

CLA re-launches campaign for better justice to new MPs

Civil Liberties Australia is taking the opportunity to re-launch the Better Justice campaign with federal parliament resuming.

In late-August, CLA delivered a hard-hitting letter to PM Turnbull calling on him to activate OPCAT*. The letter also went to the Attorney-General, Foreign Minister, Opposition and Greens justice spokespeople as well as state and territory AGs and ministers responsible for justice.

See: <http://www.cla.asn.au/News/> for a copy of the letter, and overview of the Better Justice campaign.

In September, we will be briefing new MPs particularly on the campaign, highlighting OPCAT as a way to safeguard Australian kids against abuse by detention and prison guards. MPs can put pressure on the government to finalise OPCAT negotiations which have been under way since 2009.

Both Labor and Liberal governments have been beyond slack on the issue...while both sides have claimed to have been working on ratifying OPCAT "actively" for nine years. Signed in 2009, progress to secure state and territory plans for prison and detention centre inspections regimes has been glacial.

With scandals revealed in juvenile centres like Don Dale centre in the NT (*Four Corners* expose) and in Tasmania and Queensland, federal and state/territory MPs have a clear-cut responsibility to act...now!

CLA's 10-point Better Justice plan, released in January 2016, had three key aims relating to prisons and detention centres: ratify OPCAT, begin annual external inspections of all centres, and improve education.

* When Australia ratifies OPCAT – the Optional Protocol to the Convention Against Torture – all juvenile detention places and jails under Australia's control will be opened to mandatory, external inspection.

See also: **'Shocked' UN asks Australia to compensate abuse victims**, below.

Prepare to be jailed for what you might be thinking

Attorney-General George Brandis has won state and territory approval for national laws to keep convicted terrorists in jail indefinitely, even after their prison terms expire, for their possible thoughts.

AG Brandis said the states' and territories' Supreme Courts would oversee the regime. He said judges must be "satisfied to a high degree of probability ... the offender poses an unacceptable risk of committing a serious terrorism offence", punishable by more than seven years imprisonment.

The judge's decision is reviewable, he said, and each application for post-sentence detention will last three years. After three years, the AG must apply again to keep the person in jail.

There is no limit to the number of applications that can be made...in other words, the Australian government and its first law officer have decided to trash the rule of law in this country by potentially holding a person in jail forever, for a crime he or she might be thinking of committing.

Such a law is anathema to Australia's history and traditions, Civil Liberties Australia believes. It is more like laws passed in totalitarian regimes. <http://tinyurl.com/jxux67l>

Corro from a member:

Australia badly needs 'cleanskin' political parties. Oz's young generation (20 - 30yrs) are desperate for a break, some decency in governance. The imbalances and injustices in every sector of their lives is worse than a Great Depression. They are almost entirely dependent upon their parents for sustenance, work and somewhere to live. My lucky generation dismisses that desperation. So? Mental illness, 'Ice', family violence, suicide...

We'd like to hear other members' thoughts on the issue of the need for new political parties, and on what is happening generically to younger Australians.

Denton takes aim at both sides of politics over lack of dying law

Media man Andrew Denton (photo) has savaged Liberal Kevin Andrews and Labor's Tony Burke as part of a "subterranean Catholic force" campaigning to prevent assisted dying laws from being introduced to Australia.



Denton, speaking at the National Press Club, said the unlikely pairing was behind the repeal of NT-assisted death laws by the Howard government in 1996, and behind removing the right of the NT and ACT to create such laws. It remains open for states to legislate, if they choose.

“The joint operation was led on the Liberal side by a young Kevin Andrews, a leading member of the Conservative lions dubbed the God squad who worked in tandem with rising Labor star Tony Burke,” Denton said.

They were supported by conservative politicians from both parties, as well as “well-connected Catholic businessmen.” About 60% of Australia’s palliative health care services are provided by the Catholic Church, according to analysts, so there is commercial quotient to the anti-legislation push, critics say.

“This is the theocracy hidden inside our democracy,” Denton said. He said that the past two decades had seen 28 attempts in different local parliaments to pass an assisted dying law.

He called for politicians to pass a sensible law which provided the option of relieving people’s suffering in extremis. <http://tinyurl.com/hphgx62>

Assange: Swedes at last develop some common sense

Julian Assange will be questioned by Swedish prosecutors inside the Ecuadorian embassy in London, in a possible breakthrough to end the four-year impasse over his case.

The founder of WikiLeaks is wanted for questioning over a rape allegation, which he denies. If he goes to Sweden he believes he will be kidnapped by rendition to the US because of the activities of WikiLeaks.

Assange has been living inside the embassy for more than four years and has been granted political asylum by Ecuador. He has offered from the outset to be questioned inside the embassy but Swedish prosecutors have only recently agreed. <http://tinyurl.com/htsdezsk>

CLA asks President Obama to pardon revelatory trio

Civil Liberties Australia has asked President Obama to pardon Julian Assange, Edward Snowden and Chelsea Manning.

CLA lodged the request formally in one of our two Australia Day letters for 2016, posted on 26 January.

Traditionally, US Presidents pardon a long list of people just before they leave office. President Obama is expected to disclose who is on his list around Christmas time.

In asking for the pardons, CLA noted that Assange has never been charged formally by the USA. A ‘pardon’ document by the President could be worded to ensure he never was.

In asking for a pardon for Snowden and Manning, CLA pointed out that top military and security personnel had admitted their disclosures had eventually resulted in greater – not lesser – security for America and Americans.

Senator complains under law he wants repealed

Senator David Leyonhjelm (LibDem, NSW) has launched a discrimination complaint over an opinion article describing him as an “angry white male”.

He is trying to prove the race speech law known as ‘1hC’ is absurd and needs to be repealed.

Senator Leyonhjelm has made a complaint to the Australian Human Rights Commission over an article by *Fairfax Media*’s Mark Kenny in which he described Leyonhjelm and the One Nation senator Malcolm Roberts as a “gormless duo” who displayed “angry-white-male certitude”.

It is not known whether the Senator is objecting to “angry”, “white”, “male” or “certitude”...or being grouped with a One Nation Senator. <http://tinyurl.com/hjca9y7>

Was Census crash an ABSurd fib?

Computer and security experts at the University of Wollongong (UOW) have cast doubts on the Australian Bureau of Statistics’ (ABS) claims that a Distributed Denial of Service (DDoS) attack was in part responsible for the meltdown of the Census website on 9 August.

On Census night, the ABS website – being used for the first time to allow Australians to submit their forms online – was shut down by the ABS as a “precaution”. The ABS blamed a number of factors,

including heavy traffic, a hardware failure, a false positive in the system monitoring information, and a DDOS attack (apparently, the last of four that day).

But Professor Katina Michael, from the OUW School of Computing and Information Technology, said that the evidence for a DDoS attack on the ABS site does not stack up.

"Network activity maps on the night of 9 August don't show evidence of an attack from overseas. All the maps are showing no activity for the night in question," she said in a detailed article written with colleagues on the topic. <http://tinyurl.com/z4fb27z> and <http://tinyurl.com/gtel9d5>

'Shocked' UN asks Australia to compensate victims

A "shocked" United Nations has called on Australia to compensate victims of abuse in youth detention and extend the royal commission into juvenile justice nationwide.

The global body noted children as young as 10 were "being held in inhumane conditions and treated cruelly", activities that could amount to a breach of Australia's human rights obligations.

"We are shocked by the video footage that has emerged from Don Dale youth detention centre in the Northern Territory in Australia," High Commissioner for Human Rights Zeid Ra'ad Al Hussein (photo) said through a spokesman. "Most of the children who were held at the detention facility are deeply traumatised."



The Commissioner said the disturbing footage aired by the ABC could violate the Convention on the Rights of the Child and the Convention Against Torture. Australia has signed both treaties.

The UN called on Australia to financially compensate victims of abuse in detention, as well as identify and punish the individuals responsible for such acts. <http://tinyurl.com/hz8dg29>

Police maintain secret 'watch list': new software comes with extraordinary claims

South Australia Police (SAPOL) is introducing \$780,000 worth of facial recognition software to catch criminals and chase missing people.

NEC will provide facial recognition technology allowing SAPOL to "search, scan and monitor" images and video of suspects against offender databases. This will lead to "faster and more accurate" identification of individuals, the government of South Australia claimed in a statement last month.

The software could also be used with South Australia's existing CCTV network in the future by "extracting faces in real time" and matching them against a "watch list" of individuals, it is claimed.

Further claims include the software helping solve cold cases, using old photos and images from previous cases, and being used in missing persons cases. <http://tinyurl.com/h4887pe>

Court establishes sentencing benchmark for tax-duty evasion

The District Court of SA last month sentenced a Chinese man, 24, to more than four years' jail, with two years non-parole, for offences related to illegally importing tobacco products.

Tobacco seized by the Australian Border Force was 695,560 cigarettes and 50.15kg loose. The total amount of duty evaded was \$463,366.

Civil Liberties Australia notes that this establishes a sentencing benchmark: anyone, such as corporate tax evaders, including company directors, should receive about one year in jail for every \$116,000 of tax evaded. <http://tinyurl.com/j6c5z6h>

Upper House supports same-sex marriage

Tasmania's Upper House last month voted 8-5 to give in-principle backing to same-sex marriage.

Liberal and Labor parties allowed a conscience vote on the motion from Rumney MLC Tony Mulder. "I think people need to relax and settle down, we are making it legal, not compulsory," he said.

Mr Mulder said he put the motion forward following a successful motion by Greens in the House of Assembly, the lower house, in 2015. <http://tinyurl.com/j634zyw>

State plans ‘reforms’ to eliminate suspended sentences

The Tasmanian government plans to start legislating in 2016-17 to phase in new concepts of fines without convictions and deferred sentencing, to replace suspended sentencing.

The first new law, released in draft last month, will introduce deferred sentencing and extend drug treatment orders to the Supreme Court. Another bill later in 2016 to implement fines without convictions.

“Deferred sentencing is already used in Tasmania’s youth justice court and this Bill will also formalise current practice used in the Mental Health and Cognitive Disability list,” AG Dr Vanessa Goodwin said.

“Deferred sentencing provides a fixed period of time for an offender to demonstrate that they are rehabilitating before being sentenced. This will provide important accountability for offenders and courts which is lacking with suspended sentences, under which offenders are often spared jail time based on promises to rehabilitate that they never follow through on.”

In 2017-18, she said, further bills will introduce options of home detention and community corrections orders (CCOs). “With those additional sentencing options in place we will then commence the withdrawal of suspended sentences, starting with serious violence, sex and drug trafficking offences and also preventing people charged with breaching a suspended sentence from receiving another.”

The draft Sentencing Amendment Bill (Abolition of Suspended Sentences) is available online now at www.justice.tas.gov.au. <http://tinyurl.com/ztxbjr3>

Police move to capture more photos of us

The Victorian government says it is rolling out new mobile devices and technology “progressively” to frontline police over four years, including:

- access to Sheriff notifications, the Victoria police manual and legislation, the national police record system and emails
- the ability to take and store photos, video and audio recordings, online training and other functions
- ‘significantly reduced’ paperwork, with software applications helping police process statements and access critical databases in the field.

Down the track, frontline police will wear body cameras to capture video evidence as incidents occur.

The developments are part of a \$227m boost for police in the 2016 Budget.

CJ boosts the bar

Victoria’s Chief Justice used the annual winter vacation to speak in London as a “bar booster” at a commercial law conference, where she extolled the bar’s contributions to the state’s financial wellbeing.

“The legal precinct in the heart of the business district of Melbourne is home to 13,000 legal services jobs. On top of that, it is estimated a further 14,700 jobs have been indirectly created to support the legal service providers.

“It is estimated that the economic value the legal services sector makes to the Melbourne economy comprises an estimated \$3.1 billion per annum by way of direct contribution and an additional \$4.2 billion as an indirect contribution (chiefly the consumption of goods and services in Melbourne by employees in the legal services sector), making a total of \$7.3 billion per annum.

“There is a further value-added contribution of \$3.5 billion to the direct output of the legal services sector (being goods and services consumption in Melbourne by local employees). There are currently 201,000 sq m of legal services floor space in Melbourne’s CBD, representing a 67% increase in the last decade. “

“Whilst it cannot be said that these figures relate solely to the impact of commercial litigation, nonetheless, the Commercial Bar has been a significant contributor,” CJ Marilyn Warren said.

So there you go, Australia may yet get a barrister-led economic spurt of growth at this pace. And, based on this audition, we may also get a female High Court CJ out of Victoria.

– remarks to the London International Commercial Law conference 29 June 2016

Labor backs life ban on killer drivers

The WA Labor Party will introduce a law to ban someone from ever driving again if he or she kills a person while driving under the influence of drugs or alcohol, opposition leader Mark McGowan says.

A bill to that effect was introduced last month by independent Liberal MP Rob Johnson, a former Police Minister in the Barnett government, but was not supported by parliament. Mr Johnson has fallen out with Premier Barnett and the Liberal Party, and has said he will run as an Independent at the 2017 election. The proposal was debated in the same week Suzanne McKenzie, who killed Kerrie Christenson and badly injured her husband by driving head-on into their car while drunk in 2012, had her extraordinary licence revoked by the WA Court of Appeal.

McKenzie had been granted the special licence because her 80-minute public transport journey to work was inconvenient. <http://tinyurl.com/jd26nue>

Asset seizure law to be tested

A convicted drugmaker is claiming the ACT's Human Rights Act won't permit the government seizing his family home and two other properties as criminal assets.

The test case is likely to run in conjunction with a DPP inadequacy appeal against a four-year minimum sentence handed down to Stanley Hou, 37, in June. He had pleaded guilty to manufacturing ecstasy from a commercial-grade drug laboratory inside a suburban warehouse for almost a year

After the conviction, the ACT Supreme Court granted a DPP application for three properties linked to Hou to be restrained as criminal assets. Hou and his wife, Mai Phuong Do, who lives at one property with the pair's two children, claim the forfeiture order cannot be put into effect because the DPP acted unlawfully and the order conflicts with sections of the ACT Human Rights Act.

Seizure would be unjust under the ACT HRA on two grounds, they argue: arbitrarily interfering with their family and home, and involving double jeopardy for the one offence.

The case will provide an interesting test of asset-seizure laws nationwide.

Mai Phuong Do bought a home unit in 2007 and remains the sole owner. Together, they owned the two other Canberra properties. "Neither of the properties were used in connection with the offences for which my client was sentenced and no money received from those offences was applied to the acquisition, upkeep, or improvement of the properties," their court documents claim. <http://tinyurl.com/hh482n4>

Justice minister rolled: anti-human rights laws passed



Labor and Liberal parties in the ACT have combined to pass laws reducing human rights and negatively impacting on the most vulnerable in the community, according to the sole Greens MP who is the ACT Justice Minister, Shane Rattenbury (photo), in a power-sharing arrangement with Labor.

"The laws allow for orders to restrict individuals associating with certain people or visiting certain places. They also massively expand powers to police to 'move on' people from public areas and also allow the DPP to essentially overrule a court's bail decision and send a person back to prison.

"When similar laws have been introduced in other jurisdictions – ostensibly to target street gangs or outlaw motorcycle gangs – we have actually seen them misused, and used disproportionately against young people, Indigenous people, and homeless people.

The Minister for Justice moved an amendment to annually report data on the use of the offences but the amendment was rejected on the grounds the data is not collected. "This means we have no way of actually measuring the impact of these new laws, which is deeply concerning." Mr Rattenbury said. – Minister for Justice Rattenbury media release, 4 Aug 2016

Extra \$35,556 per year to be spent on each of Canberra's 45 bikies

An ACT Policing taskforce against motorcycle gang-related violence in Canberra has received an extra \$6.4 million from the government...to deal with 45 bikies.

- ACT government bikie numbers estimate: <http://tinyurl.com/zo734ah>

The funds, announced by the ACT government, will be spent on eight new "taskforce Nemesis" positions over four years, including new investigators, intelligence officers, a surveillance specialist and forensic accountants.

"This money will be specifically used to more than double our current capacity under taskforce Nemesis to fight organised crime and outlaw motorcycle activity," chief police officer Rudi Lammers said. "It'll include specifics like the engagement of forensic accountants and those people skilled in the unexplained wealth and the criminal assets of outlaw motorcycle gangs."

The ACT Police and the ACT government recently revealed there was a total of 45 bikies in the ACT. At that number, the government and police are spending \$142,222 on each bikie over four years, or \$35,556 per bikie per year. <http://tinyurl.com/zxwefhb>

Apparently, "normal" police can't catch bikies, only super-expensive police can do that, CLA says.

State puts parole under detailed scrutiny

Queensland has initiated a wide-ranging review of parole, by Walter Sofronoff QC, who will report by the end of November 2016.

The urgent review was generated by the alleged murder of an elderly Townsville woman by a young man on parole.

"Not only will (Mr Sofronoff) examine this particular case, but he will also examine the best practice in parole systems across Australia and New Zealand and seek input from organisations working with victims and offenders, as well as experts and researchers," Queensland Premier Anastacia Palaszczuk said last month.

The terms of reference for the review, which will provide a national lead for parole issues, include:

- how effective are parole boards' operations including decision making, structure and membership;
- transparency of decision making;
- adequacy of accountability mechanisms for the system, and for decisions, including consideration of an independent Inspectorate recommended in the Callinan Review of the Victorian parole system;
- factors that would increase offenders' successful completion of parole and reintegration into the community and enhance community safety including, :
 - effective supervision, management and monitoring
 - availability and effectiveness of programs, services and interventions including for mental health disorders and drug and/or alcohol abuse
- effectiveness of parole laws, including court-ordered parole, in Queensland.

In conducting the review, Mr Sofronoff will:

- examine and have regard to best practice in parole systems operating in other Australasian jurisdictions, particularly regarding effective ways to manage risk when releasing a person on parole; and
- seek input from relevant experts, including those with knowledge of and experience of the criminal justice system, organisations working with offenders, victims' organisations, and academic researchers. <http://tinyurl.com/z4v7zgd>

Australian briefs

Prison and community offender numbers soar: Since January 2012, the number of prisoners in jails in Queensland has grown by more than 38% despite no significant increase in crime rates, the state's Police and Corrective Services Minister Bill Byrne has admitted. At 6 June 2016, 116% of the cell capacity of 6076 in the state was occupied, Qld Corrective Services figures reveal. From January 2012 to 31 March 2016, the number of offenders supervised in the community grew by 23.5% from 15,245 to 18,824. Queensland has allocated money to plan more extensions to jails, and possibly more jails, but has taken money out of QCS for the state's newly-announced special courts and teams to tackle domestic violence. <http://tinyurl.com/zoyzsf3>

Trade deals are duds: A study commissioned by the Australian government into the three most recent trade deals, with China, Japan and South Korea, found they were likely to have a negative impact on Australian trade, *Fairfax's* Peter Martin has noted. The Department of Foreign Affairs and Trade study found the deals collectively will boost exports by 0.5 to 1.5% while boosting imports by 2.5%. Rather than being export deals that will create jobs and growth, they are import deals that potentially will have

harmful effects...just like the Trans Pacific Partnership, which is now (we hope) suffering a lingering death in the harsh light of the US Presidential election. <http://tinyurl.com/jamaypk>

Qld gets more 'classy': The Queensland government is introducing new laws to allow class actions in the state's court system. Attorney-General and Minister for Justice Yvette D'Ath said the move would bring Queensland into line with states like New South Wales and Victoria. "For cases that are particularly pertinent to Queensland, it will also allow the knowledge and expertise of our judges and lawyers to be better utilised," she said. <http://tinyurl.com/htj7apx>

Australia's federal police dominated by bullies and sexual harassers: A report into diversity in the Australian Federal Police has found a culture cancer of "pervasive" sexual harassment and bullying in the organisation, echoing problems in the Australian Defence Force. In the AFP, 46% of women and 20% of men reported being sexually harassed or abused in the workplace, almost double the national average. When asked about bullying, 66% of AFP women and 62% of men said they had been bullied. The report makes 24 recommendations, which AFP Commissioner Andrew Colvin said would be implemented. <http://tinyurl.com/zazx34m>

CLA report – key activities for August 2016

CLA board meeting: action matters arising:

Correspondence

The most significant letters written were to the PM and the AG, urging ratifying of the Optional Protocol for the Convention Against Torture (OPCAT), and to all new MPs, re introducing CLA and suggesting a date to meet, with a copy of the OPCAT letter.

Letter to Tasmanian AG Goodwin re the Anti-Discrimination bill.

Email to UK like bodies re Better Justice.

Email sent to Colin Neave, Commonwealth Ombudsman, with OPCAT letter (to PM, AG etc) to assist with further dissemination of concepts.

Organisational

- Planning will go ahead for CLA reps to hold interviews, meetings and possibly gatherings in NT, FNQ, VIC/SA and WA, including meeting with like-minded groups.
- A CLA policy on 18c and 18d will be drawn up.
- Contact will be made with the ANU Debating Society, to engage members with CLA, and to similar groups on other campuses around Australia.
- A policy on Same Sex Marriage and on Compulsory Voting, will be written, for the web
- A meeting with lawyer and former journalist Andrew Fraser re Better Justice promotion will be arranged.
- The new webmaster, Austin Ngo, will monitor membership data base, and suggest improvements.
- FaceTime will be tested for communication with Tasmanian Directors for the next board meeting.
- Marketing policy review for CLA will be undertaken.

Meetings

ACT HR Commissioner Dr Helen Watchirs re UN Human Rights Day activities (photo shows former CLA V-P Noor Blumer, Dr Watchirs, CLA V-P Time Vines and CLA member Dr Asmi Wood of ANU at the opening of new Commission premises)

Austin Ngo and Tina re CLA web

Dr Sue Packham re CLA activities

Bill Stefaniak re current activities

Clarke Jones re Indigenous juvenile incarceration report

Formal meetings

Vintage Reds

Human Rights commission function

Digital Transformational "briefing"



Upcoming

5th anniversary, Liberty Tree planting, National Arboretum, Dec 10, possible marking of the occasion.

Advertising-promotion

The Board decided to advertise on *Tasmanian Times*: see <http://tasmaniantimes.com/>

Costs of TV ads are being investigated in consultation with a member.

Advertisements for CLA on Facebook will be investigated.

A generic letter to key media, who change regularly, re CLA will update contacts. It was also decided to investigate AAP Medianet costs, for press releases, with a paper to next board meeting.

Media:

Recent media work has included:

- Workplace dress codes: live interview on ABC Drive, Canberra
- Proposed ACT bail laws: on-camera interview for ABC News (and the worst provisions of the laws were watered down after the interview)
- Anti-consorting laws - backgrounder with SBS
- Smoking, should we ban under 21s from buying smokes? Background email to Sunrise.

The Board has decided that all CLA submissions should be accompanied by media releases.

International

Jury trials languish as system forces guilty pleas

In 1997, according to US federal courts data nationwide, 3200 of 63,000 federal defendants were convicted in jury trials; in 2015, there were only 1650 jury convictions, out of 81,000 defendants.

Legal experts attribute the decline primarily to the advent of the congressional sentencing guidelines and the increased use of mandatory minimum sentences, which transferred power to prosecutors, and discouraged defendants from going to trial, where, if convicted, they might face harsher sentences.

Former federal bench judge in Brooklyn NY, John Gleeson, says that because most pleas are negotiated before a prosecutor prepares a case for trial, the “thin presentation” of evidence needed for indictment “is hardly ever subjected to closer scrutiny by prosecutors, defense counsel, judges or juries.”

“The entire system loses an edge,” he said, “and I have no doubt that the quality of justice in our courthouses has suffered as a result.” He said that 81% of federal convictions in 1980 were the product of guilty pleas; in one recent year, the figure was 97%. <http://tinyurl.com/zvnxsgv>

Delaware to end capital punishment after court ruling?

The US state of Delaware’s rules for imposing the death penalty are unconstitutional, the state’s Supreme Court decided last month, probably in practice ending capital punishment in Delaware.

The court ruled that Delaware’s death penalty law gave judges, rather than juries, too great a role in imposing death sentences, violating constitutional requirements that the US Supreme Court laid out in a January 2016 decision that has brought executions in Florida to a temporary halt.

The Delaware legislature also came close to abolishing the death penalty by statute in 2016, but the debate was put on hold to await this ruling by the state’s highest court.

Delaware carried out its last execution in 2012 and has 14 prisoners on death row. The death penalty has been abolished in 18 other US states, and executions have been delayed in many others because of a scarcity of lethal injection drugs and disputes over execution procedures. <http://tinyurl.com/hplm9sp>

Canada makes top judges selection more transparent

Canada is changing how it fills vacancies on its top court, letting qualified lawyers and judges nominate themselves and using a non-partisan advisory board to recommend candidates, Prime Minister Justin Trudeau said last month.

There is a looming vacancy on the nine-member Supreme Court, with Justice Thomas Cromwell retiring this month, giving Trudeau his first chance to appoint a member of the court since becoming PM in November 2015.

Under the current system, Supreme Court justices in Canada are effectively picked directly by the PM, who does not require parliamentary approval. In Australia, High Court judges are selected after the Attorney-General consults with state and territory AGs. In the US, by contrast, Senate confirmation is required for US Supreme Court appointments.

The change in Canada creates a new system for determining candidates for the court, where justices serve until the age of 75. Once potential justices have applied, and a shortlist is compiled by the advisory board, the justice minister will consult other levels of government, various parliamentary committees and opposition politicians.

The eventual nominee, picked by the prime minister, will appear in a question-and-answer session before legislators from all parties. <http://tinyurl.com/z2hhsje>

Gun activists want open slather on e-weapons

Gun rights groups are challenging – as unconstitutional – US state laws that ban private individuals from owning stun guns and other electronic weapons.

One case in US District Court in New Jersey claims a US Supreme Court decision in March 2016 suggests possessing e-weapons is protected by the US Constitution. Challenges are also under way in Washington DC, Hawaii, Massachusetts, New York and Rhode Island.

In March, the US Supreme Court threw out a Massachusetts court ruling that stun guns were not covered by the Second Amendment, calling it inconsistent with the high court's landmark 2008 decision finding a constitutional right to bear arms. The March ruling signalled that the 2008 decision, known as the Heller case, may apply to modern electronic weapons such as Tasers, as well as handguns and rifles. <http://tinyurl.com/hrttwjz>



ODD SPOT: Will the UK become 'lawless'?

Philip Kolvin QC (photo) of Cornerstone Barristers has written:

"The consequences for our legal system have barely figured in [the debate on Brexit]. But EU-inspired or mandated legislation is part of the bedrock of societal protection. I speak of health and safety, town and country planning, ecological protection, freedom of information, data protection, competition, discrimination, public procurement, indeed the very concept of proportionality which governs much of our regulatory system. Are these protections to be thrown onto a bonfire of laws? If not, which are to survive and which are to be replaced, and if so by what?" <http://tinyurl.com/hcptz3b>

Obama releases 15 more from Gbay

The US released 15 Guantánamo detainees to the United Arab Emirates last month, eliminating a fifth of the Cuban prison's remaining population, which dropped to 61.

The detainees sent to the UAE include 12 Yemenis and three Afghans, held without trial for about 14 years. Their departure reduced the list of prisoners approved for transfer to 20 men, although a parole-like review board occasionally adds new names to it.

When Mr. Obama took office in 2009, 242 detainees remained at Guantánamo. He has proposed closing it by bringing several dozen detainees who are not approved for transfer to a replacement prison on domestic soil. But Congress has blocked that plan. <http://tinyurl.com/gpul3qz>

How choice of media coverage can sway unequally

"Even for a Republican White House that was badly stumbling through George W. Bush's sixth year in office, the revelation on April 12, 2007, was shocking.

“Responding to congressional demands for emails in connection with its investigation into the partisan firing of eight US attorneys, the White House announced that as many as five million emails, covering a two-year span, had been lost.

“The emails had been run through private accounts controlled by the Republican National Committee and were only supposed to be used for dealing with non-administration political campaign work to avoid violating ethics laws.

“Yet congressional investigators already had evidence private emails had been used for government business, including to discuss the firing of one of the US attorneys. The RNC accounts were used by 22 White House staffers, including then-Deputy Chief of Staff Karl Rove, who reportedly used his RNC email for 95 percent of his communications.

“As the Washington Post reported, ‘Under federal law, the White House is required to maintain records, including e-mails, involving presidential decision-making and deliberations’. But suddenly millions of the private RNC emails had gone missing; emails that were seen as potentially crucial evidence by congressional investigators.” – Eric Boehlert writing at *Media Matters for America*.

The above news got barely any media or commentator coverage, particularly from the Conservative media, back in 2007...by contrast with the (relatively) small number of 30,000 emails where Hillary Clinton used her own private server, a practice also followed by her Republican predecessor as Secretary of State, Colin Powell. <http://tinyurl.com/z5qdr5d>

ODD SPOT: Mum loses appeal over son’s right to burp

A US federal appeals court has upheld the petty misdemeanor arrest of an Albuquerque student accused of repeatedly disrupting his phys-ed class with loud forced burps.

The 10th circuit court of appeals decision ruled that the officer and educators named in the lawsuit were entitled to immunity, and the arrest was justified under a New Mexico law that prohibits anyone from interfering in the education process.

The student was a seventh-grader at Albuquerque’s Cleveland middle school at the time of the May 2011 arrest. He is not named in court documents.

His mother, who also isn’t named, filed the suit against the then 13-year-old’s principals and the police officer who escorted him to his patrol car before patting him down, cuffing him and taking him to a juvenile detention centre. He was held for an hour before his mother arrived. She claimed her son’s arrest was unlawful and resulted in excessive force...but the court ruled against her. <http://tinyurl.com/h7bu6ln>

‘TPP would harm US national security interests’

By Brigadier-General John Adams USA (retired), excerpts from *The Hill*, a Congressional blog

“The Republican and Democratic conventions showcased an extraordinarily rare point of bipartisan consensus: stopping the Trans-Pacific Partnership (TPP). Americans have received a rude awakening that the unpopular 12-nation trade deal is still on the table.

“President Obama (has) put Congress on notice that a vote on TPP is coming in the lame duck period after the election (November-December 2016).

“While the President recently conceded that TPP critics are ‘coming from a sincere concern about the position of workers and wages in this country’, he’s also been hammering home a familiar and often-unchallenged fallback case for trade agreements: that TPP is essential for foreign policy and national security priorities.

“As a retired Brigadier General and 30-year veteran of the US Army, I’ve long considered arguments for trade deals as national security strategies, including arguments for the TPP specifically as a ‘way to keep the peace in the Pacific’ and counter China as it ‘flexes its economic and military muscle’.

“While I respect President Obama and the pact’s military backers, I believe these arguments miss a crucial point: By facilitating the further offshoring of America’s manufacturing base, the trade pact would actually undermine America’s military readiness and global economic standing. TPP would hurt our national security interests more than it would help.

“In 2013, the Pentagon’s Defense Science Board put forward a remarkable report describing one of the most significant but little-recognized threats to US security: deindustrialization. The report argued that

the loss of domestic U.S. manufacturing facilities has not only reduced U.S. living standards but also compromised U.S. technology leadership 'by enabling new players to learn a technology and then gain the capability to improve on it.'

"The report explained that offshoring of US manufacturing presents a particularly dangerous threat to US military readiness through the "compromise of the supply chain for key weapons systems components.

"Of TPP's 30 chapters, only six deal with traditional trade issues. The rest deal primarily with special privileges for multinational corporations and investors—like establishing the rights of companies to sue governments for cash compensation over the impacts of health and safety regulations. These dominant features of the TPP would vastly expand the rights of multinational firms that do not necessarily represent America's national interests." <http://tinyurl.com/zymcrm5>

Teach refugees women are equal, says MP

Male refugees settling in Britain should get lessons about female equality, Labour MP Thangam Debonnaire is suggesting. The MP said the move could be part of a national drive to improve male attitudes towards women, commenting that new arrivals needed a "sensitive" introduction to a different culture. As chair of the all-party parliamentary group on refugees, she has recently launched an inquiry into the experiences of new refugees in the UK. <http://tinyurl.com/z5do56c>

International briefs

Some online speech is certainly not free in UAE: Anyone using a Virtual Private Network (VPN) to visit illegal sites or dodge a ban on using unauthorised voice over IP (VoIP) service faces a \$700,000 fine or prison under a new law brought in by the United Arab Emirates (UAE). Blocked services include all VoIP services except for Skype, and those provided by the UAE's two main telecom companies, Etisalat and Du. Specifically, people are not allowed to use the VoIP services built into Snapchat, Viber, and WhatsApp in the UAE. The bans seem designed to ensure that the top two telecom companies' profits are not undermined by the free calls available with messaging apps. <http://tinyurl.com/hqhxxzgl>

Four released after minor life-in-prison terms: Pennsylvania officials have paroled four "juvenile lifers" jailed decades ago after the US Supreme Court retroactively banned mandatory life terms for minors. More than 500 people in Pennsylvania and 2500 across the USA can seek new sentencing hearings and perhaps parole. The four released men have spent decades in prison for crimes they committed as juveniles. They are now in their 50s and 60s. <http://tinyurl.com/j5fsskw>

China using jail to gloss over 'colour revolution': Veteran dissident and democracy activist Hu Shigen has been sentenced to 7½ years in jail for subverting the Chinese state, after being held incommunicado since July 2015. Hu, 60, had been jailed previously for nearly 15 years for advocating democracy in China. Prosecutors said he "had not repented" after his release in 2008. The Chinese government's sweeping crackdown on lawyers and activists – more than 300 have been detained, questioned or harassed – continues in the state's bid to stave off what it calls a 'colour revolution'. <http://tinyurl.com/hqxjmbk>

Private prisons to be phased out: The US Justice Department has ordered the Bureau of Prisons phase out private jails, the beginning of the end of putting profit over prisoners in the American justice system. Deputy Attorney General Sally Yates acknowledged private prisons were sub-standard and less safe than government-run prisons. "They simply do not provide the same level of correctional services, programs and resources," she wrote, adding that they also don't "save substantially on costs." <http://tinyurl.com/zhr78ty>

Drones are US: The US Government has released a once-secret policy document once dubbed "the playbook" that shows how officials select drone targets in areas outside war zones and the key role the President has in the process. The 18-page Presidential Policy Guidance was published last month by the American Civil Liberties Union after an FOI request. Details of how strikes are approved: <http://tinyurl.com/zy4a3gv>

ODD SPOT: How representative will the 2016 US voting be? “Whatever happens, the (US) electorate will remain unrepresentative of the American people in ways not possible in Australia, with its compulsory voting,” CLArion’s US rapporteur, Fitch, says, quoting: <http://tinyurl.com/jzk3czh>

Spook ‘data-fishing’ has ‘operational purpose’ – finding: The bulk collection of personal data by British spy agencies is vital in preventing terrorist attacks, David Anderson QC, the independent reviewer of UK terrorism legislation, has found. He found that laws giving MI5, MI6 and GCHQ the right to gather large volumes of data from members of the public had a “clear operational purpose”. Anderson’s ruling is a setback for UK civil libertarians. <http://tinyurl.com/hhultru>

DATES

2 Sept, Canberra: ACT Bench and Bar Dinner. Guest speaker: Chief Justice of the NSW Supreme Court Tom Bathurst. Details: Email: ceo@actbar.com.au

7 Sept, Perth: Public lecture: Report on the findings of a 17-month study in three Indigenous communities in the West Kimberley to develop diversionary alternatives for Indigenous young people with Foetal Alcohol Spectrum Disorders (FASD). Dr Tamara Tulich, UWA Law and Prof Harry Blagg, Law lecture theatre, UWA. Info: Tara McLaren E: tara.mclaren@uwa.edu.au or ph: 08 64882638. <http://tinyurl.com/hzy2k2f>

13-15 Sept, Canberra: State of the Pacific, annual conference at ANU on research and policy in the Pacific. Details: <http://tinyurl.com/zdbbfuy>

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>

27 Sept, Brisbane: Prof Gillian Triggs to present ‘*Decline of Human Rights in an Australian Democracy*’, the 2016 Tony Fitzgerald biennial lecture. 6-7pm preliminaries, lecture 7-8pm, State Library of Qld. \$25. Joint venture of State Library of Qld and Griffith Criminology Institute.



2-6 Oct worldwide: Highlighting Wrongful Convictions

4-5 Oct, Darwin: Law Research Workshop and Showcase Child Rights, Health and Law, Charles Darwin Uni. Contact: felicity.gerry@cdu.edu.au

8 Oct Brisbane: Caxton Legal Centre 40th anniversary, Tivoli Theatre. Details: <http://tinyurl.com/hzudslk>

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



24 Oct, Western Sydney (Parramatta): The Invention of Collateral Damage: launch of public project into the processes creating a moral distinction between deliberate harm inflicted on non-combatants, and non-intentional harm as an inevitable side effect of modern warfare. Dr Jessica Whyte (photo), Western Sydney U, Female Orphan School, Parramatta campus. Details: <http://tinyurl.com/zhlqqtg>

24 Oct, Brisbane: Australian Academy of Law Public Lecture – The Queensland Court of Appeal: The First 25 Years. Banco Court. Speaker: Justice Margaret McMurdo AC I President, Queensland Court of Appeal. Free but registering required: RSVP 3 Oct 2016 Email: Ph: 07 3247 9170.

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.

10 Dec, Canberra: NATIONAL LIBERTY TREE: 5th anniversary of the planting of the Australian National Liberty Tree, by Civil Liberties Australia, National Arboretum.

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@cla.asn.au

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