

CLA readies release of decade-long 'Better Justice' campaign

Civil Liberties Australia will shortly release the overall plan for a 10-year campaign to achieve 'Better Justice' in Australia.

Twelve months in research and drafting, the plan is now Board-approved and ready for release in Jan 2016. It has five main streams, under headings of Access, Quality, Improve, Innovate, and Implement. Any CLA member who would like a pre-release version of the plan is invited to email the Secretary (see email address above).

CLA's Better Justice campaign will involve linking with all like-minded bodies wanting to realise much-needed positive change in the nation's justice and legal system, including judges, magistrates and courts; costs and delays; training and accountability; better monitoring of police and prison systems; and a way of creating properly-considered criminal/terrorist laws to replace the current ill-considered and ad-hoc approach which delivers a new law every time there's a screaming front-page news headline.

Ensuring human rights in prisons and detention centres

While the focus for the Better Justice campaign is domestic, Civil Liberties Australia will also be concentrating on overseas injustices, particularly where they affect Australians, and formal adoption of international conventions where they affect local laws and practices.

In keeping with that approach, we are campaigning to ensure the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is fully implemented in Australia.

CLA has written to the Prime Minister and all state/territory attorneys-general.

The aim of OPCAT is "to strengthen, through preventative measures including the creation of an independent National Preventative Mechanism (NPM) by each State Party, the protection of persons deprived of their liberty".

One provision of OPCAT would require regular, independent and external inspection of all Australia's prison and detention centres, which may have a massive impact on how the nation complies with international human rights obligations, onshore and offshore.

NZ (since 2008) and the UK have both fully ratified OPCAT. Australia has signed OPCAT, but we require all states and territories to endorse that commitment before we can become a 'State Party'.

As the Attorney-General's Department testified to JSCOT* in 2012: "It is in Australia's national interest to promote adherence to international human rights standards. Ratification would maintain Australia's leadership on human rights outcomes and credibility in calling on other countries to adhere to internationally accepted standards."

As CLA has told PM Malcolm Turnbull: "Such credibility is even more important now following the announcement in October 2015 by Senator Brandis and the Minister for Foreign Affairs, Julie Bishop, that Australia will seek membership of the UN Human Rights Council for the 2018-20 term." * Joint Standing Committee on Treaties.

Rights of refugees under closer scrutiny

During an almost four-hour session last month, more than half of the world's countries condemned Australia's human rights record in just 65 allocated seconds each.

Greens Immigration spokesperson Senator Sarah Hanson-Young (photo) commented that even "Australia's closest allies, like the US, UK and Canada, are appalled by the way we treat people seeking asylum," after the hearing in the Human Rights Council.

At the same time, Labor's Melissa Parke also criticised the "culture of secrecy" involved in immigration detention centres, calling them gulags.

At her instigation, the Opposition has pledged to improve the conditions at offshore immigration detention centres if elected at the next election. Labor also committed to negotiating with the governments of Nauru and Papua New Guinea to introduce independent oversight of the centres, as part of a heavily edited motion presented to caucus by her.

Ms Parke, a CLA member, had initially called for the closure of offshore immigration detention centres if conditions for detainees could not be improved. <http://tinyurl.com/ofd6mva>



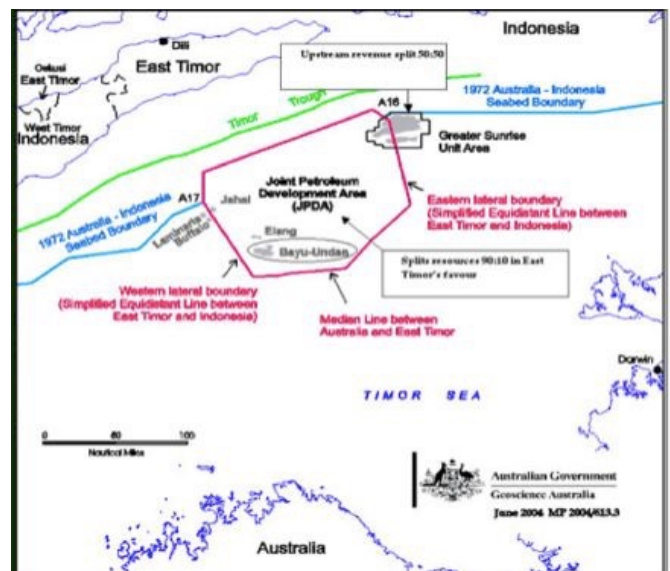
Downer, ASIS liable over ET bugging: Cowdery

Well-respected senior lawyer Nic Cowdery QC believes former Foreign Minister Alexander Downer and ASIS officers have a criminal case to answer over an Australian spying operation in East Timor.

The former NSW Director of Public Prosecutions told ABC's *Lateline* that he believes the bugging of an East Timorese Cabinet office by Australia's foreign intelligence service, ASIS, was a crime under Australian law.

"My preliminary advice is that there is a case of conspiracy to defraud that could be mounted against those responsible for the planning and the direction and indeed some of those responsible for the execution of the bugging in East Timor," he said.

The 2004 spying operation gave Australia – and possibly private entities – the upper-hand in negotiations with East



Timor over a treaty to divide the Greater Sunrise oil and gas field, worth an estimated \$40 billion.

Mr Cowdery said if the case went before Australian courts, senior ASIS officials could face prosecution, and the foreign minister at the time, Alexander Downer, could also be included if he was the one who authorised the bugging. <http://tinyurl.com/olagxc6>

Island's justice system close to breakdown

The justice system on Nauru is near-terminal.

Observers are saying the independence of the judiciary is gone, freedom of speech is no more, and the rule of law a distant memory.

NZ's parliament last month unanimously passed a motion expressing concern about the political situation in Nauru, following the suspension of opposition MPs and a recent anti-government protest on the island-nation.

NZ's foreign minister Murray McCully said that his patience was running out, and he would raise his concerns with Nauru's president Baron Waqa at a Pacific Island Forum meeting. <http://tinyurl.com/phur8pt> Australia is complicit in how Nauru is governed, given that refugee detention centre money is propping up the island nation.

Major 'win': Right To Appeal now in Tassie

It's rare in our business to have significant 'wins'.

On 2 Nov 2015, the Governor of Tasmania, Prof Kate Warner, signed into law the *Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Bill 2015*, 42 of 2015.

Civil Liberties Australia was the first organisation to propose that Tasmania introduce this law – whose shorthand is the Right To Appeal – to 'mirror' a law passed in South Australia in mid-2013. We began campaigning for it by formal lobbying of party leaders and shadow ministers in April 2013, before the SA law had passed.

At the time, it was expected the person whom we believe has been wrongfully-convicted of her husband's murder, Sue Neill-Fraser (illustration), would be freed within 18 months under a 'petition for mercy' process, and that achieving the new law would not help in her case.

As it turns out, she is still in prison after more than six years, and her request for a full court appeal will probably become the first case to be considered under the new law, in early 2016 we expect.

Major loss: govt refuses to un-merge AIC, ACC

Civil Liberties Australia was one of just a handful of organisations to make a formal submission to a Senate committee considering whether to endorse the legislating enabling the merger of the Australian Institute of Criminology into the Australian Crime Commission.

The issue was referred to the committee on 12 Nov for a final report by 26 Nov. No public consultation was announced.

Only the observant were even aware what was afoot, which was a 'quick and dirty' committee stamp of approval for a flawed proposal, without consultation, as part of the razor

gang money-saving efforts proposed two years ago in the first Abbott-Hockey Budget.

On 26 Nov, the committee formally recommended the Senate pass the bill to allow the merger to go ahead. Labor members believed an independent agency should be retained, and the Greens flat out rejected the merger, posting a dissenting report.

Against reality and common sense, the committee blithely accepted unachievable assurances from the person who most benefits from the merger, ACC CEO Chris Dawson (*photo, when with WA Police before ACC appointment*). More functions and more staff under his control must mean more annual salary eventually for the "independent" advice-giving Mr Dawson.

CLA pointed out the decline in quality crime research data and statistics that is inevitable, the loss of key people, and the fact that one central government agency will control all crime and security data...but, unfortunately, stupidity is the concomitant companion of a body focused exclusively on security.

In response to CLA criticism of how restricted future access to crime data would be, the Attorney-General's Department could do nothing other than agree:

The ACC Act does actually set up very restrictive arrangements with respect to disclosure of the sensitive information that the AIC holds. – 24 Civil Liberties Australia, Submission 2, p. 2. and 2.27

Labor members said:

The appointment of ACC CEO Chris Dawson as the Interim Director of the AIC in July 2015 raised concerns that there was to be an impending takeover of the AIC. Mr Dawson appearing before the committee twice in both his capacity as ACC CEO, and Interim Director of AIC, gives rise to concerns about the impact the Government's proposed merger are (sic) having on the independence of his office.

– ALP additional comments, 1.1 p15

The Greens said:

Civil Liberties Australia in their submission believe that 'domestic' crime issues may be neglected given the national priorities of the ACC. – 6 CLA Submission 2, p. 2.

CLA's concern was backed up by Prof Rick Sarre, President of the A and NZ Society of Criminologists, who pointed out that crime commission "intelligence" doesn't gather research about education, health, housing, welfare and similar aspects of the community which comprise part of the causes of crime.

Privacy goes under govt's FIS facial profiling

Only one government is fighting back against the Turnbull government's push to facially profile every Australian.

The ACT is worried that a proposed national facial biometric matching capability will impact on the community's right to privacy, Attorney-General Simon Corbell said last month, after raising "serious reservations" at the Law, Crime and Community Safety Council (LCCSC, Lexsic for short) meeting in Canberra.



“Most citizens are unaware that the Commonwealth and other state governments are actively working to make drivers licence images available to be searched and compared for a broad range of purposes by government agencies,” Mr Corbell said. “Parts of the Commonwealth Government’s proposal, specifically around facial identification, will give law enforcement and other agencies an unprecedented and extraordinary level of access to biometric and biographical information.

“The Facial Identification Service – FIS – would enable agencies to match a photo of an unknown citizen against multiple government records.

“This proposal by the Commonwealth leaves open the door for the changing of thresholds that determine what information can be shared, when it can be shared and who it can be shared with. Of particular concern is the prospect that this data could be accessed by the private sector in the future, and potentially for a broad range of matters beyond the most serious of criminal matters.

“As it stands such changes could be made without reference to any parliamentary oversight. It is the ACT’s view that wholesale population level comparison of facial images goes well beyond what is reasonable and proportionate in a free and democratic society.” <http://tinyurl.com/pak2z77>

Acronyms don’t hide the spin and control

The LCCSC-Lexsics (see above) used to be known for decades as SCAG, the Standing Committee of Attorneys-General: it had a clear focus on justice and the legal system in Australia.

Now, under its third name change in a handful of years, it has become a meeting focused on police, security, chasing money without convictions, and repressive databases.

It works to no public or published agenda, and keeps no minutes, simply issuing self-serving PR “communiqués” after its meetings. These are more heavily into spin that is Shane Warne: here’s one of the latest items:

“Ministers noted the significant law enforcement and national security benefits that would be achieved through closer collaboration between the CrimTrac Agency, Australia’s policing information sharing agency, and the Australian Crime Commission, Australia’s national criminal intelligence agency, and agreed to the Commonwealth taking necessary steps to merge CrimTrac and the ACC.”

What the communique fails to mention is that the ACC has already absorbed the Australian Institute of Criminology. Soon, the only figures and statistics about crime and security that anyone will be able to access publicly will be those collected, collated, organised, and endorsed by the government.

Here is what the ACC already says about the figures it releases on its website:

Infographics are a handy, unclassified reference tool that allow the ACC to provide data and information to the public in an easily digestible format on a range of topics.

In other words, you can have what we give you.

The ACC has a 14-person board of management that is wholly UN-representative of the Australian people.

There is not one woman, for example, and all members are government ‘heavies’ for whom secrecy and regulation are bywords. No public board could survive so unbalanced.

The members are: Commissioners/chiefs of the AFP (chair), NSW, Vic, Qld, SA, WA, Tas, NT and ACT police forces,

Commissioner of Australian Border Force, Director General of ASIO, Secretary of the Attorney-General’s Department, Chair of ASIC and the ATO Commissioner of Taxation.

Civil Liberties Australia has warned in formal submission to parliament that governments, run by both major parties in recent years, have created a potential monster in the ACC, which will eventually become a controlling force in society – and over MPs – as the FBI and the CIA became in America.

– <http://tinyurl.com/ngmxuux>

The Lexsics take on suicide

At its latest meeting, the LCCSC’s ministers (the Lexsics) has decided to tackle suicide.

What this means is a mystery, but this is how the Lexsics reported their plans:

Suicide Reporting in the Coronial Jurisdiction:

Ministers agreed that states and territories will establish a working group to consider standardisation of coronial legislation in relation to the reporting of suicide, including a requirement for coroners to make a finding of-intention (sic) in relation to all deaths caused by an action of the deceased, and report back to the Council LCCSC within 12 months. – <http://tinyurl.com/ngmxuux>

Does this somehow mean a crackdown on the concept of self-assisted dying, and people who decide to end their own lives after receiving pamphlets and advice from someone else?

Does this mean our police Lexsics ministers will charge people with a crime if they commit suicide?

Should make for interesting trials! Dyslexics v Psychics.

Shorten promise on juvenile Aboriginal justice

Opposition leader Bill Shorten last month committed an incoming Labor government to setting justice targets to get Indigenous people, particularly youths, out of jail.

Today, half of the young people in juvenile detention are Aboriginal and Torres Strait Islander people, Shorten said.

“Two per cent of our population makes up more than a quarter of our prison population. An Aboriginal man leaving school is more likely to go to jail than university. And the re-imprisonment rate for Aboriginal young people is higher than the school retention rate.

“This is unacceptable. Labor is determined to do more than correct historical injustice - but strive to deliver justice.”

If only, Civil Liberties Australia says. If only both parties would put juvenile justice for Aborigines high on their priority list. We live in hope. While a new federal emphasis would be welcome, it’s really up to state and territory governments to make such a commitment. – Shorten media release, 19 Nov 2015.

Minister boasts of drug availability rise, ACC shares with 265 ‘agencies’

The Australian Crime Commission removed nearly \$2 billion of illicit drugs from the nation’s streets in 2014–15, Justice Minister Michael Keenan boasted last month.

However, everyone in the business knows ‘Drugs Seized’ is a prime indicator of the quantity of drugs on the street. A record seizure year simply means there’s been record high illicit drug making, importing and selling,

Boasting about “drugs seized” is possibly the most stupid annual claim made by government ministers and police boosters, Civil Liberties Australia says.



"The ACC is Australia's national criminal intelligence agency with specialist powers. It works to discover, understand and respond to the serious and organised crime threats of most harm to Australia." Minister Keenan (photo) said. NOTE: Not even a passing mention of research, though the

government has just, stupidly, given to the ACC the Australian Institute of Criminology to absorb, a monumental folly.

The government last year also gave the ACC an extra \$24.4 million for the ACC to establish a Foreign Fighters Taskforce and \$18 million from proceeds of crime to boost information and intelligence sharing across law enforcement agencies within Australia and internationally.

In a frightening statistic, the Minister's media release reveals that the ACC "shared 6650 intelligence products shared with 265 agencies" (sic). These include 2317 analytical and tactical products and 4333 automated alerts on significant criminal targets, which was a new service in 2014–15;

Which agencies, Civil Liberties Australia wants to know? – 265 is a massive number of "agencies" to be receiving secret intelligence. The ACC report is at:

www.crimecommission.gov.au

ODD SPOT: Senate pulls the 'astroturf' from under feet of new-born lobbyists

The Senate has overturned a bill to keep big companies' tax affairs private because a group undertook "astroturfing". Astroturfing – much more prevalent in US politics – involves the use of an "artificial grassroots" organisation to push a narrow political agenda on behalf of powerful interests.

Greens Senator Whish-Wilson said the Family Office Institute was a "particularly acute" example of those with resources being able to deploy lobbyists to get a legislative result. The "family institute" had lobbied heavily to keep the tax affairs of big companies away from public gaze: "Senators themselves have admitted (that 'astroturfing') had an impact on their decision," he said.

Fairfax reported that the institute "was established in August by two lawyers and a Canberra lobbyist who represent Australia's ultra-rich in disputes with the Australian Tax Office." <http://tinyurl.com/oetqdd2>

Minister can sentence to jail, deportation

If the government doesn't like you, you're done for!

"The minister can rely, not only on an individual's criminal record, but also on protected information from the Australian Crime Commission, the Australian Federal Police and other intelligence agencies." <http://tinyurl.com/plvt9kz>

So confirms a spokesperson for Immigration Minister Dutton, that anyone falling into his web can be quickly deported, or instantly jailed then deported, simply on the minister's opinion garnered from secret information which is "protected" from public view.

Civil Liberties Australia calls on the government to amend the law so that a person must be convicted, in court, of a crime before he can be "sentenced" by any minister.

George the kettle says pot is not black...even when 'painted' by police

'Terror suspects' and 'anti-terrorist swoops' labelled by Attorney-General Senator George Brandis after overnight police staged-for-TV raids may not actually involve 'terrorists' after all.

Senator Brandis in Parliament on 26 Nov 2015:

"For a person to be the subject of a search warrant is no indication of wrongdoing, none whatsoever."

Senator Brandis says it is up to a court to decide if (someone) did something wrong. *"In the event it gets there,"* Senator Brandis quickly adds.

The exchange occurred during discussion on an AFP investigation into Minister Mal Brough. Ministers seem to be beneficiaries of larger-than-usual benefits of the doubt. <http://tinyurl.com/ph2ewvx>

Reward whistleblowers, says ASIC chair

Whistleblowers should be financially rewarded, possibly for their lifetime, Australian Securities and Investments Commission chairman Greg Medcraft told a recent parliamentary joint committee.

In the USA, whistleblowers can earn up to 30% of the penalties or legal costs of the misconduct exposed. One whistleblower earned a record \$42.5 million in 2014, business columnist Adele Ferguson reported in *Fairfax Media*.

"Not surprisingly, the US has far more whistleblowers than Australia. Since amendments to the False Claims Act were introduced in 1986, more than \$62 billion has been recovered through lawsuits filed under the act. Whistleblowers have been paid more than \$6.7 billion for their role in assisting with the recoveries, she said.

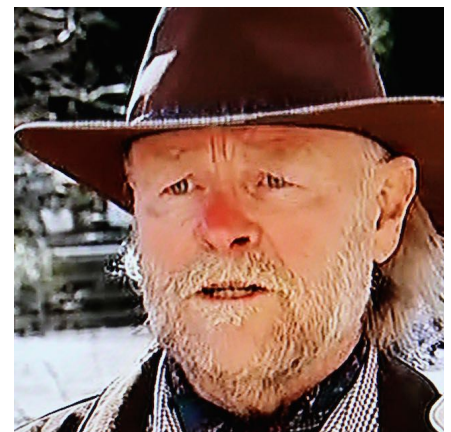
Here, whistleblowers are instantly isolated. They suffer stress, isolation, anxiety and usually a huge financial cost in lost income when they lose their job.

A good example is Allan Kessing, the former Customs man who allegedly leaked two confidential reports into the criminality and danger to security at Australia's airports, particularly Sydney.

While Customs was hiding the information, the revelations caused massive, urgent spending of more than \$300m on security upgrades, including the new posting of federal police to airports.

Kessing – convicted (of performing a huge public service) – was sentenced to nine months suspended. He lost his job, and had to pay all his own legal fees. There is no doubt, Civil Liberties Australia believes, that Kessing (photo) should receive an ex gratia payment from the Turnbull government.

"The truth is if we want whistleblowers to provide information, they need to be treated as heroes instead of pariahs," Ferguson wrote. <http://tinyurl.com/p2rbdet>



Book calls for change in drug 'war'

The failure of successive Australian governments to accept the advice of policy experts has led to a booming drug trade, according to experts in a new book.

The trade is apparently so profitable the Australian Crime Commission admitted this year that hundreds of millions of dollars are now being funnelled by crime gangs out of Australia to fund terrorist groups such as Islamic State.

A new book *'The Drug Law Wars: Twenty years of families fighting at the front'* was launched recently in Canberra. It details both the suffering of families and broader social consequences.

Rather than arguing for a crackdown, authors Marion and Brian McConnell claim prohibition has failed and that many children would still be alive if the country had adopted a more liberal approach.

The book comes at a time when there is a worldwide rethink on drug policy. The UN General Assembly is holding a special session in April 2016 after release of a report titled *What Comes After the Drug Wars?*

The Drug Law Wars has been compiled by the volunteer organisation Families and Friends for Drug Law Reform <http://fdlr.org.au/> <http://tinyurl.com/qzqpo9p>

'Catch and release' law is legal: High Court

The High Court last month ruled, by majority, that the NT's paperless arrest laws are legal.

NT police can arrest someone, without a warrant and without filing any paperwork, if they suspect the person had committed or would commit a summary offence – which would ordinarily carry a fine – and hold them for up to four hours, or until they sober up.

The law has been widely criticised by legal and human rights bodies. It is obviously aimed mostly at drunken Aborigines in Darwin, or there would be no 'until no longer intoxicated' clause.

The North Australian Aboriginal Justice Agency, with help from the Human Rights Law Centre, challenged the law, on behalf of a woman who was held in custody for 12 hours. In its submission Naaja said the law was disproportionate and a breach of the constitutional separation of powers. The detention of people under the scheme was punitive, and "[bypassed] altogether any judicial process", Naaja told the court.

But a majority of HC judges upheld the laws, and rejected assertions they gave the NT executive powers that were "penal or punitive in character". It said the laws therefore "do not impair, undermine or detract from the institutional integrity of the Northern Territory courts". <http://tinyurl.com/qxegjfv>

Civil Liberties Australia says the ruling may produce a rash of similar laws in other jurisdictions, giving police "catch and release" powers, as they were described by NT AG Johan Elferink. Let's hope none of the HC judges ever has a bit too much French wine, or German Kiefelbrau, or Bell's whisky when in Darwin.

'Seventh judge needed' as criminal cases rise

The NT's Chief Justice Trevor Riley wants a seventh Supreme Court judge.

Criminal cases have mushroomed 35% in one year, and civil cases are up 10%, he says in his 2015 annual report. There were 682 criminal matters lodged in the NT Supreme Court, up from 505 in 2014.

Riley CJ said the "shortfall in judicial resources" meant only 85% of cases had been finalised, compared to a clearance of 100% in 2014. "In June 2014 there were 177 matters awaiting hearing; by June 2015, that number had expanded to 225 matters. The workload of the court has now reached the point where a seventh judge is required." He blames alcohol-related crime and the rise in methamphetamines use.

AG Johan Elferink said the question of an extra judge would be considered in late-2016.

As the NT moves towards a seventh judge, the ACT will get a fifth judge in 2016: the ACT has about 50% more people than the NT.

ACT claims to expand sentencing options

The ACT will expand restorative justice and establish a new community-based sentencing option to replace periodic detention.

Its *Crimes (Sentencing and Restorative Justice) Amendment Bill* allows the restorative justice program to be expanded in two stages and introduces intensive correction orders as a sentencing option.

The first stage amendments will open restorative justice to adult offenders and to more serious offences. The second stage will allow restorative justice to apply to domestic violence and sexual offences and will only commence after further consultation with stakeholders.

The legislation also introduces intensive correction orders as a new sentence into the ACT's existing sentencing framework. The order is a sentence of imprisonment that can be served in the community if an offender complies with a number of strict conditions. These include a core condition of supervision by ACT Corrective Services, as well as additional conditions determined by the court on a case by case basis. <http://tinyurl.com/qdq3kzf>

... 'Legal' power to non-judicial body': lawyers

Lawyers in the ACT claim the government is denying courts the power to deal with criminals after they are placed on new intensive correction orders (ICOs).

ICOs will allow offenders to serve sentences in the community under strict restrictions and conditions. They are designed to reduce the need for prison sentences – including weekend detention, which is being phased out – and better promote community-based rehabilitation.

The ACT Law Society's support for the change was predicated on the courts, not the government, having the power over ongoing management of people who are subject to an ICO, including where there is a breach, or where a suspension or cancellation is required.

But the law, as drafted, gives that power to the Sentence Administration Body, a government entity, rather than the courts. <http://tinyurl.com/nw33a8a>

Mandatory sentences up: more jails needed

Violent home invaders will face a mandatory 5 to 15-year jail sentence in WA.

Offenders will go to jail for two years at least if convicted of three or more home burglaries, violent or not.

Police Minister Liza Harvey said violent break-ins accounted for a small proportion of the 27,000 home break-ins each year, and that those offenders needed to face harsher penalties. "If somebody breaks into your home and sexually assaults you they are looking at a mandatory minimum of 15

years in prison," she said. "If they violently assault you or cause you grievous bodily harm in the process, they are looking at seven years, six months behind bars." <http://tinyurl.com/psg8hyq>

Mandatory sentencing is likely to mean more people in jail longer, and some of them inappropriately, Civil Liberties Australia says. The policy will cost the state of WA tens of millions of dollars, as people serving jail time cost taxpayers more than \$300 each day.

State rolls out \$47m plan without consulting

The NSW government will spend \$47 million from next year to dispatch specialist teams and trained counsellors to schools across the state to identify students at risk of "radicalisation" and counter violent extremism.

But parents complain they were not consulted before the new measures were announced.

The largest parent group, the Federation of Parents and Citizens Associations of NSW – which represents the mothers, fathers and guardians of around 750,000 public school pupils – found out about the plan at the same time as it was released to the media and the public on 2 November.

Surely, if any measure needs parental consultation, it's one aimed at getting into the minds of students, Civil Liberties Australia says. <http://tinyurl.com/oqltev8>

Beckett gets \$4m after wrongful conviction

NSW must pay \$4 million, plus legal costs, to Roseanne Beckett for malicious prosecution and wrongful conviction of soliciting to murder her husband.

Ms Beckett spent more than 10 years in jail after being found guilty of plotting to kill her husband Barry Catt, and of perjury, but her convictions were much later overturned on appeal. She was released from jail in 2001, when new evidence came to light. A 2005 appeal quashed the charges, and the NSW Director of Public Prosecutions decided not to take the matter back before the court.

Court evidence stated that Ms Beckett had been relentlessly pursued by a corrupt NSW Police detective, Peter Thomas (he died last year) who actively suborned the legal system to ensure she was found guilty.

In August 2015 Ms Beckett was awarded \$2.3 million but last month the NSW Supreme Court ordered the state to pay interest on the original damages, as well as her legal expenses in fighting the case.

"Twenty-six years is a long time but by gee there's a powerful message there, don't give in and don't give up," she said outside court last month. <http://tinyurl.com/oj4qfkd>

'Plastic' guns can send you to jail for 14 years

NSW citizens with digital files for printing of 3D guns face 14 years' jail under new laws just passed.

The Firearms and Weapons Prohibition Legislation Amendment Bill 2015 amends the Weapons Prohibition Act 1998 to make possessing "digital blueprints for the manufacture of prohibited weapons on 3D printers or electronic milling machines" an offence. Maximum penalty for the offence is 14 years prison, even if the computer containing the files is located outside NSW.

The legislation adds to existing laws prohibiting owning or using a 3D-printed gun.

It is the first Australian law to prevent the spread of 3D-printed weapons. In May 2015 the Queensland Labor government

decided not to proceed with legislation to regulate and penalise the manufacture of 3D-printed guns. – various news reports.

Smiley Miley pic gets police into hot water

NSW Police illegally hacked a private Facebook account in what a magistrate branded as a reprehensible criminal offence.

The police were angered by what they claimed were "indecent" posts that included a raunchy image of the American pop star Miley Cyrus superimposed on a photograph of a serving officer.

One of the state's highest ranking police officers tried to get the magistrate, Roger Brown, to overlook the police offending by lodging a secret submission to the court. It was rejected.

After four months of illegal police surveillance on a closed Facebook page, a Sydney man was arrested and charged with three counts of using a carriage service to offend police and a further three counts of publishing an indecent article. But all six charges are now withdrawn and dismissed. In ordering costs of \$14,000 against police, Magistrate Brown described the conduct as "reprehensible" and charges as "trivial."

"Exactly how widespread is this snooping?" asked the man's barrister, Andrea Turner, in a formal complaint to the Police Integrity Commission, which has now been referred back to the police for investigation by the NSW Ombudsman. <http://tinyurl.com/nz7oxc5>

Tassie prisoners to get mandatory sex lessons

Tasmania looks set to compel sex offenders to undergo treatment in prison.

The parole board would need to consider participation in treatment programs when deciding whether a prisoner is eligible for early release, under a law that has passed the lower house unanimously. It will next be considered by the 15-member upper house.

A report earlier this year revealed that almost 20% of sexual offenders refused to take part in Risdon Prison's cognitive behavioural therapy program. <http://tinyurl.com/ndak24h>

TasPol claims 'different mistakes' today

Tasmania Police today would not make the same mistakes they made 46 years ago in the Lucille Butterworth case, Hobart Inspector David Plumpton last month told an inquest in one of the great non sequitur reasonings of modern policing.

An inquest last month was told about a series of police failings and missteps in the initial investigation into her disappearance from a bus stop on 25 August 1969. Police labelled her a runaway case.

Now the same police force, waking up after nearly half a century of slumber, thinks Miss Butterworth accepted a lift after missing her bus and was subsequently sexually assaulted and killed.



Inspector Plumpton told the inquest that early mistakes made in Miss Butterworth's case would not be repeated in today's environment. "It shouldn't have happened then. I don't believe our culture in any way, shape or form would allow it to occur [today]." He said technology, the influx of female officers and a more professional outlook had significantly altered the organisation's culture.

"If TasPol was on the improve, why weren't the Butterworth case failures addressed 40 years ago, or 30 years ago, or 20 years ago, or 10 years ago," Civil Liberties Australia's CEO Bill Rowlings has asked.

"There has been no royal commission into the police in Tasmania, other than into a specific shooting case, in the past 50 years, so TasPol has never had any external reason to improve. Some Tasmanians think their police are just as bad as half a century ago in terms of culture and attitude, and that new technology has simply masked the problems, which may indeed be worse than they used to be.

"Until there is a full inquiry into policing, the legal system and justice in Tasmania, bad old habits are likely to persist," Mr Rowlings said. "TasPol is the last of the Australian 'dinosaur' police departments which hasn't been thoroughly reviewed." <http://tinyurl.com/otp6w5x>

Cops ignore privacy to benefit security firm

Tasmania's Integrity Commission has highlighted a case last year in which an officer gave a list of "persons of interest" to a company managing the security of an event.

It included photographs, past and present charges, licence details, dates of birth, and home addresses, Patrick Billings reported in Hobart's *Mercury* daily newspaper.

When a "person of interest" discovered the list, the officer and the manager tried to deny its existence.

An internal investigation found the officer's actions not only breached the police code of conduct but may have also breached Tasmania's privacy laws and the Youth Justice Act. <http://tinyurl.com/nc9uk8j>

An incident like this one probably wouldn't have happened 46 years ago, CLA says.

ODD SPOT: No drug test counselling

Hobart City Council's alderpeople have voted to exempt themselves from its workplace drug-testing regime, which will be imposed on all other council staff.

A council meeting voted 9-3 for the exemption.

Under the council's draft Alcohol and Other Drugs Policy, council workers would be subject to random breath and saliva testing. Some workers would be required to have no alcohol in their blood, some would be allowed 0.02 per cent blood-alcohol content and general workers would be allowed a reading of 0.05.

More bombs away for sport over Essendon

WorkSafe Victoria has charged Essendon Football Club with two breaches of the OHS Act 2004 in relation to its 2011-2012 supplements provided to footballers.

The charges are:

- One breach of section 21(1) – failing to provide and maintain for employees a working environment that is, so far as is reasonably practicable, safe and without risks to health.
- One breach of 21(2)(a) - failing to provide and maintain for employees a system of work that is, so far as is reasonably

practicable, safe and without risks to health. <http://tinyurl.com/nj8q832>

The move by WorkSafe puts all sports in Australia on notice: <http://tinyurl.com/nswaawz>

If "safe" sports work, without unreasonable risks to health, is the criterion, it is hard to imagine how rugby league and union, cricket and other sports can survive in their current form. All have had deaths and severe injuries to players, not to mention the cumulative effects of repetitive training and play that can limit enjoyment of life in later years.

An interesting court case, with massive ramifications for the insurance industry?

As Essendon has already been fined \$2m by its supervisory body, the Australian Football League, for its practices in relation to the supplements program, it is difficult to see how a WorkSafe conviction would not be double jeopardy for the club (with thanks to David Roth for the alert).

Keogh trial finally dropped

The South Australian DPP Adam Kimber last month finally dropped the year-long pretence that he could prosecute Henry Keogh for the third time for a "murder" that was an accident.

Keogh was freed by a full SA Appeals Court in December 2014 after expert forensic evidence, which was available to the Crown in 2004, had been passed to the defence, as was and is required under law.

Both the current SA Chief Justice and the current Speaker of the SA Parliament, who was state Attorney-General at the time, apparently had control of the report which included that evidence, but failed to hand it over to Keogh's defence lawyers despite formal petitions for mercy being active at the time.

Keogh is now likely to sue for his 19 1/2 years of wrongful imprisonment: it would not surprise, based on former WA and recent NSW judgements in similar situations, if he receives \$10 million compensation.

For a rundown on the current Keogh situation, and on wrongful conviction cases in Australia, see:

<http://www.cla.asn.au/News/keogh-trial-ends-major-inquiry-needed/> and

<http://www.cla.asn.au/News/legal-system-fails-to-comply-on-rights/>

ODD SPOT: Police to demand more protection

Police have threatened to demand more stun guns and body armour if the government does not support moves to protect officers from its controversial Return to Work scheme, the police union says.

The Police Association of South Australia said it would also demand money to boost security at its stations against "terror attacks", increase CCTV coverage, and run dedicated patrols in entertainment districts with a minimum of three police officers after 6pm. Public protests are also likely.

President Mark Carroll said the increased harm "minimisation" measures were in response to the State Government's Return to Work Act, due to come into force on 1 July 2016.

The new law means payments to injured workers will cease after two years unless their injuries are deemed "catastrophic" and constitute a 30% whole person impairment. Mr Carroll argued the changes would unfairly cap medical benefits for officers seriously injured in the line of duty. <http://tinyurl.com/preqr3>

Australian briefs

Aussies in jail overseas on the rise: There were 1256 arrests of Australians overseas in 2014-15, 7% more than five years ago. About 200 of those were drug-related, according to DFAT's inaugural State of Play Report released last month. There was also a rise in the number of Australians abroad in jail from 339 to 371. – source: DFAT.

High time at Risdon Prison: In 2014/15 drugs from cocaine to steroids were found on Hobart's Risdon prisoners 62 times and visitors to the prison 12 times: 600 drug and alcohol seizures occurred in the past six years, official figures show. Some seized items included aspirin and prescription antidepressants, as well as drug taking implements. On 38 occasions the source of the drugs was listed as "unknown." <http://tinyurl.com/o3cey2h>

New \$10k fine for under-age alcohol supply: New laws banning adults from supplying alcohol to children in a private setting without their parents' consent came into effect in WA last month. Anyone providing alcohol at home for under-age people, without parent permission, can be fined \$10,000. <http://tinyurl.com/ptdvnck>

Police can randomly stop cars for drugs: NT Police can now randomly stop and search vehicles under the *Misuse of Drugs Amendment Bill 2015*. Police can nominate specific roads as 'declared drug detection areas' for up to 14 days, which gives them expanded powers to search for drugs in cars. – media release, AG Elferink and Police Minister Chandler, 17 Nov 2015

Hunt still pushing 'lawfare': The Turnbull government is pushing ahead with Tony Abbott's controversial "lawfare" changes against conservation groups, with a Senate committee dominated by Coalition members recommending they proceed without holding any public hearings into a bill. Most environmental organisations would be unable to challenge developments under federal laws unless they could show they were "directly affected". The government move is in retaliation for a federal court decision that Environment Minister Greg Hunt had not properly considered all advice in his approval of Adani's \$16.6bn Carmichael coalmine at Abbot Point. <http://tinyurl.com/o3fclex>

CJ calls for Aboriginal jailing target: The Chief Justice of South Australia is supporting a "justice target" to help drive down the number of Indigenous Australians behind bars. Chris Kourakis believes the measure could help reduce the number of Aboriginal and Torres Strait Islander Australians in jail, with Indigenous people currently accounting for more than 25% of prisoners. Indigenous children are 31 times more likely to be in detention. <http://tinyurl.com/opk9h2o>

Triggs blasts erosion of Australia's freedoms: The erosion of fundamental freedoms and overreach of ministerial discretion is leaving Australia increasingly isolated from international community standards, the president of the Human Rights Commission, Professor Gillian Triggs has warned. "Gone are the days when we could say, 'How dare Saudi Arabia, Qatar, Libya criticise Australia's human rights record?'," Professor Triggs said in a speech on Australia's asylum seekers and refugee policies. "Now we are attracting the concern of our traditional allies – the UK, Canada, the US

– and powerful allies in Asia such as China, Japan and Indonesia." <http://tinyurl.com/oslwp9e>

CLA report – key activities for Nov 2015

Board meeting: 15 November 2015: main public issues covered:

- strategic plan for Better Justice endorsed, key time-critical issues being progressed.
- letter to PM and AGs (federal, state and territory) re ratification of OPCAT, the torture protocol
- management of ANU law students doing internships
- membership renewal system to be evaluated
- history of civil liberties to be posted on to website
- Right To Appeal campaign to concentrate on Victorian parliament, discussions underway
- investigation of education procedures in prisons, and concepts for improvement
- Model Criminal Cases Committee: questions to be posed

Networking meetings:

- Mike Dudman and Paul Linsdell of Blackstone Legal Costings re Better Justice concept
- follow up on Paul Wilson trial in Brisbane
- Beth Stone and Ray Funnell re offshore detention
- Phil Dorling re current issues, terrorism, news media and promotion
- Drs Des and Janette Griffin re justice projects and political failings
- Bill Stefaniak re ACT issues
- CLA endorsed Refugee Action Collective Complaint to International Criminal Court
- Lawyers Ben Aulich and Peter Woodhouse re magistrate and judges accountability
- Centre for International and Public Law, ANU, at AGS: Questions of citizenship: constitutional and international law perspectives, Kim Rubinstein and Genevieve Ebbeck
- Greens end of year gathering, newest Senator Robert Simms (SA) (photo, with CLA President Dr Kristine Klugman) and Tas Senator Nick McKimm's chief of staff, Debra Rees
- Appearance PH hearing Human Rights sub committee of Joint Standing Committee of Foreign Affairs Defence and Trade, on death penalty
- CEO Bill Rowlings address to police/academic/civil society workshop at UQ on protests and infrastructure.



Better Justice:

CEO Bill Rowlings will be interviewing the original "McKenzie friend", Prof Ian Hanger AM QC and former Royal Commissioner, in Brisbane on 2 Dec about his thoughts on how to provide better-fairer-quicker-cheaper justice.

Public launch of program: January 2016

Right to Appeal – mirroring the mid-2013 South Australian law throughout Australia, a Civil Liberties Australia campaign: the Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Act 2015 was signed into law by Prof Kate Warner, Governor of Tasmania, on Monday 2 Nov 2015.

Media:

Anti-terrorism laws (foreign fighters) - many interviews with QUT Journalism students and SA high school students
Anti-terrorism laws (control orders) - on-air interview with 2CC and with ABC Radio

Western Independent interview, Nov 2015:

http://issuu.com/westernindependent/docs/2015_semester_2_edition_2_full_edit

Presentation:

Presented on Dual-Use science and academic freedom at the Association of Bio Security of Australia and New Zealand conference

Other:

Supervising ANU Law intern (by VP Tim Vines): Topic is Free Speech of Doctors working on Nauru and Manus Island.

Launch of Harm Reduction Australia at Parliament House, Canberra

Launch of Bishop Pat Power's book

Liaison John Hayward Tasmania re state of injustice

Submissions:

Senate Legal and Constitutional Affairs Legislation Ctee: on reasons for NOT merging the Australian Institute of Criminology with the Australian Crime Commission, under the *ACC Amendment (Criminology Research) Bill 2015*.

Freedoms Inquiry paper to ALRC submitted

OPCAT letters sent to PM and state/territory AGs

Revenge Porn: assisting a German citizen to lodge details of revenge porn visited on her in Australia for inquiry <http://tinyurl.com/own7uu7> Senate Legal and Constitutional Affairs Reference Ctee, deadline 14 Jan 2015, report by 25 Feb 2016

NSW:

Inquiry into elder abuse in NSW by an upper house committee, submission closing date 12 Dec 2015, reporting date May 2016. Details: <http://tinyurl.com/qf8446q>

Vale stalwart CLA member and MS sufferer, Phylli Ives

Welcome to baby Eva Griggs

INTERNATIONAL

France expands search powers

France's new laws extending the country's temporary state of emergency to three months also grant new powers to search seized devices and to block websites.

Under the legislation, police searches of digital equipment are no longer limited to the device itself. Instead, they may also extend to include any data that is "accessible from the initial system or available for the initial system," as the French digital rights site *La Quadrature du Net* explains.

In practice this means police may use seized devices in order to search for "any type of information on any type of electronic device of any French resident and especially any information available via usernames, passwords collected during a police search, any content stored online." <http://tinyurl.com/py7p3j9>

Brits beef up snooping into 'private' browsing

Britain has unveiled plans for sweeping new surveillance powers, including which websites people visit.

The draft bill released last month was watered down from an earlier version dubbed a "snoopers' charter" by critics who prevented it reaching parliament.

Home Secretary Theresa May said many of the new bill's measures merely updated existing powers or spelled them out. However, the new proposals would require communication service providers (ISPs in Australia) to retain customers' data, including their internet use for a year.

David Anderson, Britain's independent reviewer of anti-terrorism laws, has said the current British government snooping framework was fragmented, undemocratic and "in the long run intolerable".

Australia's data retention legislation requires the IP addresses assigned to users be retained, among other data when it comes to the internet, but not destination IP or URL addresses. <http://tinyurl.com/ooqep8w>

Snooper's Charter would provide total blackout of public scrutiny

The draft UK Investigatory Powers Bill, aka the Snooper's Charter, would prevent any discussion of government surveillance, even in court, Rupert Goodwins says on the *Ars Technica* website.

"The draft bill effectively makes it a crime to reveal the existence of government hacking. Along the way, the new law would also make it illegal to discuss the existence or nature of warrants with anyone under any circumstances, including in court or with your MP, no matter what's been happening. The powers are sweeping, absolute, and carefully put beyond public scrutiny, effectively for ever. There's no limitation of time." <http://tinyurl.com/ntdf9bl>

Violence is the world's worst disease

David McCoy, of the Centre for Primary Care and Public Health, Queen Mary U. London, writing in *The Lancet*, Vol 386 No 10005, 31 Oct 2015:

The wars and violence in the Middle East and north Africa, together with tragic scenes of refugees seeking safety in Europe, offer the starkest of reminders that good health is incompatible with war and conflict. Apart from their direct physical and psychological effects, wars and conflict damage health-care, food, water, and sanitation systems; pollute and degrade the environment; and undermine development. The effect of violence on the global economy in 2014 cost about \$20 trillion, equivalent to a hundred times the total official development assistance from rich to poor countries.

<http://tinyurl.com/p7h49hq>

The proportion of rape reports to police that led to a charge fell sharply in 2014/15, according to new official figures.

In England and Wales 12% of reported rapes, where the alleged victim was an adult, led to a charge or summons. In the previous 12 months the figure was 17%. The rate is almost double when the alleged victim is a child, with 23% of reported rapes resulting in criminal action.

The latest set of figures, compiled from the more than 40 police forces in England and Wales and published by Her Majesty's Inspectorate of Constabulary, now present the most up-to-date picture of how rapes are dealt with across England and Wales.

An investigation by the multi-agency Rape Monitoring Group shows there were 19,316 rapes against adults, and 9,949 against children, reported to police during the year 2014/15. In some areas, as many as 55 adults per 100,000 people told police they had been a victim of the serious sexual offence. <http://tinyurl.com/p3pls5e>

Female unionists targeted for murder

One Sunday last month, Nermin Al-Sharif, leader of the Dockers and Seafarers Union of Libya, was shot at as she was driving in a car near Benghazi.

It was the second attempt on her life: three other well-known female activists in Libya have been killed.

The international union movement is calling on the Prime Minister of the Interim Government in Libya, Abdullah al-Thinni, to protect trade unionists and human rights activists. Al-Sharif is out of hospital and recovering. <http://tinyurl.com/qzvxjqy>



Mexico to legalise all drugs

All drugs including cannabis, cocaine, heroin and crystal meth will be legal in Mexico within 10 years, the country's former president, Vicente Fox, said last month after a court ruling that makes the legalisation of marijuana inevitable.

Fox was president between 2000 and 2006 and became an advocate of legalising drugs after leaving.

The Mexican Supreme Court approved growing marijuana for recreational use. The landmark decision opens the door for an eventual legalisation in Mexico, where gangs have waged drug war for a decade.

Now that the court has ruled that it is unconstitutional to prevent people from smoking marijuana, Fox said it would eventually have to make a similar decision for drugs like cocaine and heroin. <http://tinyurl.com/nrsg49e>

ODD SPOT: California to opt for new killer drug

The US state of California is proposing a "humane and dignified" single-drug injection to restart capital punishment after a nearly 10-year hiatus.

The three-chemical method used in the past was struck down in 2006 by a judge who said it could cause inhumane suffering if one of the drugs did not work. They have not executed anyone since.

The new California protocol would allow a choice of four barbiturates for lethal injection: amobarbital, pentobarbital, secobarbital and thiopental. according to the proposal, published by the California Department of Corrections and Rehabilitation.

At least 16 California death row inmates, aged 49 to 78, have exhausted their appeals and could be executed if the protocol is adopted. One was condemned for crimes that took place 36 years ago.

California has 749 on death row. Since 1978, the state has executed 13, 68 condemned offenders have died from natural causes and 24 have committed suicide. <http://tinyurl.com/olbnkf7>

International briefs

Police shootings data: The *Washington Post* to end-October showed 796 fatal police shootings in the USA in 2015, while one maintained by the *Guardian* recorded 927 deaths from all causes. <http://tinyurl.com/o3daymx>

Top Fiji cop is now army man: Fiji's police commissioner Ben Groenewald resigned last month, accusing the Fiji military of interfering with "policing". His replacement will be a senior military officer, Lieutenant Colonel Sitiveni Qiliho. <http://tinyurl.com/pa9rz6q>

Indonesia halts death penalty: Indonesia last month announced a moratorium on the death penalty. It is a significant step for a country which has long claimed it needed the death penalty to control drug importation and use. – various agencies.

DATES

30 Nov- 3 Dec, Adelaide: Law & Society Assn of ANZ conference 'Inside Out': the edges and changing limits of law. Flinders U Law School. Venue: 182 Victoria Sq Adelaide. <http://tinyurl.com/qzs8sto>

8 Dec, Hobart: 11am, meeting of Sue Neill-Fraser support group, Botanic Gardens. Details: Email somuchdoubt@gmail.com

14-15 Dec, Brisbane: Private Law in the 21st C, Stamford Place Hotel, city. Details: <http://www.law.uq.edu.au/pl-21-century>

17 Dec, Sydney: inaugural Evidence-Based Policing Summit, Sheraton on the Park, details 02 9080 4307... "High level policy-driven conference that will have a theme and focus on "Research, Testing, Leadership" and will draw on policy, legislation, socioeconomics and case studies of successful implementation".

2016

5-6 Jan, Paris, France: Global Law Conference. Details Professor Jim Corkery, CLE Paris co-chair, Law, Bond University Qld E: jcorkery@bond.edu.au Contact: <http://tinyurl.com/nzqcdo>

6-7 Feb, Canberra: Current issues in sentencing, Prof Kate Warner (Gov of Tasmania), John Curtin School, details <http://tinyurl.com/onazvsj>

14-15 April, Canberra: **National Law Reform conference**, University House, ANU. Calling for papers: <http://tinyurl.com/oueoomn>

18-23 Sept, Auckland NZ: 23rd Intntl Symposium on Forensic Sciences. Details: www.anzfss2016.org

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