

## Terror laws tilt balance between state & citizen

The first of this year's three new tranches of beefed-up intelligence, security, surveillance and anti-privacy laws is expected to pass through parliament and become law within days.

The first law – the *National Security Legislation Amendment Bill (No 1) 2014* – is so complex it is 124 pages long, with 167 pages of explanatory memorandum. It gives ASIO, other security agencies and the Australian Federal Police much wider powers without any commensurate oversight.

It further unbalances the relationship between Australian citizens and the secret elites who supposedly work for us.

Some of the problems with the legislation are spelled out in this article on the CLA website: <http://www.cla.asn.au/News/i-could-go-to-jail-for-this-next-month/> A truncated version of the article appeared in *The Guardian Australia* newspaper: <http://tinyurl.com/pegsqv8>

Criticism is not coming from the "usual suspects" only: read what Chris Berg of the right-wing, Coalition-aligned Institute of Public Affairs says of the proposed new laws in the *SMH*: <http://tinyurl.com/p5eh3gq> One of his comments is: "...the burden of proof rests on those who say we must trade off our liberty and privacy for security. That burden has not been met."

Another tranche of laws will cover data retention: that is where the government retains access to every word spoken, every email written, as well as every internet site visited by 23 million Australians, for two years, just to target a couple of hundred jihadists, if the claims by ASIO and AFP spokespeople are to be believed. Again, where is the balance?

A third raft of new laws is planned to bring in draconian demands that you must prove you are not guilty of anything nefarious if you visit one of the world's hotspots.

So, let's imagine you visit Palestine and Jerusalem on a tour of the Middle East – for which of these states do you have to prove you didn't do anything wrong? Or will you have to doubly prove your innocence, that you don't support the Palestinians, and you don't support the Israelis?

Australia's intelligence and security laws are rapidly approaching the nature of creating thought crimes.

## CLA calls on parliament to protect Australians from potential spy excesses

Civil Liberties Australia calls on the government, the opposition, minor groups and the independents to introduce safeguards into Australia such as those proposed for England - see article below.

"The proposed new laws are an indictment on the parliament, because they are a product of the Attorney-General's Department, primed by the spy agencies, under both Liberal and Labor governments over about the past four years," CLA's CEO Bill Rowlings wrote last month.

"The draft laws are wrong because they invade personal privacy, give far too much power to secret elites without proper accountability, and diminish the traditional rule of law in Australia.

"They are the type of legislation that statesmen politicians would protect citizens from. But statesmen (and women) MPs are in short supply in Canberra," he said.

## How statesmen MPs protect citizens ...in the UK

A similar new law was passed in Britain in July, but it came with safeguards negotiated by non-Conservative parties. NONE of these safeguards are proposed in Australia.

Here's a news report from London in July:

"In return for the emergency laws in the UK, the Liberal Democrats and Labour have won long-sought reforms to the accountability of the security services that the intelligence agencies and the PM have repeatedly opposed. Prime Minister Cameron for the first time has embraced the need for a debate about the powers of the security services." The main measures outlined are:

- A privacy and civil liberties board, based on the US model – see here: <http://tinyurl.com/kvkk8w7> – will be established to oversee the security services and act as an independent watchdog.
- An annual transparency report will be published on the amount of data intercepted.
- A new flexibility in the length of time data is retained so it is only held for up to 12 months.
- A two-year expert review of the relevance of the *Regulation of Investigatory Powers Act 2000* that will – on the Labour and Liberal Democrat side – look at the process of granting intercept warrants, and – on the Conservative side – look at the possibility of extending the powers of the security services.
- A reduction in the number of public bodies that will be able to access data so, for instance, local councils will need to ask a third party to look at data.
- A limit – on the kind of data that can be accessed by the state.
- An agreement that the legislation will fall (that is, there is a sunset clause) in 2016, and require fresh legislation that can be scrutinised by parliament in the normal way.
- A new restriction that data can no longer be gathered purely in the interest of the economic wellbeing of the UK.

NONE OF THE ABOVE is proposed for Australia. (There is one obfuscatory report to parliament in Australia about telephone intercepts, not about data collected).

In the UK, government MPs blocked the worst excesses of proposed spook laws:



Deputy PM, Liberal Democrat Nick Clegg (pictured), said: "This bill has nothing to do with the so-called 'snooper's charter'. That was a Home Office proposal to store every website you have ever visited for a whole year. I blocked that last year and I have blocked every further attempt to bring it back."

He added: "I have only agreed to this emergency legislation because we can use it to kickstart a proper debate about freedom and security in the internet age –

debate the Liberal Democrats and security have been calling for for a long time." <http://tinyurl.com/n23xr7k>

In Australia, there is no such debate.

There is no such junior partner in government willing to act independently, or an opposition who will negotiate safeguards

on behalf of Australians, to ensure the intelligence agencies are properly accountable.

Civil Liberties Australia calls for the same safeguard measures being implemented in the UK to be part of the packages of new laws in Australia.

### **Muslims criticise government, win big payday**

The President of Muslim Australia, Hafex Kassem, expressed “dismay and concern” at the government’s proposed new anti-terrorism laws, which he called “a raft of measures targeted specifically at the Muslim community”.

“The current government has been trying to make new terror laws almost on a daily basis, reversing measures safeguarding the rights of Australian citizens,” he said. - media release, Australian Federation of Islamic Councils, 8 Aug 2014.

Within days, Prime Minister Tony Abbott had announced that about \$13 million of the terror package would be used to buy off Muslim criticism. The money will go largely to Muslim community groups.

It is hard to understand how the federal government can suddenly find such funds while penny-pinching occurs with other Australians who are Centrelink customers or people who need to visit a GP.

### **Why would you trust people who can't keep secrets?**

The Australian Federal Police mistakenly published highly sensitive information – including metadata – connected to criminal investigations, in a serious breach of operational security.

*Guardian Australia* last month revealed that the AFP provided documents to the Senate which were then made publicly available online on parliamentary sites and other sources for several years. The documents accidentally disclosed information about the subjects and focus of criminal investigations and telecommunications interception activities.

The AFP, ASIO and the other spy agencies, along with the federal government, want a mandatory data retention scheme to force t'coms companies to retain personal data from phone and web users for two years. Imagine how much information can leak in two years.

The information that the AFP disclosed included the address of a target subjected to surveillance, the types of criminal investigations and offences being investigated, the names of several AFP officers not publicly available and other identifying information including the phone number of an individual connected to an investigation. <http://tinyurl.com/lolxg6z>

### **Are Australians subject to the international court over US drone program?**

The director of advocacy and research at the the Human Rights Law Centre in Melbourne has raised a contentious issue about how complicit Australia is, because of use of the Pine Gap joint intelligence facility, for the US targeting of drones to kill people.

If we're providing the coordinates, we can't absolve ourselves from responsibility is the argument many people would make. This is particularly so when an American drone attack killed two Australians.

“In November 2013, Australians Chris Havard and Muslim bin John were killed in a US Predator drone attack on a convoy in Hadramout Province, Yemen. Their deaths were reported

in Australia five months later,” Howie writes.

*Australia's collateral damage in the US drone program* by Emily Howie

### **ODD SPOT: AG doesn't give a Tosca about terror law review**

On 31 July 2014, the Attorney-General and Minister for the Arts, Senator the Hon George Brandis QC, announced a national review of opera.

Despite more than 80 pieces of separate and uncoordinated intelligence and security laws, totalling thousands of pages, being passed by the federal parliament since 2001, AG Brandis has not announced a review of national terror laws.

This month, a further 124 pages of terror laws will be added.

Please note: this **Odd Spot** does not assert that George Brandis is a Scarpia-like character. Despite the similarity, the photo at right is not Brandis QC, but Pierre Berton, in the role.



### **'I'm from the government, here to heavy you'**

Social media websites and apps based overseas like Facebook, Snapchat and Ask.fm can soon expect a knock on the door from an Australian government official if they don't comply with certain expectations surrounding cyber bullying and the removal of objectionable content, *Fairfax Online* has reported.

The sites may also face being named and shamed if they don't meet the expectations.

This is according to Paul Fletcher, parliamentary secretary to the Minister for Communications, who has revealed what powers his yet-to-be-appointed e-safety commissioner will have.

Speaking at the Law Society of NSW last month, Mr Fletcher said legislation to be introduced before parliament later this year would enable him to appoint an e-safety commissioner that would become a central point of contact for children, parents and law-enforcement agencies.

The commissioner would also regularly fly overseas to establish informal relationships with social networks and apps in order to ensure they meet certain Australian expectations, he said. <http://tinyurl.com/klga8fg>

### **Rights of the dying abused...both ways**

Australian patients are at risk of being killed or saved when they do not want to by doctors who do not understand laws regarding the withholding and withdrawing of life-sustaining medical treatment, research suggests.

A survey completed by 867 doctors in Victoria, NSW and Queensland in 2012 and 2013 found “critical gaps” in their legal knowledge that could expose them to criminal charges including murder, manslaughter or assault if they act against a patient's wishes.

A report on the survey, published in the *Medical Journal of Australia* last month, said on average doctors correctly responded to three out of seven questions about laws regarding end-of-life care.

The questions covered the validity of advance directives and consent from and the authority of substitute decision makers. Participants included doctors who specialise in geriatrics, intensive care, oncology, palliative care, kidney, respiratory and emergency medicine.

“Our findings strongly suggest that doctors in a speciality involving end-of-life decision making should improve their knowledge of the law, in the interests of their patients and for their own protection,” wrote the authors from the University of Technology in Queensland, Southern Cross University and University of Queensland.

The researchers, led by Professor Ben White, director of the Australian Centre for Health Law Research, said almost 40,000 adult deaths occur each year across Australia following a medical decision to withhold or withdraw life-sustaining treatment.

The researchers said failure to comply with the various state and territory laws relating to these matters could have significant consequences for patients who could have their lives ended wrongly through unlawfully withheld or withdrawn treatment.

“Conversely, life-sustaining treatment may be unlawfully provided; for example, despite a lawful refusal of treatment through an advance directive or by a substitute decision maker.

“This may infringe a patient’s legal right to bodily integrity, and cause patients to survive with poor quality of life, which they had sought to avoid.

“For medical professionals, criminal responsibility could arise for murder or manslaughter (where treatment is withheld or withdrawn unlawfully) or for assault (where treatment is provided without appropriate consent or authorisation).”

The researchers called for more uniform laws across Australia to make it easier for doctors to be educated about them. But for the moment, they said a lack of knowledge would not excuse doctors from liability. <http://tinyurl.com/l79648j>

### **ODD SPOT: Doctors slapped on wrist over unsecured health records**

A medical centre in Melbourne breached the Privacy Act by storing medical records of about 1000 patients in a locked garden shed where they no longer operated. In November 2013, the shed was broken into and the medical records compromised. Even though the records contained sensitive personal information such as full name, address, date of birth, Medicare number, treatment details including results of medical investigations and discharge summaries, the Privacy Commissioner issued a slap on the wrist to the medical centre, ordering it to undertake staff training.

### **Vic Opposition hits new high on cannabis law**

The Victorian branch of the AMA supports state opposition leader Daniel Andrews’ call for cannabis to be examined for medical use, but stressed the drug must undergo Australian clinical trials first.

Andrews (pictured) announced last month that, if elected in November, Labor would



refer to the Victorian Law Reform Commission whether to permit prescribing, making and distributing medical cannabis. He ruled out legalising recreational use of the drug.

It could be used to treat Victorians with life-threatening and chronic conditions, he said. “In some cases parents are forced to choose between breaking the law and watching their child suffer. Children are in pain, families are suffering, people are living in fear and outdated laws are getting in the way.”

The president of the Victorian branch of the Australian Medical Association, Dr Tony Bartone, said, by reassessing the state’s laws around cannabis, clinical trials could begin to determine how useful it is.

### **Mandatory sentence will lead to injustice: Bar**

Victoria's new one-punch laws, unveiled last month, will "tie the hands of judges" and lead to injustice, according to the state's Criminal Bar Association.

Perpetrators of one-punch deaths face 10 years in jail in Victoria, Australia's toughest such laws. The sentence applies whether the death is caused by the punch, or by a victim striking their head in the fall.

Criminal Bar Association chairman Peter Morrissey SC told *ABC Melbourne* the punishments took a one-size fits all approach to sentencing. "There are many cases where a judge needs a bit more nuance and ability to impose a lighter sentence," he said. "Putting a 10-year minimum on just ties their hands and leads to injustice." <http://tinyurl.com/ln5adld>

### **Eastman conviction quashed after 19 years**

The ACT Supreme Court has quashed the conviction of David Harold Eastman in the most notorious murder case ever in the national capital.

Eastman was convicted 19 years ago for the murder of Colin Stanley Winchester, an AFP assistant commissioner, shot twice in the head at close range at the wheel of his car having just parked near his home on 10 January 1989.

Eastman walked free from prison on the day of the Supreme Court decision last month, suddenly an unconvicted person after two decades.

He did not receive a fair trial, the court said, because the Australian Federal Police and the Director of Public Prosecutions failed to disclose material to the defence, and because the forensic evidence presented in the case was fundamentally flawed.

The court referred to the ACT DPP the question of whether Eastman should be re-tried.

The history of the Eastman case in the ACT is long and tortuous. It points to the need for the ACT, like all Australian jurisdictions, to adopt the new Right To Appeal provision written into South Australian law in mid-2013. Civil Liberties Australia, along with the author of the SA law, Dr Bob Moles, has been campaigning for national uniformity in murder appeals.

Doing so would be simpler, cheaper and fairer than the convoluted path that led to Eastman’s freedom.

A coronial inquest into the death of Winchester began hearing evidence in August 1989. An open finding was recorded in December 1991. However, the inquest was re-opened in November 1992 and, after taking further evidence, Eastman was committed for trial for murder by the coroner on 24 December 1992.

The trial began on 2 May 1995 and Eastman pleaded not guilty. The trial ended on 3 November 1995 when the jury returned a verdict of guilty of murder. The trial judge sentenced Eastman to prison for life without parole, under a system where only the ACT Executive Government could decide to release him.



Eastman (pictured, two decades ago) has always denied any involvement in the killing of Winchester. He has appealed constantly for 19 years through a variety of routes, all involving long and costly court hearings.

In the latest round, on 3 September 2012 Additional Justice Marshall ordered an Inquiry under a section of the

Crimes Act into the conviction of Eastman for the murder of Winchester.

On 7 September 2012 Acting Justice Kevin Duggan was appointed as a board of inquiry to inquire into Eastman's conviction. On 22 July 2013, Acting Justice Duggan disqualified himself as Chair of the Board for possible conflict reasons.

On 23 July 2103, Acting Justice Brian Ross Martin was appointed Chair of the Board. He recommended Eastman be released as the conviction was not sound. Under ACT law, it was up to the ACT Supreme Court to confirm, or alter, that recommendation.

The court last month confirmed the quashing of the verdict, and freed Eastman...but recommended the DPP consider a re-trial (Martin had recommended there be no re-trial).

Eastman will return to court on 11 September: however, a re-trial – if any – is not likely before 2015.

The Supreme Court's latest findings have merely started another expensive merry-go-round in the fiasco that has been the Winchester investigation by the AFP, the handling of the case by the ACT DPP and the ACT court system, with successive ACT governments not free of blame in the matter.

## Forensics again found wanting

In the Eastman case (above), the forensic scientist in the case, Victorian-based expert Robert Collins Barnes, strongly linked gunshot residue found in Eastman's Mazda boot with the murder scene.

Even Eastman's trial judge, Ken Carruthers, paid tribute to the strength of the forensics when sentencing Eastman to life in November 1995, the Canberra Times reported.

"This investigation must surely rank as one of the most skilled, sophisticated and determined forensic investigations in the history of criminal investigation in Australia," he said at the time.

That statement was left in tatters by the Eastman inquiry.

A covert recording between the supposedly-independent Mr Barnes and a senior detective was played to the inquiry in which he described himself as a "police witness", and attempted to stymie attempts to have his work thoroughly reviewed.

Any serious investigation of Mr Barnes would have found he lacked objectivity, overplayed the strength of his evidence, and became emotionally involved in the case, the inquiry found. The provenance of critical evidence was either non-existent or highly doubtful, and fundamental data was not produced by Mr Barnes prior to trial.

"In some instances it is apparent that Mr Barnes could not have undertaken the organic analyses upon which he claimed to have based his opinions," Acting Justice Martin found. "In other respects, the contemporaneous accounts strongly suggest that such analyses were not carried out and that Mr Barnes' report was wrong." <http://tinyurl.com/l2b5ez3>

The number of miscarriages of justice in Australia caused by bad forensic science is alarming. Civil Liberties Australia believes we need to find a mechanism throughout Australia to re-examine murder convictions where forensic science has played a major role.

## Crime and booze assaults down; Territory sobers up

Crime statistics for the end of June show assaults down 14% Territory-wide and alcohol-related assaults down 18% across in the first six months of 2014, NT Attorney-General John Elferink reported.

There were 428 fewer alcohol-related assaults in the first half of 2014 compared to 2013, with alcohol-related assaults down 3% in Darwin.

"Police data also shows that during the time Alcohol Protection Orders and DarwinSafe have been operating, Mitchell Street (the main street) has seen assaults drop by 24%," he said.

"Alcohol-related assaults are down 27% in Alice Springs, down 15% in Katherine and a staggering 47% in Tennant Creek in the first six months of the year compared to the same period last year."

Per capita alcohol consumption in 2012-13 was down 4% on 2011-12 and down 16% on 2004-5.

## ...but alcohol orders may be invalid

Hundreds of alcohol protection orders (APO) issued by NT police may be invalid – they are racially discriminatory – after the territory's supreme court quashed several orders against one man.

The court ruled that police had not validly issued an APO to Isidore Nummar while he was in protective custody in December, 2013, so that four subsequent orders issued to him were all invalid also.

APOs were introduced in late 2013 to combat problem drinkers. They are issued to anyone who, while drunk, is charged with an offence attracting a potential jail term of at least six months. The person is prohibited from possessing or drinking alcohol or entering licensed premises for 3 to 12 months.

Such crimes can include loitering or shoplifting, and people on orders can be prevented from entering supermarkets and sports stadiums that sell alcohol. APOs can be implemented before people are found guilty by the courts, and if they breach them they can be jailed.

About 1000 orders have been issued over the past several months, with some people such as Nummar given back-to-back orders totalling years.

"This decision concerns a failure by police to follow the requirements of the APO act in issuing APOs in this particular case, but it highlights the excessively broad discretion given to police and the potential for APOs to be used in an oppressive way," said Jonathon Hunyor, principal legal officer at the North Australian Aboriginal Justice Agency (Naaja), which acted for Nummar. <http://tinyurl.com/lpbp9pm>

## DPP appeals his conviction for unlawful killing

The *Hobart Mercury* has reported that the suspended Director of Public Prosecutions Tim Ellis will be back in court on 11 November appealing against his guilty verdict.

Mr Ellis killed Natalia Pearn on 24 March 2013 when his Mercedes crossed to the wrong side of the Midland Highway and crashed into her car. Ms Pearn, 27, died at the scene.

He was found guilty of negligent driving causing death by Magistrate Chris Webster on 25 June. On 15 July in the Supreme Court, Mr Ellis's legal team launched a bid to prevent sentencing in the Magistrates Court before the appeal is heard.

Justice David Porter granted a temporary stay of further proceedings, before disqualifying himself from hearing the final application and suggesting that an interstate judge may have to be brought in to hear both the application and the appeal. <http://tinyurl.com/n8yn865>

## Australian briefs

**New law reformers announced:** The Queensland Law Reform Commission will be headed by Justice David Jackson of the Supreme Court. Other newly appointed members are former Supreme Court Justice Margaret Wilson, Peter Hastie QC, Associate Professor and Reader in Law at the University of Queensland Dr Peter McDermott, and former senior lecturer in Law at Queensland University of Technology, Samantha Traves. <http://tinyurl.com/n3jvxcz>

**Police push bikies outside Canberra limits:** Police in the ACT have established a dedicated group, Task Force Nemesis, to target suspect motorbike riders. In just two months, they arrested nine people and laid 23 charges (non-one had been convicted at time of reporting). ACT Chief Police Officer Rudi Lammers said there had not been an increase in illegal activity and the task force was a pre-emptive move. "This is about making sure that the ACT is not a transit route between Melbourne and Sydney for outlaw motorcycle gangs," he said. There were concerns bike gangs were involved in drug trafficking, money laundering, extortion and serious assaults. <http://tinyurl.com/p83ldy3>

**High time for new CanniCard:** A Nationals' MP wants to introduce CanniCards (cannabis permit cards, like drivers' licences) for terminally ill patients in NSW so they can carry medicinal marijuana. Tamworth's Kevin Anderson's draft legislation would decriminalise medicinal marijuana. Liberal Premier Mike Baird said his support for the idea would depend on how well it addressed supply and regulation issues. <http://tinyurl.com/n48lkux>

**Territory gets its own 'CAT':** The NT is setting up, the NT Civil and Administrative Tribunal (NTCAT), a one-stop-shop for civil and administrative appeals. Attorney-General John Elferink said about 117 Acts will be gradually amended to allow for the quicker-and-easier appeals mechanism of NTCAT. A further 54 Acts, including an appeals process through the Supreme Court and Local Court, will be assessed to identify suitability for the NTCAT. – media release 21 Aug 2014

**NT prisoners build pens to 'lock up inmates':** Prisoners in Darwin and Alice Springs are building holding pens for cattle under contract to the Australian Agricultural Company. The move is part of the Working Prisons Policy, and will see 40

prisoners employed for three months. The aim is to upskill prisoners so they can get jobs on release.

**Is new \$457m, network for surveillance?** Telstra is creating a brand new \$457 million wireless network in Queensland for the G20. Creating the new communications infrastructure is almost complete, with Telstra establishing special new networks in Brisbane and Cairns, where the finance ministers and central bank governors meet this month (September). Queensland parliament passed the *G20 (Safety and Security) Act 2013* in October 2013. It creates warlike powers of physical security exclusions and draconian powers of arrest around the G20 and associated events. The federal government's new laws create equivalent laws for electronic and spying powers.

## Civil Liberties Australia - report for August 2014

### Board meeting 26 August: some points

Member Pauline Westwood noted as doing excellent job monitoring TPP agreement progress/hiccups.

Sue Neill-Fraser (SNF) miscarriage of justice in Tasmania:

- the stage play of the case, a suggestion of CLA, is progressing well, in third refinement; likely to be completed by next Board meeting (November);
- SNF case featured on TV program 60 Minutes on 24 August;
- formal Petition for Mercy document likely to be lodged in late October or November: several CLA members are assisting preparation.

Right to Appeal campaign: conference in Adelaide on 7-8 Nov 2014. President and CEO to attend.

Qld double jeopardy law status: to be followed up

Article on Security/Privacy online written by V-P Tim Vines has been posted on CLA website; similar article covering mobile phone rights/wrongs in preparation.

Treasurer, Phil Schuber (pictured):

Reported CLA's finances are in good order; fee increase (to \$40pa) on 1 Jan 2014 after 10 years of the same subscription fee (\$25pa) is producing gradual increase in available funds. The Board passed a formal vote of thanks for the excellent work of Treasurer, Phil Schuber.



Submissions:

- Joint submission with other CL groups on proposed new intelligence laws: appeared at hearing of Parl Joint Cttee on Intelligence and Security on 18 August. CLA has lodged two further submissions (which, at the time of writing, had been refused acceptance by the committee):
  - *What is the most significant threat to Australians' safety from returnees?*
  - *Problem of anti-terror changes always being considered in isolation*
- Submission prepared by members Dr Joan Greig and Umberto Torresi lodged on Inquiry into the Migration Amendment (Protecting Babies Born in Australia) Bill 2014

- Submission prepared by Phil Schubert, Tim Vines and Bill Rowlings lodged on Recognition of Foreign Marriages Bill 2014
- Submission on Use of Subsection 313(3) of the T'coms Act 1997 by Government Agencies to Disrupt the Operation of Illegal Online Services: prepared by Arved von Brasch and lodged to the House Standing Committee on Infrastructure and Communications.
- Submission to the Australian Law Reform Commission on the Freedoms Inquiry is being worked up by Rhys Michie in Victoria.
- V-P Tim Vines has been asked to appear before a NSW Parl Cttee on the Health Care Complaints Commission about the Promotion of False or Misleading Health-Related Information or Practices

Tasmania Director and media spokesperson Richard Griggs:

- CLA (RG) was opening speaker at a rally of about 1000 people at Hobart Town Hall to protest draconian new protest laws, which have passed the Lower House and are due in the Upper House in October, which also involve mandatory sentences of three months for a second offence. Other speakers included former Senator Bob Brown of the Bob Brown Foundation and Greg Barns, CLA member, representing the Australian Lawyers Alliance.
- CLA-generated petition on Tas Parl House website has 2500 signatures, rising.

WA Director and media spokesperson Rex Widerstrom:

Homelessness issues in WA are growing problem  
Crackdown by Centrelink on people least able to represent themselves is a worrying new trend.

Victoria media spokesperson in training Rhys Michie:

Working with tattoo parlour association to try to ensure anti-bikie legislation does not sweep up in its dragnet the activities of legitimate parlour operators.

Preparing Freedoms Inquiry submission - more volunteers welcome.

Invitation to present at conferences:

- CEPS at Griffith U, Brisbane in late-2014: paper/presentation requested for protest laws seminar - Richard Griggs to represent CLA. CEPS: Centre for Excellence in Policing and Security.
- Flinders U, Adelaide: request for paper/panel appearance at 7-8 November symposium (see Dates below).

## President attends DFAT NGO Consultation

About 30 representatives of a wide range of NGOs concerned with human rights attended. The focus was on international aspects of human rights: i.e. Australia's role with UN General Assembly Third Committee, Human Rights Council and on the Security Council. The campaign for Australia to be on the UN Human Rights Council was raised.

Universal Periodic Reviews of member countries' performance on human rights were noted.

The progress of amalgamation of DFAT with AusAid was discussed and was, reportedly (according to DFAT) proceeding well.

A feature of the discussion was the range and quality of questions from participants. It is hoped there will be a future NGO consultation, perhaps in conjunction with the AG's Department, which focuses on domestic human rights issues.

*Photo from the DFAT NGO meeting shows Tessa Scrine of the Bahai group, and Amanda Alford, Deputy Director of the National Association of Community Legal Centres. Alford is a former board member of CLA.*



## INTERNATIONAL

### DRIP Act in UK criticised for lack of scrutiny

"It is shameful that, in a year since the Edward Snowden revealed the scope of the UK mass surveillance activities, the only British parliamentary action in relation to surveillance has been to drastically expand the interception powers of intelligence agencies," Privacy International says.

"In both process and substance, the Data Retention and Investigatory Powers (DRIP) Bill has been a stitch up from the start.

"The rushed nature with which the legislation was rammed through parliament shows an utter disregard for the democratic process and the rule of law.

"In an effort to circumvent any genuine scrutiny of what is a dramatic expansion in the British surveillance state, DRIP was dubbed an emergency and its passage deprived of any adequate debate or amendments." – media release <http://tinyurl.com/okq9jy7>

### Violence rises as prisons filled to overflowing

Official figures show violence is rising in prisons across England and Wales, with serious assaults up 30%, three murders in the past 12 months and a 69% rise in suicides.

Ministry of Justice figures reveal self-inflicted deaths in prisons rose by 36 to 88 in the 12 months to the end of March, the highest level since 2005.

Prison governors have repeatedly warned jails are struggling to cope with a record population of more than 85,000 in increasingly crowded conditions under budget cuts of up to 24% over the past three years.

The latest justice ministry figures indicate prison governors are beginning to lose the fight: nearly a quarter of the 126 prisons officially received poor performance ratings.

By comparison, 35 probation trusts across England and Wales were all rated "good or exceptional" in their last year of operation.

They were abolished in June 2014, and 70% of their workload is to transfer to community rehabilitation companies.

The prison population rise is mainly driven by an 11% increase in remand prisoners, but those sentenced are also facing longer terms. Sentenced sex offenders now number nearly 11,000, with eight dedicated prisons holding most of

them. Statistics also show more than 5,000 prisoners serving the now abolished indeterminate sentence for public protection, of whom 70% have already passed their "tariff" date. <http://tinyurl.com/m84oqbb>

## Extent of spooks' metadata reach is mind-boggling

The US National Security Agency is secretly providing data to nearly two dozen US government agencies with a "Google-like" search engine built to share more than 850 billion records about phone calls, emails, mobile phone locations, and internet chats, according to classified documents obtained by *The Intercept*.

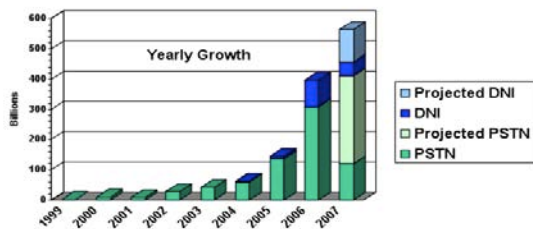
The documents provide the first definitive evidence that the NSA has for years made massive amounts of surveillance data directly accessible to domestic law enforcement agencies, Ryan Gallagher reported.

Information is also being shared with 'Five Eyes' partners, including Australia.

Planning documents for ICREACH, as the search engine is called, cite the Federal Bureau of Investigation and the Drug Enforcement Administration as key participants.



**(S//SI//REL) Increases NSA communications metadata sharing from 50 billion records to 850+ billion records (grows by 1-2 billion records per day)**



**\*(C//REL) Includes Call Events from 2<sup>nd</sup> Party SIGINT Partners (est. 126 Billion records)**

SECRET//COMINT//REL TO USA, FVEY//20330108

**NOTE:** The above chart is up to 2007 only.

ICREACH contains information on the private communications of foreigners and, it appears, millions of records on American citizens who have not been accused of any wrongdoing. Details about its existence are in the archive of materials provided by NSA whistleblower Edward Snowden.

Information shared through ICREACH can be used to track people's movements, map out their networks of associates, help predict future actions, and potentially reveal religious affiliations or political beliefs.

The search tool was designed to be the largest system for internally sharing secret surveillance records in the USA, capable of handling two to five billion new records every day, including more than 30 different kinds of metadata on emails, phone calls, faxes, internet chats, and text messages, as well as location information collected from mobile phones.

"ICREACH has been identified by the Office of the Director of National Intelligence as the US intelligence community's standard architecture for sharing communications metadata," an Administration memo states.

It added that it provides "telephony metadata events" from the NSA and its Five Eyes partners "to over 1000 analysts across 23 US Intelligence Community agencies." <http://tinyurl.com/o3rwfmf>

## ODD SPOT: How robust is justice in the UK? Is it different here?

From the date of its establishment in March 1997 to 31 January 2013, the (UK's) Criminal Cases Review Commission received 17,356 applications. Of these, 512 cases were heard by the Court of Appeal, 353 of which were quashed and 148 of which were upheld. – NSW Law Reform Commission *Report 140, Criminal Appeals*, March 2014, p 261.

Of the 512 cases of serious crime convictions, many of murder, that were formally re-heard by the appeal court, about 7% were overturned: that is, the convictions were in error.

Of the 17,356 people who claimed they had been wrongly convicted, 512 (about 3%) eventually got back into court for a new appeal because of the CCRC process in the UK.

Australia has no similar review mechanism: it is likely many people – several hundreds – in jail in Australia should not be.

## CIA stands for Congress Invigilating Agency

The director of the Central Intelligence Agency, John Brennan, has issued an extraordinary apology to the US Senate intelligence committee, conceding that CIA employees spied on committee staff.

His apology reverses months of furious and public denials.

Brennan acknowledged that an internal investigation had found CIA security staff transgressed a firewall set up on a CIA network, which allowed Senate committee investigators to review agency documents for their landmark inquiry into CIA torture. Among other things, it was revealed that agency officials conducted keyword searches and email searches on committee staff while they used the network. <http://tinyurl.com/oq27rtn>

## Jailhouse lawyer should be let to 'pass go'

Visiting Justice Simon Mount found last month that detaining NZ prisoner Arthur Taylor – the 'Jailhouse Lawyer' – in maximum security conditions since August 2013 was effectively unlawful.

This is the fourth time in 2014 that NZ Corrections has been found to be violating Taylor's rights and treating him unlawfully. Taylor said he was "rapt" that his stand against unlawful treatment had been vindicated by the formal report to Ray Smith, chief executive of Corrections.

Taylor said he expected to be placed in the same position as if the breaches described by Mr Mount had not occurred. This would mean a transfer out of Paremoremo Maximum Security Prison to a place where he is able to complete the rehabilitation courses the Parole Board has recommended for him since 2007.

Mr Taylor said Mr Mount's Report had implications for many other prisoners at Paremoremo, who may also be being unlawfully detained in Maximum conditions.

## Cost of state execution rises

Texas is paying four times more for its execution drugs from a new supplier.

The busiest death penalty state in the USA paid \$14,500 for its most recent batch of pentobarbital (brand name Nembutal) at a cost of \$1600 per vial, compared to \$375 a dose last year, according to FOI documents obtained by *Associated Press*.

The extra cost comes after the state's previous supplier refused to provide more of the powerful sedative last year, claiming the company was being targeted by execution opponents. Prison officials have since found a new compound pharmacy for pentobarbital, and have waged a successful legal battle to keep the business's name secret.

Just a few years ago, it cost about \$90 in Texas for its former three-drug combination of sodium thiopental, pancuronium bromide and potassium chloride administered to condemned prisoners. But Hospira Inc, the sole US manufacturer of sodium thiopental, stopped production in 2010 and dropped plans to produce it in Italy because the government there asked for guarantees it would never be used in executions.

Texas then switched to pentobarbital, but Denmark-based Lundbeck Inc, the drug's only US-licensed maker, bowed to pressure from death penalty opponents and announced its medication was off-limits for capital punishment.

The higher cost in Texas now does not appear extraordinary. A survey of nearly two dozen pharmacies in the Houston area shows Nembutal, the brand name for pentobarbital, sells for about \$1600, and Missouri, which also uses pentobarbital for executions, paid as much as \$8600 per dose last year. <http://tinyurl.com/ocotdoc>

## Personal health records hacked...from China?

A healthcare system spanning 29 US states announced last month that cyber criminals from China stole data on 4.5 million patients, including names, birth dates, and social security numbers.

Community Health Systems, with 206 facilities in the southern and western states, revealed the breach to the Securities and Exchange Commission. The penetration occurred in April and June, involved sophisticated malware, and is apparently connected to China, the company said.

Cyber criminals usually seek intellectual property and sensitive information on business or policy, not personal information. The stolen data includes patient names, addresses, birth dates, phone and social security numbers, but not credit card, medical, or clinical information, the company said. <http://tinyurl.com/m6o679x>

## Rap lyrics beat the rap

Rap lyrics can't be used as evidence unless they include "a strong nexus" to the crime in question, a judge has ruled.

At issue was the case of Vonte Skinner, an aspiring rapper convicted of attempted murder in the US state of New Jersey in 2008. Violent lyrics that Skinner had written years in advance of the crime figured heavily in his trial.

In the opinion written by Justice Jaynee LaVecchia, the Supreme Court of New Jersey noted that rap lyrics, even those depicting acts of violence, aren't a crime. The court also said that reading the lyrics risked "poisoning the jury" against Skinner.

"One would not presume that Bob Marley, who wrote the well-known song 'I Shot the Sheriff,' actually shot a sheriff, or that Edgar Allan Poe buried a man beneath his floorboards, as depicted in his short story 'The Tell-Tale Heart,' simply because of their respective artistic endeavors on those subjects. [Skinner's] lyrics should receive no different treatment," LaVecchia wrote.

The court ordered that Skinner be given a new trial.

Skinner, who recorded under the name "Real Threat," was convicted of shooting and paralyzing a drug dealer named Lamont Peterson in 2005. Skinner admitted to being at the Civil Liberties Australia A04043

scene, but denied involvement in the shooting.

Police later found notebooks in Skinner's car filled with violent lyrics, and he was charged with first-degree attempted murder among other charges. <http://tinyurl.com/pzqq2gp>

## INTERNATIONAL BRIEFS

**Same-sex marriage proves popular:** There were more than 1,400 same-sex marriages in the UK in the first three months after they became legal, according to official figures from the Office of National Statistics. A rush of couples tied the knot shortly after legality at midnight on 29 March. Over the next two days there were 95 same-sex weddings, with 351 in April, 465 in May and 498 in June. Women marrying outnumbered men, with 796 female couples compared with 613 male couples. The average age of women marrying was 37, more than a year younger than that of men. <http://tinyurl.com/mt8y9y4>



**Top judge devalues EU court's decisions:** UK judges have been "too ready" to follow decisions of the European Court of Human Rights, according to the UK's most senior judge, Lord Neuberger (pictured), president of the supreme court. He said at a conference of the Victorian Supreme Court in Melbourne that UK judges were beginning to see such an approach as not appropriate. One of the most controversial aspects of the European convention on human rights

was that it was an international set of rules with the ECHR in Strasbourg as "its final arbiter". "UK judges have, I suspect, sometimes been too ready to assume that a decision – even a single decision of a section of that court – represents the law according to Strasbourg, and accordingly to follow it," he said. <http://tinyurl.com/nebl43u>

**Search and ye shall discriminate:** The London Metropolitan police service, with 31,000 officers, has signed up to the "best use of stop and search code of conduct", previously announced by the British Home Secretary, Theresa May, who has admitted the power was being misused. Authorities found that 27% of stop and searches did not contain reasonable grounds for suspicion, meaning more than 250,000 of the 1m searches conducted last year could have been illegal. Last year, 47,141 arrests were made as a result of stop and search, representing 20% of total arrests by the Met, and of the 251,161 people who were stopped and searched from August 2013 to July 2014, 115,270 (46%) were white, 72,016 (29%) were black and 34,267 (14%) were Asian. Men accounted for 94% of all searches. <http://tinyurl.com/o4nb8fl>

## DATES

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

**3 Sept, Melbourne:** The Marginalisation of Parliaments, public lecture 6.30-8.30pm by Prof Cheryl Saunders. Old Arts Building, U. Melbourne, Register: [tamsinc@unimelb.edu.au](mailto:tamsinc@unimelb.edu.au) or (03) 8344 8985. Details: <http://tinyurl.com/k4pgv82>

**4 Sept Canberra:** The US rebalancing to Asia, lecture by Christopher R. Hill., former US Asst Sec of State for East Asian and Pacific Affairs. Finkel theatre, John Curtin Medical



School. 4.30-7.30 pm. Chair Gareth Evans, ANU chancellor. Free. Register <http://tinyurl.com/q6b2vm8>

**5 Sept, Brisbane:** annual criminal law conference, Qld Law Society, all day: details <http://tinyurl.com/ktdau4x>

**11 Sept, Melbourne:** Social Media and the Law: How is social media impacting our legal system? Public lecture 6-8pm at Level 20, 360 Collins St Melbourne, by head of La Trobe Law School, Dr Patrick Keyzer, and lecturer Marc Trabsky. Book by 4 Sept to Madeline Organero [m.organero@latrobe.edu.au](mailto:m.organero@latrobe.edu.au); 03 9479 2689

**12 Sept, Canberra:** Australian Young Lawyers conference and national golden gavel award: Parl House, 9.30am, golden gavel from 6pm. Register: <http://tinyurl.com/poyphug> or phone Nicole (02) 6247 5700

**15 Sept, Canberra:** Film showing of *Charlie's Country* with David Gulpilil, to celebrate the anniversary of the UN Declaration of the Rights of Indigenous People, 5 for 5.30pm, Arc Theatre, Nat. Film & Sound Archive. Register by 8 Sept with [www.hrc.act.gov.au](http://www.hrc.act.gov.au) or phone 02 6205 2222.

**17 Sept, Melbourne:** Religion and the Law, presented by Lord Dyson, Master of the Rolls for England and Wales, as the Sir George Turner public lecture. G08 Melbourne Law School, 6-7pm. Details: <http://tinyurl.com/lqtqpg> Register: [law-events@unimelb.edu.au](mailto:law-events@unimelb.edu.au) or 90351111

**22 Sept, Adelaide:** Improving public trust and satisfaction in the courts: presented by Flinders Law School, the A. Institute of Judicial Administration and SA Judicial Education Committee, free, 5-6.30pm Level 11 Boardrooms, 182 Victoria Sq, Adelaide. Details: [judicial.research@flinders.edu.au](mailto:judicial.research@flinders.edu.au), 08 8201 5537)

**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>

**16 Oct, Sydney:** Charles Perkins Memorial Oration and Prize, 6-8.30pm, Great Hall, U. Sydney. <http://tiny.cc/Oza8gx>

**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>



**7-8 Nov, Adelaide:** In the Shadows of Justice (tentative title), conference of Centre for Criminal Justice, Policy and Research at Flinders U. Details: [willem.delint@flinders.edu.au](mailto:willem.delint@flinders.edu.au) with keynote speaker Prof Kent Roach (left) of Canada. Features miscarriage of justice cases in Australia, with CLA speakers.

**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)

**14-15 Nov, Manly, Sydney:** Aust. Labour Law Association biennial conference. 'Under the Microscope: the Next Phase of Aust. Labour Law. <http://tiny.cc/iua8gx>

**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:**

**1-3 Feb, Melbourne:** Corporate Law: local and global dimensions, the 2015 Corporate Law Teachers Association annual conference, Melbourne Law School. Keynote speaker: Prof Robert Thompson of Georgetown U. Info: <http://tinyurl.com/ma98uo3>

**14-15 Feb, Canberra:** National Judicial College of Australia conference, ANU. Details: <http://njca.com.au/program/anu-njca-conference/>

**17-20 March, Brisbane:** 7th Australian drug and alcohol conference, hosted by Queensland Police and Australian Federal Police. Brisbane Convention Centre. Details: <http://event.icebergevents.com.au/adasc-2015/>

**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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