

Thank you to members who contributed

The Civil Liberties Australia executive says a heartfelt “thank you” to 20 members who answered the call for comments on “What can we say” made in the October CLArion.

We are in the process of collating the responses into a two separate papers analysing a. what is wrong with the current parliamentary committee system in relation to terrorism legislation in particular, and b. generally how Australians can have more say in the day-to-day processes of government.

Summarising the comments

Members of CLA offered suggestions which ranged from civil disobedience (not obeying certain laws) to creating a new political party for the next federal election.

Perhaps we should format the Civil Liberties Australia Party, with a pair of hands clapping as a symbol?

What was surprising was how fed up with national politics people were, and how low was their opinion of politicians.

There was a consensus that we were losing our liberties and freedoms through the activities of both major political parties, who did not know and did not care. The situation was summed up in this excellent cartoon by John Ditchburn of Inkcinct:



Committee grabs for power

The Parliamentary Joint Standing Committee on Intelligence and Security has made a grab for greater power over all Australian spook activity.

Its intentions were largely overlooked when PJCIS reported on Tranche 2 of new security legislation, which – among other things – threatens to jail for 5-10 years journalists and other commentators who reveal a secret intelligence operation of ASIO...even if revealers didn't know about the operation.

Tranche 2 is the Foreign Fighters bill, which will for the first time restrict the right of Australians to travel virtually anywhere they choose: in future, for many regions you will have to get government permission.

Tranche 3 is the data retention proposal, where everything you say and do over a comms network will be recorded for

years so the government can spy on you retrospectively, as well as in real time.

Writing about the PJCIS Tranche 12 report, Crikey's Bernard Keane said:

“...what's noteworthy about the report is that the committee (which, bear in mind, isn't an ordinary committee but one established separately in legislation) wants to deal itself much more explicitly into not just future legislative reviews — such as for preventive detention orders — but in overseeing the designation process that the bill would set up.

“This will be a significant shift by a committee that has traditionally had a limited role, primarily in relation to administrative matters of intelligence agencies, unless a government has specifically requested it to consider an intelligence or security issue...

“...the committee thus also wants its role extended to encompass the counter-terrorism activities of the Australian Federal Police (including “anything involving classified material”). These changes to the role of JCIS, if accepted, would establish in legislation a substantially greater review function ... in overseeing how established legislation is being implemented by the government – in effect codifying the role of JCIS.

“This reflects a desire on the part of some committee members to fill what is an increasingly obvious gap in the broken oversight of Australia's intelligence agencies, especially compared to the way the Brits and the Americans run parliamentary oversight of agencies.” – Bernard Keane, Crikey, 17 Oct 20-14 <http://tinyurl.com/lv9ynd>

The PJCIS can be reached here: <http://tinyurl.com/og7xuuf> ... if the Parliament House website is working properly, which it frequently is not.

CLA agrees with need, but not solution

Civil Liberties Australia agrees there is a need for greater supervision of all Australia security and intelligence agencies, including ASIO, ASIS and police and defence agencies and sub-agencies, and how the Inspector-General of Intelligence and Security (IGIS) operates.

But we don't agree the unbalanced PJCIS is the place for that scrutiny. Its members are largely chosen because of past experience in security (worked for a spy agency, high ranking military, or worked in government with the agencies).

Choosing such already imbalanced MPs for a committee reviewing security and intelligence is exactly the wrong approach: the outcome is always a spook-skewed view of propriety because of the MPs' backgrounds. They are in and of 'The Club', rather than being external to it, and reviewing it.

The members of the PJCIS should represent the average Australian, not be self-evidently biased by their previous or existing connections and possible compromises they have already made.

There should be open and transparent public hearings, as in the Senate Estimates process, at which all security, police and intelligence-related agencies should be open to questioning by non-specialists MPs. Such hearings occur in other countries, like the US and the UK.

For those people – including MPs – who say IGIS already supervises most of the key agencies, that is just plain wrong. As CLA's CEO, Bill Rowlings, told the PJCIS hearing into Tranche 1:

"IGIS is a clerical role. It does not have the power to examine the choices made by any of the agencies it looks at — that is, why the agencies have chosen to do what they do or why they have chosen not to do other things that they have not done. IGIS has no ability to look at the priorities that the agencies give... IGIS simply is a tick-the-box audit process, 'Use a blue-coloured pencil; did you follow these protocols when you took out a warrant...?' et cetera. That is the IGIS role."

When CLA asked the current IGIS, Dr Vivienne Thom, to launch 'own motion' inquiries into highly relevant aspects of agency operations, she studiously avoided doing so.

CLA believes that all the agencies, IGIS included, need much better – and transparent, in public – supervision by the parliament than currently occurs. There should be open parliamentary hearings, broadcast live on radio and TV.

The PJCIS is making a power bid for that role as a "select" committee of parliament. Because of its "select" composition, it would be precisely the wrong body to have this role...unless membership is expanded to include people representing "average" Australians, not the military/police/intelligence/security elite.

Faulkner bids for upgraded PJCIS role

Senator Faulkner, a PJCIS committee member, said late last month that it was time for "a comprehensive review of the oversight of Australia's security agencies".

"It is the parliament to which the intelligence agencies are accountable and it's the parliament's responsibility to oversee their priorities and effectiveness."

Photo: Senator John Faulkner and Dr Kristine Klugman, President of CLA, meet earlier in 2014 to discuss security and democracy issues.



The PJCIS should have greater powers of oversight of security agencies and greater access to confidential and classified information, Senator Faulkner told parliament. <http://tinyurl.com/m65a5ph>

CLA says that, if the members of the PJCIS were all men and women with a track record similar to that of Senator Faulkner, his idea may be sensible. But they are not necessarily of similar quality to the Senator, who has announced he will not be returning to the Senate after the next election.

We also take issue with his notion that the Super CIS he envisages should comprise "experts" in the security and intelligence field. Civil Liberties Australia believes there should be experts in civil liberties, human rights and freedoms equal in number to the spook experts on any such committee.

NOTE: Tranche 3 – data retention – was introduced into the House by Communications Minister Malcolm Turnbull just as this issue of CLArion went to press.

Warning bells ring loud about spook agencies

Complaints about Australia's intelligence agencies increased 34% last financial year, which was on top of a 14% increase the year before. IGIS received 504 complaints last year

(mostly about visas), the SMH reported...but more time was spent dealing with complaints of misconduct or security breaches. <http://tinyurl.com/pguzjri>

In Afghanistan last year, an SAS soldier apparently drew a handgun as a threat against an ASIS agent while both were drinking, according to reports. <http://tinyurl.com/osmm6rp>

There were Royal Commissions into Australia's intelligence operations in 1974-77, 1983-85 and 1994-95 (and one into telephone interceptions in 1985-6).

The most recent examination was the Flood inquiry in 2004, following by a review of ASIO stating in 2005 and an "independent" revue of the intelligence community in 2011.

It is now 20 years since Australia's dangerous organisations – dangerous because they operate in secret – were reviewed in detail by a Royal Commission, and 10 years since the broad-based Flood inquiry (which, incidentally, found that Australia's intelligence agencies did not, repeat not, confirm that weapons of mass destruction existed in Iraq).

Since 2004, the number of organisations involved in secret squirrel activities, and their powers and reach, have extended geometrically: there are 60-plus new laws since 9/11 13 years ago which extend their powers over citizens. Their staffing and budgets have trebled.

It's time for another Royal Commission.

Terrorism 'debate' carries inherent dangers

The problem with the current domination of public debate by terrorism is that it allows the government to sneak through matters that should be front and centre of newspapers, and dominating TV and radio broadcasts.

The Trans Pacific Partnership agreement, for example, will radically alter Australia's right to legislate for social good, making us subject to the decision of non-judicial international tribunals if a company doesn't like the way Australia operates.

Yet a major meeting of the secret TPP negotiation group, involving Australia, the US and 10 other countries, took place in Canberra last month and barely registered in the public consciousness.

The Japan free trade agreement passed parliament, and the public hardly blinked, just like the Korean FTA also passed recently.

Yet these agreements provide massive benefits to the rural sector at the expense of greater costs to the vast majority of urban Australians, including in health (and access to medicines), cheaper software and being able to pay reasonable prices for downloaded movies and songs.

ODD SPOT: Media rumour panics Australia's Most Fearful

Parliament's infamous burqa ban was brought to you by the President of the Senate Stephen Parry (Lib, Tas) and the Speaker of the House of Representatives Bronwyn Bishop (Lib, NSW).

There might be some excuse for ignorance of security matters for Bronny Blowfly, but Thrustan Parry spent 10 years as a Tasmanian policeman, four as a detective (he was also a funeral director for 18 years, 10 of them embalming).

"The so-called 'burqa ban', and all the terrible signals it sent, and all the damage it did, was prompted by an anonymous tipster called 'Media Manipulator' dialling the 2UE whisper line with a rumour about a protest, which was heard by Channel Nine, whose film crew passed it on to the Australian Federal Police," wrote Lenore Taylor in the *Guardian*.

"The parliament house threat level has not in fact increased since 2010 and remains at medium – despite the increase in the national threat level from medium to high," she wrote.

PM Anthony John Abbott, speaking from his under-hill bunker, warned us in September that "chatter" involving the building had been picked up "between Australians in Syria and Iraq and their supporters here in Australia". We wonder who makes this stuff up?

Why should we believe anything any politicians say about fear levels when they are so easily spooked?

<http://tinyurl.com/pxr94pw>

Who can you believe? Possibly neither

How frequently Australians' private internet and phone metadata records are divulged to law-enforcement and spy agencies without a warrant is now completely unclear because two different government departments report different figures.

An annual report published by the Attorney-General's Department shows there were 339,067 warrantless metadata "authorisations" in 2012-13, but a separate Australian Communications Media Authority report reveals there were 551,942 authorised "disclosures", according to Ben Grubb in the *Canberra Times*.

ACMA's 2013-14 report, tabled last month, shows a further 582,727 authorised "disclosures" while this year's AGD's metadata report is yet to be released.

Which can you believe? Why should we believe either of them? <http://tinyurl.com/nzu6as7>

Twiggy card OK if freedom of choice

The Australian government is negotiating with banks about issuing welfare recipients with a card to restrict their use of benefits for things like food and clothing, banning spending on gambling and alcohol.

Civil Liberties Australia believes the move is acceptable, provided it is an option exercisable at the discretion of the welfare recipient, without duress. In other words, if free choice is involved.

The proposal was recommended by mining magnate John Andrew Henry Forrest, otherwise known as 'Twiggy', in his review of indigenous employment and training, released in August 2014.

The government has been examining Mr Forrest's 256-page report, which also suggested parents lose family payments if their children waggled school and tax-free status for innovative indigenous businesses. <http://tinyurl.com/k3v6lfq>

No human rights here, we're Australian

The Coalition government's proposed welfare changes breach Australia's human rights obligations, a parliamentary committee has found.

The proposal is to make jobless young people wait six-months before receiving unemployment benefits.

A bipartisan parliamentary report found the federal government would breach its international human rights obligations if it goes ahead with the proposal. The Joint Committee on Human Rights said "the committee considers that the measure is incompatible with the right to social security and the right to an adequate standard of living".

Despite the comment, the government is planning to go ahead with the plan. <http://tinyurl.com/ntxrugt>

Booker winner says amnesia is defence to privacy loss

Author Peter Carey (left), Booker prize winner in 1988 for *Oscar and Lucinda* and in 2001 for *True History of the Kelly Gang*, says we've been gradually robbed of our privacy, and things are worse than we think.



"Privacy should be a fundamental human right," Carey told the *Guardian's* Luke Harding.

"We've been tricked out of it to a great degree by giving up little bits of it along the way, because it's easier to give some information to Amazon or to Walmart or to whatever it is.

"So the water is getting hotter and hotter. We are used to being in the warm bath. We are putting up with it. But it is sort of evil, I guess." He adds: "We should be able to keep our information, our conversations private."

According to Harding, Carey says that, in a place where the state helps itself to our private data, things are worse than most of us realise. "It's more nightmarish than we can normally really allow ourselves to see. It's like amnesia in that sense: that you can't afford to see what you have done or where you are. Because if you did, you would be in deep despair." <http://tinyurl.com/qjd4s8o>

Carey's latest novel, *Amnesia*, has just been published.

Annabel Crabb writes on the DNA of innocence

If you have nothing to hide, you have nothing to fear. We hear that all the time, but privacy is woven deeply into the DNA of innocence. Giving it up – even voluntarily – is a sacrifice, made by people who are guilty of nothing beyond sharing a religion or an ethnicity with the guilty.

Of all the trauma caused by stupid-bastard terrorists, this is perhaps the least obvious and least gory, but one of the most lasting; the obligations imposed on innocent people to demonstrate their continuing innocence, even when they are accused of nothing.

In Australia, this might today be the subtle obligation on Islamic schools to demonstrate that they are not radicalising their students. On imams to demonstrate that their mosques are places of peace not hate. On women who wear the burqa. The burden of proof has shifted, subtly and nastily. <http://tinyurl.com/k99a67t>

ASIO free to kill in secret

If ASIO kills someone, accidentally or otherwise, the new terror laws prevent anyone publicly disclosing the fact, former independent national security legislation monitor, lawyer Bret Walker, said last month.

He disclosed grave concerns the new laws would give ASIO, and the foreign equivalent, the Australian Secret Intelligence Service, ASIS, too much power.

The new laws could allow illegal activities to go unreported. "I cannot see any justification for information relating to a special intelligence operation not being able to be disclosed if ... it shows the special intelligence operation has been conducted illegally," Mr Walker told *Fairfax*.

He said he was deeply concerned and "disturbed" by the fact nothing could be disclosed publicly under the new laws about

a special intelligence operation, including if an innocent person was killed.

Mr Walker said that he was concerned ASIO officers could be "shielded" by the law. He called this a "deficiency" in the legislation that AG George Brandis must address. <http://tinyurl.com/kvby3su>

ASIO spies on itself

The Australian Security Intelligence Organisation inadvertently spied on its own employees, in one of a series of surveillance breaches in the past 12 months compiled by Australia's intelligence watchdog.

The Inspector General of Intelligence and Security (IGIS) annual report was tabled in parliament last month, and identified a series of breaches of ASIO's spying powers at a time when the federal government is granting the agency unprecedented new powers.

IGIS identified four errors relating to the execution of search warrants by ASIO which constitute breaches of the law. Five breaches of law were also self-reported by ASIO, which included one incident in which ASIO intercepted calls from one of its own offices. <http://tinyurl.com/nham7kn>

SAS pulls gun on ASIS?

The Australian special forces soldier who pulled a handgun on a female spy last year in Afghanistan apparently intended it as a threat.

The ABC reported last month that the Inspector-General of Intelligence and Security, Dr Vivienne Thom, had reopened an inquiry into the use of weapons by the Australian Secret Intelligence Service (ASIS) in the wake of an "incident overseas".

Scant details of it were included in Inspector-General's annual report, but Dr Thom wrote: "While no physical injury resulted, the incident had the potential to cause serious injury."

The ABC confirmed the incident involved a trooper from Australia's elite Special Air Services regiment pulling a handgun on an ASIS agent. Both the soldier and the agent had been drinking. Both were armed. Another source has now confirmed the agent was a woman. <http://tinyurl.com/osmm6rp>

Defence has claimed it can't comment because the matter is "under investigation by IGIS. But Defence should be commenting on what its own investigations have revealed, CLA says.

Parliamentary standards are dropping quickly

The word 'dickhead' has made its way into parliamentary speech.

Senator David Leyonhjelm (Lib Dem, NSW, at right) used it to describe the 17yo Bankstown youth who went missing on a fishing trip and turned up in the Middle East waving a black flag.



Brendan O'Connor (Lab, Gorton Vic) criticised Senator Mathias "Girlyman" Cormann (Lib, WA) for "sounding like a dickhead" when using the sexist putdown against opposition leader Bill Shorten (Lab, Maribyrnong, Vic).

Immigration Minister Scott Morrison said opposition leader Bill Shorten was leader of "Team Idiot" on border protection. So much for debate on the human rights of refugees.

The standards in parliament are dropping:

- in general debate;
- during question time;
- on principle;
- in the quality of the representatives, as evidenced by some committees CLA has appeared before over the past decade; and
- in how Ministers think they are entitled to interfere with independent bodies...see below.

ASIC gets it right, one day

The Australian Securities and Investments Commission (ASIC) chairman Greg Medcraft told a business lunch in Sydney last month that civil penalties for white-collar offences were "just not strong enough".

"This is a bit of a paradise, Australia, for white collar, frankly," he said, expanding on his thoughts by saying Australia needed harsher jail terms and bigger penalties. "All you're doing is giving them a slap on the wrist [and] that is not deterring people."

But he metamorphosed into a wimp after a phone conversation with Finance Minister Mathias Cormann, who said he was concerned on seeing Medcraft's comments in the media. Before a Senate Estimates hearing later in the month, Medcraft said: "I correct that. Basically the point is that we want to make sure we don't become a paradise."

There, it's official. Australia, paradise for white collar crime one day, not a paradise the next.

CLA has previously commented that ASIO and the AFP could find many more criminals, doing much more damage to Australia and individual Australians, if they concentrated on the boardrooms of the nation rather than the back streets.

Apparently the chair of ASIC agreed with us, for one day. <http://tinyurl.com/mopbmwz>

ACC employee leaves over drugs

The Australian Commission for Law Enforcement Integrity wants more "high risk" public service agencies to introduce drug testing after a staff member at the Australian Crime Commission was caught out.

But Australian Privacy Foundation chairman Roger Clarke said blanket policies to test more public servants would be heading toward a Stalinist state which turned employers into police.

An ACLEI report last month revealed the ACC employee's resignation earlier this year, days after the agency widened its testing program to include all staff and not just those in operational jobs. The ACC employee walked out of the office when told of a looming test that [same afternoon and ACLEI later confirmed the staff member was using recreational drugs.](http://tinyurl.com/pcvkxke) <http://tinyurl.com/pcvkxke>

Crime Commissions have a poor record with drugs. NSW CC assistant director Mark Standen was jailed for 22 years (16 non parole) in December 2011 for conspiring to import 300kg of ice precursor chemicals, allegedly worth \$60m after processing. He formerly worked with the Australian Federal Police.

Parke stands up for liberty, again

Melissa Parke (Lab, Fremantle) was a sole voice of dissent among major parties as the federal parliament approved a vast expansion of the powers of spy agencies, and criminalised reporting on special intelligence operations.

Parke told the House of Reps the bill could have a chilling effect on journalism. and warned of the dangers of trading freedom for security. "I do not support a number of key elements in this bill," she said.

"Contrary to the reductive argument that says we're making a straight trade of less freedom for more safety, the reality is likely to be and indeed has proved to be many times in the past that constraining our fundamental liberties achieves nothing more than making us less free and in fact does ourselves more harm by licensing the abuse of powers."

The only MPs to vote against the second reading of the bill in the lower house were the Greens deputy leader, Adam Bandt, and the independent MPs Andrew Wilkie and Cathy McGowan. Parke abstained. Parke's speech: <http://tinyurl.com/l7nqog5>

'Easy does it' on terror laws: Labor MP

Labor's Anthony Albanese has attacked the coalition government's national security laws and restrictions on press freedom.

He criticised "draconian" laws that could see journalists jailed for five to 10 years and said they may need to be wound back. Both the government and opposition had acted too quickly in rushing the laws through.

"I think there should be greater scrutiny not just from Labor but from the government as well," Mr Albanese said. "At a time like this, the security agencies will take every opportunity to impose things that have been in their bottom drawer for a long period of time."

The Member for Grayndler in inner-city Sydney said that laws that threatened to restrict legitimate work by journalists to expose errors made by security agencies went too far. <http://tinyurl.com/qdwf6ty>

Human Rights committee says need has not been justified

Parliament's human rights committee, chaired by a Liberal MP and with five of the Coalition members, warned that the Abbott government's "foreign fighters" bill was likely to breach Australians' rights.

The committee's chairman, Western Australian Liberal Senator Dean Smith, said the committee had "determined that some measures outlined in the bill are likely to be incompatible with human rights"

He said the government had not explained why the new powers to police and intelligence agencies were necessary and why existing powers were not enough to tackle the current terrorism threat.

"The committee is seeking further explanation from the Attorney-General," he said. <http://tinyurl.com/pp78xg9>

It didn't get it: the bill is now an Act...of irresponsibility.

We are killing some of our children

In NSW, with Australia's largest First Peoples population, the youth suicide rate is one in 100,000. In the NT, the rate is 30 deaths in 100,000.

In the Kimberley, with a First Peoples population of 16,000, the rate of youth suicide is over 80 per 100,000.

The rate of suicide in WA's Kimberley region tragically outstrips the overall national suicide rates of every nation on this planet. The Kimberley's First Peoples comprise just about all the suicides.

The rate of suicide among WA's First Peoples males has increased over a few decades from 4.7 per 100,000 population to 78.8 per 100,000. Most suicides occur where there is acute poverty.



The median age of First Peoples is 21, compared with 37 for the rest of Australia: 1.6% of all Australians die by suicide but for First Peoples this rises to more than 4.2%.

By comparison, 99 First Peoples died in custody over a nine-year period, launching the Royal Commission into Aboriginal Deaths in Custody. <http://tinyurl.com/n4c7624> – from *The Stringer*, an independent news journal run by Gerry Georgatos, who also took the photo.

Proposing how to regain civil liberties

How do we solve the problem of our civil liberties being crushed under increasingly more repressive terror laws? CLA member Alison Bevege says the first step is to delink the issue from the problem of Islamism and solve that separately.

"And (we should) stop the fatal mistake of (pretending) that there is no problem with Islamism at all – when there is – and that it is being used so effectively as a shield by those who would destroy civil rights and liberties," she said last month.

Read her article here: <http://www.dailytelegraph.com.au/news/opinion/islamic-fascists-unveil-their-hate/story-fni0cwl5-1227090395649> and read about a declaration for secularising of Islamic society: <http://www.centerforinquiry.net/isis>

PM&C goes anti-social

The Department of Prime Minister and Cabinet is further tightening its social media policy by banning any online comment on politics or government policy of any kind by its staff, Bernard Keane wrote last month.

Staff must not use, even in a private capacity, social media sites that might reflect poorly on the department, he told his *Crikey* audience.

A revised policy circulated to staff "for comment" represents an even more draconian limitation on private expression by PM&C staff than the previous iteration of the department's policy.

That policy, revealed by Samantha Maiden of *News Ltd*, caused consternation with its Stasi-like demand that staff inform on each other if they suspected a colleague of anonymously or pseudonymously making political comment. The proposed policy simply bans any comment at all, instructing staff not to:

"Make, like, share and/or retweet any statement/s or comment/s that may be interpreted as advocating or criticising Government policies or the policies of other political parties or groups."

MPs should go to ethics school

NSW MPs and political candidates should be put through compulsory training on ethical conduct, a government-appointed panel says.

A panel chaired by former Sydney Water managing director Kerry Schott has produced the recommendation in an interim report on political donation reform.

Premier Mike Baird commissioned the panel in June, in the wake of allegations aired at the Independent Commission Against Corruption about Liberal MPs rorting electoral funding laws.

The panel's final report is due next month but its preliminary report said the ICAC hearings had exposed a "pressing need for cultural change in NSW politics".

Its recommendations include:

- more frequent and early disclosure of donations
- tougher penalties for serious breaches of election funding laws
- extending the timeframe for starting prosecution from 3 years after an offence is committed to 10
- An "anti-circumvention" offence for those who deliberately try to exploit loopholes in funding laws
- Mandatory education for MPs and candidates on ethical conduct and electoral funding law

It said candidates, MPs and their staff should undergo compulsory education in "their obligations under election funding laws and ethical behaviour in general, including the expectations placed on Members as holders of public office". <http://tinyurl.com/lfyqkkj>

CLA gains new Doctor of Laws

CLA member Dr Virginia Marshall recently became the first Indigenous woman to gain a PhD in law from Macquarie U.

Her thesis was on 'A web of Aboriginal water rights: Examining the competing Aboriginal claim for water property rights and interests in Australia'.



Photo: Dr Marshall (left) and Macquarie U. deputy chancellor Elizabeth Crouch.

It has been a long journey for Marshall, who left school after year 10 for a professional music career as an opera singer in Australia and Europe. After her fourth child, she decided she needed a new career and would have to undertake tertiary studies.

"Completing a certificate four at TAFE College gave me entry into uni, where my thirst for academic success saw me complete six degrees in five and a half years, through five universities – UOW, UNE, UNSW, CSU and ANU."

While studying, Marshall worked as an Aboriginal discovery ranger, casual lecturer in Aboriginal studies, lecturer at the police academy, and as a legal aid lawyer.

"What drives me is a passion for social justice and a desire to see Aboriginal people in Australia gain legal recognition for their water rights and interests. I am intent on challenging the prevailing legal and institutional paradigms, and now have the weight of my quite substantial doctoral thesis to back me up," she said. <http://tinyurl.com/kryu2oz>

Integrity supremo chases 'missing link'

The Tasmanian Integrity Commission wants to create the "missing link" by getting public servants to dob each other in.

TIC has asked the State Government for a new law so public officials can be charged for "misconduct in public office" if they have acted corruptly.

The law would bring Tasmania into line with the rest of the country. "It is our missing link," TIC supremo Diane Merryfull said. She has just launched a new "Speak Up" awareness campaign urging public servants to dob in improper behaviour. <http://tinyurl.com/lg35qu>

AFP use stun guns 'like cattle prods'

"Australian Federal Police officers appear to be using offensive weapons, including guns, batons, capscicum spray and (stun guns) more and more," wrote Jack Waterford in the *Canberra Times* recently.

"...increasingly not for self-defence but as a form of forcing compliance by people with whom they come into contact, a significant proportion of whom are mentally disturbed at the time of their confrontations with police. In several of the few cases, it also appeared to be a form of punishment for failure to obey orders," he wrote.

"This is a conclusion supported not only by statistics, but by the slight reportage of videos of (stun gun) confrontations provided by the AFP under FOI legislation. The videos...also suggest that some police are putting their hands to the cameras attached to (the stun guns) so that the record of confrontations is patchy at best.

"Increasingly, however, they are becoming, in the ACT and elsewhere, an ordinary part of police equipment, and seem to be becoming a favoured weapon with difficult and unpredictable people, including drunks and the mentally ill.

"There have been more than 400 incidents around the world, including in NSW and West Australia, where they have caused deaths and, in many such incidents, it has been apparent that they have been used, not for self defence, but to secure compliance, to 'quieten down' a struggling but secured offender, to punish insolence or, in some cases, to 'drive' a prisoner somewhat in the manner of cattle under a cattle prod," Waterford wrote. <http://tinyurl.com/mrcd7bu>

NT risks vigilantes with new website

The NT will have a public website with photos, details and locations of convicted serious sex offenders.

"The website will include an image, physical description and regional whereabouts of convicted serious sex offenders in the territory," Attorney-General John Elferink announced last month.

"This initiative will allow individuals and families to familiarise themselves with important details and be more vigilant about named serious sex offenders in and around their area." <http://tinyurl.com/qecqzz8>

Police and AMA gang up on Nitschke

Euthanasia campaigner Dr Philip Nitschke is under siege in every Australian state from police over his possible role in nearly 20 deaths in the past three years, all apparently suicides.

The deaths involve two suicide methods promoted by him, the lethal drug Nembutal or a nitrogen inhalant device.

Dr Nitschke faces expulsion by the AMA when its NT branch council next meets, after an earlier move to suspend him failed due to a paperwork error.

Nitschke's main "sin" is holding a different view to the mainstream, we believe.

Civil Liberties Australia does not support Dr Nitschke: his method of promoting the cause of euthanasia is counter-productive, we believe. But we believe he has a right to promote his views, within the law, any reasonable way he chooses. <http://tinyurl.com/lp4gvxp>

Coalition reported under child abuse laws

The Australian Medical Association has formally notified the NT government that federal immigration detention is harming children.

The AMA said their members were legally required to report damage being caused to children under the Territory's mandatory child abuse reporting legislation.

Dr Peter Morris from the AMA NT said medical staff of Darwin Hospital have referred seven cases. <http://tinyurl.com/l75fc2s>

Domestic violence ups prison numbers

The South Australian government will double up inmates in cells and fast-track jail expansions to cope with a surge in assault cases, particularly of domestic violence.

Correctional Services chief executive David Brown told a parliamentary committee last month that the prison population had grown 5.6% in the previous three months.

The government is expanding Mt Gambier Prison by 24 beds, adding 80 bunk beds elsewhere in the system and investigating where another 70 to 100 bunks could be added.

In the department's submission to the committee, it stated that growth in prisoner numbers last financial year was "exceptional". A peak of 2581 prisoners was reached on 16 September this year.

"Over 30 per cent of the new admissions this financial year were on offences of assault: 50% were domestic violence related," Mr Brown said. <http://tinyurl.com/q35hazb>

Stun gun use expanded in SA

SA police may now use stun guns against unarmed people.

Guidelines changes mean alleged offenders do not have to be armed before an electronic control device (ECD) can be used, but a situation must be considered high risk.

The state's STAR (special task and rescue) officers have been using stun guns for several years.

General police in Adelaide and in country areas, including for single patrols, were given permission to carry the weapons about five years ago. But the devices had to be carried in the boot of a patrol car and only accessed when police faced a high-risk incident involving an armed person.

Now one officer in each uniformed patrol crew may carry a stun gun. <http://tinyurl.com/mvslfzj>

Government dispenses with buggery

The Victorian Parliament has become the first Australian jurisdiction to formally acknowledge that sex between consenting men should never have been a crime.

New legislation allows Victorians to apply to erase their criminal record for crimes of a homosexual nature. Crimes that may be expunged include "the abominable crime of buggery", "loitering for homosexual purposes" and other indecency offences where the conduct would otherwise be lawful under today's laws.

Once applications are approved by the secretary of the Department of Justice, convictions will no longer appear on

police checks and criminal records. <http://tinyurl.com/m57esom>

NSW is taking a similar approach, but Queensland appears to be dragging its feet.

Attorney-General Jarrod Bleijie announced he is "not shutting the door" on expunging the record of people charged and convicted under historic laws which made consensual homosexual acts illegal.

He later "clarified" the government's position by saying it was "happy to look at" following the lead of other jurisdictions, and would welcome submissions on the issue.

A Federal Senate inquiry in 2012 recommended all Australian states and territories look at expunging the record of those caught under the historic laws, which Queensland did not repeal until 1990.

In September 2013, the Queensland government confirmed it was examining the issue, but made no change. <http://tinyurl.com/o8jlo8z>

Guards strip search four times a day

Strip searches of female inmates at the Townsville Women's Correctional Centre were illegal, Queensland ombudsman Phil Clarke has found.

Last year, prison guards suspected medicine at the centre was being diverted by a small number of inmates, so they started strip searching women who were receiving the medication, before and after taking it. The searches continued for 10 months until the ombudsman received a complaint. Prisoners who received one medication twice daily were subject to four strip searches a day.

Mr Clarke found the strip searches were inappropriate and the actions were not authorised by head management. He said the practice was "unreasonable and contrary to the law"...and recommended more training.

Debbie Kilroy (right) of the Sisters Inside organisation said she was disgusted by the revelation and that disciplinary action was warranted. "Practices around strip searching women are nothing more than sexual assault by the state.

"Prison officers have been conducting unlawful strip searches of women and so the penalty now is training?" she said. <http://tinyurl.com/mmm3hro7>



Judge campaigns for gender equity on bench

Justice Margaret McMurdo continues to campaign for gender equity in judges' appointments.

"The current Queensland government, since coming to office about two and a half years ago has appointed 20 judicial officers: six Supreme Court judges, including two to the Court of Appeal and the Chief Justice, four District Court judges, if you include the present and former Chief Magistrate, and 10 magistrates," Justice McMurdo said recently.

"All but one, Magistrate Penny Hay, are men, although I am pleased to note that Magistrate Leanne O'Shea...was recently appointed deputy Chief Magistrate. This now means that only 5% of these appointments are women."

Justice McMurdo again questioned whether an independent judicial appointment process was needed in Queensland. <http://tinyurl.com/l4nzxox>

CCC officers thwart police, fly the coop

WA's Corruption and Crime Commission thwarted police investigating alleged criminal conduct within the CCC, according to the parliamentary inspector of the CCC, Michael Murray.

Officers from the CCC's Operational Support Unit had resigned, been sacked or moved interstate, meaning they were "no longer readily accessible to investigating police".

Mr Murray's annual report to Parliament last month said: "Police investigation into suspected criminality on the part of Commission officers may not be delayed, or thwarted, by a decision of the Commission to withhold documents from the Police, or access to suspects or witnesses, who the Police wish to interview, where, as was the case in respect of the matters that I referred to the Police for investigation," the report stated.

He plans recommending government amends the CCC Act "to facilitate my capacity to make orders designed to ensure that my referral of a matter to an agency external to the Commission is effective to achieve its purpose". <http://tinyurl.com/oagbx9k>

Held for 11 years, without conviction

The imprisonment of a mentally impaired Aboriginal man without conviction in WA since 2003 will be reviewed next month, the Mentally Impaired Accused Review Board says.

The man, known as "Jason", was charged with unlawful killing when, aged 14, he allegedly drove a stolen car which crashed in Perth, killing his 12-year-old cousin. He was found unfit to stand trial and indefinitely jailed under a custody order for the mentally impaired.

Disability advocates had written to Attorney-General Michael Mischin requesting an urgent review of his detention, arguing Jason did not have a history of violence and did not represent a risk to the community or to himself. His case, they said, was like that of mentally impaired Indigenous man, Marlon Noble, who was jailed for more than 10 years without a conviction over sexual assault charges. <http://tinyurl.com/lgc2dt>

Australian briefs

Electroshocking banned for children: New mental health legislation in WA banning the use of electroconvulsive therapy (ECT) on children under 14 has passed State Parliament. There are also stricter controls in general on electroshock therapy. A child aged between 14 and 18 who is a voluntary patient cannot have the treatment without informed consent and approval by the Mental Health Tribunal. <http://tinyurl.com/l6h4ek8>

Drinkers pay to breathe, be surveilled: Drink-drivers in Victoria who have their licence cancelled are now having special locks fitted to their cars to prevent them driving while under the influence. The devices can take photos to make sure that the correct person gives the sample. Up to 10,000 interlocks will be installed each year under the Victorian Government's legislation, with drivers paying \$1605 for the device for six months use. <http://tinyurl.com/mkpxhhl>

New auto cameras produce 'fine' result: NT Police, using Automatic Numberplate Recognition technology for the first time, found one in every 55 vehicles on Darwin roads was unregistered. Officers detected 24 unregistered vehicles out

of 1323 over four hours at a traffic stop in Berrimah one day last month. NT fines for driving an unregistered vehicle on a public road range from \$300 to \$2800, plus a victim's levy. Police also caught two mid-range drink drivers and seven unlicensed drivers, and discovered 13 defects that made vehicles unroadworthy. <http://tinyurl.com/ksc4mbp>

Females to dominate as solicitors: Queensland Law Society's 2013-14 annual report reveals the makeup of the state's legal profession is changing radically. President Ian Brown said the report showed Queensland had reached the tipping point regarding the gender and age of solicitors. "We now have 5025 female solicitors, up by 6.7% on 2012-13's figure and at this rate, we predict the number of women to outnumber men in 2-3 years' time," Mr Brown said. "For the first time, the majority of male solicitors are Gen Xers, indicating increasing numbers of Baby Boomers are retiring." <http://tinyurl.com/nklz8bl>

Bruxner to head NTCAT for a year: Richard Bruxner has been appointed temporary president of the new NT Civil and Administrative Tribunal (NTCAT) for 12 months until a selection process is completed and a permanent president is appointed," NT AG John Elferink said. Bruxner has 24 years experience as a lawyer, mainly in litigation. He was a barrister for 11 years before joining the NT Solicitor body in 2008. He was appointed Crown Counsel in October 2011. NTCAT will operate from Casuarina. – media release, NT AG, 21 Oct 14.

Police may pay for alleged terrorist raid stunt: The first of perhaps many suits against police for using force during the '800-police raids' in NSW in September will be lodged by the Rabieh family. They claim police violated the mother by tearing bedsheets off her when she not wearing a hijab, and by hitting and punching her; their house was searched for 12 hours. Police detained 15 people after the massive raids, which the Greens claimed were a political stunt. Only one serious terrorism charge was laid, relating to planning a terrorist act, and it is yet to be tested in court. <http://tinyurl.com/l69wkk2>

TPP ministers still face hurdles: Talks between the 12 proposed Trans Pacific Partners, which includes Australia, advanced during a three-day meeting that wrapped late last month in Australia, but contentious issues remain to be resolved before clinching a deal. "We have made significant progress" on tariffs and making unified trade rules under the [Trans-Pacific Partnership initiative, the trade chiefs said in a joint statement issued after their first gathering since May.](http://tinyurl.com/qjz7e33) <http://tinyurl.com/qjz7e33>

CLA report for October:

Request by the Australian Law Reform Commission on discussion paper, *Review of the Native Title Act 1993* (DP 82). Recognition and scope of native title rights and interests; authorisation; and joinder provisions. CLA does not plan to make a submission unless a CLA member can volunteer to prepare the response. Deadline is 18 Dec 2014, for the ALRC to report by March 2015.

Meetings:

- Renai LeMay, adviser to Senator Scott Ludlam (Greens WA) re megadata legislation

- Barrister John Purnell SC re Miscarriages of Justice and history civil liberties in ACT;
- Barristers Doug Hassall and Chris Ryan re history of civil liberties in ACT.
- Bill Stefaniak re current activities, history and ACT Civil and Administrative Tribunal
- Aust Council for Internat. Development CEO Marc Purcell

Rally, protest area at Parliament House against the Trans Pacific Partnership trade deal.
 Memorial gathering of Friends & Family of Drug Law Reform.
 Briefing at Parliament House by Sen Scott Ludlam and other Senators on data retention legislation

Annual Lionel Murphy lecture by CLA member Prof George Williams on the newest terror laws legislation, ANU.



Photo shows CLA President Dr Kristine Klugman, CLA member Prof George Williams, CLA Vice-President Tim Vines and CLA member Ernst Willheim.

Speeches and articles:

- Preparation for trip to South Australia for the Miscarriages of Justice symposium, meetings with CLA members and history research
- Publication in the ACT law Society *Hearsay* of appeal for information on ACT civil liberties history
- Request from Bar Association to write an article for next Association newsletter

Tasmania – Director Richard Griggs reports:

1. proposed anti-protest laws to create mandatory three-month sentences for peaceful protesters:

(a) 27 Oct interview with Living Black SBS on anti-protest laws proposed (available here: <http://www.sbs.com.au/shows/livingblack>)

(b) 26 October release of joint statement against anti-protest laws. CLA was one of 22 organisations to sign the statement: <http://tinyurl.com/m6ak8yn>

2. comment criticising proposal to publish name and address information of convicted sex-offenders: <http://tinyurl.com/mvrbszh>

3. comment pointing out that history should tell us to be sceptical of the effectiveness of prohibition - responding to proposal to ban smoking for all people born after the year 2000: <http://tinyurl.com/myb53e2>

Victoria and South Australia: Rhys Michie reports:

- finished off the collaborative submission with the Australian Tattooists Guild; and
- wrote an article on the passing of the sexting legislation in Victoria.

The *Evidence (Protections for Journalists) Amendment Bill* in South Australia passed the Legislative Council in September and was due for its second reading in the House Assembly on 30 October. There were originally two Bills put up; one from the Independent Minister the Hon John Darley, and one from the Opposition. Only Darley's Bill has progressed. Ill keep an eye on progress, it could get through this month or the next. It may pass in late-October or November.

Also in SA the *Surveillance Devices Bill* was negated on its third reading. Elements of the Bill appear to have morphed into the *Listening and Surveillance Devices (Miscellaneous) Amendment Bill*, which has not yet progressed to any great degree.

National: V-P Tim Vines

Media: ABC Radio, Drive Alice Springs - Nova Peris Emails and Privacy in the Digital Era

Other: Represented CLA at the Data Retention Forum organised by Senators Ludlam, Xenophon and Leyonhjelm.

INTERNATIONAL

Court rules a cop out for judiciary

In Europe, the communications office of the EU Court of Justice has released a "myth-busting" document to refute criticism from free expression advocates and civil society groups over the controversial "Right to be Forgotten."

Among other things, the communique suggests that the ruling does not "contradict" freedom of expression, an assertion with which many human rights groups plainly disagree.

The EUCJ ruling allows individuals to request search engines to remove links from results that appear when their names are queried. The ruling places the responsibility for deciding whose content gets removed on companies like Google and Microsoft, rather than with a relevant body within the judiciary.

Digital rights groups around the world agree that such decisions are best left to the discretion of a judge, not a corporate platform whose bottom line could be harmed if they should decide the 'wrong' way. <http://tinyurl.com/lrgy5e6>

Tories plan to renege on human rights

If Britain's next government is Conservative, it will withdraw from the European convention on human rights unless Britain gets a veto right, Justice Secretary Chris Grayling has told the party's conference.

He said a Tory government would withdraw from the convention if parliament failed to secure the right to veto judgments from the European court of human rights (ECHR).

A withdrawal from the convention could jeopardise Britain's membership of the EU, which is separate to the Council of Europe whose members are drawn from across the continent and include Russia and Ukraine.

Membership of the Council of Europe is a requirement for EU member states.

In the Conservative party's next general election manifesto, the Tories would reverse more than half a century's tradition of human rights authority residing in Europe by giving parliament the right to veto judgments. The authority of the court in Strasbourg would be severely curtailed, with parliament to decide whether or not to adopt ECHR decisions.

Withdrawing from the convention could also see Britain breach its international obligations in the 1998 Good Friday agreement, which helped to bring peace to Northern Ireland. The agreement was approved by referendums on both sides of the Irish border and lodged at the UN: it said the two

communities in NI would be protected by safeguards that include “the European convention on human rights and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe”. <http://tinyurl.com/obvkja7>

US Hack Pack may strike where they like

The US government may hack into servers anywhere in the world without a warrant, the Justice Department said last month.

Their clear ‘Hack Pack’ mentality was revealed in a new legal filing in the ongoing prosecution of Ross Ulbricht. The government believes Ulbricht is the operator of the Silk Road illicit drug website.

The NY federal court filing concerns exactly how the US government found the Silk Road servers in Iceland.

Ulbricht claims that the government's position—that a leaky CAPTCHA on the site's login led them to the IP address—was “implausible” and that the government (perhaps the National Security Agency) may have unlawfully hacked into the site to discover its whereabouts.

“In any event, even if the FBI had somehow ‘hacked’ into the SR Server in order to identify its IP address, such an investigative measure would not have run afoul of the Fourth Amendment,” Assistant US Attorney Serrin Turner wrote.

“Because the SR Server was located outside the US, the Fourth Amendment would not have required a warrant to search the server, whether for its IP address or otherwise.” <http://tinyurl.com/oe5r3mr>

Mass surveillance ‘corrosive’ of online privacy

Mass surveillance of the internet by intelligence agencies is “corrosive of online privacy” and threatens to undermine international law, according to a report to the UN general assembly.

The critical study by Ben Emmerson QC (right), the UN's special rapporteur on counter-terrorism, released last month is a response to revelations by the whistleblower Edward Snowden about the extent of monitoring carried out by the Five Eyes group, which includes Australia, GCHQ in the UK and the National Security Agency NSA in the US.

Emmerson's study poses a direct challenge to the claims of governments that their bulk surveillance programs, which the barrister finds endanger the privacy of “literally every internet user,” are proportionate to the terrorist threat and robustly constrained by law.

To combat the danger, Emmerson endorses the ability of Internet users to mount legal challenges to bulk surveillance.

“Bulk access technology is indiscriminately corrosive of online privacy and impinges on the very essence of the right guaranteed by [the UN's International Covenant on Civil and Political Rights],” Emmerson, a prominent human rights lawyer, concludes. The programs, he said, “pose a direct and ongoing challenge to an established norm of international law.”

Article 17 of the covenant, Emmerson points out, states that “no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home and correspondence, nor to unlawful attacks on his or her honour and reputation”.

The 22-page report warns that the use of mass surveillance technology, through interception programs developed by the NSA and GCHQ such as Prism and Tempora, “effectively does away with the right to privacy of communications on the internet altogether”. <http://tinyurl.com/pew23c2>

ODD SPOT: ID stealing rife in South Korea

In South Korea about 80% of the country's 50 million citizens have had their government-issued ID number stolen, and 40% – including the president – have had financial data compromised as a result of breaches at three credit card companies.

Associated Press says the hacks started in 2004 and have continued ever since. The problem is that the numbers are really easy to guess because they have been assigned using a pattern of birthdays and gender identification since the 1960s. *BBC News* reports that citizens can't change their government ID numbers even after they have been compromised.

The South Korean government is likely to have to issue new numbers to everyone over 17, which could take 10 years and cost billions of dollars. <http://tinyurl.com/per3gar>

Court 2 delivers blow to police intelligence

The New York Circuit Court of Appeals No 2 has belted the reputation of police firmly on the head.

It has recently confirmed a lower court decision that there was no discrimination against Robert Jordan when he scored too high on an IQ test. That is right, too high!

Jordan, 49, is a college graduate. He scored 33 points, the equivalent of an IQ of 125. But the police department in New London, Connecticut, interviewed only candidates who scored 20 to 27, on the theory that those who scored too high could get bored with police work and leave soon after undergoing costly training. Most police in America score 21-22, equal to an IQ of 104, a little above society average.

There was no discrimination, the appeals court ruled, because the same standards were applied to everyone who took the test, not just to Mr Jordan, who has worked as a prison guard since being rejected by the police. – from a story Copyright © 2014 ABC News Internet Ventures

Same-sex marriage gets a boost from bench

The US Supreme Court last month endorsed appeals court rulings allowing same-sex marriage in five states, a decision which reinforces the right of same-sex marriage across the USA.

The ruling officially affected same-sex marriages in Indiana, Oklahoma, Utah, Virginia and Wisconsin – same-sex couples started getting married in those states within hours – but unofficially it virtually removes all barriers to gay marriage in America.

Now there are 24 states, and the District of Columbia (similar to the ACT in Australia), which allow same-sex marriage. Within weeks the recent decision could expand same-sex marriage to 30 states, comprising a majority and making overturn of the right to marry very difficult. <http://tinyurl.com/n8w8nuu>

Pull the other leg, Eric

Retiring Attorney General Eric Holder recently the top US law enforcement official, said it was “worrisome” that tech



companies were providing default encryption on consumer electronics.

Locking the authorities out of physically accessing the contents of devices puts children at risk, he said. "It is fully possible to permit law enforcement to do its job while still adequately protecting personal privacy," Holder said during a speech to a child sexual abuse online conference.

"When a child is in danger, law enforcement needs to be able to take every legally available step to quickly find and protect the child and to stop those that abuse children. It is worrisome to see companies thwarting our ability to do so."

Yeah, pull the other one, Eric. You mean protect kids like when the Obama children could have been in danger, and the Secret Service failed to stop an intruder before he had reached the White House kitchen and ordered lunch, bringing his knife with him? <http://tinyurl.com/qht4eze>

Thais plan to ID tourists with bracelets

Thailand's tourism minister says identification wristbands will be distributed to tourists, amid safety concerns sparked by the murders of two British backpackers recently.

Kobkarn Wattanavrangkul said she had approached hotels over the idea of handing out wristbands to help identify tourists who get lost or into trouble. "When tourists check in to a hotel they will be given a wristband with a serial number that matches their ID and shows the contact details of the resort they are staying in, so that if they're out partying late and, for example, get drunk or lost, they can be easily assisted," Ms Kobkarn said.

"The next step would be some sort of electronic tracking device but this has not yet been discussed in detail." <http://tinyurl.com/o3j7jpp>

ODD SPOT: Kiwi bureaucracy gives dole recipients the brush off

People on the dole are being told to brush up on their oral hygiene as part of a NZ government text message campaign slammed as degrading by advocacy groups.

The country's health ministry is sending regular text reminders to young Work and Income clients urging them to brush their teeth, and asking whether they've brushed today. The program is being touted as an innovative solution to the country's chronic state of oral health, and a fresh way to reduce the number of beneficiaries requesting expensive emergency dental care grants. But it has been roundly condemned by civil libertarians and beneficiary advocates who have labelled the project distasteful and demoralising. <http://tinyurl.com/q59lznk>

29 years in jail, suddenly exonerated

A man who spent 29 years in prison for kidnap and murder has walked free after a judge overturned his conviction, saying it was based on a false confession.

David McCallum, who was 16 when arrested in 1985, broke down after Brooklyn Supreme Court Judge Matthew D'Emic exonerated him last month. The packed courtroom broke into applause.

McCallum and Willie Stuckey, also 16 at the time, were arrested for the 20 October 1985 kidnapping and murder of 20-year-old Nathan Blenner in Queens district of New York. Stuckey died in 2001 in jail.

At a news conference, Brooklyn district attorney Kenneth Thompson said he had "inherited a legacy of disgrace with

respect to wrongful conviction cases". A Conviction Review Unit that he established, which is headed by a Harvard Law School professor, Ronald Sullivan Jr, has resulted in the vacating of nine convictions this year: 17 others have been deemed valid. <http://tinyurl.com/q78fart>

'Entire US justice system' fails Manuel

A building worker from Texas, who was sentenced to death for a murder he did not commit, was released last month after spending nine years in prison, four on death row.

Manuel Velez, 49, was arrested in 2005 and sentenced to death three years later for killing a one-year-old who was partially in his care.

But over the years the conviction unravelled. Tests on the victim's brain showed that Velez could not have caused the child's head injuries because of the dates on which they would have occurred. Further evidence revealed that the defendant, who is intellectually disabled, had suffered from woeful legal representation at trial, and that the prosecutor had acted improperly to sway the jury against him.

Brian Stull, a senior staff attorney with the American Civil Liberties Union who has represented Velez since 2009, said that "an innocent man went to death row because the entire system failed him. The defence counsel meant to defend him let him down, the prosecutor who is meant to secure justice committed misconduct, and even the judge made errors that were recognised on appeal." <http://tinyurl.com/m6cspuv>

Woman dances, hugs after 17 years wronged

A woman who spent 17 years in jail for the murder of a homeless man hugged her grandchild for the first time and did a dance of happiness after she was judged innocent of murder and freed.

"I always knew that one day God would bring the truth to the light," Susan Marie Mellen, 59, told reporters last month, after she was released. A Los Angeles County judge overturned her conviction, saying that her attorney failed to properly represent her and that a woman who claimed she heard Mellen confess was a "habitual liar." <http://tinyurl.com/o8tupas>

International briefs

Some EU citizens pulled from the web: Google says it has removed 170,706 URLs in the wake of a European Court of Justice ruling in May requiring search engines to take down "inadequate, irrelevant, or no longer relevant" materials from search results upon request by EU citizens. The search giant said it has already been asked to remove about half a million URLs from its search results, and it has removed about 42% of them, according to its latest 'Transparency Report'. <http://tinyurl.com/kq3ezx9>

Solomons votes this month: Solomon Islands will hold national elections on Wednesday 19 November. A total of 287,567 voters have registered, 139,059 female and 148,000 male. Reports indicate a new biometric voter registration process successfully removed 160,000 fraudulent, incorrect or duplicate registrations. The cleansed voter list is expected to contribute to a fair election. <http://tinyurl.com/l4o2jpr>

Maryam awaits trial: In Bahrain, human rights activist Maryam Al Khawaja awaits trial for allegedly attacking a police

officer. The 26-year-old co-director of the Gulf Center for Human Rights in Beirut was arrested at the end of August when she arrived in Bahrain to visit her father, prominent human rights defender Abdulhadi Al Khawaja, who has been in prison since 2011. Both activists played key roles in organising mass demonstrations that shook the island nation that year. Maryam also holds Danish citizenship. <http://tinyurl.com/ox9j9n6>

Taylor becomes political prisoner: NZ electoral litigant Arthur Taylor says he was attacked and beaten last month by a special restraint team in the presence of Auckland Prison bosses. He says the attack by prison staff on him was unprecedented and obviously related to his voting case, where he tried to secure the vote for prisoners. He says the attack should be on video, and he will take legal action under the Convention Against Torture, to which NZ is signatory. He now considers himself to be a political prisoner. Source: email from the Taylor team.

FBI wants its spying built in to your phone: The expanding options for communicating over the Internet and the increasing adoption of encryption technologies could leave law enforcement agents "in the dark" and unable to collect evidence against criminals, the Director of the FBI claimed last month. Speaking at the Brookings Institution in Washington, James Comey raised child predators, violent criminals, and crafty terrorists to reasons that companies should build surveillance capabilities into the design of their products and allow lawful interception of communications. <http://tinyurl.com/nalchlz>

Is a man's hotel his castle? The US Supreme Court is weighing in on another Fourth Amendment privacy case, concerning a Los Angeles ordinance requiring hotels to surrender guest registries to the police upon request without a warrant. They will hear an appeal of a lower court that ruled 7-4 that the law – meant to combat prostitution, gambling, and even terrorism – was unconstitutional. The law requires hotels to provide the information, including guests' credit card number, home address, driver's license information and vehicle license number, at a moment's notice. Several dozen cities, from Atlanta to Seattle, have similar ordinances. <http://tinyurl.com/ns4qudu>

Metadata is a no-no: In April 2014, the court of justice of the European Union (CJEU) invalidated the European Data Retention Directive, removing the legal basis for data retention laws in countries across the EU. The court was unequivocal in its finding that the mass collection of metadata is an interference with the right to privacy, and access to this data cannot be justified under vague references to combating serious crimes or terrorism. If access to this sensitive data is granted, such access must be subject to prior review "carried out by a court or by an independent administrative body". <http://tinyurl.com/k3amf5f>

Police stun gun use up 13%: Stun guns were drawn by police more than 5,100 times in England and Wales in the first six months of 2014. Officers fired their stun guns at people 826 times. They used them on a stun setting a further 123 times. In the past year, use of stun guns has risen 13%... including last year on a blind man whose white stick police mistook for a samurai sword! <http://tinyurl.com/n268nq2>

DATES



7-8 Nov, Adelaide: Miscarriages of Justice Symposium, conference of Centre for Criminal Justice, Policy and Research at Flinders U. Details: willem.delint@flinders.edu.au with keynote speaker Prof Kent Roach (left) of Canada. Features miscarriage of justice cases

in Australia, with CLA speakers Klugman, Rowlings, Ash, Etter, plus other leading MoJ, wrongful conviction and Innocence project experts.

11-12 Nov, Melbourne: 10th annual Islamic studies postgraduate conference: postgraduate students from any uni welcome. Contact Tessa Shaw: 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/iaa8gx>

4-6 Dec, Washington USA: 'Advancing UNiversal Human Rights Culture', American U. Convenor is Prof Claudio Grossman, chair of the UN Committee Against Torture. Organiser: Dr Sev Ozdowski, U. Western Sydney. Info: s.ozdowski@uws.edu.au

10 Dec, World: International Human Rights Day

11-12 Dec, Adelaide: 6th Intntl Illicit Networks workshop: analysis of organised crime. Details <http://tinyurl.com/mckaaq6>

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: lynettehua@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/>

25-27 Nov Adelaide: 28th A&NZ Society of Criminology, Flinders U. Details – willem.delint@flinders.edu.au

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

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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:mailto:secretary[at]cla.asn.au)

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