

Letters go out this week to parties and pollies

Our letters to parties and pollies standing for the upcoming Australian election out this week, 1-6 June. The full details of them were in the previous (May) edition of the CLArion newsletter.

In summary, we're asking for their stances on a Bill of Rights for Australia, treatment of asylum seekers, winding back surveillance laws, improving governance and introducing better law and justice systems. We're also asking candidates to commit to a more equal Marriage Act, and legislating so people can legally choose how they want to die without penalising their relatives or friends.

Finally, we're quizzing the parties and candidates on their stance on the Convention Against Torture (OPCAT, which includes international inspection of jails and detention centres) and asking them to treat the problems of individuals on drugs as a health issue, not a criminal "war".

Census problems not resolved

With the election dominating media coverage, the 9 August national census has slipped off the radar. There are still major problems – including the ability of the government to safeguard people's individual records – that are unresolved.

This article, sparked by our compatriots in the Australian Privacy Foundation, spells out the problems.

<http://feedproxy.google.com/~r/Delimiter/~3/EYLCqWC7Jk8/>

Sue Neill-Fraser appeal nears



Barbara Etter, CLA member and pro bono lawyer for Sue Neill-Fraser (SNF) reports that the SNF appeal team is close to finalising documents needed for her "Right To Appeal" application to the Supreme Court of Tasmania.

The deadline is 22 July for Etter (photo) and pro bono barrister Tom Percy of WA to complete paperwork. (See page 7, *Hobart Mercury*, 28 May 2016)

SNF will reach seven years in prison in August for a "murder" that CLA believes she did not commit. Her husband, Bob Chappell, disappeared when alone overnight on the couple's yacht moored in Sandy Bay, Hobart, on Australia Day 2009. His body has never been found.

CLA was instrumental in achieving the new law in Tasmania, passed in November 2015 and mirroring the 2013 equivalent in South Australia, that is enabling the current appeal. Under the system, one judge of the Tasmanian Supreme Court will decide, basically on the paperwork and a limited hearing, whether a full appeal on "fresh" and "compelling" new evidence will be heard by a full three-judge Court of Criminal Appeal.

If the appeal goes ahead, CLA believes Tasmania should look to mainland judges to ensure a fair hearing, given the publicity the case has had locally. (see Eastman story below for comparison).

Eastman to get Victorian judges for his appeal over retrial

The weird and costly legal soap opera that is the David Eastman case in the ACT will have Victorian judges decide how its next episode pans out.

Eastman, now 70, was jailed for murder in 1995 over the execution in January 1989 (by two bullets to the back of the head) of AFP Assistant Commissioner Colin Winchester.

Since 1995, Eastman has been involved in continuous litigation and petitions to have the conviction declared wrongful.

In May 2014 a two-year inquiry process resulted in visiting judge Brian Ross Martin deciding there had been a "substantial miscarriage of justice" in the original case and that Eastman had not received a fair trial. Justice Martin pilloried the handling of the case by the AFP and the Office of the ACT DPP.

Eastman has been free on bail since mid-2014.

In August 2014 the ACT Supreme Court formally quashed the original conviction. But in early 2015, the ACT DPP decided to re-try Eastman in a decision that mystified many legal observers.

Next, Eastman filed for a stay of the retrial proceedings (effectively seeking a ruling equivalent to acquittal) but in April 2016 the Eastman stay bid was thrown out of the ACT Supreme Court.

Now Eastman is appealing that decision. Three Victorian judges will hear the new Eastman appeal (against rejection of his stay application) in October 2016.

So, still on foot is the ACT DPP's bid to try Eastman again – even though he has spent 19 1/2 years in jail and cost the ACT Government something like \$15-20m in legal, court and police costs so far – and another case in which Eastman is suing the ACT government for wrongful imprisonment.

Civil Liberties Australia believes the Eastman case could have another five years to run, and could cost the ACT another \$10m on top of the tally so far.

Of course, if Eastman eventually wins his wrongful imprisonment claim, you can add at least another \$10m to that figure. – Wikipedia, personal information and <http://tinyurl.com/j3wn73c>

Legal academics call for Criminal Cases Review Commission

Adelaide legal academics and authors, Dr Bibi Sangha and Dr Bob Moles, called last month for a Criminal Cases Review Commission for Australia.

They want the new national body to investigate miscarriages of justice in major cases, and refer those it believes may be wrongful convictions back to the appeal courts.



Moles and Sangha (photo) were instrumental in helping to overthrow the conviction of Henry Keogh. Keogh served more than 19 years for a crime that wasn't. Mistaken 'expert' forensic evidence claimed he held his then partner under shallow water in a bath. More expert evidence eventually showed the death was accidental, after a fall.

The original forensic pathologist involved presided over about 400 other cases in SA and other jurisdictions that may now need reviewing. Two of them are already before the SA Supreme Court after the state of SA passed a special Right To Appeal law, which has since been duplicated in Tasmania.

There, the new law is allowing Sue Neill-Fraser to appeal against her similarly misguided conviction, in CLA's opinion. CLA is campaigning for a similar law to be mirrored throughout the rest of Australia.

"If states are passing laws that permit 'double jeopardy' – the re-charging of acquitted people because new forensic evidence has emerged – it is only fair that people who are convicted are permitted to appeal if new forensic or other evidence emerges that questions the justice of their conviction," CLA CEO Bill Rowlings said.

In the UK, the CCRC received 1599 applications in 2014-15. Over nearly 20 years, it has referred about 3.5% of the cases received to the appeal courts. Of those referred, about 70% have been successful: that is the original court decision was wrong, in about 400 cases, roughly 20 a year.

If the same wrongful conviction figures translate to Australia – and our system is based directly on that of the UK – about 6-8 convictions for murder, rape, major robbery and the like would be overturned here every year. <http://tinyurl.com/hjo9l72> CCRC website: <http://www.ccr.gov.uk/>

Refugees locked up arbitrarily and illegally, with no chance to appeal

Australia's indefinite refugee detention on secret security grounds is arbitrary and illegal, the UN says.

The government should compensate people it locked up without charge for up to six years, the UN's Human Rights Committee said in its ruling on the case of five refugees.

An Iranian, three Sri Lankan Tamils and one Afghan Hazara were illegally detained between 2009 and 2015 because the Australian Security Intelligence Organisation had made an "adverse security assessment" against each of them.

They were recognised as refugees by Australia – "for whom return to their countries of origin was unsafe" the UN HRC said – but were refused visas on security grounds. But they weren't allowed to know why they were classified as security risks, nor could they see any of the evidence against them, or

contest it. So they were held in detention indefinitely, without facing charge or trial, and without access to the courts.

ASIO, years later and again arbitrarily, reversed its security assessments against all five. They were released to live in the community in Australia, as they still do, after four to six years of being locked up without reason and without charge.

The UN ruled the refugees' detention was arbitrary and contrary to their right to liberty because the Australian government had failed to justify why they were a security risk.

Administrative detention is legal under Australian law, but is incompatible with Australia's international treaty obligations under the ICCPR, the committee ruled.

It is not known whether anyone in ASIO has been demoted due to the obvious initial error of its findings, or whether compensation to the five refugees will come out of the ASIO budget. Possibly 10 more refugees are believed to be in a similar situation, locked up without knowing why and with no chance to appeal. <http://tinyurl.com/hfsectg>

Aussie and Chinese judges to go a-courtin!

In September, the Chief Justice of the High Court of Australia, Robert French, will lead an Australian delegation to visit the Supreme People's Court of China in Beijing at the invitation of the President of that Court, Zhou Qiang.

Others in the delegation will be HC judge Susan Kiefel, Federal Court CJ James Allsop, Fiona McLeod (photo) as President-elect of the Law Council of Australia, and the chief executive and principal registrar of the High Court.



"There is no doubt that the Chinese judiciary is interested in engaging with judiciaries of the world as an aspect of the development of its own judicial system," CJ French said. "The visit will contribute to that engagement. The involvement of the Law Council is important, as it has already begun negotiating with relevant Chinese bodies about the delivery of legal services in and between our two countries in light of the China-Australia Free Trade Agreement."

– CJ French, State of the Australian Judicature address, Hobart, 29 April 2016 <http://tinyurl.com/p454wpt>

Soon, your face and full details will be on Australia's 'big brother' database

NEC Australia will build CrimTrac's newest national biometrics database, to start next year (2017).

In a huge escalation of 'Big Brother' in Australia, the \$52m fingerprint and face-capture system replaces the national automated fingerprint identification system.

The centralised CrimTrac – essentially re-creating the equivalent of West Germany's old Stasi secret service files on the citizenry – links police, law enforcement and national security agencies.

Police and spooks are expanding the Biometric Identification System, adding massive holdings of facial images to finger and palm prints. Already 12m images are held in the national databases, meaning half the Australian people have been 'captured' whether they know it or not, whether they like it or not. <http://tinyurl.com/jxhxov2>

Presumably, NEC Australia (a private company) will have full access to the database. Prepare for leaks, from the government side and/or the private side, CLA says.

Why can't the Australian govt facilitate anonymous whistleblowing here?

The Papua New Guinea Department of Finance – with support from the Australian Government and the UN Development Program – has established a way for public officials working in PNG's public financial management system to anonymously report cases of corruption to a phone text messaging service.

So said the blurb for a seminar delivered on 9 May 2016 at the ANU.

"All reported cases are referred to the Internal Audit and Compliance Division in the Department of Finance for further investigation, in collaboration with relevant state authorities," the blurb said.

Raises the question: why is there no similar scheme in Australia, which is no less prone to corruption?

– Amanda H A Watson and Colin Wiltshire, State, Society and Governance Program, ANU

Public servants: guilty until tested innocent

Public servants at the Department of Immigration and Border Protection – the Dark Shirts – are being randomly drug tested at work, allegedly to counter lapsed standards, safety risks and corruption.

Staff with an alcohol breathing reading higher than 0.02 face disciplinary action, with supervisors notified after a positive result. So far more than 2000 have been tested, but the results are not known.

The testing regime was introduced alongside new restrictions on social media, second jobs and sloppy appearances when the two departments merged in 2015. <http://tinyurl.com/jbv2e6g>

Parliament asked to dictate how green groups spend

Parliament's environment committee wants green groups to lose their tax deductibility status for donations unless they spend a quarter of it on "environmental remediation" such as tree plantings.

Labor MPs on the committee rejected the proposed "25 per cent rule" outright, saying in their dissenting report it would in effect be a restriction on political speech

Promoted by the mining lobby, the "25 per cent rule" would follow similar moves in Canada and NZ in recent years to tighten tax concessions for green donations. Greens groups say it is a disguised attack on free speech. <http://tinyurl.com/jvxnumx>

Now, if political parties had to devote 25% of their donation income to the common good, perhaps they could repaint inner city brothels, refurbish Aboriginal camps outside country towns; create a drug rehabilitation centre for company directors discovered with drugs by sniffer dogs; and remediate pot plants in airline frequent flyer lounges.

Anyone have any other ideas for how political parties ought to spend their 25% doing community good? <http://tinyurl.com/jvxnumx>

Kirby calls for national privacy law

Former High Court judge Michael Kirby last month took aim at the state of political "paralysis" in Australia on privacy law reform.

He wants robust new laws allowing people to sue for damages over the publication of intimate photographs and other private information.

Mr Kirby said proposals for privacy law reform had "been before the federal and state parliaments many times, at least four major considerations in the past 30 years. I think it would be better if we had a national standard on this." <http://tinyurl.com/hh2gh4k>

Santow the new HR Commissioner

Attorney-General George Brandis last month appointed Ed Santow – currently CEO of the Public Interest Advocacy Centre, PIAC – as Human Rights Commissioner for five years. He replaces 'Freedom Commissioner' Tim Wilson, who is standing for parliament as a Liberal on 2 July.

Dr Kay Patterson will be the new Age Discrimination Commissioner and Alastair McEwin will be the Disability Discrimination Commissioner.

The AG also appointed a new Commonwealth Director of Public Prosecutions, Sarah McNaughton, for five years. – media releases, AG, 5 May 2016.

Police forces risk making people deaf

Australia's police forces have bought new 'ear guns' that can break up protests with loud, piercing sound, – and also cause permanent hearing damage.

Victorian, West Australian, South Australian and Queensland police, as well as the Australian Federal Police, own Long Range Acoustic Devices (LRADs, or LOUDRADs). NSW and NT refused to tell ABC Radio whether or not they had bought them.

Militarily, LOUDRADs have cleared buildings of snipers, who flee in terror from the ear-piercing sound.

In the US, Missouri Professor Karen Piper suffered ear damage when innocently caught near a G20 protest. She sued, and received more than \$70,000 damages from the City of Pittsburgh. <http://tinyurl.com/z9xc2yp>

Australia's Ministers don't 'get' human rights

Thirty-seven percent (37%) of the Bills presented to the Australian Parliament fail the human rights test. That's the sorry story of the Parliamentary Joint Committee on Human Rights (PJCHR) 2013-14 annual report, just tabled under the then-chairmanship of Liberal Philip Ruddock.

The committee is a 'relative newby', created in 2012 as a salve by the then-Labor government for its refusal to enact a Bill of Rights, even though a two-year national consultation recommended a BoR.

In considering human rights now, the ministry, advisers and departments are extraordinarily slow and, in a "significant number" of cases, not competent in understanding what the need for human rights compatibility means, the report says.

Some 86% of committee requests for responses in 2013-14 were late...or very late, Mr Ruddock said.

Turning to today, the same PJCHR said in its May 2016 report that the secrecy offence provision of the Australian Border Force Act 2015, which criminalises the disclosure by an ABF worker of information obtained in the course of their work, is "likely to be incompatible with the right to a fair trial". (37th PJCHR report, 44th parliament).

Under the Building Code (Fitness for Work/Alcohol and Other Drugs in the Workplace) Amendment Instrument 2015, workers' right to privacy was breached disproportionately by construction workers having to undergo drug and alcohol testing, the PJCHR says. – media release, PJCHR 3 May 2016.

ODD SPOT: Seeking a Dutton video?

A 28-year-old Scottish man has been arrested, and faces hate crime charges, over an online video that reportedly features his pug dog making a Nazi salute in front of a screen showing a video of Hitler. Police Scotland officers said the video had been shared online and "caused offence and hurt to many people in our community". There is apparently no truth in the rumour that Australian Border Force dog trainers have sought a video of Minister Dutton. <http://tinyurl.com/hk5h36p>

PS has little faith in Border bosses

Public servants responsible for Australia's border security have given a crushing vote of no confidence to a "command and control" culture and "military-style regime" of their department and bosses.

An official survey of the Department of Immigration and Border Protection, which includes Customs after a 2014 merger, shows 70% of officers have no confidence in their boss Mike Pezzullo or Australian Border Force Commissioner Roman Quaedvlieg.

The official internal Pulse survey of DIBP, taken in January and February 2016 by private consultants Nous Group, paints a bleak picture of staff morale. <http://tinyurl.com/z6yoo7j>

Photo: Head departmental dog breeder Quaedvlieg (right)



CJ calls lack of legal support 'unjust'

"Fifty percent of Australians aged 15 years and over need legal help every year," WA Chief Justice Wayne Martin told a Law Week gathering last month.

"For a well-functioning system, access should not be dependent on the capacity to pay, and vulnerable litigants should not be disadvantaged. A system which effectively excludes a sizable portion of society from adequate redress not only can result in considerable economic and social costs, but can also be regarded as unjust," he said.

"Legal Aid may be able to assist some Australians. However it is estimated that only the most seriously financially struggling 8% of households qualify for Legal Aid assistance. Given that 14% of Australians live below the OECD's poverty line, it is clear there is a significant gap for Australians to get legal assistance," Martin said. – speech, Perth 16 May 2016, available on the WA Supreme Court website.

WA judges fail to meet court, education targets

The WA Supreme Court is not meeting turnaround targets for criminal trials, hasn't done so for two years, and won't in future years, the state's chief justice, Wayne Martin, said last month.

Median delay in 2015 slipped from 30 weeks out to 37...and that's after the committal phase, so the real time to receive justice in WA is much, much longer. And the WA government has indicated that speedy justice is not a priority: it is refusing to appoint a judge to replace one retiring this month (June), CJ Martin said in the court's annual review document.

The Judicial College of Australia has a target of five days judicial education-professional development for each judge each year. In 2015, 8 WA judges failed to meet the target (1 undertook no education-development whatsoever). Four WA judges exceeded the target, and one met it precisely. – WA Supreme Court, annual review 2015.

Move to reform civil liberties group: CLA offers help

The former Council for Civil Liberties in WA held a meeting to re-form as an active group last month.

Led by acting President David Pugh and Secretary Mattie Turnbull, about a dozen people met to discuss options for the future, including reforming under the current name or changing name, as well as potential affiliation with another organisation, plus the need for a new constitution and way of operating.

Two factors have sparked the bid to revive CCLWA: firstly, the former President of some 25 years, Peter Weygers, agreed to relinquish involvement after holding the reins tightly and, secondly, new state registration laws for community organisation mean some change must be made to the constitution and structure within the next three years.

Civil Liberties Australia provided a background paper we had produced in 2007 which analysed the state of civil liberties in WA, and future possibilities. We also offered to help a new entity find its feet: the group is still considering its options.

Police become Candid Cop Camera cinematographers

About 300 police have started wearing body cameras in Bunbury and southern WA in a six-month trial.

Perth police will also go 'Candid Cop Camera' from early this month (June), using chest-mounted cameras already in use in Queensland, SA, NSW and the NT.

WA Police Minister Liza Harvey said the cameras would protect police and the public: "Body-worn video can also provide greater credibility for police and result in calmer interactions between police and offenders as they both know they are being filmed." <http://tinyurl.com/huq9p7b>

NSW becoming a police state, formally by law

A bill passed by the NSW upper house last month granted police extraordinary powers to create serious crime prevention orders and public safety orders.

Both SCPOs and PSOs permit draconian measures against individuals when police don't have enough evidence for a criminal prosecution, or after a criminal sentence has expired.

The NSW Bar Association says serious crime prevention orders would effectively set up a "rival criminal justice system", according to Paul Farrell, writing in the *Guardian Australia*.

The orders would give police similar powers to control orders on terrorism suspects – but they could be applied to a citizen merely alleged to be vaguely connected with or involved in a serious crime, without the person ever being found guilty of an offence.

David Porter, police powers solicitor at Redfern Legal Centre, said the new powers essentially removed equality before the law: CPOs would be decided by police on secret "intelligence" and evidence that police would not show the person or the person's lawyer. <http://tinyurl.com/hycn224>

See also: Richard Ackland in *Guardian Australia*: <http://tinyurl.com/z49z5hm>

Dogs falsely 'convict' in 80% of drug detections

The NSW Police transport command has had the largest growth in drug dog operations of any command in the past three years – and the worst track record of false positive drug dog indications.

Of 3592 searches carried out by the transport command after a drug dog indication in 2014, 80% were false positives, with no drugs being found.

This represents a massive imposition on innocent people, subjected to delays and doubts and being considered guilty until a scientific device ruled them innocent of a “claim” made by a dog.

Australian should be innocent until proven guilty, Civil Liberties Australia says. Drug dogs reverse that right, wrongly, in every 4 out of 5 “detections”.

Being wrong 80% of the time proves that police (and customs) drug detection dogs are public relations gimmicks, not appropriately accurate and reliable crime fighting tools. <http://tinyurl.com/zbkxn8d>

NSW seeks licence to plant pot

The NSW government last month applied to the federal government for a licence to grow cannabis for medical research trials.

It joins Victoria, which already has trials under way.

Earlier this year, the Federal Parliament passed legislation to make the cultivation of medicinal cannabis legal...with a licence. High fencing, security cameras and individual plant labelling and recording are likely to be requirements to be met before the state can begin any medicinal cannabis growing trials.

Like Victoria, the NSW government is running clinical trials for severe childhood epilepsy, terminal illnesses and chemotherapy-induced nausea. <http://tinyurl.com/j7dzjng>

Women free to seek medical help unhindered

For the first time in 25 years, anti-abortion protesters who have picketed the Wellington Parade, Melbourne, abortion clinic six days a week were absent last month.

Women, children and men were able to enter the building without first being forced to run the gauntlet.



A bill introduced by Sex Party MP Fiona Patten (photo) which made it illegal for anti-abortion protesters to harass or film people coming or going from abortion clinics, with heavy penalties for those who break the law, came into effect on 1 May.

"I went to the clinic that day and was very pleasantly surprised that people were adhering to the new regulations," Ms Patten said. "I saw patients accessing and exiting the clinic freely and without being morally judged by protesters. It's very pleasing to see the law working and that finally the rights of the patients will be respected." <http://tinyurl.com/jxsmjen>

Revenge porn law proposed for top end

The NT may soon get revenge porn legislation.

Attorney-General John Elferink said revenge porn was a growing problem. "It is appropriate that the sharing of private sexual images and recordings without consent, including threats to share those images and recordings be criminalised in the NT," he said. "People are vulnerable to harmful digital communications and the damaging results can be extensive."

Victoria and South Australia already have laws criminalising revenge porn. A federal parliamentary inquiry has recommended a new law to criminalise revenge porn nationally.

In the NT six separate people reported to police about non-consensual sharing of intimate images between July and December 2015.

Mr Elferink said he was waiting for a response from the Law Reform Committee before drafting the legislation. <http://tinyurl.com/zcmn52b>

Bail presumption reversed

The NT is also amending the Bail Act to deter property crimes committed by serial offenders.

Chief Minister Adam Giles said Territorians were sick and tired of repeat offenders, particularly youths, being released on bail to simply offend again.

Under the changes, repeat property crime offenders will either be held in prison on remand or monitored electronically if released on bail. There will be a presumption against bail for people arrested with convictions for two or more serious property crimes within the past two years.

“Serial property offenders will be required to enter into a conduct agreement, which will include being fitted with an electronic monitoring device (if) the presumption against bail is rebutted,” AG Elferink said.
– media release, AG 18 May 2016

Greens Minister pushes for ‘pioneering’ FOI law

The Greens Minister in the ACT, Shane Rattenbury who shares power with Labor to have the numbers to govern, has tabled new freedom of information legislation.

He claims his bill would take the ACT "from being one of the least open FOI jurisdictions in the country to being one of the best". He wants Cabinet papers open after three years, but with a special exemption possible.

Under the bill, departments must publish incoming-minister briefs, question-time briefs, and estimates and annual reports briefs three years after they're written, unless publishing is against the public interest. Ministers' diaries must also be published and "must include all the appointments and meetings that relate to the minister's ministerial responsibilities".

Each agency must appoint an "information officer" to make decisions about access to government information, and instead of being done internally, reviews will be done by the ACT ombudsman.

Information officers should presume information should be released, and would need positive convincing that it was contrary to the public interest to not release it. In line-ball case, a document must be released.

It would be an offence to prevent the disclosure of information, by destroying it or not recording information that should be recorded, or using removable Post-it notes rather than annotating a document. The bill also authorises agencies to provide information requested informally, without forcing people to go through a formal FOI process. <http://tinyurl.com/h4hs4qt>

RSPCA tug of ‘war’ continues after inquiry

A parliamentary inquiry wants to give a WA department of state much greater control and oversight of RSPCA-led prosecutions, even though urging more funding for its inspectorate duties.

After a year-long probe into the RSPCA, chaired by WA Shooters and Fishers MP Rick Mazza and dismissed by critics as a witch hunt, the parliamentary committee has made 26 recommendations. They include a proposal to give the Department of Agriculture and Food (DAFWA) power over all prosecutions.

Mr Mazza and government members of the committee likened some of the RSPCA's prosecutions to those conducted by "private law firms". In WA and elsewhere throughout Australia, critics say the RSPCA can be over-officious and force prosecutions where less drastic remedies would be better. They believe a non-government body like the RSPCA should not have police-like inspection and prosecution powers.

The WA inquiry proposal and many of the other recommendations have been strongly rejected by Labor and Greens members of the committee. They believe giving DAFWA increased authority would decrease the number of prosecutions and harm animal welfare outcomes.

Muddle-headed minister forgets fragility of liberties in sunshine state

Cancer Council Queensland wants a total ban on smoking for all children born after 2001 to gradually eliminate smoking altogether...and the state's health minister, Cameron Dick, says he's open to the idea.

Queensland recently passed laws to ban smoking at bus and taxi stops, outdoor pedestrian malls and in or near childcare facilities and children's sporting events and skate parks. Residents in the state's aged care facilities will also be banned from smoking in their rooms for the first time and will only be allowed to light up in designated areas.

Minister Dick is a former barrister and state Attorney-General, who should know better, Civil Liberties Australia says. "If you ban choice because your personal choice is different from some people, it's only a few steps from there to banning all choice that doesn't agree with your views on things like religion, political parties, free speech, and freedom of assembly. It's not that long ago that you couldn't assemble in Queensland for a protest march, which the muddle-headed Minister Dick would do well to remember," CLA CEO Bill Rowlings said. <http://tinyurl.com/hdrmgv5>

Abortion laws set for double overhaul

Two dinosaur states regarding abortion, NSW and Queensland, may be about to enter the 21st century by passing new laws.



In Queensland, the independent MP for Cairns, Rob Pyne (left), has introduced a bill to decriminalise abortion. It would repeal sections 224, 225 and 226 of the 1899 Criminal Code which make it a crime for the person performing the abortion, the woman herself, and anyone helping. If passed, abortion will be regulated under health legislation, not criminal law.

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee is now considering the bill, which is likely to be decided on a free vote.

NSW Legislative Council Greens MP Dr Mehreen Faruqi has released a draft bill to decriminalise abortion in NSW, and to create hassle-free access zones around abortion clinics, as apply in Tasmania, Victoria and the ACT. Civil Liberties Australia has been instrumental in crafting the wording of the new laws in all three states.

Abortion in NSW remains in the Crimes Act 1900 — sections 82, 83 and 84 — in wording very similar to that of the current Queensland Criminal Code. In NSW, abortion is a crime for both the woman and her doctor although case law has found that an abortion may be lawfully performed when the doctor believes a woman's physical and/or mental health is in serious danger. Unlike Queensland, in NSW, social, economic and medical factors may be taken into account, according to Obstetrics Professor Caroline de Costa and Criminal Law Professor Heather Douglas.

They say that, in NSW, clients visiting clinics have been exposed to extraordinary harassment especially in Albury and Surry Hills in Sydney.

Former CLA Board member, James Staples, who died in April, was instrumental as a barrister in NSW half a century ago in having the stricter aspects of the NSW abortion law “overlooked” by police and politicians provided abortions were carried out safely in private hospitals. At that time, it was decided to allow the laws to be not enforced, quietly, rather than taking the chancy path of having them re-legislated. Fixing the basic legal problem is long overdue in NSW, CLA says. <http://tinyurl.com/z5xfyee>

TasPol fails to properly apply anti-protest act: Brown charge dropped

Tasmania Police have dropped charges against former Australian Greens leader, ex-Senator Bob Brown, over a forest protest at Lapoinya in NW Tasmania in January 2016.

Advised by the DPP, TasPol said there was doubt over whether Dr Brown and four others were arrested in a “business access area” as charged, or on “business premises”. The charges against the other four are also likely to be withdrawn. It is not known why Brown was singled out as an exception. <http://tinyurl.com/ze6zwya>

The Anti-Protest Act has been criticised by CLA and others for being overly complex in its drafting and heavy handed in its punishment. CLA Tasmanian Director Rajan Venkataraman is the lead petitioner to the Tasmanian Parliament asking for the laws to be repealed. Tasmanian CLA members can add their names to the petition. <http://tinyurl.com/zz29p8t>

Dr Brown is continuing with his challenge in the High Court: he contends the legislation contravenes the right to free speech which the court has found is implicit in the Australian Constitution.

Senate candidate stands for euthanasia, drug reform

The lead candidate for the Australian Sex Party for the NSW Senate is noted historian and author Dr Ross Fitzgerald.

He says his primary slogan is: Your Life, Your Choice, with a second bite as: We Stand for More than Sex! Fitzgerald – who regularly writes articles for the CLA website – says his main policies are:

1. taxing all religious institutions
2. drug reform, including legalising and taxing marijuana

3. support for dying with dignity
4. prison reform, and dealing with alcoholism, addiction and illiteracy among inmates and parolees.
5. support for same sex marriage.

Australian briefs

Beware the govt plans to send us to an early crypt: The Federal Government is clearly engaged in the early stages of seeding the Australian public with the idea that tough new anti-encryption laws are something we need to stop terrorists. We don't yet know precisely what forms these laws will take. But, based on the statements that PM Turnbull and AG Brandis have been making, along with the developing situation in the USA with respect to the encryption of Apple iPhones, it's not too hard to make an educated guess." Renai Le May, writing in *Delimiter* <http://tinyurl.com/hvhcouq>

Parties runs on bribes? In 2014-15, according to the Australian Electoral Commission, the combined (political) parties of Australia received over \$170 million, mainly donations and mostly from private individuals and companies. As the public understands, it's a fair bet most of that was donated in the expectation of some sort of special treatment or monetary advantage granted by the ruling party. In other words, an officially-sanctioned bribe – Julian Cribb, writing in the *Canberra Times* 3 May 2016. <http://tinyurl.com/zd4mc2m>

Witness K gets international recognition: Witness K is the former ASIS agent who revealed illegal bugging by ASIS of the East Timorese government in 2004 for the benefit of Australian resources companies. His actions were recognised at the Blueprint Prize for Free Speech awards in London last month: as a former ASIS agent, he cannot be identified, but has been acknowledged along with three other individuals "who displayed great bravery and integrity in revealing a truth for the greater public good". <http://tinyurl.com/h3tjhzs>



Magistrates miraculously become 'judges': As of 3 May, 'judges' of the NT's new Local Court are hearing a broader range of civil and criminal matters, with small claims transferred to NTCAT (the consumer small claims tribunal). NTCAT's jurisdictional limit has risen to \$25,000, with the Local Court handling civil claims beyond that up to \$250,000, up from \$100,000. The NT is demonstrating how little valued is the title 'judge' if magistrates can be instantly turned into judges, which no specialised training whatsoever, Civil Liberties Australia says – media release, AG John Elferink (photo), 3 May 2016

'Right wing' doesn't understand human rights: The 2016 Budget last month revealed the Office of the Information Commissioner will not die: it gets \$37 million over four years to keep doing its (truncated) Freedom of Information and privacy functions. But the OIAC funding basically comes out of the Australian Human Rights Commission's budget. What is it about the need for more human rights protection for Australians and for refugees that the Coalition government doesn't understand? <http://tinyurl.com/jcx9c54>

Australia fails on mental health care: The UN's Human Rights Committee has rejected Australia's argument that the healthcare it provided to five indefinitely-detained refugees was sufficient to address their mental health concerns. The UNHRC found indefinite detention on secret grounds caused "serious psychological harm" which could not be addressed by treatment in detention. <http://tinyurl.com/hfsectg>

AFP fail: The Australian National Audit Office says the AFP don't meet federal cyber-security standards. The chief standard used to secure the IT systems of Federal Government is the Australian Government Information Security Manual, published by the Australian Signals Directorate within the Department of Defence. "Australian Federal Police and the Department of Industry, Innovation and Science did not achieve compliance with the ISM," the ANAO report stated. *Delimiter* <http://tinyurl.com/zrrwbmq>

CLA report – key activities for May 2016

Organisational:

New board member Mark Jarratt attends first meeting.

New webmaster Austen Ngo.

CLA board meeting: 22 May 2016:

(followed by presentation/discussion on CLA's Better Justice PowerPoint: suggestions made to approach Fabian Society, Sceptics, etc)

- FAQ: example provided to Board FYI: exploring option to publish more FAQs on website.
- Sue Neill-Fraser: directions hearing held 22 April, final paperwork to be lodged by mid-July.
- Paul Wilson, criminologist on sex charges, 1st trial aborted: noted.
- Australia Day letter to SA asking for Royal Commission over state of justice: Premier's answer is 'No'.
- Writing of Australian CL history continues: new material received from NT and ACT.
- Foundation Board Member Jim Staples' death noted, and that of Dorothy Campbell (co-author of NSWCCCL history); longtime CLA member and former ACT Attorney-General Bill Stefaniak was in coma in hospital in May due to a heart attack.

Planning:

- Long term strategy for CLA to be discussed later in 2016: option of rotating presidency noted.
- Questionnaire to would-be Senators, MPs in marginal seats and party leaders on CL issues, ready.
- INSLM review of specific legislation: CLA to submit short letter setting out position that major review is required, rather than piecemeal review of a few clauses occasionally.
- Tasmania Director Richard Griggs to lead on CLA's national petition reform campaign in late 2016.
- WA situation discussed: need for CLA to re-address problems/opportunities in the West.

Activities:

- National Better Justice presentation refined: sent to a range of legal/justice influencers.
- Tas protest laws petition lodged. NOTE: Tas govt has applied to High Court for Bob Brown Constitutional appeal to be dropped as Tas has dropped charge over Lapoinya protest.
- Submission on Custodial Inspector Bill lodged to Tas Parliament (note possible need for national duplication to comply with OPCAT).
- Director Rajan Venkataraman acting national media spokesperson with Tim Vines overseas.
- TasPol Commissioner has given verbal approval for cannabis trial, but no change to law yet (noted that Vic has passed a weak new law).
- CLA Vice-President and National Media Spokesperson Tim Vines continues his PhD on human health, global challenges and rights, liberties: researching in Scandinavia and Europe during June.

Events attended:

Former High Court CJ Sir Anthony Mason (photo) on proportionality, including personal discussion with CLA CEO re judicial education.

Long-standing CLA member Keith McEwan has celebrated his 90th birthday.

Meetings:

William Churchill. Phillip Morris re e-cigarettes.

Greg O'Sullivan, son of former CLA Patron Laurie, re ACTCCL history.

Interview by CLA member Sarah Moulds for her PhD research on usefulness or otherwise of parliamentary committees.

Martin Hockridge and Dianne O'Hara of ACT Law Society re right to appeal-double jeopardy law.



International

Nauru commitment to democracy questioned

Nauru's commitment to democracy and the rule of law has recently come under question, according to ANU Pacific expert, Dr Stewart Firth.

In a lecture last month, Dr Firth explained that the Nauru government, under president Baron Waqa and justice minister David Adeang, moved quickly after its election in 2013 to dismiss the Resident Magistrate and prevent the Chief Justice from returning to Nauru.

At the same time, the government effectively barred journalists by increasing their visa fee from \$200 to \$8,000. The sequel was the indefinite suspension from parliament of three MPs for 'talking too much to foreign media', and of two more for 'behaving in an unruly manner'. Opposition MP Roland Kun has since had his passport cancelled, ensuring that he remains separated from his family in NZ.

Continuing criticism prompted the Nauru government to suppress freedom of expression in May 2015 by directing the country's monopoly internet provider Digicel to block Facebook and apps such as Skype.

Under the amended criminal code of 2015, any statement deemed likely to threaten public order has become punishable by up to seven years' imprisonment, including those likely to arouse 'political hatred'. Earlier this year the Nauru government cancelled all visitor visas for Australians and New Zealanders, then introduced new rules requiring them to find a Nauruan sponsor who can be fined or gaoled if visa restrictions are breached. <http://tinyurl.com/hf26dog>

British peers fear demise of Bill of Rights would be costly

The British government's proposed bill of rights would hamper the fight against crime, undermine the UK's international moral authority and could start "unravelling" the constitution, a cross-party parliamentary committee warned last month.

The House of Lords' EU justice sub-committee has urged ministers to rethink plans to scrap the Human Rights Act and highlights fears expressed by the Irish government that the policy could damage the Northern Ireland peace process.

Publication of the draft legislation, which is intended to replace the Human Rights Act, has been repeatedly delayed despite the bill of rights being a Conservative party manifesto pledge. It is now expected after the EU referendum. <http://tinyurl.com/zd7tk5y>

Stun guns get green light from US Supreme Court

The US Supreme Court has ruled it's legal for Americans to carry – and therefore to use – a stun gun, even though such a weapon didn't exist when the 2nd Amendment was passed.

The court ruled stun guns are not "dangerous and unusual" weapons. And it confirmed its decision in the 2008 *Heller* case that weapons beyond those used in warfare are protected by the 2nd Amendment, the famous "militia right to keep and bear arms" clause.

In 2008, *Heller* confirmed the right of an American to keep and bear arms for self defence, that such "arms" included handguns, and that weapons could be kept loaded, without trigger guards.

The recent Supreme Court decision stemmed from a case in Massachusetts where a woman produced a stun gun to protect herself from a large man, the father of her two children, who was threatening her outside her workplace even though she had a court protection order in place against him.

The danger of the latest ruling, Civil Liberties Australia says, is that it creates a scenario of weapons without end: for example, "carry" probably can be extended to drones (which are weapons of war) so that soon American properties could be defended by armed drones on autopilot hovering 24 hours a day, be it house or factory or school, carrying automatic weapons fired automatically on detection of movement.

Some US lawyers blame the recently-dead Supreme Court judge Antonin Scalia for every-increasing problems caused by the *Heller* 5-4 ruling. If Scalia had stuck to his avowed "originalist" (literal reading of old text) principles, they say, he could not have joined the majority in *Heller* when the 2nd Amendment relates only to the rights of "militia". <http://tinyurl.com/gu322ht>

Big Pharma firm opposes state killing

Pfizer, the world's largest pharmaceutical company, has imposed new controls to ensure its products are not used by US prisons to execute death row inmates.

The move shuts off the last remaining legal source of the drugs used in lethal injections, throwing death penalty states into deeper disarray as they struggle to obtain drugs and carry out executions.

States are secretive about the source of the lethal injection drugs they use to subvert a European-led boycott which blocked trade of the supplies to US prison departments. <http://tinyurl.com/hsqxmu8>

ODD SPOT: Religion on the decline

A new poll in the USA reveals a big fall in people saying they attend weekly religious services, from 55% in 1978 to 27% now. There appears to be a decline in religious activity and belief among Americans: in 2015, the respected Pew Forum published data showing that almost 23% of Americans defined themselves as religiously unaffiliated, up from 16.1% in 2007. <http://tinyurl.com/hezlf9v>

Smoking pot produces individual high lights

Measuring 'drunk' is pretty easy; the more alcohol someone drinks, the more alcohol shows up the blood and the more impaired that person becomes on a scale of tipsy to wasted.

Measuring marijuana 'high' is far hazier. Blood tests that try to quantify marijuana use are in fact useless at assessing how impaired a driver is, according to a study by the AAA Foundation for Traffic Safety.

The study found that people with low blood amounts of THC – or delta-9-tetrahydrocannabinol, the main psychoactive component of pot – may still act as if they're really stoned. On the other hand, some people may have THC measurements off the charts yet still act normally.

The finding is critical because it means it's a nonsense to set legal limits for the amount of THC a person can have in their blood while driving, or to determine how impaired someone is on a work site. <http://tinyurl.com/hha3bjm>

Judge offers a self-service solution

A US judge resigned last month after being caught trading sex with young men for reduced sentences.

He also stored pictures of nude defendants on his home computer, which allegedly also held child porn.

The resignation of Arkansas local district judge Joseph Boeckmann came when it was discovered the judge had given male defendants a hand-written note in court with his phone number on it instructing them that they could perform a "community service" at his house as part of a "substitutionary" sentence.

Authorities are in the process of recovering some 4500 photos from the judge's computer. "They all depict young men, many naked, in various poses inside the judge's home and outside in his yard." Prosecutors are considering their options. <http://tinyurl.com/z5gxcwg>



Gross County District Court Judge Joseph Boeckmann

Arkansas judge accused of trading reduced sentences for sexual favors, plus child porn allegation

ODD SPOT: Robbery squad living up to its name?

The Lagos State Police Commissioner Fatai Owoeni announced that the two policemen allegedly involved in hijacking a trailer containing auto spare-parts in Sagamu, Ogun State, Nigeria, have been sacked and will be prosecuted.

It is alleged Inspector Durojaiye Taiwo and Sergeant Victor Omorokai of the Strike unit of the Special Anti-Robbery Squad (SARS), Ikeja, led two other policemen to hijack the trailer which contained goods worth about \$150,000. They were arrested with the aid of a tracking device installed in the trailer. <http://tinyurl.com/gnro8l6>

UK to examine impact of sharia law

UK Home Secretary Theresa May has launched an official review of the application of sharia law in England and Wales.

The review, part of the government's counter-extremism strategy, will be carried out by a Home Office-appointed panel chaired by Prof Mona Siddiqui and including family law experts and a retired high court judge, advised by two imams who are religious and theological experts.

The Home Secretary said the review would look into whether, and, if so, the extent to which sharia law was being misused or applied in a way that was incompatible with the rule of law in Britain. It would also assess ways in which sharia law may be causing harm in communities. The inquiry was expected to be completed by 2017. <http://tinyurl.com/huyopcm>

WHO tries to stop doctors doing FGM

The World Health Organisation published guidelines to help health professionals to improve the care of girls and women living with Female Genital Mutilation, medical journal *The Lancet* reported last month.

"Worldwide, more than 200m girls and women suffer the physical and psychological consequences of FGM (which) is a harmful practice and can cause several immediate and long-term health consequences such as haemorrhage, post-traumatic stress disorder, painful urination, and complications in childbirth."

The *Lancet* said many health professionals worldwide are unaware of the negative health consequences of FGM and remain inadequately trained to recognise and manage the complications properly.

"Disturbingly, in several high-FGM-prevalent countries, between 9% and 74% of FGM procedures were performed by health professionals—the so-called medicalisation of FGM," *The Lancet* said. <http://tinyurl.com/z9q9ty7>

Wrongful convictions occur at same rate as doping in sport:

"...behind the publicity, the number of athletes detected for doping has remained stable at around 1–2%," *The Lancet* reported last month.

If only there was as much outcry over the at-least 1-2% of convictions that are wrongful – acknowledged by most legal authorities worldwide – for murder and rape, Civil Liberties Australia says.

Like doping in sport, the failings in legal and justice systems are also kept submerged for fear people will lose faith in the established authority groups.

Note: The World Anti-Doping Agency (WADA) says past research suggests that actual prevalence (of doping) could be 10% or higher in certain sports. CLA says some counties and countries could have actual prevalences of wrongful convictions to rival that 10% figure. <http://tinyurl.com/zf7rsqa>

International briefs

Simpler, faster 'Innocence': For simplicity, speed and to save copious black ink, the innovative, progressive Association In Defence of the Wrongfully Convicted (AIDWYC), based in Toronto, Ontario, Canada is changing its name from today (1 June 2016). The unwieldy mouthful becomes simply "Innocence Canada". Whew! – personal communication with CLA. <http://tinyurl.com/gr25zvw>

Court achieves high approval rating: The US Foreign Intelligence Surveillance Court, the one that NSA whistleblower Edward Snowden revealed is allowing the government to obtain the metadata of every phone call to and from the USA, received 1457 requests to approve surveillance last year. It approved 1457 of them. In 2014 it received 1379 requests: it approved 1379. <http://tinyurl.com/jtr5dwx>

Jail murders/suicides are up: Six murders and 100 suicides in prisons across England and Wales in the past 12 months comprise the highest levels for at least 25 years. Ministry of Justice data shows assaults rising 27% to more than 20,500. A total of 9,458 prisoners – one in 10 – are reported to have self-harmed in 2015, with a 25% rise in reported incidents of self-harm to more than 32,000. Suicides rose to 100 in the 12 months to March, up from 79 in the previous 12 months, even as the prison population remained stable at 85,500. Murders were up to 6 from 4. <http://tinyurl.com/hzzgqka>

Odd Spot – slavery: When Britain ended slavery in 1833, it was the slave owners who received compensation, not the slaves. This regime of unimaginable brutality relied on literally working slaves to death: the lifespan of those (slaves) that survived the trip across the Atlantic (from Africa) was just 7-10 years. <http://tinyurl.com/hbgl59k>

Judge faces down Facebook’s legal claim: A US District Judge has ruled that Facebook must face a class action lawsuit from Illinois Facebook users who are unnerved by the site’s photo-tagging feature, which encourages friends to identify each other in photos, that relies on facial recognition to suggest which people to tag. Illinois’ Biometric Information Privacy Act was passed in 2008 and restricts how private companies are allowed to collect biometric data. Facebook claimed its conditions said any disputes must be decided under Californian law, but the judge rejected the plea. <http://tinyurl.com/jekz9sh>

Exposure is costly: The artist Megumi Igarashi, known as Rokudenashiko (good-for-nothing girl), has been found guilty of obscenity in Japan for publishing data from which it is possible to 3D print a replica of her vagina, to raise funds for a kayak inspired by her genitalia. The 44-year-old was fined \$5000, half the penalty demanded by prosecutors, at the Tokyo district court last month. Igarashi’s aim was to expose the illogicality and irrationality of Japan’s obscenity law. <http://tinyurl.com/huoestl>

Jails face troubles: An extra \$20m is to be pumped into English and Welsh prisons to tackle a rising tide of violence and suicides, the justice secretary, Michael Gove, has announced. There have been 100 suicides in the past year and a 20% rise in assaults in the second half of 2015 among the 85,000-strong prison population. There were also nearly 2000 fires in prisons in 2015, a rise of 57% on 2014. Riot squads have been called into volatile jails across England and Wales at a rate of 30 to 40 times a month to deal with serious disorder. <http://tinyurl.com/hf6es4f>

Triple 0 call is a cop out: A British police officer who sparked a nationwide terrorism alert by making a hoax 999 call to his own force has been jailed for seven years. PC Amar Tasaddiq Hussain sent West Midlands police into “overdrive” after phoning through an anonymous warning that a terrorist with links to Syria was planning to kidnap a Muslim police officer. Jailing Hussain at Stafford crown court last month, judge Michael Chambers criticised the 29-year-old officer for showing no remorse and pleading not guilty in the face of overwhelming evidence. <http://tinyurl.com/zbcpcyk>

Police need special protection: The US state of Louisiana has enacted an anti-hate crime law to protect...police. However, violence against police officers in the US is near an all-time low, according to data kept by the FBI and private groups. Homicides have been less than half what they were in the 1970s, when there were far fewer officers. In 2015, 41 officers on duty were “feloniously killed,” a category that excludes accidental deaths, the second-lowest figure in the last 60 years; the lowest was in 2014. Liberties and rights groups say the move aims to dilute the basic meaning of hate crimes and to undermine movements protesting illegitimate use of force by police. <http://tinyurl.com/j7gx4qr>

DATES



30 June- 2 July, Canberra: 24th ANZIL conference: International Law of the Everyday – Fieldwork, Friction and Fairness. Details: <http://tinyurl.com/jzbl58h>

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

14-16 July, Dili Timor Leste: Keynote address by Justice Stephen Gageler, organiser NT Bar Association, at Timor Plaza Hotel. Info: <http://ntba.asn.au/dili-conferences/2016-2/>

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>

21-22 July, Brisbane: National administrative law conference, Convention Centre, Brisbane. Email: aial@commercemgt.com.au

28 July, Perth: Out of Bounds? Photographing Australian Border Crossings. Public lecture by Prof Jane Lydon, Wesfarmers Chair of Australian History at University of Western Australia, Fox Lecture Theatre, Arts Bldg, 6-7pm. <http://www.ias.uwa.edu.au/lectures/janelydon>

16 Sept, Sydney: Commercial Law and Government, NSW State Library, 9-5pm. Details: <http://tinyurl.com/z7aq36t>

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

2-6 Oct worldwide: Highlighting Wrongful Convictions

18-21 Oct, Melbourne: 17th National Family Law conference, Law Council of Aust. Info: <http://tinyurl.com/guqynnc>

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.

2017:

23-25 March, Adelaide: National Access to Justice and Pro Bono Conference, Law Society of SA. Info: <http://www.lawsocietysa.asn.au/na2jpb2017>

CLArion is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. 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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