

*Happy New Year to all CLA members. We thought we'd start the year with a positive story...*

### **PM commits to 'free' euthanasia vote**

Prime Minister Tony Abbott has promised a dying man that he will allow Liberal Party members to vote with their conscience on a euthanasia bill being developed by Greens Senator Dr Richard Di Natale.

Peter Short, 57, said receiving the commitment during a half-hour phone conversation with the PM was like reaching "the top of a mountain". Mr Short was spending his final Christmas and New Year with his family after being told in January 2014 that his oesophageal cancer – first diagnosed five years earlier – had returned and was terminal.

He is campaigning for legislation to enable terminally ill people to choose when and how they die. Mr Abbott indicated that he was unlikely to personally support voluntary euthanasia legislation, but he told Mr Short that he would not "whip" his members into taking a party line on the issue.

Mr Short said the commitment was vital for the Di Natale bill to have a chance of passing the Senate. <http://tinyurl.com/lalx486>

### **Beware! New Australia ID card and more censorship may cloud 2015**

Civil Liberties Australia would not be at all surprised to see a new Abbott government push on a national ID card in 2015, to be promoted as an 'anti-terrorist' approach.

Another hoary chestnut of conservative governments, censorship, is likely to re-emerge: it too is likely to be couched in patriotism, and may be mixed up in the metadata debate.

With the anniversary of the Gallipoli landing being celebrated – not merely commemorated – in 2015, jingoism is likely to rule supreme. It will be hard to find a proper balance between the glorification of war and all people and things military, and the overwhelming desire of 99% of Australian civil society to live in peace here at home, and to avoid ill-fitting foreign escapades.

Paradoxically, in the past when conservative governments were in power it was sometimes possible to make civil liberties gains: the older Liberals and a few Nationals were imbued with strong principles of fairness and equity. But those characteristics are not prominent in the vast majority of MPs who now wave a 'terrorist threat' flag at every opportunity.

In 2015, the Labor side of federal politics must re-invent itself. CLA hopes it finds its long-lost civil liberties and human rights principles: it could start by producing a humane policy on asylum seekers and committing to a bill of rights. That those two simple aspirations seem so far removed from potential Labor policy is at once an explanation and a condemnation of

how far to the right our twin-hulled ship of state is leaning, and how hard the fight will be to just get back to an even keel.

We are also expecting this year to focus on trying to ensure a fair trial for people charged with historic sexual assault charges, such as those dating back more than 20 years when false memory syndrome is a known problem. The role of police in possibly facilitating false memories needs academic attention.

Another battle will be to prevent the combined forces of incumbency, the Liberal-National Coalition and the Labor Party, from passing new voting laws which effectively make it harder for the little guy or gal to enter parliament. Civil Liberties Australia believes we need more diverse voices in parliament, not more identical sound bites from Tweedledum's and Tweedledummer's clones.

### **Govt keeps censorship regime**

The Coalition government has decided to keep the Classification Review Board, despite earlier deciding it would be lumped in with all the other merits review tribunals which are being amalgamated.

"Material efficiencies were unlikely to be gained from a merger," the Attorney-General's Department said. As well, the CRB had to make same-day decisions and use specialist facilities.

Cynical we may be, but it is highly likely that an apparatchik with a memory pointed how useful it can be to throw in a censorship firework when things are going bad politically for the government.

### **AGM to start next month**

Civil Liberties Australia's annual general meeting gets under way from the first of next month: this is notice for members of the timeline and processes of the general meeting.

The AGM is run electronically, rather than physically in person, so that all financial members with individual email addresses throughout Australia have an equal opportunity to take part. Members without individual email addresses, such as people who usually receive the *CLArion* by mail or who have elected to not receive the *CLArion* or who are part of household memberships, will receive postal paperwork.

The election period runs between 1 Feb and 29 March: full details are in the "Civil Liberties Australia – December report" section of this *CLArion* - see later.

### **Henry Keogh free after 20 years: Royal Commission needed**

Henry Keogh was granted bail just days before Christmas, apparently ending a 20-year nightmare of being jailed for a murder he did not commit.

The South Australian Court of Criminal Appeal overturned his 1994 conviction for killing fiancée Anna-Jane Cheney by drowning her in a bath. It was the first case brought in Australia under the innovative "Right To Appeal (R2A)" law passed in SA in mid-2013. Under that law, a person can have his case re-heard if there is fresh and compelling new evidence in the case.

In Keogh's case, the new evidence was of how deeply flawed was forensic evidence presented at the original trial.

But SA itself is on trial – and Civil Liberties Australia is calling for a Royal Commission – because appeal courts and the legal system, including Attorneys-General were told and given proof of the forensic mistakes more than a decade ago. They failed to act.



Bob Moles, a legal reform activist and Keogh supporter, said setting aside the conviction was but a good start. "We first said the conviction should be set aside 15 years ago and it's taken us all this time to actually get the correct decision from the court," Dr Moles said. He said the court had no choice but to set aside the conviction after the prosecution's own independent experts said the forensic evidence did not support any theory of murder or criminal assault.

Right: Henry Keogh and his daughter Alexis emerge from the Supreme Court of South Australia moments after he was freed on bail – SBS TV



"This is a turning of the tide for South Australia and nationally as well," Dr Moles said.

Dr Moles and CLA are campaigning for the R2A law to be 'mirrored' in every state and territory, and federally as well. Tasmania's Attorney-General, Dr Vanessa Goodwin, a criminologist by profession, has already committed to adopting the law: she has been waiting on the Keogh decision in SA to begin community consultation in Tasmania. <http://tinyurl.com/otq2u7g>

Read CLA's release-day story: <http://www.cla.asn.au/News/keogh-free-royal-commission-needed/>

Read daughter Alexis' plea for help in 2010: <http://www.cla.asn.au/News/alexis-keogh-and-jailed-father/>

## AG admits justice system 'inefficient'

Reforms are needed across South Australia's criminal justice system to deal with inefficiencies in the system, Attorney-General John Rau said last week.

"Cultural and attitude issues" were resulting in some cases being dealt with later than they should be, he said. "There are delays that there do not need to be, and some matters that could have been dealt with quite quickly sit in the system for too long," he said.

Mr Rau made the comments during the release of a discussion paper that recommended five major reforms. He said backlogs in the court system were increasing despite statistics indicating that crime rates in SA were falling.

Suggested reforms included a conditional charges scheme for minor offences, an investigation into the state's high rate of remands in custody, a system to identify cases for early resolution, and "diversion options" for minor offences.

Civil Liberties Australia will be submitting that SA - and all Australian states and territories – have to address their poor record over wrongful convictions. "We need better justice throughout Australia," CLA President Dr Kristine Klugman said. <http://tinyurl.com/m7wygk4>

## Chief Justice raps knuckles of parliament's SIC

The Chief Justice of Australia, Robert French, has fired a shot across the bows of the Security and Intelligence Committee (SIC) of the Australian Parliament in a speech in NZ in late November.

Justice French was delivering the Robin Cooke lecture – devoted to how the common law and constitutions interact – in Wellington.

*"Although all manner of officials and public authorities charged with the administration of particular Acts of Parliament develop guidelines based upon their interpretations, the final and authoritative interpretation is that of the courts," the CJ said.*

*"The common law constitutional function of courts in interpreting statutes does not extend to giving them a meaning that their text will not bear."*

Recently, in face of protests from civil society (including CLA) that new terror laws were going too far in surveillance of, and restrictions on, innocent Australians, the SIC group decided not to change the wording of the legislation, but to recommend that the government alters the explanatory memorandum, the 'guideline' document attached to the bill, only.

While Justice French was not so forthright as to link his comments directly to the recent SIC decisions, it is known\* that the CJ's attention had been drawn to how inappropriate it is that some SIC MPs believe they can "shape" how the High Court interprets laws by comments the MPs are wont to insert in the exploratory memorandums attached to bills which will become acts.

The MPs have now been given a highly judicial rap over the knuckles, and officially warned.

They cannot squirm away from stating explicitly how they want the law to apply clearly in the black-letter legislation of the land...not in airy-fairy guidelines that carry no force of law whatsoever.

\* Civil Liberties

Australia is certain that the CJ French (photo) was alerted: we were the ones who wrote to him pointing out the error in the ways of some SIC MPs, basically



parliamentarians who didn't understand how the law works, in spite of themselves being the lawmakers.

Now they know. Explanatory memorandums are not the law.

SPEECH: [Common Law Constitutionalism lecture, Wellington, New Zealand, 27 November 2014](http://www.cla.asn.au/News/common-law-constitutionalism-lecture-wellington-new-zealand-27-november-2014/)

## No idea about definition, cost, who pays or how it will work...

The SIC MPs held a hearing in December about data retention a month before submissions to their deliberations closed.

"The hearing was a colossal waste of time: we still don't know what data will be retained or how much it will cost, and neither does the committee charged with considering the scheme. The only sensible conclusion is that the hearing was purely for show, and the government has no interest in a credible inquiry," wrote Bernard Keane, *Crikey's* Canberra political correspondent.

Further wastes of time will be held in February.

And what will it – data retention – cost? Nobody knows. Who will pay? We will. <http://tinyurl.com/nox68fq>

## Australian prison numbers reach 10-year high

There were 33,791 prisoners in Australia, a 10-year high, at 30 June 2014.

Both male and female prisoners rose 10% in a year, continuing their upward trend. There are now 185.6 prisoners for each 100,000 adults.

Queensland experienced the largest annual increase in prisoner numbers, up 16%, followed by Victoria, up 14%. Tasmania was the only place to see a fall, by 7%.

Other key findings from the 2014 Prisoner Census are:

- three in five prisoners (59%) had served a sentence in an adult prison previously;
- the median age of male and female prisoners was similar, 34.0 and 34.5 years;
- Aboriginal and Torres Strait Islander prisoners comprise 27% of Australian prisoners (they make up less than 3% of the population);
- overseas-born prisoners account for 18%;
- the most common male offence was acts intended to cause injury (21%), followed by sexual assault, unlawful entry with intent and illicit drug offences (all 12%); and
- the most common female offence was acts intended to cause injury (20%), followed by illicit drug offences (17%) and offences against justice (11%).

Details: Prisoners in Australia, 2014 (cat. no. 4517.0), ABS website <http://tinyurl.com/klg2hag>

## Conviction may depend on 'docking'

An innocent person is 1.7 times more likely to be convicted if they are forced to sit in court behind a glass dock, rather than at the bar table alongside their lawyer.

New Australian research has found juries are more likely to find guilt when the accused was more isolated in the court room.

University of Western Sydney Professor David Tait placed more than 400 jurors in identical mock terrorism-related trials in July, with the only variance between hearings the defendant's position – in a glass dock, an open dock or at the bar table.

The results, which Prof Tait described as world-first research, were 60% of jurors found the defendant in the glass dock guilty, 47% of jurors found guilt when he sat at the open dock, and 36% when at the bar table, US-style.

## TPP misses deadline, rapacious suing extends

The TransPacific Partnership (TPP) agreement between Australia, the US, Japan, Canada and eight other Pacific Rim countries misses another deadline this 2015 new year's day.

A strong internal campaign in the US has stopped the Congress voting to allow 'fast track' approval: the agreement must now undergo full debate on the floors of their parliament. The TPP has cross-party opposition: it is disliked by some Republicans and some Democrats.

Leaked documents and industry reports make it clear that Big Pharma companies in the US want to delay the world's access to cheaper generic medicines; media companies want longer copyright payment periods and restrictions on the internet; and tobacco companies want to prevent stronger public health labelling.

They all want the right to sue governments over domestic laws and regulations by way of the Investor State Dispute Settlement (ISDS) process: that's where companies can get a

three-man arbitration tribunal made up of non-judges to rule that a country must bow to commercial interests.

These types of cases are growing: the French company Veolia is suing the Egyptian government over a rise in the minimum wage. – from Aftinet bulletin: <http://aftinet.org.au/cms/>

A Canadian view: <https://openmedia.org/ourfuture>

## No major censure for police over Brazilian Curti's stun gun death

Four NSW police officers involved in the pepper spray and stun gun death in custody of Brazilian Roberto Laudisio Curti have largely escaped censure.

Two were charged with common assault, and two with assault occasioning actual bodily harm. Three charges were dismissed. One officer was found guilty of common assault.

The assault in March 2012 was use of two cans of OC ("pepper") spray deployed within 15cm of Curti's face. No use of stun guns was found to be criminal, despite the gross breaches of the NSW police standard operating procedures. Curti was reportedly stunned 14 times while on the ground.

The local court imposed only a two-year good behaviour bond. If successfully completed, this will mean that no criminal conviction will be recorded. In the meantime, that officer has a conviction for common assault, which means a serving officer has a record that would disqualify him from becoming a police officer.

He may face disciplinary action. Based on common practice with police in such cases, he may well resign before any penalty can be applied.

The Curti family may now take civil action against the state of NSW. <http://tinyurl.com/mgwejeh>

## Information? Phone home

Australia's federal freedom of information laws are being overseen by a single public servant working largely from home.

Information Commissioner Professor John McMillan laughed off the bizarre situation last month, telling a parliamentary hearing that "in an age of technology, it's possible" to cope with his "slightly more awkward working environment".

The government's lack of control of the Senate meant it could not pass legislation last month that would have formally wound up Professor McMillan's office and given his powers to other agencies.

The closing down of the Office of the Information Commission has been botched from the outset. It is believed that some public servants had to take out bridging loans to cover mortgage and car repayments because the government did not make final decisions early enough for their monthly pay to be continuously credited into their bank accounts.

## Help! Legal aid in dire straits, due to cuts

Legal assistance services in Australia need an injection of \$200m, the Productivity Commission says.

The PC's year-long inquiry into access to justice arrangements, released recently, found significant gaps in free legal help for family law matters, including family violence and child protection, and particularly the gap in independent lawyer services for children.

The report said such a funding boost would enable legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander legal services to maintain frontline

services and help to more people. It would make about 400,000 more people eligible for civil legal aid grants and about 10% of households eligible for legal aid services, in line with the proportion of disadvantaged Australians.

The Coalition plans to slash more than \$40m from the legal assistance sector over the next four years. <http://tinyurl.com/muau8s6>

### Would you like a say on Defence?

Would you like to have your say on the massive Defence budget? And on Defence's annual report?

The Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade is seeking help to scrutinise the Department of Defence Annual Report 2013-14.

Close attention is being paid to: personnel matters, recruiting and employing women, cultural reform, reserve policy, and military justice and transparent reporting.

They want written submissions by 9 February 2015. Details: [www.aph.gov.au/jfadt](http://www.aph.gov.au/jfadt)

Defence Annual Report 2013-14: <http://www.defence.gov.au/annualreports/13-14/>

### Australia now 'most inhumane, uncaring, selfish': Fraser

Australia is now known around the world as the most inhumane, the most uncaring and the most selfish of all the wealthy countries, former prime minister Malcolm Fraser declared last month.

He said recently passed migration legislation gave Immigration Minister Scott Morrison "dictatorial, tyrannical powers" over the lives of asylum seekers and "destroyed the rule of law as we know it".

"He can block an asylum seeker from making a protection claim on the vaguely defined grounds of 'character' or 'national interest'. His reasons are secret. He can detain people without charge, deport them to any country he chooses, even if it's a place where they have been known to be tortured," Mr Fraser said.

Crossbench senators supporting the legislation, on the basis of concessions they negotiated with Mr Morrison, committed "a political error of fundamental proportions", he said.

Speaking at the opening of the Asylum Seekers Resource Centre's new premises in Footscray, Melbourne, Mr Fraser said the children Mr Morrison had agreed to release from detention could be sent to their home countries under new 'fast track' processing, or face years in limbo on temporary visas that preclude family reunion. <http://tinyurl.com/knb6tcy>

### Govt backtracks to provide escape hatch

Reversing an election pledge, AG George Henry Brandis has extended the role of Margaret Stone as independent

examiner of negative ASIO findings on asylum seekers.

Stone (photo), a former federal court judge, has reviewed the ASIO assessments for the past two years. The Liberals promised to get rid of her, but failed to realise they needed a way out to avoid becoming jailers of dozens or hundreds of people for the terms of their natural lives.



The problem of such asylum seekers – in Australia, but unable to be returned or sent anywhere because of the negative ASIO assessments – is intractable without the safety valve that Stone provides. She has been appointed for a further two years.

Immigration Minister Scott Morrison last month revealed there is a "legacy" load of 30,000 asylum seeker cases where Stone may be the last resort for freedom for the refugee...and an "out" for the government. <http://tinyurl.com/lsqrgb5>

### Greens to move '\$60K scholarship' bill

The Greens are preparing a bill to protect whistleblowers, like Freya Newman, in private institutions,.

She was the worker at Whitehouse Institute of Design who accessed records showing Tony Abbott's daughter, Frances, received an unadvertised – and still unregistered by the PM – \$60,000 scholarship.

Newman was placed on a two-year good behaviour bond late in 2014 after pleading guilty in September to one count of unauthorised access to restricted data. She could not argue the disclosure was in the public interest because Whitehouse is a private institution and falls outside public-service whistleblower protections.

Greens Senator Lee Rhiannon said recent events in the higher education sector highlighted inadequacies in the whistleblower protection regime.

### Australia holds refugees in secret hellhole

The Australian government is locking up asylum refugees on Manus Island in a secretive, airless, solitary confinement unit, and holding them incommunicado for up to four days.

One man was locked in the notorious 'chauka' unit for "misbehaving" detainees seven times in six months, according to official camp management documents. Once he was taken straight from Chauka to medical evacuation to Australia in a life-threatening condition, *The Guardian* reported last month.

Called officially the Managed Accommodation Area, chauka (the name of a bird endemic to Manus) is remote from the main centre: it is not shown on official maps of the detention infrastructure. The hellhole is usually over 30 degrees, with

### ODD SPOT: MPs should be sin-binned for poor behaviour towards journos

In late 2014, Clive "Walkout" Palmer shouted down a *News Ltd* journo trying to ask a question at the National Press Club, and former acting first assistant secretary in the Public Service, Andy "Scoop" Nikolic, the Member for Flinders Island, hijacked a media conference called by other Tassie MPs in the parliament's gardens.

It was getting very hard for journos late in 2014 to control the poor behaviour of the elected representatives.

Perhaps parliament could meet alternatively in each lower house MPs electorate, so that their own electors have to put up with them, rather than the put-upon people of Canberra who are so poorly represented in percentage terms in parliament.

Or, journalist Angela Bishop could send naughty MPs – who don't know how to behave in relation to the media – to a sin bin, like her mum does so well. *NOTE: Before MPs complain, this is satire...*

90%-plus humidity and no air-conditioning: it comprises three shipping containers arranged in a triangle. Each container is bare save for a single bed. There are no windows.

Ben Pynt from human rights advocacy organisation Humanitarian Research Partners (and a member of CLA) said the long-term effects of solitary confinement such as at chauka were similar to torture. <http://tinyurl.com/kb8e7y9>

## Happy birthday to the 'Darkest Day'

It seems the AFL administrators of the sport and ASADA, the national drug agency, have no concept of fairness and equity, or a balanced approach.

There was an evidence-lacking witch hunt launched at a made-for-TV, beat-up media conference in Canberra in Feb 2013 by the then-incompetent Australian Crime Commission and Labor government federal ministers. The event became notorious as the 'Darkest Day in Australian Sport'. It should have been termed the darkest day in policing and politics.

The 'Drugs in Sport' fiasco finally stumbled head-first to the bar of the Melbourne County Court last month, nearly two years later.

It shows how strong the ACC-AFL-ASADA case was in Feb 2013, and is now, in that it has taken 23 months to get to court. For all that time, the authorities have been desperately seeking evidence, by whatever means it takes.

Those mainly affected – the public who pay to attend games, the media and the Essendon Football Club – aren't allowed in court to see, transparently, what skulduggery ASADA and its co-conspirators are up to against individual players. No-one is permitted to report in detail what's being done behind closed doors. But you can be sure justice isn't.

ASADA has used and abused its own and AFL powers in thimble-and-pea trickery to try to justify outrageous bids to get sportsmen to self-incriminate. The rule of law is a foreign concept to these bodies; innocent until proven guilty doesn't have a place in top sport administration, where the reverse operates.

Civil Liberties Australia believes it is time there was a Royal Commission into Sport. Its brief would be to lay down a path to restoring fairness and equity to amateurs and professionals playing and administering sport in Australia. Creating a sporting bill of rights would be a great start.

No players should have to put up with the inequity and uncertainty that ASADA and the AFL – stirred originally by an out-of-control ACC and prodded by politicians – have put the Essendon and Cronulla Sharks rugby league footballers through over the past two years.

The saga enters its third year on 7 Feb. Happy birthday to the "Darkest Day". <http://tinyurl.com/nqkgk2r>

## Trial aborted: cops can't keep track of cocaine

The trial of a man charged with importing 400kg of cocaine by yacht into Scarborough Marina in Queensland in October 2010 has been aborted because the Australian Federal Police denied on oath the existence of a video...which was subsequently found on the AFP website!

The amount of drugs seized was variously reported by police and prosecution authorities as 464kg, 400kg and 355kg. The different figures appear to mean that more than 100kg of cocaine mysteriously disappeared – or AFP scales in different places are woefully uncalibrated.

Australia's federal police also took into custody an olive green bag containing 20kg of cocaine from the boot of a hire car, but failed to look inside a second olive green bag clearly visible on the back seat.

The hire car was parked unguarded in the AFP's Brisbane car park for three days. It was only when the hire car company wanted the car back that federal police officers opened the back seat bag and found it held another 25kg of cocaine.

This Scarborough drug bust, from the yacht *Mayhem of Eden*, is worth much closer attention. It occurred at the same marina



where Sue Neill-Fraser's *Four Winds* yacht had been moored immediately before it was sailed to Tasmania, making an overnight stop at Eden on the way down.

She said that drug smuggling may have been a motive for the disappearance of her husband off their yacht in Sandy Bay, Hobart, on Australia Day 2009.

Neill-Fraser, convicted of murder without a body, weapon, motive or eyewitness and now sentenced in Risdon Prison to serve 18 years, was ignored by Tasmanian Police, who do not appear to have made any realistic effort to investigate the people and the circumstances connected with Scarborough Marina and *Four Winds* presence there.

A former owner of *Four Winds* had an address at Eden on the south coast of NSW: premises in Eden were raided in connection with the Scarborough Marina drug bust. But still TasPol appears to have not tried to explore with their federal counterparts if or how there were any links.

Note: CLA is not suggesting any links between any former owner of the *Four Winds* and drug smuggling: we do however believe that remarkable coincidences of time, place, yachts and drugs should be better investigated when an innocent woman has been wrongly convicted. <http://tinyurl.com/pg9k5c5>

## Debate rages over future of DPP

Debate rages in Tasmania about whether the government will – or can, or should – dismiss the DPP.

The Director of Public Prosecutions, Tim Ellis, was sentenced in Hobart Magistrates' Court last month for negligent driving causing death, after being convicted earlier in 2014, then losing an appeal.

Just before Christmas, magistrate Chris Webster handed down a four-month suspended jail sentence, provided he remains of good behaviour for two years, during which time he is also banned from driving.

The Tasmanian legislation appointing a DPP says he or she holds office virtually "for life", until age 72, the same retiring age as senior judges. The state can dismiss him if he misbehaves, or is incapable of doing his job, unless only temporarily ill. Otherwise, he holds the position at his own pleasure, no-one else's, as regards how long he stays until the day of his 72nd birthday, when his appointment terminates.

The question is, does a conviction for killing someone – or any elements around his court cases – comprise "misbehaviour" or a formal admission of "incapacity". His lawyer, Garth Stevens, told magistrate Webster last month that Mr Ellis "has had to adjust to a life of permanent incapacity, pain and disability" due to the serious injuries he suffered in the crash.

A Facebook page sprang up immediately after the sentencing to discuss the DPP's position: thousands of comments

appeared in just a few days before the page was suddenly taken down. There was widespread public criticism that the DPP had been still drawing a salary of about \$430,000 a year while the court case dragged on for 21 months after the collision.

A new Facebook page emerged, commenting on the disappeared first one: "*The Facebook page 'WE WANT TIM ELLIS FIRED' got approx 9000 likes in 3-4 days, & strong comments - then VANISHED!!!! Who set it up? Why was it taken down? Does anyone know?'*" [https://www.facebook.com/permalink.php?story\\_fbid=398966853593545&id=135009013322665&notif\\_t=lik](https://www.facebook.com/permalink.php?story_fbid=398966853593545&id=135009013322665&notif_t=lik)

The Facebook page mystery continues, meanwhile...

Both the previous Labor-Green and the current Liberal governments continued Mr Ellis's salary while his legal case ploughed through the courts over 2013 and 2014. Now the Liberal government must decide what happens next: does the government want Mr Ellis stay or go as DPP?

This is virgin territory in terms of clauses and conditions of statutory office holders who are protected by the clear need for independence from government interference in day-to-day duties of the role. Tasmania could well be in for more litigation before the situation is resolved, because it is not clear what the entitlements of the state and of Mr Ellis are.

New legislation may be needed, according to many people in political and legal circles in Hobart, who are openly saying that the next DPP appointment, whenever that occurs, should be for a term – 5, 7, or 10 years – and not for "life".

But, if the office of the DPP was running well under Mr Ellis before the death crash, why are people now proposing legislative change? The collision changed nothing about how the DPP system was functioning.

However, if the office of the DPP was not operating well before the crash, so that shorter appointments are now necessary, before any new legislation passes there should be an inquiry into what, if anything, was wrong ...and what can be done about it.



If there was/is a major problem, changing the length of appointment won't fix it.

**Background:** Natalia Pearn (photo), 27, died in a head-on smash on the Midland Highway in March 2013 when the car Tim Ellis was driving was across double white lines in the wrong lane.

## AG may change 'insanity' laws

SA AG John Rau is contemplating whether to change the state's mental impairment defences.

Last month he received the first report of the two-year-old SA Sentencing Advisory Council, containing a detailed analysis of the insanity/mental incompetence defence.

Part 8a of the *Criminal Law Consolidation Act (SA)* provides that a person who is not mentally competent to commit an offence can't be sentenced to prison, though they can be detained. The SAC is proposing changes to the definition of, and test for, mental incompetence, and additional options for an extended period when such defendants are released under supervision.

"Such a review is not unique to SA," Mr Rau said. "Victoria, WA, NSW as well as NZ and Scotland have recently considered mental impairment laws." – media release, 12 Dec 2014 <http://tinyurl.com/ps6kmkd>

## ACT buys 'justice' off the shelf from the West

The ACT is buying a courts management system off the shelf from WA.

It will replace a 24-year-old 'MAX' database, and "facilitate the collection of data about court operations and cases," according to a media release (ACT AG, 10 Dec 2014).

The Integrated Case Management System will start in the ACT Civil and Administrative Tribunal (ACAT) early in 2015, then be rolled out to other courts by the end of 2016.

Civil Liberties Australia is mystified why all states and territories don't use the same system, so they can cross-tabulate statistical and other information.

## AGs thumb their noses at UN

The NT and WA will ignore a UN committee's recommendation to get rid of mandatory sentencing laws to cut the rising Indigenous incarceration rate.

The UN's Torture Committee was concerned at reports mandatory sentencing disproportionately affected Indigenous Australians who make up 30% of the nation's prison population. The committee was particularly concerned about mandatory sentencing laws in WA and the NT for offences such as assault and domestic violence.

NT's acting Attorney-General, Willem Westra van Holthe (photo), last month said he would not be apologising for "looking after the interests of all Territorians". "The NT Government will not be reviewing our mandatory sentencing laws," he said.



WA AG Michael Mischin said he regretted the over-representation of Indigenous people in the prison population but stood by the state's stance on mandatory sentencing. <http://tinyurl.com/lmlc7sn>

## Governments breach rights, locking up men

Both the federal and NT governments have breached human rights by allowing four Indigenous men with disabilities to be locked up in the NT despite being innocent of any crime, the Human Rights Commission has found.

The Commonwealth dismissed the judgment by the HRC, which found multiple abuses of the human rights of the men, claiming the HRC had acted outside its jurisdiction by launching the inquiry in the first place.

The federal government, which pokes its nose in Territory affairs whenever it suits it, claims this time that its nose knows no reason why it should assume any blame whatsoever....despite the 2007 Intervention ostensibly on the basis of the welfare of Aborigines.

It is not known whether the four men will be removed to Manus Island or Nauru to obviate the problem. <http://tinyurl.com/q2vcgb4>

## Magistrate's Googling causes retrial

Perth magistrate Barbara Lane resigned just before being officially removed from a case because she Googled information about it in advance of the hearing.

The case in Joondalup Magistrates Court involved the operators of a Carabooda market garden accused of housing itinerant or seasonal labourers in sheds and outbuildings on their property without council approval. The operators denied wrongdoing.

When the twice-adjourned case began again, Ms Lane asked whether the accused ran West Australian companies, adding that she had "Googled them".

Their lawyer objected and an order was made to review the matter in the West Australian Supreme Court. Last month, Justice Eric Heenan ruled there had been a breach of procedural fairness, and ordered a retrial before a different magistrate. <http://tinyurl.com/qymh9de>

Magistrates inappropriately Googling is rare, but critics of the justice system suspect that jurors frequently Google the background cases, which they are not permitted to do. Civil Liberties Australia believes there needs to be a 'Better Justice' campaign to analyse how the justice system is working, or not, and to design and implement protocols for improvement.

## ODD SPOT: You need a licence to beg!

Fremantle has declared its cappuccino strip out of bounds for beggars...unless they are licensed.

The City of Fremantle has introduced a registration scheme for beggars, who are only permitted to operate in certain areas. Council rangers had registered nine legitimately homeless beggars by late last year. They are not permitted to beg in the tourism thoroughfare of Market Street and some surrounding streets.

Fremantle Mayor Dr Brad Pettitt said the ultimate aim was to help the homeless. "We've got community safety rangers here who speak with the people who're begging and get them in contact with the services that they need," he said.

City of Perth wants the state to pass a law to make begging illegal, says an AAP report. <http://tinyurl.com/n2um8hx>

## Sniffer dogs produce 97.56% failure rate

Tens of thousands of NSW people are subjected to public police searches each year because sniffer dogs falsely identify them as carrying drugs.

NSW Greens MP David Shoebridge said successive governments had failed to prevent unjustified drug searches stemming from sniffer dog use. "This data shows that every year in the range of 10,000 people are routinely and grossly inappropriately humiliated on our streets or on public transport," he said.

The searches are focused at Redfern train station far more than at Central or Kings Cross stations, even though Redfern searches are less likely to identify drugs, data showed.

NSW sniffer dog statistics as revealed recently:

- 64% of searches found no drugs in 2013.
- Nearly 17,800 people searched.
- 2.44% of searches led to successful prosecutions.
- Passengers at Redfern Station 6.5 times more likely to be searched than passengers at Central Station <http://tinyurl.com/pvfk5dp>

In 2006, a major and detailed NSW Ombudsman's inquiry\* found that drug detector dogs were wrong in about 75% of their initial assessments. In Oct 2009, then-federal Customs Minister Brendan O'Connor issued a media release\*\* indicating Customs dogs achieved a success rate of about 2.2%.

Civil Liberties Australia says the cute dogs are kept by Customs and police as a PR tool, rather than being an effective crime-fighting resource. It's a case of much doggy-doo about nothing.

\* Review of the Police Powers (Drug Detection Dogs) Act 2011, June 2006: NSW Ombudsman report

\*\* Minister for Home Affairs, 30 Oct 2009, 'Celebrating 280 dog years of excellence'.

## Australian briefs

**Serco reprimanded by Ombudsman.** The Commonwealth Ombudsman's office released a report (<http://tinyurl.com/pffbo39>) reprimanding Serco over \$US5000 which has gone missing. An asylum seeker (Mrs X) says she handed the money to a Serco officer when she was transferred to the immigration detention facility in 2012, and it was never returned. The Ombudsman found both Serco and Immigration at fault, and both are refusing to reimburse the money. Serco is one of the few companies that do anything desired of them by governments – for a price – sometimes with few or no questions asked, with new staff in a new area of operation.

**Govt spies on its own workers:** SA Health used cameras hidden in smoke detectors to monitor its staff at SA Pathology premises in Adelaide. Two cameras were installed in October as part of an investigation of processing delays for pathology reports, SA Health has admitted. The clinical support services director Ken Barr said the covert cameras were dismantled in December 2014 and regular cameras installed. The investigation continues. <http://tinyurl.com/mwpmjuf>



**Eight police charged with theft:** Eight SA police officers are facing numerous theft charges involving tools, electrical goods and alcohol in Adelaide Magistrates Court. The six men and two women from the Sturt area south of the city were charged after a joint investigation by the Independent Commissioner Against Corruption and SA Police Anti-Corruption Branch. Secrecy surrounds the case, with all submissions made during the court appearance suppressed. Those charged will appear again in February. <http://tinyurl.com/nh2bmut>

## CLA report for December:

CLA was invited to the Attorney-General's Department and Department of Foreign Affairs and Trade's Non-Government Organisation forum in Sydney. Rhys Michie attended on CLA's behalf, and his detailed report is on web site. It is an important document for understanding how AGD and DFAT plan to inform the United Nations about what is happening in Australia in key areas such as civil liberties, human rights, disabilities, immigration and refugee matters and with Indigenous Australians.

### Book review:

Don Dunstan biography written by CLA member Dino Hodge (see website). Review by President Dr Kristine Klugman.

### Wrongful convictions — miscarriage of justice initiatives:

Robin David Macartney in WA, Henry Keogh and ramifications of his release on bail just before Christmas 2014 in SA, and the Sue Neill-Fraser case in Tasmania.

International liaison with Canada and UK re possible global campaign for Better Justice.

Better Justice campaign: basic strategy and approach is being worked with key Australian stakeholders, while approaches are under way internationally.

**Networking meetings:** Peter Grabosky re miscarriage of justice and wrongful convictions contacts, and preparing for a 'Better Justice' campaign.

Software engineer Arved von Brasch (photo, with CLA President Dr Kristine Klugman) re Classification Review Board (censorship) and internet matters.



**Play:** Work continues telling the story the Sue Neill-Fraser case: it is close to its first public airing.

#### **History project:**

Chapters on Tasmania, Victoria and the Northern Territory are close to completion. The South Australian chapter is half-finished, while work continues on other chapters.

#### **Submissions:**

The major submission being worked on is that to the Australian Law Reform Commission on the 'Freedoms Inquiry'. Rhys Michie is leading the project.

*CLA is hoping for good news on Australia Day for one of our valued CLA members: more in February.*

#### **Media:**

December was a quiet time for media. There were no major interviews or articles.

#### **Tasmania:**

CLA's Tasmanian Director Richard Griggs has accepted a position on the Board of the Hobart Community Legal Centre. In terms of civil liberties, Tasmania in 2014 was dominated by the campaign against the *Workplaces (Protection from Protesters) Bill*. The Bill would have created mandatory three month jail sentences for people who twice gathered on public land to protest in a way that slowed or hindered a business vehicle.

CLA's main contributions to the campaign were:

- a December 2013 opinion piece in the *Hobart Mercury* outlining the dangers in legislating for mandatory jail terms for peaceful protesters: <http://tinyurl.com/q3zxvss>
- convening a round table meeting of concerned organisations. The meeting resulted in a joint statement being drafted by CLA which attracted signatures from 22 organisations from unions and groups representing lawyers, Tasmanian Aboriginals, gay and lesbians and environmentalists: <http://tinyurl.com/obysbp2>
- drafting a petition to the Upper House asking they vote against the Bill. The petition secured over 2400 signatures: <http://tinyurl.com/k2oc8oc>
- an August 2014 opinion pieces in the *Hobart Mercury* making the case against mandatory minimum prison sentences <http://tinyurl.com/pqdqvkp>
- CLA's Tasmanian Director Richard Griggs speaking at a large public rally in the Hobart City Hall protesting against the proposed laws: <http://tinyurl.com/kcpre8s>

The campaign successfully achieved some, but not all, of its aims. The main success was in convincing the Upper House to successfully move amendments to the Bill to remove the mandatory prison sentences.

#### **2015 CLA AGM:**

Civil Liberties Australia's annual general meeting gets under way from the first of February; this is notice for members of the timeline and outline of the processes of the general meeting.

The AGM is run electronically, so all financial members with individual email addresses throughout Australia can take part. Members without individual email addresses, who receive the CLArion by mail or who have elected to not receive the CLArion, will receive AGM paperwork by mail.

The election period runs between 1 Feb and 29 March.

The period to 21 February is open to receive draft motions from members. The Board of CLA meets on 22 Feb to consider any proposed motions and to confirm outstanding membership applications so as to finalise membership for voting. Online discussion of draft motions between members can take place between 23 Feb and 6 March, which is also the call for nominations for board positions period.

If you are thinking about proposing a motion, please discuss the idea with the President or Secretary to ensure your proposal is not already under consideration or is not being put forward by another member. Contact President Dr Kristine Klugman on email: president (at) [cla.asn.au](mailto:cla.asn.au) in the first instance.

The board determines the final wording of any motions on 8 March, and advises members of motions to be voted on, if any, and board election requirements, if any.

Between 9 March and 23 March is the voting period. Almost all votes are usually lodged by electronic means. Those few members who don't communicate by email will receive postal ballot papers as required. Completed postal ballot papers must be received at the CLA PO box by close of business (5pm Eastern Standard Time) on 23 March.

## **INTERNATIONAL**

### **Bellwether patent about to expire**

In the USA, the patent protecting the active principle of imatinib, the world's first "miracle" cancer drug, expires on 4 January 2015.

The patent protecting the beta crystal form of the active principal ingredient will expire on 23 May 2019.

Imatinib is marketed by the pharmaceutical company Novartis in Australia, Europe and Latin America as Glivec, but the drug authority in the USA forced a name change there to Gleevec, because the original name sounded similar to a pre-existing drug in that market.

By whatever name, it treats chronic myeloid leukaemia (CML) and gastrointestinal stromal tumours (GISTs) plus some associated conditions.

Most patients taken one 400mg tablet a day. Each tablet costs about \$130, which means a month's course is about \$4000, and the yearly cost about \$50,000.\*

But in India, where the Supreme Court ruled the patent did not apply, the same content can be bought in a pill which is identical in substance and form for about \$2 each, or \$60 a month.

The patent battle over imatinib and like drugs will be one of the defining debates of the next decade in Australia and worldwide. We can expect many lawsuits as the pharmaceutical companies attempt to "evergreen" their patents by creating a (very slightly) altered form of an existing drug.

PS: The patent on imatinib in Australia expires later in 2015. Note: the CLA CEO is on Glivec x 1/day.

\* Patients in Australia pay a maximum of about \$400 a year... whereas the Pharmaceutical Benefits Scheme must pay the rest, potentially up to \$49,000 per patient, if it hasn't negotiated a better deal, from a very weak position, with the



company. The total cost to the Australian PBS is hundreds of millions of dollars a year.

## NZ CCL jacks up over 'fake consultation'

The New Zealand Council for Civil Liberties refuses to take part in the submissions process around the NZ Parliament's *Countering Terrorist Fighters Legislation Bill*, a recent media release says.

Thomas Beagle, chairperson: "Giving people just two days to make a submission is farcical. It's a parody of proper consultation and New Zealand's democratic process.

"We refuse to help legitimise this fake consultation by taking part in it. The Government should withdraw this Bill until such time as it can be properly considered in accordance with normal practice."

Seems the NZ government operates the same way the Australia government does. <http://tinyurl.com/m76wevm>

## Kiwis rush through terror laws

NZ rushed through parliament last month a range of anti-terrorism laws to increase domestic surveillance and stop nationals from travelling abroad to fight for groups such as Islamic State.

NZ's domestic spy agency may now carry out surveillance for up to 24 hours without a warrant. The government can cancel a passport on national security grounds for three years, up from one year.

The law, passed 94 votes to 27, is scheduled to expire in 2017. <http://tinyurl.com/myul7yk>

## Dotcom warrants legal, court rules

New Zealand's Supreme Court ruled last month that warrants granted in 2012 to search Kim Dotcom were legal.

Dotcom and three others were ordered to pay \$33,000 in legal costs.

Judges ruled 4-1 that the police were permitted to seize items they took from Dotcom's house in 2012, even though the warrants had procedural flaws.

In 2012, the US government accused Dotcom of racketeering, copyright infringement, and money laundering in connection with his website Megaupload, which the US contends encouraged people to share pirated copies of music and movies.

The thrust of Dotcom's argument against the search warrants was that they were overly broad and "authorised search and seizure of material likely to include that which was irrelevant and private." <http://tinyurl.com/k33gus2>

## 16yo arrested for school speech

Turkey has arrested a 16-year-old high school student for "insulting" President Recep Tayyip Erdogan, accusing him and his ruling party of corruption.

The boy is believed to be a member of a leftist organisation, the *Hurriyet* newspaper reported.

The boy, known by his initials MEA and left-leaning, delivered a speech in the central Anatolian city of Konya, a bastion of Erdogan's Islamic-rooted Justice and Development Party. It was in memory of a young secular teacher killed by Islamists in 1930, according to *Hurriyet* newspaper.

Arrested by police at his school, he now faces four years in prison if convicted.

Riza Turmen, a politician of the secular opposition Republican People's Party, denounced the arrest as a violation of the UN

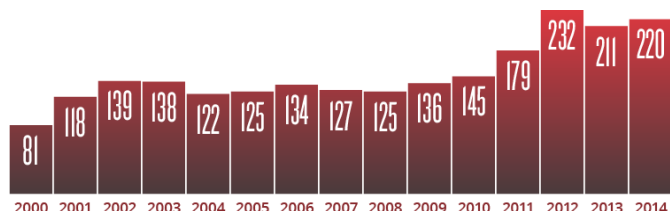
charter on children's rights. "Regimes taking children out of classes by police force and putting them in jail are fascist regimes," Mr Turmen, a former judge at the European Court of Human Rights, said. <http://tinyurl.com/m2lmfos>

## Journo jailings rise again

A total of 220 journalists were in jail at 1 Dec 2014, 9 up on a year ago.

The Committee to Protect Journalists said 56 journalists were killed in the first 11 months of 2014.

The bar chart shows the number in jail at the end of each year...there is a distinct rising trend.



## Senate says CIA brutal, ineffective

The US Senate Intelligence Committee last month issued a withering indictment of the Central Intelligence Agency's program to detain and interrogate terrorism suspects after the 11 Sept 2001 aircraft attacks on the USA.

Millions of internal CIA documents illuminated practices that were more brutal — and far less effective — than the agency acknowledged either to Bush administration officials or to the public.

The Senate committee's investigation, according to its chairwoman, Senator Dianne Feinstein of California, found that CIA officials routinely misled the White House and Congress about the information it obtained.

They also failed to provide basic oversight of the secret prisons it established around the world. <http://tinyurl.com/qbuurzo>

"History will judge us by our commitment to a just society governed by law and the willingness to face an ugly truth and say 'never again'," Senator Feinstein said.

The committee released a summary of the 6000-page report.

"In 500 pages, the summary...paints a devastating picture of an agency that was ill equipped to take on the task of questioning Al Qaeda suspects, bungled the job and then misrepresented the results," the NYT said. <http://tinyurl.com/pt7xthr>

## 'US should prosecute its torturing officials'

The Obama government should prosecute Americans who tortured, says the *New York Times*.

"Since the day President Obama took office, he has failed to bring to justice anyone responsible for the torture of terrorism suspects — an official government program conceived and carried out in the years after the attacks of Sept 11, 2001," the paper said.

"These are, simply, crimes. They are prohibited by federal law, which defines torture as the intentional infliction of 'severe physical or mental pain or suffering'. They are also banned by the Convention Against Torture, the international treaty that the United States ratified in 1994 and that requires prosecution of any acts of torture."

Read more: <http://tinyurl.com/mmk65sv>

## ODD SPOT: Are lawyers on the decline?

The bottom is dropping out of the law school market in the USA. Enrolments of first-year law students have sunk to levels not seen since 1973, when there were 53 fewer law schools in the USA, according to the American Bar Association. The 37,924 full- and part-time students who started classes in 2014 represent a 30% decline from just four years ago, when enrolment peaked at 52,488. In 2013, only about 65% of law graduates got law jobs. Attending law school in the US costs about \$50,000 per year of study, or even more at the 'name' schools, like Harvard. <http://tinyurl.com/pezhb6b>

## 'Drift towards police state', top cop warns

The battle against extremism could lead to a "drift towards a police state" in which officers are turned into "thought police", Sir Peter Fahy, Chief Constable of Greater Manchester, warned last month.

He said police were being left to decide what is acceptable free speech as the efforts against radicalisation and a severe threat of terrorist attack intensify. It is politicians, academics and others in civil society who have to define what counts as extremist ideas, he says.

Fahy as Chief Constable of Greater Manchester police also has national counter-terrorism roles. He is vice-chair of the police's terrorism committee and national lead on Prevent, the counter radicalisation strategy. <http://tinyurl.com/qds9n3x>

## China stops use of executed prisoners' organs

China will stop using executed prisoners as a source of organs for transplants from today (1 Jan 2015), the head of the country's organ donation committee, Huang Jiefu, said last month.

The change to national policy was one of the issues proposed when Civil Liberties Australia took part in non-government organisation dialogue with a Chinese government delegation two years ago in Canberra.

Death row prisoners have provided the overwhelming majority of transplanted organs for years, owing to high demand and low donation rates. But in future their organs will only be used if they volunteer to donate and their families approve the decision, he said.

China is also reducing executions for crimes. In 2013, it is believed China executed about 2400 people, about 10,000 fewer than the number executed annually a decade ago. <http://tinyurl.com/osakoo4>

## Privacy groups fight to overturn intrusions

The US and Australia have been working through the Asia-Pacific Economic Cooperation body to reduce the level of protection for personal data that is provided by OECD-style data protection laws.

Their efforts have resulted in the 'APEC Privacy Framework'. See <https://cbprs.blob.core.windows.net/files/APEC%20Privacy%20Framework.pdf> This framework is a mechanism for enabling personal data to be transferred between countries. National privacy laws are undermined by means of the Cross Border Privacy Rules System (CBPRS). See <http://www.cbprs.org/>

On 3 December 2014 a coalition\* of privacy and consumer groups sent a joint submission to APEC asking for significant changes to the CBPRS. The submission is available here: <http://www.privacy.org.au/Papers/APEC-CBPR-141203.pdf> The submission follows a long period of opposition by civil

society representatives to the first implementation of the CBPRS, which has now been operating in the US for 18 months.

The submission raises concerns at the growing number of false claims of APEC certification and the absence of an official, accurate list of members. The signatories oppose the appointment of TRUSTe as an accreditation agent for the CBPRS in the US, citing weaknesses in that organisation's program criteria, conflicts of interest, and unacceptable use of fine print exclusions in TRUSTe certified privacy policies.

The group has called on APEC to reform its CBPRS or close it down. – media release, Aust. Privacy Fndtn, 5 Dec 2014

## ODD SPOT: 'Bad' female drivers 'terrorists'

Two women's rights campaigners detained in Saudi Arabia for defying the country's driving ban have been transferred to a special tribunal for "terrorism", activists say.



Loujain Hathloul (photo), a woman with 228,000 Twitter followers, has been detained since 1 Dec 2014 after trying to drive into the Kingdom of Saudi Arabia from neighbouring United Arab Emirates in defiance of a driving ban. Maysaa Alamoudi, a UAE-based Saudi journalist, arrived at the border to support Ms Hathloul and was also arrested.

Saudi Arabia is the only country in the world which does not allow women to drive. However, investigations appeared to focus on the women's social media activities rather than their driving. <http://tinyurl.com/oxe6t7m>

## 'Mass surveillance threatens privacy'

The digital communications revolution has led to "perhaps the greatest liberation movement the world has ever known," the Deputy High Commissioner for Human Rights, Flavia Pansieri, suggested recently.

Addressing the Human Rights Council in Geneva, Pansieri used as an example the online dialogue held as a precursor to the negotiation of the post-2015 sustainable development goals, a dialogue in which more than a million people participated.

"Yet these digital communications platforms are not only vulnerable to surveillance, interception and data collection, they may actually facilitate such practices, putting at risk a range of human rights," he said. Noting the particularly serious impact on the right to privacy, Mr Pansieri said that the rights to freedom of opinion and expression, of peaceful assembly and association, the right to family life and to health, also may be at risk. <http://www.ohchr.org/EN/NewsEvents/Pages/MassSurveillance.aspx>

## US authorities use old law to 'jailbreak' data

Court documents from two federal criminal cases in New York and California that remain otherwise sealed suggest that the US Department of Justice (DOJ) is invoking an 18th century law to compel Apple to un-encrypt its phone data to help investigations.

Under iOS 8 software, Apple says: "Apple cannot bypass your passcode and therefore cannot access this data."

But in both court cases, the seized phones – one of which is an iPhone 5S – are encrypted and cannot be cracked by federal authorities. Prosecutors have now invoked the All

Writs Act, an 18th-century federal law that simply allows courts to issue a writ, or order, which compels a person or company to do something.

Some legal experts are concerned that these rarely made public examples of the lengths the government is willing to go in defeating encrypted phones raise new questions as to how far the government can compel a private company to aid a criminal investigation.

Two federal judges agree that the phone manufacturer in each case (one of which remains sealed, one of which is definitively Apple) should provide aid to the government.

<http://tinyurl.com/pckutpp>

## **Egyptian judge orders mass execution**

An Egyptian judge has sentenced 185 Muslim Brotherhood supporters to death over an attack on a police station near Cairo in 2013 in which 12 policemen died.

The attack on Kerdasa police station took place on the day Egyptian security forces cleared two Brotherhood protest camps in Cairo, killing hundreds of people in one of the bloodiest episodes in Egypt's modern history.

The ruling is preliminary and subject to a lengthy appeals process. It also goes to the country's top religious authority for approval, although his opinion is not binding.

Another court recently dropped murder and corruption charges against ex-president Hosni Mubarak over the killing of protesters during the 2011 uprising that ended his 30-year rule. <http://tinyurl.com/pkg2rzq>

## **Pom pollies told to honk off**

British MPs have been warned off Hong Kong.

Sir Richard Ottaway, chairman of the Commons foreign affairs committee, said he and fellow committee members had been told by the Chinese embassy they would be turned back if they tried to enter. The MPs planned to visit Hong Kong to inquire into the colony's relations with the UK 30 years after the agreement that led to the hand-back to China in 1997.

The move comes amid renewed protests by pro-democracy campaigners in Hong Kong, who are demanding the right to choose their own leaders without interference from Beijing, as they say they were promised. <http://tinyurl.com/nclruj2>

## **Angela's boyos also spy on their own**

Germany's top foreign intelligence agency, the BND, squirms through a legal loophole to snoop on its own citizens abroad if they are working for a foreign company or organisation (which would include the UN, of course).

Normally, the agency is not allowed to spy on German people or companies under Article 10 of the Basic Law, regardless of where they live.

The German government admitted last month "that work-related calls or emails are attributed to the employer. If the employer is foreign, the BND can intercept them." <http://tinyurl.com/o76vqkk>

## **Phone search is OK, but only immediately**

The Supreme Court of Canada has ruled 4-3 that law enforcement officers can search someone's phone when they arrest them – but that the search must be directly connected to and immediately after that arrest, and the officers must keep detailed notes.

The Canadian decision offers a significant difference between a related decision (Riley v. California) from the United States

Supreme Court, which ruled 9-0 in June 2014 that law enforcement cannot search an arrestee's phone unless they have a warrant.

The Canadian case, known as Kevin Fearon v Queen, revolves around a woman operating a jewellery stall in July 2009 at a flea market in Toronto's Downsview neighbourhood who was robbed. Two alleged robbers were nabbed nearby soon after. <http://tinyurl.com/ojx55vz>

## **ODD SPOT: Test MPs in the uppers house!**

The Hungarian Prime Minister called last month for mandatory drug testing of journalists and politicians.

A member of Viktor Orban's governing Fidesz party had recently suggested mandatory annual drug tests for 12 to 18-year-olds as well, but that plan has apparently been dropped.

In an interview on state radio, Mr Orban said: "Politicians, journalists and those filling positions of public trust have to be included [in the drug tests] because it is clear that those who consume drugs cannot be relied on in the fight against drugs."

<http://tinyurl.com/otbm24a>

## **NSA gives ACLU a Chrissy present**

The US spy supremo, the National Security Agency, responded to an FOI lawsuit from the American Civil Liberties Union by quietly releasing 12 years worth of internal reports on Christmas Eve.

Several of the reports were previously withheld illegally, and they became the subject of the FOI lawsuit in 2009.

The new trove of information has inspired a different breed of headlines, such as "Highlights From Newly Released NSA Oversight Reports Reveal Bumbling Ineptitude But No Evidence Of Systematic Abuse" from *Forbes*.

The newly discovered errors ran the gamut, including American data being e-mailed to unauthorised recipients, data being kept on unsecured computers, and sensitive information being sent to the wrong printer. <http://tinyurl.com/lo75382>

## **International briefs**

**Mandatory DNA collection too intrusive:** A California court has ruled that mandatory collection of a DNA sample from people simply arrested on felony suspicions – but not charged, much less convicted – violates the Golden State's constitution. A three-judge panel of the First Appellate District Court of Appeal went against a 2013 US Supreme Court decision known as *Maryland v. King*. That case found that a similar DNA law in Maryland was a valid form of police identification of suspects, analogous to fingerprinting and photographing. "The California DNA Act intrudes too quickly and too deeply into the privacy interests of arrestees," presiding justice J. Anthony Kline wrote for the panel. The California Constitution, unlike the US Constitution, declares "privacy" to be an "inalienable right" under a 1972 state law. <http://tinyurl.com/ldupyn>

**Suicide no longer criminal:** The Indian Government has announced that it will overturn Section 309, a controversial law criminalising suicide. The announcement follows a 2008 report from the Indian Law Commission that recommended repeal of the "anachronistic" statute, mandating that people attempting suicide would be presumed to be suffering from mental illness and thus not liable for punishment. <http://tinyurl.com/otc9kua>

**New twist on going Dutch:** The European Court of Justice has ruled refugees claiming asylum on the basis of their homosexuality should no longer be subjected to tests to prove it. Some asylum seekers had been subjected to arousal tests or faced detailed questioning about their sexual behaviour. The case was brought on behalf of three men whose asylum claims in the Netherlands were rejected on the basis that their assertions that they were gay, and would therefore face persecution if returned to their home countries, could not be proved. The court ruled that while questioning asylum seekers about their sexual orientation was acceptable, questioning them about sexual practices was not. <http://tinyurl.com/qdu9978>

**Tribunal rules snooping OK:** A British tribunal overseeing the nation's intelligence agencies ruled last month that electronic mass surveillance of people's mobile and online communications, like the Prism program revealed by Edward Snowden, is legal. Privacy advocates and rights groups had sought the opposite ruling. They will appeal to the European Court of Human Rights, which generally takes a more affirmative view of the rights of citizens to privacy and to not be spied on. <http://tinyurl.com/qy7q63y>

**Gbay sends four prisoners to Uruguay:** Six men held for more than a decade at Guantanamo Bay, the US military prison on Cuban land, were flown to Uruguay for resettlement last month. The four Syrians, a Tunisian and a Palestinian, flown aboard a US military transport plane, were the largest single group to leave the internationally condemned camp since 2009, US officials said. President Barack Obama took office six years ago promising to shut the prison, citing its damage to America's image around the world, but he has been unable to do so, partly because of obstacles posed by the US Congress. In mid-December 2014, there were 136 prisoners left in Gbay, down from a maximum of 779. <http://tinyurl.com/l9nt6kq>

**FBI is a loser:** FBI agents in every region of the USA have mishandled, mislabelled and lost evidence, according to a highly critical internal investigation that discovered errors with nearly half the pieces of evidence it reviewed. The evidence collection and retention system is the backbone of the FBI's investigative process, and the report said it is beset by problems. It also found that the FBI was storing more weapons, less money and valuables, and two tons more drugs than its records had indicated. In Newark, Honolulu, Milwaukee, Washington and Richmond, for instance, auditors found problems with the handling of more than 70% of firearms in evidence. <http://tinyurl.com/leww62r>

**Jordan reinstates death penalty, executes 11:** Jordan ended an eight-year moratorium on executions last month by hanging 11 men. The men, convicted of murder dating from 2002 to 2004, were killed at the Swaqa prison, about 100 kilometres south of the capital Amman. Jordan's last execution took place in March 2006. Since then, more than 100 people have been sentenced to death for crimes such as murder, rape and treason, but until last month, none of the sentences had been carried out. <http://tinyurl.com/l97edw6>

### **ODD SPOT: Orangutans have rights, too!**

An Argentine court believes a female orangutan, Sandra, at the Buenos Aires Zoo has basic rights as a "non-human individual" to live in semi-freedom with other large primates. In an unprecedented ruling, the Second Appeals Court ruled that

Sandra, a Sumatran orangutan, who has spent 20 years at the zoo, can enjoy a large measure of freedom in a sanctuary in Brazil. <http://tinyurl.com/poad9rq>

**Mandatory DNA collection too intrusive:** A California court has ruled that mandatory collection of a DNA sample from people simply arrested on felony suspicions – but not charged, much less convicted – violates the Golden State's constitution. A three-judge panel of the First Appellate District Court of Appeal went against a 2013 US Supreme Court decision known as *Maryland v. King*. That case found that a similar DNA law in Maryland was a valid form of police identification of suspects, analogous to fingerprinting and photographing. "The California DNA Act intrudes too quickly and too deeply into the privacy interests of arrestees," presiding justice J. Anthony Kline wrote for the panel. The California Constitution, unlike the US Constitution, declares "privacy" to be an "inalienable right" under a 1972 state law. <http://tinyurl.com/lldupyn>

## **DATES**

**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/>

**20-21 Mar, Brisbane:** Queensland Law Society Symposium 2014, Brisbane Convention Centre, <http://files.qls.com.au/150320/Symposium2015RegistrationForm.pdf>

**29 Mar-1 Apr, Auckland NZ:** 14th Aust'asian Conference on Child Abuse and Neglect. Details: <http://tinyurl.com/lx1hamb>

**18-19 May 2014:** Waikiki Hawaii: Pacific Rim Intntl Conf on Disability and Diversity. Details: <http://www.pacrim.hawaii.edu/>

**5-9 July, Perth:** 15th International Symposium of the World Society of Victimology, Perth Convention Centre. Details: <http://tinyurl.com/nu4aogr>

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

**June, England:** 800th anniversary of Magna Carta  
**Date, Place TBC:** 2<sup>nd</sup> Global Domestic Violence Conference

## **2016**

**18-23 Sept, Auckland NZ:** 23rd Intntl Symposium on Forensic Sciences. Details: [www.anzffs2016.org](http://www.anzffs2016.org)

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