

## CLA committee success may prevent another Bali Nine situation

Sometimes in the daily battle against the forces repressing liberties and rights, we forget that occasionally we have wins.

Civil Liberties Australia achieved some success in relation to “Bali 9” situations in 2008, when the Australian Parliament’s Joint Standing Committee on Treaties agreed to adopt two CLA proposals:

- Government should prevent...exposing an Australian citizen to the death penalty, and
- Government should monitor status/rights of extradited people

Both these issues have been top of mind in the past few weeks, over execution of the two Bali Nine Australians, and over potential extradition of a Malaysian citizen to face a possible death sentence.

We have asked MP Kelvin Thomson (Wills, Labor) who was chair of JSCOT when it agreed to CLA’s proposals, to follow up on the formal status of Australian Federal Police guidelines in relation to the Bali Nine, and to request an up-to-date briefing of practices in the Attorney-General’s Department.

While the AFP never formally agreed to changed guidelines which would prevent it “shopping” Australians, it does now require the Attorney-General’s approval for key information exchanges. CLA believes it is time to re-visit the protocols under which the AFP operates.

Here is our report on the 2008 JSCOT recommendations to the federal government: <http://www.cla.asn.au/News/no-more-bali-9-cases-and-extraditions-to/>

### Who said this?

*We have made our way in this often dangerous and cruel world, not by just strictly pursuing our geopolitical interests, but by exemplifying our political values, and influencing other nations to embrace them. When we fight to defend our security we fight also for an idea, not for a tribe or a twisted interpretation of an ancient religion or for a king, but for an idea that all men are endowed by the Creator with inalienable rights. How much safer the world would be if all nations believed the same. How much more dangerous it can become when we forget it ourselves even momentarily.* <http://tinyurl.com/kmzn4ye>

– don’t you wish an Australian politician had said that? But no, it was Republican Senator John McCain, arguing for full, transparent release of a Democrat-generated report on CIA torture.

## AGM about to get under way

The annual general meeting of Civil Liberties Australia takes place over coming months, online.

We believe we are the first organisation in Australia to undertake all general meeting processes online: members will receive emails explaining the process and timing over coming weeks. Members not registered with CLA with an email address will receive posted, paper information and forms.

Each two years we elect officer-bearers, and 2015 is an election year. It is expected most of the current office-bearers will offer themselves for re-election. Please keep an eye out for election material: it will include the annual report, and a voting form, which can be filled in quickly and easily, and returned by email for email-registered members or posted back.

## Two CLA members receive AMs

Two members of Civil Liberties Australia received AMs in the Australia Day 2015 honours.

Ann Symonds of Sydney NSW, received hers for significant service to social justice, particularly through drug law reform, and to the Parliament of NSW.

Brian Tennant (photo) of Subiaco WA, received his for significant service to the community, particularly through advocacy roles for improved social justice, law reform and civil liberties. CLA was a sponsor of his nomination.



## Study shows 71% of people develop false memories

The idea that memories are not as reliable as we think they are is disconcerting, but it’s pretty well-established, according to Cathleen O’Grady writing online for *Ars Technica*.

“Various studies have shown that participants can be persuaded to create false childhood memories – of being lost in a shopping mall or hospitalised, or even highly implausible scenarios like having tea with Prince Charles.

“The creation of false memories has obvious implications for the legal system, as it gives us reasons to distrust both eyewitness accounts and confessions.

“It’s therefore important to know exactly what kinds of false memories can be created, what influences the creation of a false memory, and whether false recollections can be distinguished from real ones.

“A recent paper in *Psychological Science* found that 71% of participants exposed to certain interview techniques developed false memories of having committed a crime as a teenager. In reality, none of these people had experienced contact with the police during the age bracket in question.” <http://tinyurl.com/m3da967>

CLA is particularly concerned about two cases, one in Tasmania and one in Queensland, where false memories appear to have played a major part.

The Sue Neill-Fraser case in Tasmania turns on two sets of memories “facilitated” by police interrogation: she has been wrongly convicted of murdering her husband, Bob Chappell, with no body ever found.

The Queensland case is yet to come before the court.

## Inphos should notify customers of breaches

Internet and phone providers – inphos – should have to notify customers of metadata breaches if they are forced to store customers’ records for two years as part of the Abbott government’s mandatory data retention regime, Australia’s federal Privacy Commissioner told parliament last month.

Timothy Pilgrim (photo) also warned the proposed data retention scheme may result in providers collecting "more personal information than is necessary" for their business purposes and "retaining that information for longer than is necessary for those purposes". The scheme would therefore require providers to handle personal information in a way "that may otherwise be inconsistent with those providers' obligations under the Privacy Act," he said.



Ben Gruff reported that Mr Pilgrim made the remarks in a submission to the Parliamentary Joint Committee on Intelligence and Security, which is examining the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, introduced into federal parliament in October. <http://tinyurl.com/q46e5ye>

The PJCIS – or the SIC, security and intelligence committee, as we call it – has extended its hearing dates after at first rushing the data retention issue. It held one day of hearings pre-Christmas, then MPs went on holidays while civil society worked on submissions. Now the SIC is back at work, but realises it has to devote more time to trying to justify why all your and my communications should be observed by the Big Brothers of the spook and police communities. There was a time once when police and intelligence agencies watched crooks, not the innocent.

### Chance to have a say on treaty negotiations

The ALP and Greens have initiated a [Senate Inquiry](#) into Australia's secretive trade agreement processes, like behind-closed-door deals involved in the Trans Pacific Partnership.

Currently all trade negotiations are done by bureaucrats in secret and MPs don't see the details until after the particular agreement is signed in principle: approval by the parliament is a token affair.

With treaties that are dangerous to the Australian democracy, like the TPP, it is vital that the parliament and the people get to see and comment on the proposed treaty clauses before Australia makes a firm commitment.

The [terms of reference](#) to the new inquiry allow people to raise concerns about secrecy and lack of democracy, and promote public debate about these concerns.

If you are concerned about the TPP and similar treaties, please send a letter or a longer comment to the inquiry by 27 Feb, the closing date for submissions.

### Dissidents strip rhetoric out of TPP hype

"The nations secretly negotiating the Trans-Pacific Partnership (TPP) together comprise some 40% of the world economy. Past agreements have led to the demise of jobs, a great reduction in manufacturing, and an overall reduction in wage rates in the US. There is no reason to believe that the TPP won't have the same effect." So says a telling article in Dissident Voice, an online US journal reporting from the American perspective.

"For something negotiated by the elite rich from many countries in the dark – one would be stupid to believe otherwise. In fact, most objective sources predict that the TPP would provide transnational corporations with greater access

to cheap labor and new power to trump public-interest protections for labor, food safety, drug prices, financial regulation, domestic procurement laws, just to name a few — laws established over decades by democratic countries."

<http://tinyurl.com/pckmsut>

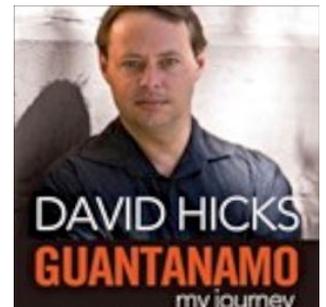
Precisely. That's what Civil Liberties Australia has been saying for five years.

### Hicks non-crime plea: ruling awaited

The Centre for Constitutional Rights in the USA is actively working to get David Hicks' plea bargain 'conviction' overturned, alongside the efforts of CLA member and South Australian barrister Stephen Kenny. Here is CCR's recent report on the Hicks case:

#### Case in focus: Hicks v. United States

Our (CCR's) commitment to fight the injustices of Guantánamo takes many forms in many venues – from the Supreme Court to "Waiting for Fahd," in our representation of individual clients and our dogged advocacy on their behalf to the op ed pages. One of our current efforts is the case Hicks v. United States, which seeks to vacate David Hicks' 2007 military commission conviction for "material support for terrorism." Hicks, an Australian citizen, was captured in December 2001 by the Northern Alliance and turned over to the US. He was a plaintiff in CCR's winning Supreme Court case *Rasul v. Bush*, which established the right to counsel for men detained at Guantánamo. In 2007, he was the first detainee to be tried under the military commission system – a system rigged to sidestep the rights of defendants in federal courts. Desperate to get out of Guantánamo, where he had been tortured, he took a plea deal. Federal courts (in both *Hamdan v. United States* and *Al-Bahlul v. United States*) have since ruled that "material support" is not a war crime and that therefore the military commissions cannot convict anyone of it. Based on this, Hicks is seeking to vacate his conviction, and clear his name. Hicks v. United States was filed in 2013, and just last (month) we submitted our latest brief in the case. We are awaiting a ruling from the Court of Military Commission Review. For the latest news, see: *Hicks conviction illegal: US govt* <http://www.cla.asn.au/News/hicks-conviction-illegal-us-govt/> on the CLA website.



### ODD SPOT: Life matters

*Could a film similar to 'The Life of Brian' be made about 'The Life of Muhammad', a correspondent asks.*

### Defence bans extremists...but who defines?

Public servants in the Defence Department have been banned from associating with extremist political groups, at work and in their spare time.

The department's employees will also be expected to do-in colleagues they suspect of dabbling in extreme ideology.

Defence boss Dennis Richardson told his 21,000 civilian bureaucrats in late 2014 that their private political activities could now result in them being punished under the Australian Public Service Code of Conduct.

The move extends bans already in place on Australian Defence Force members belonging to groups that hold views that are extremist, violent, bigoted or discriminatory.

Anybody caught in defence workplaces advocating supremacist views or with material that is offensive or belittling to minority groups will be in trouble, staff have been warned. <http://tinyurl.com/ls3o5rq>

An extremism checklist has been distributed to line managers in the department, with tips for spotting warning signs that their public servants might be flirting with the hard right. (There is no warning about other directions, apparently, even though Defence holds officers from the gamut of spectra).

The key question, Civil Liberties Australia says, is who decides what is "extremist"?

Richardson himself until recently presided over ASIO, Australia's internal, secret, security agency which, it is believed, was implicated (along with NSW Special Branch police) in the only major political bombing in Australia's history, the Hilton Hotel fiasco of 13 Feb 1978, which claimed the lives of two garbage collectors and a policeman... Alex Carter and William Favell, and Paul Birmistriw.

Those who benefited most from the Hilton bombing were ASIO, which received hugely expanded powers, and the Australia Federal Police, a service which was literally born of the bombing.

## AG barks up the wrong tree

"The Attorney-General's latest attempt to use the Sydney siege and recent events in France as justifications for the government's mandatory data retention laws is as distasteful as it is misleading," Jon Lawrence, executive officer of Electronic Frontiers Australia wrote last month.

"The problem with citing France and Sydney as examples, apart from leveraging a number of tragic deaths for political gain, is that they are in fact fairly strong cases of why mandatory data retention may not be the critical necessity he asserts it to be.

"Two other recent 'acts of terror' similarly point to the same conclusion, namely the Boston Marathon bombing in April 2013 and the brutal murder of Lee Rigby in London the following month. In each of these four recent examples, the perpetrators were well-known to police and intelligence agencies.

"The Attorney-General (George Brandis) quotes former ASIO chief David Irvine as saying that access to metadata is 'absolutely crucial' in identifying terrorist networks. As these examples clearly show, identifying the perpetrators was not the problem.

"In each case, it was rather decisions taken to not commence, or to cease, close surveillance of these individuals that arguably contributed to the failures of law-enforcement and intelligence agencies to prevent each attack," Lawrence says. <http://tinyurl.com/nypkwyx>

## It's enough to make you jump...

Queensland smokers may now be banned from lighting up a smoke on their own balconies under proposed changes to body corporate laws.

Attorney-General Jarrod Bleijie commissioned research which found that smoke from neighbouring units sometimes forced non-smokers to keep their windows and doors shut. The QUT research proposed regulating where unit dwellers could smoke, ruling out areas such as balconies.

Public consultation on the proposed changes is open until 30 January. AAP - <http://tinyurl.com/naq49eg>

## Viet vet falls foul of RSL over jacket

A Vietnam veteran is considering taking legal action against an RSL club in NSW after being refused entry because he was mistaken for a bikie.



Robert Wickes, who served in Vietnam as part of the Second Royal Australian Regiment, told the ABC that he had faced terrible discrimination over the years, but never expected it from his local RSL.

In 2012, Mr Wickes said he was denied entry to the Davistown RSL because his veterans' motorcycle vest (photo), which sports service medals and ribbons, made him look like a bikie gang member.

Davistown RSL club has defended its actions and dress code. <http://tinyurl.com/k9obvv8>

## Police tap into personal data 1200 times/week

Victoria Police are seeking access to people's phone and internet data at least 1200 times a week.

The figures came to light during a parliamentary inquiry into mandating that phone and ISP companies keep all your data for at least two years.

Figures show VicPol sought authorisations to access data 310,000 times over the past five years. The Australian Federal Police sought data 110,000 times in the same period.

Suelette Dreyfus, a researcher in computing and information systems at Melbourne University, said far more data was being created about people's communications than ever before, yet it was being accessed without warrants. "This is not just metadata, it's your life," she said. <http://tinyurl.com/nwtkbut>

**Freaking controllers:** Pervasive surveillance and draconian laws have a ratchet effect: a surveillance state where everyone is guilty of something is made to order for those who like to control us. ...governments always abuse their powers. We've seen again and again that there is little to no accountability for government abuses – Dan Gillmore, *Slate*: <http://tinyurl.com/necpaog>

## Vics to review bail laws

The Victorian Government will review bail laws after a man accused of threatening police on social media was released on bail.

Kohdr Mustafa Taha, 35, of Brunswick allegedly made the threat on Twitter in December 2014. The message, sent to

Victoria Police, allegedly said: "I'm going to hurt your officers." It was also alleged that Mr Taha posted other messages supporting Islamic State.

Police said a raid of his home found a rifle bullet and three swords. They argued against bail last month, saying Mr Taha posed an "unacceptable risk". <http://tinyurl.com/qyv77vv>

## Bunbury's illegal cupcake factory shut down

Bunbury city council shut down an 11-year-old girl's lemonade, cupcakes and lemon meringue pie street stall because custard and cream products are not allowed to be made at home for sale.

Chelsea-lee Downes is looking for a new line of business in the township, about 175km south of Perth, after an anonymous complainant we'll call Algernon dobbled her in even before she had fully set up the stand; he had noticed promotional pieces on social media.



*Chelsea-lee's stall, before the council pounced. Marisa Ruderforth (her step-mum's) photo.*

Instantly the full weight of the council descended. Both the products and the stall's roadside location were dangerous. Chelsea would have to find another way to make some pre-Christmas bucks.

Environmental health manager Sarah Upton said custard and cream products are very high risk. "They cannot be manufactured at home for sale."

She promised the council would help Chelsea in the future: "If she can look at manufacturing food in a commercial kitchen, then there is a possibility that she will be able to (set up a stand) in the future," Ms Upton said. <http://tinyurl.com/px2uwzr>

## ODD SPOT: Softy George allows gays to marry

Eleven gay couples in Perth have tied the marriage knot legally in Perth in the past six months. Since British law changed last year, same-sex couples have been bypassing legislation to get hitched at the British consulate in the Perth CBD. British citizens may legally marry a partner of the same sex...and, following permission from Australia's Attorney-General Senator George Henry Brandis, can do so in the British diplomatic offices in Adelaide Terrace in Perth.

Who would have thought Georgie-Porgie was such a softy for a good vow and weep! What about everyone else in Australia? <http://tinyurl.com/lpabyao>

## How to make people disappear

The WA government is hiding growing prisoner numbers by no longer releasing statistics, Labor claims.

The weekly offender statistics reports on the Department of Corrective Services website have appeared since 2007, but suddenly stopped being posted mid last year. The reports

provided comprehensive information including a breakdown of Aboriginal, female, male and juvenile offenders, as well as the number of offenders in each prison.

Labor's corrective services spokesman Paul Papalia claimed it was a clear attempt by the Barnett government to cover up an overcrowding crisis in WA's prisons. In January 2007 the total prison population was 3500. In March 2013 it hit 5000 and it has continued to balloon, currently sitting at 5450.

Minister for Corrective Services Joe Francis declined to comment. The department says it is "reformatting the statistics and the website"...which has so far taken it about eight months. The website and figures should be back online in March 2015, DoCS says. <http://tinyurl.com/odqy24w>

Each prisoner costs WA taxpayers about \$340 a day, based on capital and recurrent costs (Report on Government Services, Productivity Commission, 2012-13 figures).

## McCusker backs R2A law for WA

Former WA Governor Malcolm McCusker is backing a proposed new law that would allow criminals with fresh and compelling evidence to have their appeals go before a judge rather than the Attorney-General.

Mr McCusker, one of WA's most prominent barristers, said the current system was "not satisfactory" because it put the decision in the hands of a politician who was under no obligation to give any reasons for refusal. His call for change follows that from barrister Tom Percy a day earlier.

Both are backing the Right to Appeal (R2A) law, introduced in South Australia in mid-2013, which Civil Liberties Australia and Networked Knowledge are campaigning to have 'mirrored' in each state and territory. Tasmania has already agreed to follow SA's lead.

WA's shadow attorney-general, John Quigley, has drafted legislative amendments based on the SA R2A model that he plans to table as a private bill in 2015.

Mr McCusker said a decision affecting the liberty of a person "should be made openly, transparently and with good reason". He said that wasn't happening under the WA system. He said there was also the problem of public perception that the AG's decision could be influenced by political or populist reasons. <http://tinyurl.com/kdcuzav>

## Schoolteacher secures stranger's freedom

Former WA schoolteacher Barbara Santek's has won a marathon, serendipitous battle to free an innocent man jailed for murder in the US.

Tyrone Hood's 50-year jail term handed down in 1996 for shooting dead Marshall Morgan, 20, was last month commuted by outgoing Illinois governor Pat Quinn. Hood (photo) walked free from prison.

After first hearing of Hood's case at an Amnesty meeting in Fremantle in 2000, Santek eventually moved to Pennsylvania in the USA, from where she has fought to prove Hood innocent, in later years with the help of pro-bono lawyers she convinced to take on the case. <http://tiny.cc/m9smsg>



## Whealy 'new' Eastman judge...73 and 'retired'

The ACT Labor-Greens government has appointed the Hon Anthony Whealy QC to the ACT Supreme Court to hear upcoming proceedings regarding the David Eastman matter.

The ACT Director of Public Prosecutions has decided Eastman, freed last year because of police, forensic and DPP errors 19 years ago, must stand trial again for the murder of AFP Assistant Commissioner Colin Winchester in 1989. Eastman has filed for a permanent stay of proceedings.

Whealy has been a solicitor since 1965, half a century ago. From 2000 to 2012 he was a NSW Supreme Court judge, then a judge of the Court of Appeal from 2010 to 2012, when he "retired".

Since then, Whealy has also been Chair of the COAG Committee on Counter-Terrorism Laws, an Acting Judge of Appeal in WA and Assistant Commissioner of the Independent Commission against Corruption. He is also currently a part-time Commissioner of the NSW Law Reform Commission, Deputy Chair of the NSW Sentencing Council, a University Visitor for the Catholic University and a consultant for the Judicial Commission of NSW.

Civil Liberties Australia asks the questions nobody else seems willing to ask: when is a person too busy to be appointed to a position such as the judicial Eastman role, and when is somebody, who is so busy, too old to be appointed to such a judicial role?

Whealy is 73, beyond the normally mandated retirement age for judges in at least some jurisdictions. By his own admission in newspaper interviews, he wanted to retire after the 2010-11 Keli Lane case (a woman convicted of killing a baby, with a body never found).

Since that case, Whealy has become something of a 'media tart', popping up to give his personal un-judicial comments on the Lane case and on terrorists, usually replete with large, full-fronting photo coverage as well.

Why ACT AG Simon Corbell chose Whealy is a mystery. His a la mode portrait (photo above) at the 5 Wentworth (Sydney) barristeria website says he does alternative dispute resolution, arbitration and mediation.



## Hospital may not discriminate against Chinese-trained doctor

An ACT tribunal has severely criticised a hospital employment policy that discriminates against doctors trained overseas.

The government policy allows hospitals to preference doctors trained in Australia.

The ACT, like most other states and territories, has a policy of preferencing local graduate doctors for employment. But the Territory's Civil and Administrative Tribunal (ACAT) has ruled it is a form of racial discrimination, and it may also be in breach of the Australian constitution.

The legal issue was raised by a very highly-qualified migrant doctor who was refused employment on the basis he had received his training in China. <http://tinyurl.com/o3rkqgs>

## ODD SPOT: How CLA made police older, wiser

Sometimes, our critiques work wonders! On [20 Nov 06](#) we wrote on the lack of experience in ACT Policing with 60% of the force with five or fewer years of experience; the comparable figure in NSW was 36%. It was an issue Civil Liberties Australia raised with ACT Attorney-General Simon Corbell on a number of occasions. In the latest ACT Policing annual report the figure has moved up to a creditable 37.5%. CLA's criticism has obviously helped make the police older and wiser over the past eight years.

## Watching bodies rot in the name of science

Yarramundi in the Blue Mountains near Sydney is to get Australia's first body farm, where scientists watch, measure and research the human corpse decay.

The University of Technology Sydney 200m by 250m facility is on Springwood Road near Lynchs Creek. UTS forensics professor Shari Forbes will lead research into how human remains decompose. Among other things, they will establish an accurate 'scent' profile of a decomposing body to help train cadaver dogs. You can donate your body to be used in such research if you wish. Civil Liberties Australia's member records include a former medical doctor, retired, doing a PhD on the rate of growth of maggots found with bodies.

## Three probes launched into NT police

Chief Minister Adam Giles has promised the conduct of the former Commissioner of the NT Police, John McRoberts, would be vigorously investigated – by the Ombudsman, the NT Solicitor and a Public Interest Disclosure Commission.

The actions of at least one other senior police officer are also being investigated.

The Top End Cop Caper has raised the scandal meter in Darwin to red hot. The case swirls around the behaviour of Darwin travel agent and reported socialite Xana Kamitsis, with whom it is alleged Mr McRoberts had been romantically involved. Ms Kamitsis was very publicly – in front of TV cameras, alerted by the police – arrested and handcuffed late last year after an investigation into alleged missing funds from a government travel subsidy scheme.

Chief Minister Giles says that, once investigations are complete, the Ombudsman would report findings to the Legislative Assembly, and the Public Interest Commissioner would advise the Police Commissioner of the outcome of the investigation, who in turn would brief the Police Minister. The Solicitor for the NT would advise the Attorney General and the Police Commissioner of the outcome of that investigation. – Sources: media release and news reports.

## Law Society gets into sex advice

The Law Society of SA launched a smart phone app late last year called The Naked Truth to help educate young people about laws regarding sexual activity.

The app has been downloaded 3500 times. In SA, any person over 18 convicted of a sexual offence ends up on the sex offenders registry, and there has been an increase in the number of cases involving consensual relationships where one person was just under-age and another just over.



Victoria has produced the best legislation in Australia, after a long inquiry and report in 2014. Other Australian states and territories should mirror the Victorian legislation, Civil Liberties Australia says. <http://tinyurl.com/mp46adm>

## Australian briefs

**Anzackery:** 'The catalogue of the National Library of Australia (NLA) records that during the 1970s just 51 personal narratives of the Great War (1914-18) were published. That number grew to 98 during the 1980s; there were 153 published during the 1990s and 215 during the first decade of the twenty-first century.' (Carolyn Holbrook, [Anzac, the Unauthorised Biography](#) (2014), chapter 6), as quoted in the Dec 2014 newsletter of Honest History: <http://honesthistory.net.au>

**Premier calls for national bikie laws:** Victoria's Premier Daniel Andrews wants national legislation to end Australia's "patchwork quilt" of bikie laws. His call last month came after claims that bikies were relocating to Victoria to avoid other states' anti-consorting laws. <http://tiny.cc/9r1msx>

**Oz needs e-referendum mechanism:** The UN Security Council has rejected a Palestinian resolution calling for peace with Israel. The resolution sought peace within a year and an end to the "Israeli occupation" of Palestinian territories by late 2017. The resolution failed to achieve the nine votes majority required to pass. Eight countries voted in favor of the motion – China, France, Russia, Argentina, Chad, Chile, Jordan, Luxembourg; two opposed the motion – US and Australia; and five abstained – UK, Lithuania, Nigeria, Korea, Rwanda. It was Australia's last vote as a member of the council for a year: why would Australia vote against peace, and for continued occupation of one country by another, Civil Liberties Australia asks? Perhaps we need an online 'e-referendum' mechanism so our government knows how we the people want them, our representatives, to vote. <http://tinyurl.com/q2e08sx>

## Kids don't belong in detention...

A regular sight near Darwin's Blydin Point Immigration Detention Centre is this protest van, shown with retired agronomist, Civil Liberties Australia member (and NT Council for Civil



Liberties founder 40 years ago) Rob Wesley-Smith, left, and Richard Davis, a former Channel 9 employee who narrowly avoided becoming one of the Balibo 5 on East Timor, Malcolm Rennie going in his place. Davis has been staging the weekly vigil for about three years. Wes says some staff coming away from the centre snarl, others smile and wave. - Little Darwin blogspot <http://tinyurl.com/n7ry9cn>

**Least-best citizens bear brunt of govt skirmishes:** "The continuous and messy skirmishing between state and Commonwealth governments may be the price we pay for federalism, but it is telling that the Australians who so often bear the brunt of this intergovernmental conflict are generally the most disadvantaged. I can only hope that the premier of

WA and the prime minister, who makes so much of his personal interest in the lives of Indigenous Australians, will come to their senses." – Melissa Parke, Federal Member for Fremantle, December 2014. <http://tinyurl.com/nnb8tua>

## CLARIFICATION:

Last month, a commentator on the CLA website on our vaccines story – [Vaccination: more free speech, not less](#) – questioned whether measles immunisation was still relevant in Australia and the USA: the following is from *The Lancet*, 24 Jan 2015, Vol. 385:

*The increase in global coverage with the measles vaccine has made a profound contribution to the reduction in childhood mortality, with a 74% reduction in childhood deaths attributed to measles from 535,300 in 2000 to 139,300 in 2010. Furthermore, reductions in measles mortality accounted for 23% of the estimated decrease in all-cause child mortality (worldwide) from 1990 to 2008.*

## CLA Report...for January 2015

Sometimes it is worth remembering what actions we in CLA have taken in the past, in the cause of liberty and justice. We have had a few wins over the more than a decade of CLA's existence. Often CLA lobbying is one of a number of factors influencing government policies, so it is difficult to isolate CLA impact from other bodies working to the same end. Occasionally, however, our pivotal role is apparent.

The lead story in this edition of CLArion explains our role in trying to prevent future 'Bali Nines'.

Another 'win' has been recent, and is continuing, with momentum growing for state governments adopting 'Right To Appeal' (R2A) legislation gaining strength. The initiative is all about correcting miscarriages of justice, and giving people charged with capital offences the right to another chance when new evidence has been uncovered.

The South Australian government passed of the Statutes Amendment Appeals Act (SA) (2013), an achievement of Dr Bob Moles and his Networked Knowledge organisation. This legislation was tested by the Keogh case late last year, leading to Keogh's release after 19 years in prison. While the SA DPP has until 6 Feb 2015 to move for a re-trial, it is highly unlikely that the DPP will, or that a re-trial could succeed, given that state-sought evidence of forensic experts says it is most likely that no crime was committed.

CLA, by agreement with Dr Moles, has taken the lead in promoting the R2A law in the rest of Australia. Tasmania plans to introduce similar legislation, following representation from CLA which began in April 2013, when we first briefed the current Attorney-General, Dr Vanessa Goodwin, who was then Shadow AG. The new Tasmanian legislation, hopefully this year, will allow Sue Neil-Fraser's wrongful conviction to get back before the court so that, like Keogh in SA, she can receive justice after years in prison.

In Victoria, newly-elected Australian Sex Party Member of the Legislative Council (and CLA member) Fiona Patten (photo) will introduce R2A as a private member's bill.

The process has begun, with formal lodging in parliament expected in February or March.



We hold some hope that the NT and the ACT will see the benefits of switching to the R2A approach. While the ACT has shown, with the Eastman case, that its inquiry system can work, Eastman has proved how extraordinarily expensive and justice-delaying the process is.

January has been a quiet month, allowing for catch up of routine matters. Research on the history of civil liberties in Australia has continued, with several chapters ready for publication on the web.

CLA frequently appears to be on the "wrong" side in some cases: we cite our concern about false memory in allegations of sexual assault. We wonder how much reliance can be placed on memories of "inappropriate touching" by students nearly half a century ago. It is extremely easy to irrevocably damage a person's reputation and achievements over a lifelong career with such accusations which, it is shown, can be easily "induced" <http://tinyurl.com/m3da967>. The identity of women bringing charges is protected but not that of the alleged perpetrator, who is instantly devalued in the media and public, before any trial has begun. It would seem to be far more just to protect the person accused in such harrowing cases, until they are found guilty of a crime. – President Kristine Klugman

**Media:** VP and National Media Spokesperson Tim Vines:

- TV Installation by Local Government - Radio Interview
- Anti-Vaccination seaker, free speech and right to protest - Print interview for AAP.

Tasmania Director Richard Griggs has been dealing with proposed new defamation laws: see below.

The screenshot shows a news article with the following content:

**Concerns raised that Tasmania could become defamation magnet**

MICHELLE PAINE · MERCURY · JANUARY 07, 2015 12:00AM

TASMANIA would become a magnet for corporations wanting to sue under proposed defamation laws, says Civil Liberties Australia Tasmanian president and lawyer Richard Griggs.

Comments on social media could also be in the firing line should the State Government bring in the laws, Mr Griggs said.

His organisation has joined a chorus of concern about the legislation, which would make Tasmania the first state to allow companies to sue for defamation. Uniform defamation laws were brought in across Australia in 2006.

"We would be stepping away if Tasmania were to make changes," he said.

"The state would be a magnet for corporations to lodge claims. Defamation laws have historically been to protect individuals, not corporations."

The Law Society of Tasmania has already raised concerns about the legislation stifling freedom of speech.

Richard Griggs, Tasmanian director of Civil Liberties Australia, says comments on social media could also be in the firing line.

## INTERNATIONAL

### Call for law to ban anti-semitism

European Jewish leaders, backed by a host of former EU heads of state and government, are to call for pan-European legislation outlawing anti-semitism amid a sense of siege and emergency feeding talk of a mass exodus of Europe's oldest ethnic minority.

A panel of four prestigious international experts on constitutional law backed by the European Council on Tolerance and Reconciliation (ECTR) have spent three years

consulting widely and drafting a 12-page document on "tolerance". They are lobbying to have it converted into law in the 28 countries of the EU.

The proposal would outlaw anti-semitism as well as criminalising a host of other activities deemed to be violating fundamental rights on specious religious, cultural, ethnic and gender grounds.

These would include banning the burqa, female genital mutilation, forced marriage, polygamy, denial of the Holocaust and genocide generally, criminalising xenophobia, and creating a new crime of "group libel" – public defamation of ethnic, cultural or religious groups. Women's and gay rights would also be covered.

The proposed legislation would also curb, in the wake of the Paris attacks, freedom of expression on grounds of tolerance and in the interests of security. <http://tinyurl.com/n42h76b>

### US Supreme Court to rule on gay marriage

The US Supreme Court last month agreed to decide whether all 50 states must allow gay and lesbian couples to marry, positioning it to resolve one of the great civil rights questions in a generation before its current term ends in June 2015.

The decision came just months after the justices ducked the issue, refusing in October 2014 to hear appeals from rulings allowing same-sex marriage in five states. That decision, which was considered a major surprise, delivered a tacit victory for gay rights, immediately expanding the number of states with same-sex marriage to 24, along with the District of Columbia, up from 19. <http://tiny.cc/b7slsx>

### Dutch court asked to rule data retention invalid

A legal challenge to Dutch data retention law will be heard in the District Court of the Hague on 18 Feb.

The law requires telecommunications and Internet companies to retain customer location and traffic metadata for six to 12 months, depending on the type of data, for investigatory purposes.

However, the complainants want the court to invalidate the law because it violates fundamental privacy rights, according to their law firm Boekx advocaten. The law should be scrapped, they say, because of a ruling from the Court of Justice of the European Union (CJEU) in 2014, which invalidated the EU's Data Retention Directive on which the Dutch law is based, because it violates fundamental privacy rights.

After evaluating that ruling, though, the Dutch government decided in November largely to maintain the national data retention law on the grounds that it "is indispensable for the investigation and prosecution of serious criminal offences." The challenge, filed by civil rights organisation Privacy First, Dutch Association of Criminal Defense Lawyers, Dutch Association of Journalists, Dutch Section of the International Commission of Jurists, ISP BIT and telecom companies VOYS and SpeakUp, aims to get the law invalidated as soon as possible.

Data retention laws in other EU countries, such as Austria and Germany, have also been ruled unconstitutional. <http://tinyurl.com/nppnjor>

### Obama wants civil liberties retained

Barack Obama and David Cameron struck different notes on surveillance powers last month after the President conceded that there is an important balance to be struck between monitoring terror suspects and protecting civil liberties.

As UK Prime Minister Cameron warned the internet giants that they must do more to ensure they do not become platforms for terrorist communications, the US President said he welcomed the way in which civil liberties groups hold them to account by tapping them on the shoulder.

Obama agreed with the PM that there could be no spaces on the internet for terrorists to communicate that could not be monitored by the intelligence agencies, subject to proper civil society oversight. But, unlike Cameron, the president encouraged groups to ensure that he and other leaders do not abandon civil liberties. <http://tiny.cc/5rblsx>

## Google stays mum

Google took almost three years to disclose to the open information group WikiLeaks that it had handed over emails and other digital data belonging to three WikiLeaks staffers to the US government, under a secret search warrant issued by a federal judge.

WikiLeaks has written to Google's executive chairman, Eric Schmidt, protesting that the search giant only revealed the warrants in December 2014, having been served them in March 2012. In the letter, WikiLeaks says it is "astonished and disturbed" that Google waited more than two and a half years to notify its subscribers, potentially depriving them of their ability to protect their rights to "privacy, association and freedom from illegal searches".

The subjects of the warrants were the investigations editor of WikiLeaks, British citizen Sarah Harrison; spokesperson for the organisation, Kristinn Hrafnsson; and Joseph Farrell, one of its senior editors.

## About face!

Facebook has complied with a Turkish court order to locally block access to several pages showing materials said to be insulting to the Prophet Muhammad.

Turkish media reported that the Gölbasi Criminal Court of Peace in Ankara issued the order, and it threatened to ban Facebook if it did not comply. This same court has led previous bans or blocks of other sites, including YouTube and Twitter.

Turkish Prime Minister Ahmet Davutoglu recently appeared with a number of other world leaders in Paris at a rally for freedom of expression in the wake of the shooting at the offices of Charlie Hebdo, a French satirical magazine. But Amnesty International reported that earlier this month, a leading daily newspaper, Cumhuriyet, is facing a criminal investigation for reprinting some of the Charlie Hebdo cartoons.

Davutoglu told reporters in the Turkish capital earlier this month that freedom of expression "does not grant anybody the right to insult another's beliefs." He added, "In this country, we don't allow insults to the Prophet. This is a very clear, sharp and principled stance. Everybody should know this."

<http://tinyurl.com/lqv8c2c>

## Blimp can keep a wide eye on you

The US Army has launched a surveillance blimp, or helium-filled aerostat, from the Aberdeen Proving Ground near Baltimore, Maryland. The Raytheon-built blimps, entitled the Joint Land Attack Cruise Missile Defense Elevated Netted Sensor System (JLENS), are meant to watch for missiles, hovering at 3000m. But the blimps can scan through 360 degrees out to 550km away, meaning one strategically placed could cover all of NSW. Raytheon PR boasts that their system

can detect and follow cars, trains, boats, and trucks. <http://tinyurl.com/k4ygd3>



## Rapes rise by 31%

Rapes recorded by police in England and Wales rose 31% in the past year to 24,043 – the highest level for at least a decade, according to the UK Office for National Statistics.

ONS say the increase in rapes and a 22% rise in all sexual offences reflects a greater willingness among victims to come forward to report attacks as well as better recording by the police.

There was an 11% fall in overall crime levels in the 12 months to September 2014 compared with the previous year. The 11% fall, based on people's experience of crime, confirms a continuing downward trend in overall crime levels, at their lowest since 1981. <http://tinyurl.com/ljpo2f>

## Police no longer allowed 'free gifts'

The Obama administration has stopped US local and state police using federal law to seize cash, cars and other property without proving that a crime occurred.

It is a sweeping check on police power. Since 2008, police agencies have seized more than 55,000 items of cash and property worth \$3 billion under a civil asset forfeiture program called Equitable Sharing, under which the locals could share 80% of the "take" with the feds.

Local and state police routinely pulled over drivers for minor traffic infractions, pressed them to agree to warrantless searches and seized large amounts of cash without evidence of wrongdoing. The law forces the owners to prove their property was legally acquired to get it back, often years later.

Police spent the seizure proceeds like kids in a toy shop, in some cases buying luxury cars, high-powered weapons and military-grade gear such as armored cars for their squads.

Police budgets in every state of the USA will suffer. Since 2001, about 7600 of the nation's 18,000 police departments and task forces have participated in Equitable Sharing. For hundreds of police departments and sheriff's offices, the seizure proceeds accounted for 20% of their annual budgets in recent years. <http://tiny.cc/ljwksx>

## Death stalks corridors of US Supreme Court

The US Supreme Court agreed last month to hear the appeal of three Oklahoma death-row inmates challenging the three-drug protocol the state now uses for executions.

But earlier in January the judges refused, by a 5-4 vote, to grant delays of four inmates' executions: one of the four was executed the night of that judicial ruling. Three remain alive.

The Oklahoma case focuses on one of the three drugs that Oklahoma uses in execution procedures — the sedative, midazolam, Lyle Denniston comments. "The first drug in an execution by lethal injection is supposed to make the inmate unconscious so that the two other drugs can then be injected without causing excruciating pain. The three inmates contend that midazolam is not supposed to be used as an anaesthetic, and is not reliable in achieving a coma-like unconsciousness." <http://tinyurl.com/prpro8u>

In a later petition, the state of Oklahoma asked that the Supreme Court rule the three executions be delayed until the court's ruling is handed down: Oklahoma's governor can delay an execution by 60 days only. <http://tinyurl.com/oz2ggqx>

## Canada may decide assisted dying is a right

Canada is waiting on a Supreme Court ruling over whether the nation's federal prohibition outlawing assisted suicide is unconstitutional.

The court could strike down Canada's ban on assisted suicide and give parliament 12 months to craft new legislation, as it did with prostitution.

The court heard arguments in October 2014 over whether the criminal ban on assisted suicide violates the nation's Charter of Rights and Freedoms. Judgments are normally rendered, on average, six months after a hearing, Sharon Kirkey reports on *Canada.com*

For decades, the Canadian Medical Association's position on euthanasia was unequivocal: it opposed doctor-hastened death in any form. But in mid-2014, the CMA's general council voted to allow doctors to follow their conscience when deciding whether to participate in medical aid in dying. <http://tinyurl.com/ppbfxvr>

## Saudis flog the outspoken while protesting for freedom of speech

Saudi Arabian representatives lined up in Paris to join high-profile protestors over the death of cartoonists at the hands of Muslim terrorists.

Back in its own central religious square in Jeddah, the nation was wielding 50 lashes against a local protestor who wants human rights law in the anachronistic kingdom brought into the 21st century.

Raif Badawi was receiving the first lashes of the 1000 he will receive between now and June.

He was sentenced in May 2014 to 10 years' jail and the 1000 lashes – 50 at a time over 20 weeks – and fined 1m Saudi riyal, about \$325,000.

He has been held since mid-2012, and his Free Saudi Liberals website, established to encourage debate on religious and political matters, is closed.

The extensive Saudi royal family, which controls virtually every aspect of life in the kingdom, is cracking down on dissent.

The ruling family fears that people's movement's in other Middle East nations might penetrate Saudi Arabia's taut borders and foment revolt. <http://tinyurl.com/nj4yqgd>

Saudi footballers have difficulty with female bus drivers in Australia: <http://tinyurl.com/m9odovb>

## No privacy if Cameron re-elected

David Cameron, the British Prime minister, up for re-election in May, says he will ban encrypted online messaging apps

unless the UK government is given 'backdoors' access to people's private correo.

"Are we going to allow a means of communications which it simply isn't possible to read?" Cameron said last month while campaigning, in reference to apps such as WhatsApp, Snapchat, and other encrypted services. "My answer to that question is: 'No, we must not.'" <http://tinyurl.com/pv9n9jz>

## 'UN needs global protective agency for data'

A new UN agency for data protection and data security is needed to protect the confidential and personal information of citizens around the world, the European commissioner for digital economy told delegates at the World Economic Forum last month.

Günther Oettinger said a recent Sony hack, which exposed swathes of confidential and personal information, had shown Europe the need to radically reshape the way data is used. "We are in a digital revolution, and we need a data revolution in parallel," Oettinger said in a panel alongside Sir Tim Berners Lee, the inventor of the world wide web. <http://tinyurl.com/lcj9dp3>

## CIA absolves itself of snooping

The five CIA officers who snooped into the computers of US Senate staff – who were probing the CIA's torture program – acted in good faith and committed no wrongdoing, the CIA has found.

An "accountability board", in which three of its five members are CIA officials, concluded there was simply a misunderstanding, that the CIA believed it could search the computers being used by staffers of the Senate Select Committee on Intelligence. National security was at stake, too, the CIA said.

"The Board determined that while an informal understanding existed that SSCI work product should be protected, no common understanding existed about the roles and responsibilities in the case of a suspected security incident," according to its highly-redacted report released last month. The review said that the CIA's position was that it had "obligations under the National Security Act" and a legal duty to scour the computers "for the presence of Agency documents to which SSCI staff should not have access." <http://tiny.cc/y96isx>

## Drug agency secretly records 793m vehicles

Since at least 2010, the Drug Enforcement Agency has been expanding a regional licence plate reader (LPR) program to the entire USA: it was previously only known to be concentrated in the border region of the American south-west.

The American Civil Liberties Union, under the Freedom of Information Act, obtained documents which also show the DEA captured over 793 million license plates from May 2009 through May 2013 with the stated goal of drug-related asset forfeiture.

"The government has essentially created a program of mass tracking," Catherine Crump (photo), a former ACLU lawyer now teaching at the University of California, Berkeley, said. "The US has created a system where the



government can track you and the American public simply has to accept it as a fait accompli."

LPRs scan plates at very high speed – often 60 plates per second – and record the date, time, and precise location that a given plate was seen. <http://tinyurl.com/mqs9qmy>

## Chinese want terrorism laws like US, Australia

US advocacy group Human Rights Watch last month urged China to revise draft legislation aimed at combating terrorism, saying it was little more than "a licence to commit human rights abuses".

The law, which was made public for consultation last November, would establish a new counter-terrorism body that would have the power to designate organisations and members as terrorists without any protections of due process. (Just like terrorist laws in Australia, and bikie laws in Queensland, CLA says).

The Chinese draft's definition of terrorism includes "thought, speech, or behaviour" that attempt to "subvert state power", "incite ethnic hatred" or "split the state". Subversion and "splittism" are catch-all charges that have been used against dissidents.

Human Rights Watch China director Sophie Richardson called for the draft law to be brought in line with international standards, saying that "in its present form this law is little more than a licence to commit human rights abuses".

Under the Chinese proposals, public areas would be outfitted with facial recognition equipment...like is happening in the US and Australia. This, US HRW says, is a system that "could easily be abused for personal or political ends". <http://tinyurl.com/mfc9273> What an amazingly blinkered, red-white-and-blue view of the world of repressive terrorist laws. Apparently, US HRW hasn't had a good look at its own nation's laws, and surveillance processes.

## International briefs

**US to decide on surveillance/privacy:** In 2015, the US Supreme Court is likely to rule whether the National Security Agency's bulk metadata collection, which includes collecting data on Australians, is legal. Several privacy-related cases may make it to the court, including one in which there's already been a judicial order to shut down the NSA's bulk metadata collection program. Larry Klayman's case would essentially put a stop to unchecked NSA surveillance. He won such an order in the lower courts when fighting for privacy against the newly understood government monitoring, revealed by Edward Snowden. However, it's a victory in name only – the judicial order in *Klayman* was stayed pending the government's appeal. <http://tinyurl.com/mkxjqye>

**Making money from you:** A US company which provides personalised genetic reports for \$99 from a spit swab is now selling the aggregated data of its customers to another biotech company. Selling customer data is providing a lucrative new venture, with one deal worth \$10m up front, and \$50m down the track. The spit swab company has 10 such deals in the works, reports say. <http://tinyurl.com/oul24nu>

## ODD SPOT: Merlin helps deliver legal 'magic'

Jeffrey Sterling, a former CIA officer, was convicted of espionage last month on charges that he told a reporter for *The New York Times* about a secret operation to disrupt Iran's nuclear program. (Sterling will be sentenced in April). The trial

was part Washington spectacle, part cloak and dagger. Former Secretary of State Condoleezza Rice testified, as did CIA operatives who gave only their first names and last initials, with their faces shielded behind 2.2m-high partitions. A scientist was referred to only by his code name, Merlin. His wife was Mrs. Merlin. <http://tinyurl.com/ppok9q5>

**Morituri wish Lords would hurry up!** A bill to give terminally ill patients the right to an assisted death won't pass the UK Parliament before the May general election. A debate in the House of Lords last month managed to address a handful only of more than 150 amendments. In one, the Lords voted 180 to 107 against changing the wording from "assisted dying" to "assisted suicide". The Help-Death bill, proposed by former Labour Lord Chancellor (ie, 'attorney-general'), Lord Falconer of Thoroton, would provide "competent" adults with less than six months to live assistance to end their own life if they choose. Falconer said he would try again with another assisted dying bill after the 2015 election. <http://tiny.cc/ruumxs> For an opposing viewpoint: <http://tiny.cc/q70msx>

**Police kill two blacks a week:** In 2013, the FBI tallied 461 "justifiable homicides" in the USA committed by law enforcement – justifiable because the FBI assumes so, and courts have not found otherwise. This is the highest number in two decades, even as the overall homicide rate continues to drop. Homicides committed by on-duty law enforcement made up 3% of 14,196 homicides committed in 2013. In an average of about 96 police homicides a year, a white officer kills a black person. Estimates are of about 310m guns in the USA, basically one for every child, woman and man. From <http://www.thenation.com/>

**DEA gets another 'D' for scruples:** The US Justice Department has coughed up \$134,000 to a New York woman as compensation after the Drug Enforcement Agency created a counterfeit Facebook profile and posted risqué personal pictures they got from her mobile phone without consent. The DEA created a phoney Facebook profile in the woman's name and maintained it for at least three months in 2010 in a bid to nab other suspects connected to an alleged drug ring. At one point in the litigation, the government said the counterfeit account was for "legitimate law enforcement purposes." The US government admitted no wrongdoing. <http://tinyurl.com/ov5x3x7>

## ODD unSPOT: Cops don't want to be spotted

Police in the USA want a cop-spotting phone app restricted, claiming it amounts to a "police stalker". But the Google app Waze, used by 50m people in 200 countries, concentrates on providing real-time accident and traffic data about congestion, traffic cameras and weather...as well as reporting a police presence which shows upon a traffic map for other users to see.



It seems police want the right to control any information flows they don't like, CLA says. <http://tinyurl.com/ktbqurn>

