

## What we'll be asking the pollies before the 2016 election

After feedback from members on what issues mattered most, Civil Liberties Australia will ask political candidates for the 2016 federal election to publicly state their personal, and their party's, positions on the liberties and freedoms of Australians in the list below.

The answers will help members decide how they will vote.

CLA members are concerned the 2016 election does not continue a steady erosion of Australians' fundamental rights.

As the Law Reform Commission's recent 'Freedoms' report shows, the parliament is primarily responsible for Australians' losing traditional liberties and rights over the past 15 years.

We will be sending a letter asking for the following answers to all main participants:

### Bill of Rights:

Will you legislate for a national Charter of Rights and Responsibilities in Australia?

### Asylum seekers:

- Will you remove all children from detention, and commit to never again locking up children?
- Will you restore freedom of speech to whistle-blowers with experience of detention centres?

### Surveillance:

Will you ameliorate data retention laws and require warrants for accessing metadata?

### Good governance:

- Will you provide new protections for whistle-blowers revealing wrongdoing in the PS? (That is, will you introduce a Public Interest Disclosure law that actually works).
- Will you introduce Qui Tam (payments for fraud exposure) law into Australia, as in the US?

### Law and Justice:

Will you introduce "right to appeal" provisions federally, as in SA and Tasmania?

Will you create a national Criminal Cases Review Commission system, or similar, as in the UK?

Will you create a federal 'ICAC' (a corruption commission with wide powers)?

### International:

Will you ensure all of Australia fully abides by the Optional Protocol to the Convention against Torture (OPCAT)?

### Euthanasia:

Will you change federal law so people can choose to die, assisted if needed, with dignity?

Will you restore full decision-making rights to the ACT and NT Parliaments?

### Equal rights/discrimination:

Will you change the Marriage Act so same-sex couples can marry?

### War on drugs:

Will you change policy and laws so drugs become a health issue more than a criminal issue?

## Here's what else members say we should do:

In the best response we've ever had to a call for comment, a large number of CLA members responded with their main concerns, and several new ideas, after an appeal in the April CLArion.

Here – apart from what's above – is what we could/should be doing as a nation, members say:

**Federal:** user-pays levy for use of local infrastructure imposed on international companies that do not pay their fair share of local tax; no access to fuel subsidies unless a company pays full tax, on time (that is, no access while a tax appeal is in progress – and no 'catch-up' fuel tax subsidy payment if the tax appeal is successful); restore the traditional privacy of Census information; remove Peter Dutton from the Immigration portfolio; national ban on using plastic bags; make training of politicians mandatory before they take up their positions (legal principles, government structures/mechanisms, maths/finances for large enterprises, history/logic of government failures/successes).

**State:** Abolition of mandatory sentencing; abolish long sentences for children (replace with education and support programs); campaign every state and territory against homelessness until it is 20% of what it is in 2016; stop jailing people with mental health and other disabilities; upfront restoration cost paid by local and international miners for remediation and to repair site degradation (held in trust); keep people out of jail using alternative 'community help' projects; more funds for primary education, education of prisoners also; ensuring state schools have equivalent infrastructure (pools, gyms, etc) to that of private schools; remove the new anti-protest laws sweeping the states; stop forced council amalgamations; **MRI scan and psych tests for politicians to ensure they are 'fit-for-purpose'** before starting their political career (and as a 'benchmark' for comparison during or at the end of their careers).



*Photo: Makeshift homeless shelter, removed by government. PIC credit: Johnscotaus, 4 Apr 2015*

**Police:** prohibition on their being a member of a 'secret' or 'exclusive' organisation; scrutiny of random cases during an investigation (like a 'jury', but during the investigation phase rather than the court phase); all interactions with others to be recorded on time-stamped, audio-visual equipment; every case to have one named officer responsible who is liable to prosecution if proper procedure is not followed; promotion nominated from below, rather than above.

**Judiciary:** prohibition on membership of a 'secret' or 'exclusive' organisation; set fee for all cases regardless of

court time taken; promotion nominated from junior lawyers rather than politicians; all cases to have at least brief details and verdicts published on the internet; no withholding of information from open court and reporting for 'national security' or like grounds; encourage public debate and criticism of court cases and remove defamation protections for individuals when acting as a paid employee of the state.

**Parliament:** guarantee of complete freedom of speech in and about the workings of parliaments and politicians; retraction/ wholesale revise of 'terror' legislation; search warrants to be approved by ombudsman, including phone and internet surveillance; creation of 'citizen courts' with power to subpoena people and recommend a formal trial; guarantee of whistleblower rights and protections.

**Politicians:** cease all donations to political parties; ban TV advertising by parties, individuals standing for election and by governments in the lead-up six months before elections; create a 'fear test' to ensure any new laws, rules or regulations in the public or private sector do not stigmatise and discriminate against 'others'.

### **Govt's \$3m for low quality 'intell' anonymously**

Justice Minister Michael Keenan has just given one of Australia's most dangerous and insidious public programs another \$3m boost.

Crime Stoppers is getting \$3 million so citizens can – anonymously – "report those suspected of being involved in criminal activity".

Dobbers can get \$1,000 if a tip leads to an arrest...but only 1 in 46 dob-ins result in arrest, suggesting 45 people are wrongly slandered for every correct tip.

Last year 322,000 contacts from the public resulted in 140,000 intelligence reports and led to almost 7000 arrests and 20,000 charges. Note that the Australian Minister for Justice believes an anonymous tip-off can be equated to an "intelligence report": such thinking explains the low quality of "intelligence" held by the Australian Crime Commission. <http://tinyurl.com/jddrp4o>

### **Lamenting the chance for root-branch reform**

Columnist-barrister Greg Barns has added to the national lament for political states-men and -women.

"There is no mould-breaking Sanders (US) or Corbyn (UK) on the Australian political landscape. Nor are there political movements emerging that are capturing public attention by tapping into discontent about the way political influence is captured so readily by well-heeled interest groups.

"It is a curious state of affairs, because the sorts of matters that have spawned large followings in the US, Britain, Canada and parts of Europe are as relevant in Australia. Inequality in Australia is at a 75-year high. There is well-documented evidence that many huge corporations pay little or no tax in Australia," Barns wrote last month.

"Australia is joined at the hip with Washington. Foreign and defence policy is looking very risky, given the rise of China in our region, and of course the appalling mistreatment of asylum seekers by both the Coalition and the ALP is known the breadth of the globe.

"So why is there no groundswell of daring political leadership in this country?" <http://tinyurl.com/zz2bxln>

Disclosure: Barns is a lapsed CLA member, who will probably pay his dues now he has been reminded!

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## **JAMES STAPLES DIES**



**James (Jim) Staples passed away peacefully on 27 April 2016 in the Hillcrest Nursing Home at Gloucester, NSW.**

**He was a foundation Board Member of Civil Liberties Australia in 2003, and served on the Board for four years.**

**He was a noted NSW barrister who stood up for prisoners and also dramatically improved how abortion law worked.**

**Once a communist, he was expelled for distributing the famous Krushchev speech, revealing Stalin's excesses, to the 20th party congress. He was also famous/notorious for NOT being appointed to the Industrial Relations Commission in 1989, when all other members of the abolished Conciliation and Arbitration Commission were appointed to the new body. Effectively, the Hawke Government had used an Act of Parliament to sack Mr Justice Staples.**

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### **Australia: where control freaks react from fear**

You can be held in jail, and/or 'controlled', in Australia for fear that you might commit a crime.

You can be jailed, for a decade or two, for fear of a potential crime that a secret service-provided agent-provocateur has steered you towards. A dozen or so 'terrorists' are in jail in NSW and Victoria allegedly under such circumstances.

Soon, you can stay in jail – possibly forever – for fear that fear still exists at the end of someone's 10- or 20-year sentence that the person might commit the same type of crime for which they had been jailed in advance in the first place.

Apparently, monitoring bracelets, tapped communications and ASIO and AFP surveillance would not be enough: our most eminent politicians have decided, because of their own fears, that only keeping people in jail without evidence will suffice.

Australia's new descent into a police state comes courtesy of the latest meeting of the nation's 'first' ministers. That's an obviously jocular term created by the PM, Premiers and Chief Ministers to acquire a status beyond their station. Not one of them currently holds a candle to statesmen who have led Australia's democratic parliaments in the past.

At a meeting of the Council of Australian Governments (COAG) last month, the pre-eminent people sworn to uphold the rule of law in their jurisdictions trashed it, yet again. Here's what they said:

*"First Ministers supported the development of a nationally consistent post sentence preventative detention scheme that covers high risk terrorist offenders. They agreed that the Commonwealth would draft legislation, to be introduced as soon as practicable, following consultation with states."*

The nation had no pre-warning the “first” ministers would abandon the rule of law in Australia. There has been no public consultation in any state or territory, or nationally.

You can tell how much “deep” thought they gave detention without reason and without evidence. It was one of 12 items on the agenda of a one-day meeting which included tax, education, health, federation and competition reform, indigenous economic development and reducing violence against women and children.

COAG meetings are where national issues are decided. That used to happen in sittings of the federal parliament, but the House of Representatives has become one of such ill-repute for national decision making that the “first” ministers make national decisions without public scrutiny at meetings off limits to the press and the people.

There is no published COAG agenda in advance, so the nation knows not what is to be decided. There are no citizens or reporters present, to know what is being discussed by whom. And there are no minutes, just a “communique” which is another name for PR spin.

By this method, the Australian nation has decided to lock up people, apparently forever, based on fear.

<http://tinyurl.com/h3y6ur9>

### **Hawke gets brave...long after ceasing to be a ‘cowardly politician’**

The illegality of euthanasia in Australia is "absurd" and politicians are too cowardly to fix it, former prime minister Bob Hawke said last month.

The 86-year-old acknowledged his passion for the issue was new but said he had always been in favour of euthanasia.

"It's just an unarguable case," Mr Hawke told *ABC Radio National*. He said there were no ethical grounds for forcing people in terrible pain to "suffer and suffer and suffer" on quasi-religious moral grounds. "I can see no logical or moral basis for such an absurd position." <http://tinyurl.com/zwdebbq>  
See: Canada opts for national euthanasia law, below in **‘International’**

### **Blick lays into ‘self-serving PS mandarins’**

Public service mandarins are merely self-interested in hiding their advice when they demand more limits on the public's right to information on government activities, a former PS heavy said last month.

Bill Blick said there was no evidence that freedom of information laws inhibit "frank and fearless" advice from the bureaucracy to politicians.

Mr Blick, a former Deputy Secretary of the Department of the Prime Minister and Cabinet, a former Inspector-General of Security and Intelligence and former Deputy Commonwealth Ombudsman, called on the critics of Fol to put up some "frank and fearless evidence" to support their call for more restrictive public access, or "shut up". <http://tinyurl.com/zrcnv59>

### **ODD SPOT: Barristers...guardians – or jailers – of the truth?**

“...people accuse us of lying for a living, but my real job is to stop the truth from ever coming out. You have to create a narrative for each case, out of the Lego sets of facts that are proved”– Charles Waterstreet, barrister, writing in *Farifax Online* 9 April 2016 <http://tinyurl.com/j96abdp>

### **AFP tell Senator they won’t answer**

The Australian Federal Police are refusing to answer questions from Senator Nick Xenophon about whether they have recently accessed the metadata of journalists, politicians or political staffers.

By doing so, they have effectively put themselves beyond parliamentary investigation under Senate Estimates processes.

The AFP claim answering would be illegal under new data retention legislation. The Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015 passed in March last year.

For the first time, it forces Australian telcos and Internet service providers to retain comprehensive records on their customers’ Internet and telephone habits for two years.

In a Senate Estimates session on 9 February, the Independent Senator asked the AFP a number of questions about how it had used the laws to access metadata pertaining to journalists, politicians or political staffers over the past year.

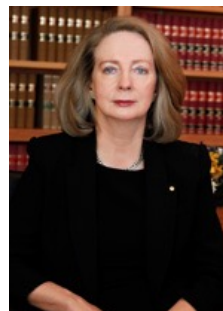
However, in its written response, the AFP said it was prohibited from disclosing any information about whether it had made such accesses.

“The Australian Federal Police is unable to provide the Hon Senator with this information as doing so would be an offence under section 181B of the Telecommunications (Interception and Access) Act 1979,” the AFP wrote. — Renai LeMay, writing on *Delimiter* <http://tinyurl.com/jqe64vp>

### **French retires; female ‘dropout’ may take nation’s top judicial post**

Chief Justice of the High Court Robert French will resign from midnight on 29 January 2017, possibly paving the way for the first female, and first high school dropout, to become CJ of Australia.

French’s resignation takes effect a few weeks ahead of his 70th birthday on 19 March 2017 so that his successor can start before the 2017 sittings begin on 30 January 2017.



The two most senior judges remaining on the court are both female, Susan Kiefel (photo) and Virginia Bell.

Kiefel, from Cairns, was a high school ‘dropout’ at age 15 – she left after year 10 – who went back to complete secondary school while working as a secretary.

She gained a law degree and then forged an impressive career, later achieving a Masters in Law from Cambridge UK. She joined the High

Court in 2003.

She turns 70 in January 2024, so would have six years to serve in the top job.

Bell is a former Redfern Legal Centre and civil liberties lawyer, who was appointed a judge of the NSW Supreme Court in 1999. She has been on the High Court since February 2009. As she must retire in early 2021 and so has only a further four years to serve, it is unlikely she would be preferred as CJ.

The new Attorney General, after the election, will make the appointment, but the traditional consultation with the states and territories is already under way. Whoever is appointed – Kiefel or an outsider not currently on the court – will tilt the ‘balance’: there will be three females and three males on the court when French leaves.



## Should jurors be fined for ‘researching’?

Which Australian jurisdiction will be the first to introduce a fine for jurors using social media?

A proposed new Californian law will see jurors who don't obey a judge's warning to not research on the Internet about a case or use social media during trial fined about \$2000.

The first-of-its-kind measure, now before the California Assembly, would give a new weapon to judges who can already hold misbehaving jurors in contempt. But under the new law, designed to combat mistrials, a judge would have an easier time issuing a rank-and-file citation under the proposed law instead of having to go through all of the legal fuss to charge somebody with contempt.

Judges routinely warn jurors not to research their case or discuss it on social media. Normally, errant jurors are dismissed without any penalty, and sometimes a mistrial ensues. Under the new law, levying a fine would be as easy as issuing a traffic ticket.

The problem is as common in Oz as in the USA, Civil Liberties Australia says. <http://tinyurl.com/jj8heqm>

## Turning legal mistakes into comedy: the funny way to reform

*The Weekly with Charlie Pickering*, an ABC TV comedy, last month tackled the problem of Australian wrongful convictions.

Using humour, it highlighted how backward our legal system is by comparison with Britain, how DNA evidence is not always retained for future testing, how even fresh and compelling new evidence of a person's innocence is unlikely to get them a re-hearing in most states and territories, and how much justice reform is needed in Australia.

All credit to Pickering and crew for tackling a difficult subject so well, CLA says.

You can watch the video here: <https://m.youtube.com/watch?v=4YKRyNe2Mrk>

For further details of CLA's Better Justice initiative, see the CLA website or email: [secretary@cla.asn.au](mailto:secretary@cla.asn.au)

## Public servants' freedom of speech confirmed

In a win for free speech, public servants now have a decreed right to speak about political matters outside working hours, even against the government they work for.

In the case of Centrelink worker David Starr, the Fair Work Commission found public servants were not bound by their code-of-conduct to show deference to the government while on their own free time.

Commission Vice-President Adam Hatcher found the Public Service Act gave departments no general right to discipline their employees for political speech outside of working hours and such powers would be a "gross intrusion into the non-working lives and rights of public servants."

Using an alias, Starr had engaged in an online argument with a government official over waiting times for youth allowance claims. Centrelink pulled out all stops, and tracked down Starr using his posts to other sites using the same pseudonym.

But the FWC found Centrelink had used one of its official social media channels to supply misleading information to the public and that DHS sacked its internal critic after he told the truth about waiting times.

Centrelink has been ordered to reinstate Starr. In so doing, they have reinforced freedom of speech for all public servants. <http://tinyurl.com/z4upaas>

## AFP digs deep into journalist's privacy

The Australian Federal Police have admitted they sought access to a *Guardian* reporter's metadata without a warrant in an attempt to hunt down his sources for refugee stories.

It is the first time the AFP has confirmed seeking access to a journalist's metadata in a particular case.

The admission came to light when the AFP told the Privacy Commissioner it had sought "subscriber checks" and email records relating to the *Guardian Australia* journalist Paul Farrell, and the correspondence was sent to Farrell by the office of the Australian Information Commissioner.

Earlier this year *Guardian Australia* reported that the AFP had accrued a file of at least 200 pages on Farrell in an attempt to uncover and prosecute his confidential sources. <http://tinyurl.com/jgmbvqx>

## Queenslanders get rid of dreadful laws

The dreadful VLAD laws in Queensland are to be scrapped, replaced by control orders.

Justice Alan Wilson's review of the state's anti-bikie legislation, which includes the Vicious Lawless Association Disestablishment (VLAD) Act, has recommended the changes.

Under VLAD, introduced by the former LNP government, bikies convicted of a serious crime would have to serve an extra 15 to 25 years on top of any prison sentence. They could avoid the extra jail time if they 'grassed' on their mates.

Wilson's review calls the mandatory sentences "excessively harsh", and proposes a new "aggravating circumstance" of serious organised crime, which could add extra years to jail time.

The State Government said anti-association measures that prevented three or more bikie gang members from gathering would be removed. Wilson recommends a new consorting offence allowing police to warn a person not to meet with two other people with previous convictions. If this warning is ignored, the person would be committing a consorting offence. <http://tinyurl.com/zryv7x9>

## Murri courts reintroduced

Queensland is reintroducing Murri – Indigenous – courts, starting with Rockhampton.

AG Yvette D'Ath said the eventual 13 Murri courts were an important tool in diverting Indigenous people from the criminal justice system, where they are over-represented in Queensland.

"Murri Courts began in 2002 but ceased their vital function after being axed by the previous LNP government in 2012," Ms D'Ath said.

Qld Law Society president Bill Potts said the state and federal governments should set "aspirational targets" to reduce the jailing of Indigenous Australians. He said it cost about \$66,000 to keep a prisoner in jail each year – while the cost of keeping a person fed, clothed, with a roof over their head and a university education was about \$38,000. <http://tinyurl.com/joovpke>

## State provides lead over medicinal marijuana

Victoria has become the first state in Australia to make medicinal cannabis available to people in exceptional circumstances – safely, securely and lawfully, according to government PR spin.

Under a new law which allows making, supplying and accessing safe and high quality medicinal cannabis products, children with severe epilepsy will get first access from early 2017.

The Victorian government is establishing an Office of Medicinal Cannabis to oversee manufacturing and all clinical aspects of the medicinal cannabis framework. <http://tinyurl.com/h9q4d3l>

## Cops get sniffy over bid to re-leash dogs

The Police Integrity Commission in NSW is investigating officers allegedly caught criticising a state MP online, using racist and sexist posts on social media.

“Police personnel at Sydney City Local Area Command, Kings Cross, Bankstown, Cabramatta – and even within senior management – have been implicated in an extraordinary attack on the Greens member for Newtown, Jenny Leong,” *Fairfax’s* Eamonn Duff reported. Facebook posts allegedly mocked her ethnic background and referred to her father as a “swamp monkey”.

The claimed cyber-bullying follows the Greens’ latest bid, in the NSW Parliament, to repeal the state’s controversial sniffer dog drug detection program. <http://tinyurl.com/ztr6e8n>

## Bar president wants end to Indigenous over-representation

The president of the Australian Bar Association, Patrick O’Sullivan (photo), last month called for national co-operation to tackle the alarming and disproportionate rates of Indigenous incarceration.



The ABA is proposing mandatory sentencing laws be amended or removed, and funds saved from housing prisoners redirected into programs that rehabilitate and reduce repeat offending.

“Australia’s Indigenous incarceration rate is one of the most challenging human rights issues facing the country. The proportion of Indigenous prisoners has almost doubled over the 20 years since the Royal Commission into Aboriginal Deaths in Custody and is a matter of deep concern to the ABA,” he said.

- Indigenous Australians are jailed 16 times more often than the rate for non-ATSI Australians.
- Indigenous children 10-14 are 30 times more likely to be jailed than non-Indigenous peers.
- Indigenous women are almost 20 times more likely to be locked up than non-Indigenous women.

Indigenous people are more than 25% of the prison population despite comprising only about 3 per cent of the national population. In the NT, Indigenous people make up nearly 90% of the prison population in prison, O’Sullivan said.

“An Indigenous young person who has served a prison sentence is more likely to return to prison than finish school. On any given night in Australia, over half of all young people in detention are Indigenous.” <http://tinyurl.com/j6xq2v9>

## Criminal lawyers highlight NT’s abysmal stats

The NT imprisonment rate sits at 847 per 100,000 adults, nearly four times that of its nearest Australian rival, WA.

In the Territory, 86% of those in prison and 96% of those in juvenile detention are Indigenous, and the daily average number of prisoners has more than doubled in the past 20 years.

The new \$500 million adult prison in the NT (opened Nov 2014 - ed.) will reach capacity by 2018 and has seen the youth detention facility re-located to the former adult prison which had been condemned.

The mandatory sentencing regime and restrictive bail laws has caused a significant growth in prisoner numbers. Daily averages grew by 31% over just two years: 38% of those entering an adult prison and 60% of those entering youth detention are unsentenced on reception. This has not led to a decrease in offending or recidivism. For example, recorded assaults have increased and 71% of adult prisoners have served a previous prison term. 95% of the adult prison population in the NT have a hearing impairment which can affect cognitive function, yet there is only one deaf signing interpreter available.

– from submission to Senate inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia, April 2016, by the Criminal Lawyers Assn of the NT.

## Female violence victim abused by ‘the system’

Police arrested a domestic violence victim in front of her children, locked her up for two nights, and charged her with failing to turn up to give evidence against her abusive partner, despite claims they handed her subpoena to her attacker.

Magistrate Peter Dingwall has threatened to refer the case to the ACT Human Rights Commission, and the woman’s lawyer, Tom Taylor of Ben Aulich and Associates, slammed the “most disappointing” way his client was dealt with, Christopher Knaus reported in the *Canberra Times*.

Police say they are conducting an internal review, while prosecutors – who had argued the woman be held in custody over Christmas – have reiterated the difficulties of securing convictions when victims change or retract their evidence.

The victim, meanwhile, says she and her children have been left seriously traumatised by her experience with the justice system. The case stemmed from a triple-0 call made in January 2015. The woman told the operator her partner had struck her in the face in front of her children, and threatened to torch them alive inside their house. <http://tinyurl.com/j6o2e9j>

## New judge, new court, new limit

The ACT is expected to appoint its fifth Supreme Court judge this month, with a start date of 1 July.

Last month, work began on a major upgrade to the ACT’s court infrastructure, a \$150m government-private sector project to create a four-storey replacement for the 65-year-old Supreme Court.

AG Simon Corbell also announced an increase in the jurisdiction range for Canberra civil disputes tribunal, ACAT, to \$25,000. In future, its head – called a president – will be a magistrate or equivalent. Appeals from a president’s decision will go straight to the Supreme Court.

## Orme dies...but his message lingers

CLA notes with sadness the death of noted privacy campaigner Bill Orme on 20 April 2016.

Orme was a former partner of a major law firm, a founder of the first privacy group in NSW, and instigator of walking paths

around Sydney Harbour and the coasts of NSW. In Feb 2010, he made a comment on a CLA article which holds true more so today:

*Editor, CLA Your Opinion: The Tax Commissioner's defence of his powers to break into homes and businesses without judicial warrants as 'trust me, I'm a good guy' is a dangerous argument. Powers such as these should be resisted when proposed, and removed where they exist. Many societies have lived to regret their complacency in allowing them. In the 1970s the Statistician asked for these powers to gather statistics. After a vigorous campaign, they were deleted.*

*If, as the Commissioner says, the powers are rarely used, then the same judicial controls society imposes on police investigating serious crimes are appropriate. We are becoming far too complacent about the erosion of our civil liberties, and too trusting that our governments always act with discretion.*

– Bill Orme, Executive Member, NSW Privacy Committee 1975-82, Neutral Bay, NSW

## Australian briefs

**Prisoners graduate:** A record number of prisoners graduated from certificate courses delivered by Batchelor Institute of Indigenous Tertiary Education (BIITE) at NT correctional centres in the first quarter of 2016. A total of 83 certificates were awarded at the Darwin Correction Centre and the Alice Springs Correctional Centre, a 30% increase from the previous graduation in December 2015. The certificates cover kitchen skills to business and visual arts, and include qualifications in Resources and Infrastructure Operations, Construction, Indigenous Environmental Health, Visual Arts, Agrifood Operations, Kitchen Operations, Engineering and Business. – media release AG John Elferink 30 March 2016.

**WA may change bail system:** WA AG Michael Mischin, with Premier Colin Barnett's endorsement, is considering changing the state's automatic parole review system. Under it, prisoners receive an auto-review of their circumstances every three years. But a particularly heinous criminal spree in the 1980s, involving kidnap, rape and murder of four women, is forcing WA to face whether it will release Catherine Birnie, one of the pair who committed the offences. Civil Liberties Australia has long argued that bail provisions should be uniform around Australia. <http://tinyurl.com/jl4m7mu>

**LCA wants end to one-punch mandatory minimum sentences:** The Law Council of Australia last month called for an end to mandatory minimum sentences for 'one punch' killings, saying they don't prevent violent crime and can have unjust outcomes. NSW and Victoria both introduced mandatory minimum prison terms for single-strike deaths in 2014, after high-profile cases. In NSW, if you're drunk when delivering the one punch you get at least eight years in prison: there's no mandatory minimum if not drunk. In Victoria, you'll be convicted of manslaughter and must be sentenced to at least 10 years if the victim was not expecting to be hit. <http://tinyurl.com/jloo5u2>

**Eastman legal soap opera continues:** The ACT Supreme Court has ruled David Eastman, 70, must stand trial again for

the alleged murder of AFP assistant commissioner Colin Winchester in 1989. Eastman was jailed for more than 19 years, then released in 2014 on quashing of the original verdict by the ACT Supreme Court after an inquiry by acting ACT judge Brian Ross Martin found he had suffered a mistrial caused by police and the prosecution. Martin ruled there had been a "substantial miscarriage of justice" and that a retrial would not be feasible or fair. In a decision which perplexed and angered many in the ACT, DPP Jon White decided to retry him: Eastman asked for a permanent stay, but the ruling went against him last month with acting ACT judge David Ashley saying the reasons for his decision could not be released for fear of contaminating the upcoming trial. The Eastman case, like a maze within a kaleidoscope, continues to get weirder and weirder. <http://tinyurl.com/h3bdrmx>

## CLA report – key activities for April '16

**Development** of 2016 federal election issue priority listing(s) for July (?) election and member concern listings for both federal and state/territory elections, starting with the ACT (October) – see lead items in this newsletter.

**National Law Reform conference:** two-days, University House, ANU: President and CEO attended, Michael Kirby was plenary speaker and he reminisced about the law reform conference held in the same hall in 1976. The Australian Law Reform Comm. has been battered, now one commissioner. It is important that law reform bodies be independent. Need to think empirically and conceptually. Favourably mentioned Bob Moles and Right To Appeal (R2A) in SA. (Dr Klugman reminded Mr Kirby of CLA's success in helping to achieve R2A in Tasmania also - see photo).



Discussed currently emerging criminology and legal/justice reform issues with Prof Russell Hogg of QUT, ANU Dean of Law Stephen Bottomley and Prof Simon Rice.

Follow-up under way with Prof Anne Wallace (ECU), and Justice Kirby. Presenters and attendees included CLA members Prof Simon Bronnitt (UQ), Prof Kim Rubinstein (ANU) and Sarah Moulds (SA Law Reform Institute).

## Administration

Interviews and appointment of new webmaster Austin Ngo, extensive briefing with Lance Williamson and Bill Rowlings.

## Networking:

Dierdre Hyslop John Graham re prisons and prison reform  
Criminologist CLA member Peter Grabosky re Better Justice  
Public meetings:

*Fifteen Years On: Where Next for Terrorism Laws?* Institute of Governance and Policy Analysis, Old Parliament House  
*Human Rights and Refugees*, Gillian Triggs, President of the Australian Human Rights Commission, Llewellyn Hall ANU, organised by Refugee Action Committee



## International

### What's yours is yours...in America but not in Australia

In America, the government may not freeze or seize assets if the assets are not linked to a crime, whereas throughout Australia governments can do just that.

The US Supreme Court ruled 5-to-3 last month against prosecutors who asked a judge to freeze \$2 million of Ms Sila Luis's funds that were not connected to a suspected fraud, saying the money would be used to pay fines and provide restitution should she be convicted.

Ms Luis said she needed the money to pay her lawyers. The judge issued an order freezing her assets.

That order, the Supreme Court ruled, violated her US Sixth Amendment right to legal counsel.

Justice Stephen Breyer, in a plurality opinion also signed by Chief Justice John Roberts and Justices Ruth Bader Ginsburg and Sonia Sotomayor, said the case was simple.

The government can seize, Justice Breyer wrote, "a robber's loot, a drug seller's cocaine, a burglar's tools, or other property associated with the planning, implementing, or concealing of a crime."

But it cannot, he said, freeze money or other assets unconnected to the crime. "The distinction that we have discussed is thus an important one, not a technicality," he wrote. "It is the difference between what is yours and what is mine." <http://tinyurl.com/hao4lgy>

### ODD SPOT: Keeping dodging in the family?

Former UN Secretary-General Kofi Annan's has said that: "*Africa loses more money each year to tax dodging than it receives in international development assistance.*" Annan's son was named in the recent Panama Papers as an alleged tax dodger. Seems that, in Africa, the higher up your family connections are, the more you can access all sorts of deals and dodges. Perhaps not "only" in Africa?

### Counsellor merely has to say the word...

A day after the Myanmar government's de facto new leader, Aung San Suu Kyi, last month announced that freeing political prisoners and student activists was her top priority, a judge ordered the release of 69 student protesters jailed for more than a year without trial.

Judge Chit Myint said prosecutors had decided to drop charges against all of the protesters except for three leaders. "The court has decided to free you unconditionally," he announced to cheers and singing. The students had been arrested in March 2015 for protesting a law restricting academic freedom.

Ms Aung San Suu Kyi heads Myanmar's government as state counsellor, a new post created for her. She was a political prisoner and spent 15 years under house arrest at the hands of the country's former military government. <http://tinyurl.com/htfckk>

### Detector dogs fail on drugs, but nose out snags and cheese

Sniffer dogs at Manchester airport have failed to find a single person carrying heroin or cocaine over the border during a six-month period studied by the independent chief inspector of borders and immigration.

But one dog, trained to detect illegal animal products, often found "small amounts of cheese or sausages" carried by holidaymakers, the chief inspector's report said. Inspectors said that although heroin and cocaine were assessed as "very high priority" for the search team, no class A drugs had been found by the dogs between November 2014 and June 2015.

The review assessed border checks at the airport and the Home Office, which oversees the checks, said improvements must be made.

The airport, the UK's third largest, has six detector dogs and new kennels, which cost \$2.3m. One dog made "accurate detections"...but mostly of cheese or sausages, which the report said was a poor return on the annual cost of running the canine team.

Over the period the dogs helped seize more than 46,000 cigarettes, 60kg of tobacco, 181kg of illegal meat and \$50,000 in cash. The dogs were successful on three occasions at detecting illegal drugs, finding small amounts of class B substances. They also found tablets of human growth hormone, Viagra and Bromazepam. <http://tinyurl.com/h3zshy9>

NB: The most reliable report into detector dogs, by the NSW Ombudsman, found they were wrong about 73% of the time.

### Canada opts for national euthanasia law

Canada's Prime Minister Justin Trudeau has introduced legislation to legalise physician-assisted death for Canadians with serious medical conditions.

The Supreme Court of Canada overturned a criminal ban against assisted suicide in February 2015 and the new bill is a response to a court-imposed deadline.

Although criminal law is a federal matter in Canada, when it became apparent the Conservative government was not acting on the court's ruling, Quebec used its powers over health care to introduce a provincial assisted-dying system late last year. Since the Supreme Court ruling, judges in other parts of Canada have also given individual patients permission for assisted deaths.

Last year, the court concluded it was unconstitutional to deny the option of assisted death to consenting adults who had "a grievous and irremediable medical condition" that has brought on "suffering that is intolerable". The court's unanimous decision was a reversal of its 1993 ruling upholding the ban on assisted deaths.

Canada has a Bill of Rights incorporated into its Constitution. <http://tinyurl.com/hn6o2f6>

### 'Defence should lose its immunity when it kills its own', MPs say

The Ministry of Defence should lose its British historic crown immunity from prosecution when armed forces personnel are killed during training, the Commons defence committee has said.

A detailed report by MPs concludes that the MoD should be liable for corporate manslaughter charges when there is a serious failing in its duty of care. "The lives of serving personnel are worth no less than those of civilians and those responsible for their deaths must be equally liable under the law," the committee said.

Between 1 January 2000 and 20 February 2016, 135 armed forces personnel died in non-combat incidents, mainly on training exercises. During that period 11 "crown censures" were recorded, the maximum sanction possible under the current system. <http://tinyurl.com/jseus9t>

## ODD SPOT: Obama gifts freedom...but slowly

President Obama last month commuted the sentences of 61 people convicted of federal drug and firearm crimes, more than a third of them serving life. However, thousands of low-level, non-violent inmates still languish in federal prison, serving sentences far longer than what would be imposed under today's laws, the NYT says. "Keeping people like this locked up for years costs not only taxpayers, but society as a whole," according to the NYT. "In 2014, the Justice Department said the president's pardon power (would) reduce the prison terms of drug offenders sentenced under old laws...yet more than 10,000 clemency applications still wait resolution, while Mr Obama has issued only 248 commutations. <http://tinyurl.com/z5upjfd>

## Convicted female kidnapper may pay for all the CIA's 'rendition' sins



A former undercover CIA officer may be extradited to Italy this month after being convicted for a 2003 "extraordinary rendition" – kidnapping off the street – of a terror suspect to Egypt. Sabrina De Sousa (photo), a dual US-Portuguese citizen, was arrested in Portugal in October 2015.

She has lost three appeals against being handed over to Italian authorities. Her extradition is due on 4 May.

The alleged kidnapping involved an Egyptian cleric, Hassan Mustafa Osama Nasr – known as Abu Omar – who was snatched off the streets of Milan by the CIA, allegedly with the help of Italian officials, and sent to Egypt, where he was allegedly tortured.

The case was investigated by an independent prosecutor in Italy, leading to the conviction in absentia of De Sousa and 21 other CIA operatives and high-ranking officials.

At the time, the case was seen as the only exhaustive investigation of the illegal counter-terrorism practice known as extraordinary rendition, and exposed US allies' role in helping to execute the strategy. <http://tinyurl.com/ht5p4dx>

## Lawyers should ditch jargon, UK body says

The most significant barriers that prevent consumers from accessing legal services are cost and lack of information, according to a UK Legal Services Board report.

Non-financial barriers to access included

- inaccessible language and communications;
- lack of trust; and
- failure to cater for the needs of vulnerable consumers.

Jargon and inaccessible language put consumers off securing advice or representation. The impact is particularly heavy on vulnerable consumers.

The report noted that trust in lawyers in the UK remained "disappointing" and left "significant scope for improvement". A survey in the UK in 2015 found only 47% would generally trust lawyers to tell the truth.

"The ordinary man or woman in the street" was trusted by 40%. In contrast, consumers trust teachers (71%) and doctors (82%).

The report found that the legal profession should learn from other sectors in overcoming the issues, as they are not specific to lawyers. The report highlights the efforts of financial and medical professions in the use of plain English (with multiple translations) to enable consumers to better understand processes.

– Barbara Etter blog: <http://tinyurl.com/h8eq4g8>

## International briefs

**Spurrier heads Liberty UK:** A longtime human rights campaigner, Martha Spurrier (photo), who has specialised in claims against prisons and police, is succeeding Shami Chakrabarti as director of Liberty, the UK civil liberties organisation. She has been a member of Doughty Street (barrister) Chambers in London for the past six years. The chambers are headed by noted Anglophile-Aussie barrister, Geoffrey Robertson, of *Hypotheticals* fame.



**How to do well under an FTA:** Tobie Mining and Energy executives claim that Colombia created a national park on Amazon rainforest where the mining giant had a concession to mine for gold. Under the US-Colombia Free Trade Agreement, Tobie claims Colombia is liable for the company's lost investment of \$21 billion, or more than 22% of Colombia's national budget. <http://tinyurl.com/jx8v8cf>

**US jailing is four times world average:** The US incarceration rate is now more than four times the world average, with about 2.2 million people in prisons and jails. Of those, roughly 200,000 are federal inmates, double the number it was 20 years ago. This substantial increase occurred even as violent crime was falling sharply. More than \$100 billion is spent annually on corrections, or about \$770 per household. At the federal level, the Bureau of Prisons budget grew 1700% from 1980 to 2010 and now devours more than 25% of the entire Department of Justice budget. <http://tinyurl.com/h8qd4z7>

**ODD SPOT: Protest serves the nation:** 'I saw courage both in the Vietnam War and in the struggle to stop it. I learned that patriotism includes protest, not just military service.' John Kerry, now US Secretary of State.

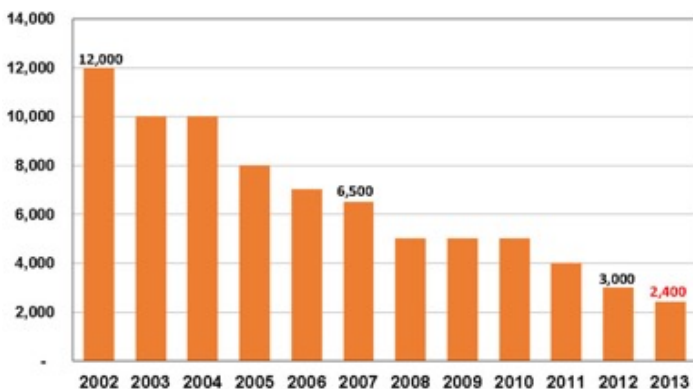
**When suicide is all you have left:** A single father refugee on Nauru has been convicted and put on a 12-month bond for attempting to take his own life, prosecutors using his tragic case to deter people holding protests. Sam Nemati, an Iranian, and his eight-year-old daughter had resettled in Nauru on temporary refugee visas after being detained for two years under Australia's offshore immigration processing regime. In late January Nemati and his daughter moved accommodation to Nibok Lodge, where Nemati said his daughter would have other children to play with, but authorities sought to remove them because he had moved "without approval or authority". According to ABC Radio, Nemati became distressed after officials began removing his belongings and he attempted to take his own life. <http://tinyurl.com/j3kogzp>

**Virtue-Vice 'police' have their wings clipped:** Saudi Arabia is reining in its widely feared morality "police" by stripping



them of their powers of arrest. The unexpected decree means the police — formally named the Commission for the Promotion of Virtue and Prevention of Vice, but more usually called the *muttawa* — will have to refer cases to the regular authorities. They can currently intervene in behaviour ranging from drug dealing to social issues such as "mingling between the sexes" and women who are not properly veiled. The new decree also instructs them to be "gentle and humane" in their dealings with the public...which will be a new way of operating for the largely out-of-control religious fanatics who comprise their ranks. <http://tinyurl.com/zr4lxad>

**Executions rise again:** Amnesty claims 1634 people — plus possibly thousands in China — were executed in 2015. Iran, Pakistan and Saudi Arabia were prime among the hanging-shooting-injecting-beheading nations which, in total, increased executions by about 50% over the previous year. China a decade or so ago killed about 9000 people a year, but in recent times has drastically reduced its execution rate as the number of crimes punishable by deaths dropped from 68 in 2011 to 46 in 2015. *Table source: Dui Hua Foundation, China*



**'Ignorant, illiberal, misguided' rights comments — claim:** Britain should withdraw from the European Convention on Human Rights regardless of whether the upcoming referendum on EU membership voted for withdrawal, the UK's Home Secretary, Theresa May said last month. The Labour opposition condemned her remarks as appalling. Shadow Justice Secretary Charles Falconer described the intervention as "so ignorant, so illiberal, so misguided". Lord Falconer accused May of "sacrificing Britain's 68-year-old commitment to human rights for her own miserable Tory leadership ambitions". <http://tinyurl.com/glr64ro>

**Turks continue crackdown on free speech:** Dutch journalist Ebru Umar has been questioned by police over an article critical of Turkey president Erdogan's crackdown on freedom of expression. Insulting the president is an offence with a four-year jail term. She has been forced to report twice weekly to police, and may not leave Turkey, where she keeps a holiday home. About 2000 journalists, academics, cartoonists and others have faced Turkish courts in recent years for insulting Mr Erdogan. <http://tinyurl.com/h2rdsdgm>

**Far right polls strongly in Europe:** Norbert Hofer's 'Freedom' Party, running on an anti-immigration ticket, polled a 'landslide' 36.4% of the vote last month in the first round of elections to become president of Austria, population 8.7m. The nation's two main parties polled so poorly that Hofer will run off against an independent, Alexander van der Bellen

(20.38%) for president on 22 May. The president is formally head of state, swears in the chancellor, has the authority to dismiss the cabinet and is commander in chief of the military. <http://tinyurl.com/zzmkszy>

**DATES**

**2 May, Melbourne:** The peace process and the Constitution: Constitution making as peace making? The U. Melbourne 2016 Human Rights Lecture by Manuel José Cepeda Espinosa, President of the International Association of Constitutional Law. 6-7pm, Woodward conference centre, 185 Pelham St Carlton. Details: <http://tinyurl.com/z7u788v> or phone 03 9035 7742.

**16 May, Perth:** The Case for Legal Aid — Law Week Breakfast with Fred Chaney AO, 7:15–9am, Argyle Room, Parmelia Hilton Hotel. Details: <http://tinyurl.com/jzbp6xe>

**20-29 May, Australia:** Whistleblower Edward Snowden visits Australia's capital cities by video link from his refuge in Russia. Date for your city, go to Think Inc: <http://tinyurl.com/jdufejv>

**26 May, Hobart:** Australian and US Federalism: what each can learn from the other - Prof Carol Weissert, Florida State U, 5.30-7pm, UTAS. Details: <http://tinyurl.com/hnwy96l>

**26-28 May, Mackay:** North Qld Law Association conference. Speakers include Qld CJ Holmes and Qld Law Society president Bill Potts. Clarion Hotel, Mackay Harbour. Details and rego: <https://nqla.com.au/nqla-events/>

**14 July, Hobart:** Greg Moriarty (photo Commonwealth Counter-Terrorism Coordinator, gives the 7th Sir James Plimsoll lecture, UTAS. <http://tinyurl.com/gtpx9dh>



**21 July, Melbourne:** 'Political Libels and the Conscription Referendums of the First World War', Prof Mark Lunney, School of Law, U. New England, Armidale. 6-7pm, G08 Melbourne Law School Details: <http://tinyurl.com/gwamjtt>

**18-23 Sept, Auckland NZ:** 23rd Intntl Symposium on Forensic Sciences. Details: [www.anzfss2016.org](http://www.anzfss2016.org)

**21 Sept Adelaide:** Lawyering, Judging and Researching with Big Data, Dr Frank Fagan, School of Law, UNISA, 5.30-7pm, City West Campus, 50 North Tce. <http://tinyurl.com/zfngjb7>

**10 Dec, World:** This year is devoted to a year-long UN campaign to celebrate the 50th anniversary of two landmark international covenants on human rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which were adopted by the UN General Assembly on 16 Dec 1966.

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Responsibility for election comment in *CLArion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au)

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