have more "bite" than Dr Thom exhibits as IGIS.

She actively dodged investigations that might fall without her bailiwick. CLA asked her in writing to investigate any Snowden-like behaviour by Australian surveillance entities: she declined – "not my department", said IGIS Thom.

If you're not looking, it's no wonder you don't find anything wrong, CLA says. <http://tinyurl.com/m7lfdrp>

## Oz bodies pry more than most

The Australian government has made more requests for data from tech companies than any other government, after the US.

Australian authorities asked tech companies for more user data last year than their counterparts in any other country barring the United States, a compilation of "transparency reports" reveals.

Australian authorities made 52,017 requests for user data from companies such as Facebook, Google, Apple and Microsoft – or 2870 for every million internet users.

That was more than authorities in Germany, France and the UK but less than those in the US, which made a hefty 784,511 requests in total.

The figures are found in a new database created by online information-sharing site Silk, which groups all available transparency reports, but they don't include requests from spook agencies, like ASIO, which are secret. <http://tinyurl.com/ms3qm3q>

## Incursions crackdown dries up legitimate donations

Key Muslim leaders in Sydney have appealed directly to the man most likely to become the next NSW police commissioner, asking him to back away from enforcing "draconian" laws that make it a crime to support the civil war in Syria, *ABC Radio* reported last month.

NSW Deputy Police Commissioner Nick Kaldas was asked to convey that stark message not only to his colleagues in law enforcement agencies, but to politicians in the federal arena too.

The Foreign Incursions Act makes it a crime to support the war in Syria by going over to fight, or by providing material and financial support to warring parties. Three people have been charged under the law but so far none are far enough through the judicial process to test the strength of the evidence.

Muslim leaders say that publicity about the law and the charges has completely dried up legitimate civilian donations to help women and children in Syria. <http://tinyurl.com/oaqklp4>

## To be, or not to be, on the offenders' register

South Australian campaigners are urging AG John Rau to pass a 'Romeo and Juliet' law so that young people doing-the-what-comes-naturally don't end up on a pedophile sex register.

Barrister Craig Caldicott said relationships could easily be differentiated from predatory incidents and child pornography: courts should be able to treat such cases appropriately. "We're talking about 18 and 19-year-old men and women having relationships with 16 and 17-year-olds, most of the time with the consent of both sets of parents," he said. "They find themselves before the District Court on child pornography and unlawful sexual intercourse charges because of something as simple as an ill-advised selfie." And they go on the sex offenders register for anywhere from eight years to life.

Under SA law, anyone convicted of a sexual offence – including producing or possessing child pornography – is listed on the register. Only minors who appear in the youth court don't go on it, Sean Fewster reported in *The Advertiser*. It is believed the SA AG will be receptive to calls for a change in the law: recently, Mr Rau called for national guidelines on sexting laws so that teenagers would not face prosecution over consensual image-sharing. <http://tinyurl.com/mhwcng8>

## Police minister resigns after corruption claim

Mike Gallacher resigned as NSW police and justice minister last month.

Gallacher's barrister made the announcement after the Independent Commission Against Corruption (ICAC) heard that the Liberal minister and Darren Williams, a development manager at Nathan Tinkler's Newcastle property developer, Buildev, together devised a scheme to make payments to a fake political consulting agency, Eightbyfive. The money would pass to the Liberal party in contravention of electoral fundraising laws, the inquiry heard.

The payments were made by Tinkler's stud farm, Patinack Farm, to Eightbyfive, an entity run by Tim Koelma, an associate of the former NSW energy minister Chris Hartcher. <http://tinyurl.com/mqg8vhw>

## Supporters keep quiet vigil for justice for SNF

People, walking through the Parliament House gardens in Hobart on a Saturday morning or a weekday lunch hour, are likely to see one or two, or maybe more, placard-carrying supporters of Susan Neill-Fraser (SNF), asking for 'Justice for Sue' by way of a referral back to court.



These vigils are ad hoc and can be large or small, an individual standing quietly or a small group of like-minded supporters.

The commonality of these people, some of whom have been strangers to each other until now, is a deep and disquieting concern that a miscarriage of justice has occurred – *Lynn Giddings*.

The Hobart supporters of Neill-Fraser – wrongfully jailed over the disappearance of her husband in January 2009 – have created a supporters' page: <https://www.facebook.com/pages/Sue-Neill-Fraser-Support-Group/742127032506721>

## SNF petition close to lodging

A team of lawyers is close to finalising a formal petition for mercy by Sue Neill-Fraser, seeking justice.

The fifth anniversary of her arrest and locking up without bail is 20 August 2014 – it is expected the petition will be lodged by then with the Tasmanian Government.

A formal petition is the last remaining chance Sue Neill-Fraser (SNF) has under Tasmanian law to overturn her conviction. If the petition is successful, the case will be reviewed by the Supreme Court.

SNF, recently turned 60, is in her fifth year of a 23-year sentence for murdering her husband/partner, Bob Chappell on Australia Day 2009. He disappeared overnight when alone onboard their newly-bought 16m yacht, Four Winds, moored off Sandy Bay in Hobart. No body has ever been found.

Civil Liberties Australia believes SNF is innocent.

So do many people with detailed legal knowledge who have reviewed the case. Those who have said publicly that they are prepared to help her fight for justice include senior barristers such as Robert Richter QC of Melbourne and Chester Porter QC of Sydney.

Stuart Tipple, like Porter a member of the legal team which secured Lindy Chamberlain's freedom in the 'Dingo-took-my-baby' case, also believes SNF should get a new hearing.

In practice, the petition goes to the state Attorney-General Dr Vanessa Goodwin. She can request the Supreme Court of Tasmania to hold a new hearing, effectively a new appeal.

## Govt hails its latest ID idea

The Victorian government will capture identification details of taxi passengers and drivers to eliminate criminal behaviour, but experts warn the move threatens privacy principles.

Taxi "marshals" in areas of high alcohol-fuelled violence will use technology that collects personal ID documents and taxi licence plates.

Geelong will get the new system first, and it will extend to other cities if successful.

Victoria's Transport Minister Terry Mulder announced the proposal as part of a \$300,000 package for eight councils – Glenelg, Stonnington, Manningham, Mitchell, Baw Baw, Warrnambool, Geelong and Wodonga – to install new seating, signage and pedestrian barriers at "safe taxi" ranks.

Marshals will use a new tablet app, developed at a cost of \$30,000, that saves ID information of both drivers and passengers. Included will be the taxi number, passenger's name, mobile phone number and a form of ID, such as a driver's licence.

The marshal will record details manually and upload the data to the council's servers. Data will only be accessible to police when they are following up a complaint. <http://tinyurl.com/o8mbvyy>

## Do women have equal right to be criminal?

As part of the Victorian government's \$453m prison expansion, the capacity of the women's prison system will rise by 34%, from 416 to 561 places.

This correlates with the fact that the number of female prisoners in Australia has grown by 46% to a total average daily count of 2349 in mid-2013.

However, there is little analysis to explain the increase — which has occurred at a much higher rate than the male prison population. – *Sally Parnell, CEO Jesuit Social Services writing in NewMatilda.*

## 500 raiders find alleged illegals under beets

Federal police claim three brothers are the head of a Perth crime syndicate involved in money laundering and using foreign nationals as cheap labour in market garden operations.

More than 500 law enforcement agents raided a number of properties in Perth's northern suburbs one day last month. The main operation targeted a market garden compound at Carabooda, where more than 130 foreign nationals were taken into custody. Police said the raids followed a four-year investigation in which 230 foreign nationals had been interviewed by police.

Acting Commissioner Craig Ward from State Crime said 19 people have been charged with a total of 32 state and federal offences related to money laundering and harbouring unlawful non-citizens. <http://tinyurl.com/phou2hf>

## WA Indigenous prison runs on self-care lines

In WA, more than 40% of the 5000 people in WA prisons are Indigenous and one in 20 adult Aboriginal men are in jail.

The West Kimberley Regional Prison, opened near Derby in 2012, is designed specifically for Indigenous prisoners, aiming to reduce reoffending by teaching inmates life skills and instilling a sense of pride and independence.

The 144 inmates, mostly male but with some females, live together in self-contained houses, grouped according to gender, family ties and security rating. There are 22 houses, holding 6 or 7 people each.

The prison runs under what is known as a self-care model. Inmates are given a weekly budget to buy food and are also responsible for cooking meals and keeping their houses tidy. There's also a strong focus on giving prisoners the skills to get a job on the outside. <http://tinyurl.com/kol56rr>

## ODD SPOT: 'Bikie Hilton' fails to attract guests

Public sector union, Together, said last month that the 52-bed bikie-only prison at Woodford, north of Brisbane, was virtually empty with



just one bikie prisoner, while the Maryborough jail remained over capacity. Woodford became the "Bikie Hilton" when the Queensland government introduced special laws – and prison – for the helmeted leathermen. Maryborough's capacity is 320 secure prisoners, but it is believed to be 15 over capacity. <http://tinyurl.com/krkoc7k> Photo shows guest facilities at the Bikie Hilton.

## Queensland to benchmark its state of crime

Queensland has launched a new parliamentary Inquiry to find out how criminal the state is.

The inquiry, due to report by 31 October 2014, will examine:

- trends and type of crime activity in Queensland using crime statistics and "unreported crime";
- social and economic contributors to crime;

- impacts of criminal activity on the community and individuals;
- effectiveness of crime prevention strategies, including imprisonment, justice reinvestment, early intervention, alternative dispute resolution, and other national and international models;
- the experiences of Queenslanders with regard to the criminal justice system, including victims of sexual and/or domestic violence, including their interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes; and
- ways to increase collaboration and co-operation throughout the criminal justice system.

The inquiry will also recommend how to curb criminal activity, reduce rates of recidivism, and build a safer community. It will hold public and private hearings across Queensland; ensure the hearings examine local statistics; and take public and private submissions. – media release, 22 May 2014

## CLA to promote goose-gander law change

Civil Liberties Australia is asking Queensland Attorney-General Jarrod Bleijie to give equal rights to people wrongly convicted of murder as it will to the State.

The Qld government has announced new laws which will allow prosecutors to reopen cases against offenders acquitted of murder before 2007. The Labor government in 2007 made it possible to try a defendant again on the same or similar charges, if new evidence came to light, but the revised laws did not apply to old cases.

Mr Bleijie says DNA improvements will help solve crimes committed before the technology was introduced.

"Advancements in technology including DNA have a profound effect on cases that police have investigated over the years that in fact may lead to potential convictions in the future.

"But under the double jeopardy laws, without having the retrospectivity in place ... those offenders are still out in our community. Why should someone who was acquitted 20 years ago but now there's fresh and compelling evidence based on modern technology – why should they get away with murder or other serious crimes?"

CLA agrees they should not...but nor should people rot in jail when new technology shows they were wrongly convicted.

The State should not get away with locking up innocent people for decades.

If it's good enough for the state to have a second chance, so should the innocent person in jail.

## Minister's bid to curb police chases stalls

The ACT Legislative Assembly has put paid to a proposal to curb police chases.

The ACT Territory and Municipal Services Minister, Shane Rattenbury, had moved a motion calling for an investigation into more restrictive policies for police chases in the ACT, saying an average of 18 people were killed in them each year in Australia.

Mr Rattenbury, the sole Green in the parliament whose vote enables Labor to be in government, said seven people died in accidents related to police pursuits in the ACT between 2004 and 2010. He sought an investigation into recent pursuits from Australia and overseas, with experts and public opinion to help form recommendations for the ACT government.

"There have been many other crashes and injuries," Mr Rattenbury said, calling for police officers to be limited to pursuits when a serious crime had been committed. "The

police have an important role in enforcing the criminal law. But at the same time police pursuits create a risk to those involved and the wider community as they often lead to dangerous and high-speed driving.”

Analysis by the Australian Institute of Criminology of data from 2000-2011 shows 110 of the 218 deaths were of alleged offenders driving while pursued by police vehicles. A further 26 deaths were of passengers in the same vehicles, while six deaths were of police officers engaged in pursuits.

“The most prevalent type of offence committed prior to a fatal pursuit is traffic-related – that is an offence such as speeding, dangerous driving, or registration and roadworthy offences,” Mr Rattenbury said.

He called for the ACT to consider following Australian jurisdictions including Tasmania and South Australia whose police pursuit policies had been reviewed and refined. Mr Rattenbury praised authorities in Queensland for a 2009 review by the state's coroner. It refocused policy on safety and discouraged officers from pursuing vehicles for minor traffic and drink-driving offences.

His motion failed to receive support in the chamber. <http://tinyurl.com/kbvqw64>

## New ‘top’ CAT to be called NTCAT

The second last jurisdiction in Australia is about to introduce a one-stop-shop for civil and administrative appeals.

The NT Civil and Administrative Tribunal (NTCAT) will replace most of 35 existing commissioners, tribunals, committees and boards.

Attorney-General John Elferink said: “NTCAT will hear and determine a broad range of administrative matters and operate independently of Government. It will remove unnecessary duplication and inefficiencies, a similar move which has already been adopted in all states across the country, except Tasmania.”

The administrative law reform will require amendments to an estimated 117 Acts; and the 54 acts which include an appeals mechanism through the Supreme Court and Local Court will be assessed to identify suitability for the NTCAT – NT AG media release, 16 May 2014.

## Australian briefs

**PUP puts bite on Qld Premier:** Federal MP Clive Palmer has served defamation papers, claiming \$1.1m damages, on Queensland's Premier, Campbell Newman, over claims Mr Palmer had tried to “buy” the State Government. The leader of the Palmer United Party is suing Mr Newman over statements claimed to be “totally false and damaging to his integrity”. He said Mr Newman falsely accused him of trying to “buy” the LNP State Government and implied he had offered incentives to NT MPs to join PUP. <http://tinyurl.com/mnan8a2>

**ACT gets new supreme court complex:** Canberra's upgraded supreme court precinct will include eight new courtrooms, five jury deliberation rooms and a secure jury reception and orientation area, refurbishing facilities built in 1963. The project is expected to cost more than \$120 million: a temporary courthouse will be established in office accommodation during construction. <http://tinyurl.com/m49e5nl>

**Australian department has hallmarks of the mafia:** The mafia-like secretive organisation known as the Australian Department of Immigration illegally maintains a secret blacklist

of lawyers and migration agents deemed “high risk” or “of concern”, leading to greater scrutiny of applications for clients seeking partner visas. The existence of the list is a disgrace, and the head of Immigration should be sacked immediately. ASIO's time would be more productively spent investigating illegality actually perpetrated by government, rather than potentially against government. <http://tinyurl.com/lxceax9>

**First charge laid over abortion protest distance:** John Graham Preston, 58, of Brisbane has been charged with two counts of failing to comply with a direction of a police officer over two protests in Hobart in March. One protest was outside a Hobart abortion clinic, the other at a fertility clinic in Moonah. Preston is the first to be charged under Tasmania's new Reproductive Health Act 2013 which makes it an offence to protest within 150m of a clinic. The hearing is set for September 2014. <http://tinyurl.com/kbpxmrt>

**Union wants state to run prisons:** The Prison Officers' Union says the WA government should take responsibility for all jail services rather than look to increase private competition. Corrective Services Minister Joe Francis said last month that a broad review of the sector, now under way, could see private operator Serco lose its prison and court security deal. He said all options were on the table as part of the review, including boosting competition by introducing new prison security providers. Serco has had a number of prisoners escape from its custody this year. <http://tinyurl.com/lsm2m7s>

**NSW ministers to publish diaries:** Premier Mike Baird has announced that a diary summary of each NSW minister's external meetings will be published quarterly. It will list the purpose of the meetings, the organisations involved and details of any lobbyists present. Only Queensland publishes ministers' diaries, and does so monthly. In the US and the UK, the president and the prime minister publish their diaries online. <http://tinyurl.com/q6uytqc>

**Famous pub setting for euthanasia tale:** Daly Waters pub, 600km south of Darwin, will become a movie set next month when a film about euthanasia is shot there. The Last Cab To Darwin is a movie about a dying taxi driver's quest for euthanasia, starting in Broken Hill NSW and then working its way to Darwin when euthanasia was – briefly - legal in the NT. The Castle actor Michael Caton and Academy Award nominee Jacki Weaver will star, with direction by Jeremy Sims. <http://tinyurl.com/pw5ggy3>

**Bagmen unlimited is new election approach:** Queensland has scrapped limits on political donations and election spending, and lifted the reporting threshold. Changes to the law last month also mean a windfall of public funding for major parties, including a new “policy development payment” which will be denied to independents and smaller parties, while voters in future will have to prove their identity at the ballot box. Donation records will now be released annually, rather than twice a year. <http://tinyurl.com/qfp7afw>

**Police encourage anonymous dobbing-in:** WA Police have just held a “dob in a bikie” day, where anonymous callers could finger whom they liked. Police claim there are nine known criminal bikie gangs in WA including more than 440 patched members and nominees, spread across 27 chapters and 28 clubhouses around the state. In 2014, before the dobbing day, there had been 54 arrests and 405 charges including for 36 illegal firearms and more than 700kg of cannabis and

methylamphetamine. Police were given tough anti-association laws aimed at breaking up bikie gangs and other criminal organisations which came into force in November 2013. So far no charges have been brought under the new laws. <http://tinyurl.com/pxj58fq>

**New camp keeps prisoners 'at home':** Nhulunbuy is to get a permanent low-security prisoner work camp to keep inmates close to their traditional homeland. Inmates from the Datjala Work Camp will move into a 50-bed facility and participate in a mix of volunteer work and paid employment through the NT's Sentenced to a Job program. The Datjala Work Camp will mostly accommodate offenders who have family and community ties to the East Arnhem Region, allowing them to retain their cultural values while serving out their sentence - AG NT media release 15 May 2014

## Civil Liberties Australia - report for May 2014

CLA member Melissa Parke co-founded an important support mechanism for the ABC last month.

Melissa, the Labor Member for Fremantle, along with the Liberal Member for Reid in NSW, Craig Laundry, launched the

support group at a function at Parliament House to which CLA's President and CEO were invited.

The Australian Parliamentary Friends of the ABC is a cross-party group expected to be influential in making sure the ABC survives rounds of budget slashing as intact as possible. The launch, on 28 May, was attended by a broad cross-section of MPs drawn from the major party groups.

*Right: Melissa Parke and Craig Laundry at the launch.*



*Photo: Bill Rowlings*

## The New, the Bold and the Old...



*New Member for the PUP party, Clive Palmer (Fairfax, Qld), CLA President Dr Kristine Klugman, and the 'Father of the House', the longest-serving Member of Parliament, Philip Ruddock (Berowra, NSW), listen to the launch speeches of the Parliamentary Friends of the ABC group at Parliament House on 28 May 2014.*

## CLA board meeting, May 2014: Main issues

Report on eAGM process, formal annual report papers lodged, election for office-bearers 2015

President/secretary, webmaster, treasurer and media spokesmen reports received on a period of relative quiet.

Reports from states: Tasmania and WA

Discussion took place on a number of issues: Right to Appeal project, asylum seekers project, report on Sue Neill-Fraser campaign, report on networking meetings, five recent submissions made, etc.

CL history progress: CEO reported that the final drafts of three chapters had been finished since the previous board meeting, and were out for review: Tasmania, WA and NT. Other chapters being worked on.

Article on budget impacts on human rights for press release prepared: see <http://www.cla.asn.au/News/rights-and-liberties-suffer-budget-blow/>

Issue of Duty of Care by police discussed at length: decided more work needs to be done on the issue.

**DFAT NGO consultation meeting:** on Australia-China Human Rights dialogue: President Kristine Klugman attended for CLA – email Secretary for copy of report.

**Lectures:** Vice-President Tim Vines lectured to ANU School of International Politics and Strategic Studies students

**Networking meetings on a range of issues with:**

Melissa Parke MP WA

Craig Laundry MP NSW

Sen John Faulkner NSW

Sen Clive Palmer Qld

Bob Katter, MP Qld (and Nicole Ogilvie)

Andrew Wilkie MP Tasmania

(issues included initiatives with refugees, ABC support, opposition to Trans-Pacific Partnership agreement, alleged corruption in Qld and NSW, resourcing issues, new restrictions on FOI and the Office of the Aust. Information Commissioner, and the Sue Neill-Fraser miscarriage of justice)

**Articles:** See website for new articles, especially by new member Eva Cripps on bikies (*What 'Success', Mr Dempsey?*) and an anonymous former Customs Officer on the proposed Australian Border Force (*May the Force be without you*)...go to: <http://www.cla.asn.au/>

## Media/presentations:

Quiet month as far as media goes, but other activities include:

Vice-President and National Media Director, Tim Vines:

- Presentation on Data Retention to Masters students at the ANU School of International, Political and Strategic Studies, include a debate with AFP Deputy Commissioner Neil Gaughan.
- Presentation to ANU medical students on Privacy, Public Health and Sexually Transmissible Diseases.
- Working with students taking part in the ANU's Vice-Chancellor's Unravelling Complexity course – their topic was privacy.

Director, Tasmania, Richard Griggs:

Preparation of briefing paper for all Tasmanian MPs on costs of mandatory sentencing and removing suspended sentences, for distribution in June.

Rhys Michie, Victoria:

Preparation for major submission to the Australian Law Reform Commission on the Freedoms Inquiry (see advertisement in this CLArion).

## INTERNATIONAL

### Kettle and pot get steamed up over spying

China has called for a halt to what it describes as unscrupulous US cyber-spying, saying that an investigation has concluded that China is a major target.

The complaint, in a government agency report, comes a week after US prosecutors charged five Chinese military officers with hacking into American companies to steal trade secrets.

The report by China's Internet Media Research Centre mentioned former NSA contractor Edward Snowden's leaks and said a subsequent investigation by Chinese authorities "confirmed the existence of snooping activities directed against China," the official Xinhua news agency said.

"As a superpower, the United States takes advantage of its political, economic, military and technological hegemony to unscrupulously monitor other countries, including its allies," the report said. "The United States' spying operations have gone far beyond the legal rationale of 'anti-terrorism' and have exposed its ugly face of pursuing self-interest in complete disregard of moral integrity."

It said the operations had "flagrantly breached international laws, seriously infringed upon the human rights and put global cyber-security under threat. They deserve to be rejected and condemned by the whole world."

The Internet Media Research Centre is overseen by the State Council Information Office, the Chinese cabinet's press office.

### Can mobile phone give evidence against you?

US Supreme Court justices are fumbling to find the right buttons to press in two companion cases revolving around whether police officers need a warrant to search a suspect's mobile phone upon arrest: *United States v. Wurie* involves an old-fashioned flip-phone, while *Riley v. California* centres on a modern smartphone.

In *Riley* the debate is about whether an arrest alone allows a police officer to search the vast troves of data available on a person's smartphone. In *Riley's* case, his phone held a potentially incriminating photo: Riley was standing next to a red vehicle allegedly involved in a prior shooting, but the car was not directly connected to Riley's current arrest.

Justices and counsel alike name-dropped a host of technologies and digital platforms, including Twitter, Facebook, Fitbits, GPS, airplane mode, Faraday bags, encryption, online dating apps, and several others in an effort to craft what amounts to an appropriate search and seizure rule for the digital age.

Justices appeared all too willing to try to strut their technological proficiency—some more successfully than others—the task at hand was to determine whether warrantless searches of mobile phones and other devices in a suspect's proximity "incident to arrest" are acceptable under the US Constitution's Fourth Amendment, which forbids "unreasonable" searches and seizures. <http://tinyurl.com/k66lme9>

### Rape used as pre-caning punishment

Wilayatul Hisbah – sharia religious police – in Indonesia's Aceh province will publicly flog a young woman for adultery after she was turned in by eight males who had already gang-raped her in vigilante punishment.

If Australian or western women visit Aceh, the same could happen: a recent bylaw in the province extended its provisions to all residents and visitors, including non-Muslims.

The woman to be flogged, a 25-year-old widow, and her alleged partner, a married 40-year old man, were caught inside her home by a group of eight intent on enforcing the sharia prohibition on sex outside marriage, local media reports say. The eight, including a 13-year-old, tied up and beat the man and repeatedly raped the woman before dousing both in raw sewage. They then marched the couple to the office of the local sharia police.

Under Aceh province's sharia law, each of the pair faces nine strokes of the cane in a public place. The alleged rapists face investigation and conviction by the ordinary criminal courts.

Aceh is the only Indonesian province which enforces sharia law, after the central government in Jakarta granted its religious leaders the right to impose it in 2001 to try to quell separatist sentiment. Sharia law is also spreading in other areas of Indonesia, adopted by local communities. <http://tinyurl.com/nktvklz>

### Sultan introduces sharia law

One of the richest countries in the world, Brunei, has introduced sharia law, in future to include penalties such as severing of hands and death by stoning.

Brunei's Sultan Hassanal Bolkiah (right) introduced the initial phase last month, which involves fines or jail for offences including indecent behaviour, failure to attend Friday prayers and out-of-wedlock pregnancies.



A second phase covering crimes like theft and robbery starts later this year, involving more stringent penalties such as severing of limbs and flogging. Next year, death by stoning for offences including sodomy and adultery will be introduced.

Tourists are expected to be subjected to the same laws.

Brunei is the first East or South-East Asian country to introduce a sharia penal code nationally, joining several countries like Saudi Arabia and Iran. Brunei is a nation of 400,000 people, two-thirds of whom are Sunni Muslims. Homosexuality is forbidden. <http://tinyurl.com/mwtyq7d>

### High Court asked to rule on validity of stopping prisoner voting

Across the ditch in NZ, the Attorney General is applying to the NZ High Court to strike out an application by Arthur Taylor and four prisoners at Christchurch Womens' Prison to declare the ban on prisoner voting invalid.

Taylor and his female friends are seeking a declaration that the law prohibiting prisoners from voting breaches the NZ Bill of Rights Act, the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and the Treaty of Waitangi (articles 2 & 3, which guarantee "Tino Rangitiratanga", loosely translated as 'traditional rights').

The AG claims the application discloses no reasonable cause of action and is abuse of process.

Taylor says he believes the court will dismiss the strikeout application. He says he and the women prisoners have a strong case that the prisoner voting ban breaches the NZ Bill of Rights Act.

He says the highest Courts in Australia, Canada and the UK have all modified prisoner voting bans.



## TPP is yesterday's news, says ex-WTO chief



The former director-general of the World Trade Organisation, Pascal Lamy (above), says pacts like the Trans-Pacific Partnership (TPP) are yesterday's news.

"Look at the US-Japan agreement," he says. "It's about pork, beef and rice. They are not exactly 21st-century trade opening topics. The Trans-Pacific Partnership agreement Australia is negotiating with the US and 10 other countries...is the last of the big old-style agreements."

His brutal message delivered just after a meeting with the Australian Treasury is that trade is no longer much advanced by cutting tariffs.

"I listen to businessmen, not trade negotiators," the former French socialist who stepped down from the WTO last year said. "They know what's useful. Most of the time they don't even use free trade agreements. They make ambassadors feel good, but they are not worth the effort." <http://tinyurl.com/lmjmqem>

## ODD SPOT: Putin shoots World Cup footballers in the mouth

Russian President Vladimir Putin has signed into effect a law banning all swearing in films, television broadcasts, theatres and the media. Offenders will face fines up to \$1500 for organisations, or to \$75 for individuals. Where disputes arise a panel of experts will decide exactly what counts as a swear word. Books containing swear words will have to carry warnings on the cover. The law takes effect 1 July 2014. If Russia makes the World Cup soccer finals, starting 2 July, expect its footballers to be fined for what they say on live TV when they miss a shot at goal. <http://tinyurl.com/ngc2bs6>

## 4% – minimum – of death sentence convictions probably innocent

A new study argues that more than 4% of US people sentenced to death are probably innocent.

In a paper published this week in the journal PNAS\*, researchers statistically examined the cases of 7482 death row convictions from 1973 to 2004.

Using a mathematical model, study authors estimated that if all death-sentence defendants remained under sentence of death indefinitely, at least 4.1% would be exonerated. "This is a conservative estimate of the proportion of false conviction among death sentences in the US," the authors said.

In the time period examined, authors wrote that 943 people had been executed, or roughly 13% of the 7482 death sentences imposed. By contrast, 117, or roughly 2%, were exonerated. An additional 2675, or roughly 36% o

f the total, had their sentences commuted. (The number of people who died on death row but who were not executed was 298, or 4%). <http://tinyurl.com/mj4mo25>

\* *Proceedings of the National Academy of Sciences (of the USA)*

## Britain now free to make people stateless

Britain passed a new law last month that allows the government to strip terrorism suspects of their citizenship even if it renders them stateless, taking the country's already sweeping powers to revoke nationality a step further.

After four months of wrangling, the House of Lords, the Parliament's upper chamber, approved a clause in a new immigration bill that removes a previous restriction on leaving individuals without citizenship. The bill became law a few days later, after receiving royal assent.

Britain has been one of the few Western countries that can revoke citizenship and its associated rights from dual citizens, even native-born Britons, if they are suspected or convicted of acts of terrorism or disloyalty. The government has stepped up its use of this tactic in recent years. In two cases, suspects have subsequently been killed in American drone strikes.

<http://tinyurl.com/mpno5al>

## INTERNATIONAL BRIEFS

**Stop-search powers curtailed:** Britain will reform police stop-and-search powers after discovering as many as 250,000 street searches (27%) last year were probably carried out illegally. Home Secretary Theresa May said she wanted revised codes, best practice schemes and new methods of accountability to lead to a significant reduction in the use of stop and search, more intelligence-led targeted operations, and better arrest ratios. Black people are still seven times more likely to be stopped by police than white people, with only about one in 10 of those stops leading to an arrest. <http://tinyurl.com/lhxnqqh>



**Marry-go-round:** President Uhuru Kenyatta (left) has signed into law a provision allowing Kenyan men to marry as many women as they like. Female MPs had stormed out of the parliament when the bill passed. Women are not allowed to marry more than one man in Kenya. <http://tinyurl.com/n8l6rol>

## Woman stoned to death by her family:

A 25-year-old woman was stoned to death by her family last month outside court in a so-called "honour" killing for marrying the man she loved, Pakistani police said. Farzana Iqbal, 25, was waiting for the High Court in Lahore to open when a group of about a dozen men began attacking her with bricks. Her father, two brothers and former fiance were among the attackers. Iqbal had come to court to argue that she had married of her own free will. About 1000 Pakistani women are killed every year by their families in honour killings, according to Pakistani rights group the Aurat Foundation. <http://tinyurl.com/kn52sw4>

**Don't mention the security 'war':** The Obama administration has barred current employees and contractors, as well as former workers at the Office of the Director of National Intelligence, from even mentioning leaked media material. The edict means that those working for the agency that supervises

the nation's 17 spy organizations cannot mention any leaked material in speeches, opinion pieces, research papers, or books. It does not even matter whether the material is classified, according to dictate from the office run by James Clapper, the director of national intelligence. <http://tinyurl.com/mpawmxj>

**Google responds to being EUgled:** Google has launched a webpage, where European citizens can request that links to information about them be taken off search results, as the first step in complying with an EU court ruling affirming the "right to be forgotten". Google has posted a webform for people to submit requests but has stopped short of specifying when it will remove links that meet the criteria for being taken down. Failure to remove links that meet the EU's broad criteria for take-down can result in fines. It is expected there will be a barrage of requests. <http://tinyurl.com/getxnmw>

## DATES

**1 June, Melbourne:** Re-Evaluating Intellectual Property Rights in the World Trade Organization, Prof Bryan Mercurio, Melbourne Law School, 1-2pm, Rm 608. Details: [law-geln@unimelb.edu.au](mailto:law-geln@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](mailto:Kerryn.baker@anu.edu.au)

**6 June, Canberra:** Inaugural Australian Government Legal Network Conference, National Gallery of Australia, Canberra. Register: <http://tinyurl.com/pjdhl9q> Inquiries: [gln@ag.gov.au](mailto:gln@ag.gov.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.

**27 June–5 July, Lido, Venice:** 2014 Venice School of Human Rights: topics Business and Human Rights, Internationalisation of Migration Law and the Role of the EU, and Freedom of Expression and Assembly Online. Infor: [www.eiuc.org/veniceschool](http://www.eiuc.org/veniceschool)

**28 June, Melbourne:** Launch of Monash Law School 50th anniversary book, and dinner. Details: [law-marketing@monash.edu](mailto: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 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/>

**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](mailto: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](mailto: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>

**5 Nov, Canberra:** National information policy conference, held by the Office of the Australian Information Commission. Details TBA. Info: <http://www.oaic.gov.au/news-and-events/oaic-events/information-policy-conference-2014>

**11-12 Nov, Melbourne:** 10th annual Islamic studies postgraduate conference: postgraduate students from any uni welcome. Contact Tessa Shaw: [law-cilis@unimelb.edu.au](mailto:law-cilis@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](mailto: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:** 2<sup>nd</sup> Global Domestic Violence Conference

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*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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## SPECIAL: Who can-can't donate & how much

The legislation surrounding political donations differs between federal and state bodies, with different states adopting different fundraising restrictions.

Federal: Donations above \$12,400 must be disclosed; no cap on donations; no restriction on donors

NSW: Donations above \$1000 must be disclosed; donations capped at \$5000; some entities such as property developers banned

Victoria: Donations from gambling licence-holders capped at \$50,000; donations from casino and gaming licence-holders capped at \$50,000

WA: Gifts and other income above \$2,100 must be disclosed

NT: Gifts over \$1,500 must be disclosed

ACT: Must disclose donations over \$1,000

Qld: Donations over \$1,000 must be disclosed; donations are capped at \$2,000 to individuals, \$5,000 to parties; considering move to be in line with federal legislation

SA: New reforms to be introduced in 2015 <http://tinyurl.com/ld2suem>

ENDS