

Census was ‘appallingly’ handled, says parliamentary committee

The supposed “consultation” undertaken by the ABS in the lead-up to the 2016 census was appalling.

The Australian Bureau of Statistics must get rid of its threats to fine people \$180 a day if they don’t complete the census, consult more and smarten up its management practices.

That’s the view of Senator Chris Ketter (ALP, Qld, photo) who is the chair of the Senate economics references committee in its report tabled last month.

He criticised the ABS for failing to consult with the general public before deciding to keep everyone’s names and addresses, instead of destroying them as was customary practice.

“Manifestly inadequate,” were his exact words about how poor ABS consultation was.



In future, there must be external privacy impact assessments a year before the census and the ABS must consult with the non-government and private sector, if the committee’s recommendations hold.

And the ABS is to report any breach of census data to the Office of the Australian Information Commission within a week of becoming aware of it.

More than 96% of households contributed data to the 2016 census, coming from 4.9m online forms and 3.5m paper forms.

In relation to the “big brother” fine threats, the committee report revealed there were only 266 cases referred to the DPP for possible prosecution in 2006, and only 78 cases in 2011. No figure was given to prove anyone at all was actually prosecuted successfully. The report also revealed ABS incurred \$30m extra costs during the events of 9 August this year, when their website suffered meltdown through their own incompetent management.

The NXT Party’s Senators Nick Xenophon and Stirling Griff said the census deserved censure. The law should be changed so that providing information is clearly voluntary. They praised *Crikey’s* Bernard Keane for commenting that the 2016 census had gone from “snapshot to surveillance”.

Report: <http://tinyurl.com/h3675zf>

CLA says two lessons from census

There are two major lessons from the census debacle, CLA says.

1. The quality of the Australian Public service is declining seriously over time as successive governments impose an annual “efficiency dividend” which slashes budgets cumulatively. Now, 25 years since it was introduced, the cuts probably amount to about a third of what would-should have been today’s budgets. The census debacle is a classic result of cuts by a thousand knives. The cuts should stop.

2. Federal (and state, for that matter) agencies and departments must realise that genuine consultation with people is to their advantage: they ignore or avoid it at their peril.

Just a small reminder: the 2013 election was also appallingly handled

Remember the December 2013 election? The Australian Electoral Commission lost some 1400 ballot papers in WA. The High Court formally voided the result. The entire Senate election for WA had to be re-run in April 2014.

There’s a clear pattern with the ABS and the AEC: long-standing institutions are failing due to government under-funding, while Defence and police/security departments are over-funded in the extreme by comparison.

The federal government has lost balance.

Trump’s first decision – ‘No TPP’ – is win for Australia

Proto-President of the USA, Donald Trump, has delivered for Australia in his first formal decision, to throw out the Trans-Pacific Partnership agreement.

While corporate and political elites lament its demise, ordinary people can be delighted they are freed from greed. Critics say the TPP would have not delivered “jobs and growth” in Australia.

“It would have allowed companies to bypass the High Court, and given global companies the right to sue governments for millions in unfair international tribunals over health and environmental regulation,” the unions’ anti-TPP campaign leader Dr Pat Ranald said.

“(The TPP) extended monopolies on biologic medicines for an additional three years, delaying cheaper versions of those medicines, which would have cost taxpayers hundreds of millions of dollars per year. It also entrenched copyright monopolies.

“Chapters on services reduced the ability of future governments to regulate essential services. The TPP increased the numbers of temporary migrant workers vulnerable to exploitation, without testing if local workers were available.”

Put in simple Trump terms, the TPP would have benefited only Australia’s farmers while forcing people living in cities to pay extra for things like computers, software and apps, music and CDs, medicines, etc.

“The TPP for Australia was essentially an extra tax on city slickers so farmers and graziers could enjoy bigger incomes,” CLA’s CEO Bill Rowlings said. “We are delighted to have played a part in defeating a trade deal that was unfair to the vast majority of Australians, but super-good for the rich.”

Civil Liberties Annual General Meeting dates announced

CLA’s AGM will take place over 5 Feb to 28 March 2017. Members who are up to date financially will be able to take part electronically. Members without a personal email address will be posted information and ballot papers. More details will be provided in the January 2017 *CLArion*.

How we can learn the lessons of ceding excessive, elite and secret power

There are many lessons for democracy and politics worldwide in the Trump victory in the US.

Commentator Glenn Greenwald (photo) points out one lesson covers the unbridled rise of executive authoritarianism. The rise and rise of the unaccountable, secret elite is also a problem in Australia.



Here's how Greenwald described the American problem...and solution:

“...particularly over the last 15 years of the endless war on terror, both political parties have joined to construct a frightening and unprecedentedly invasive and destructive system of authoritarian power, accompanied by the unbridled authority vested in the executive branch to use it.

“As a result, the president of the United States commands a vast nuclear arsenal that can destroy the planet many times over; ...legal authorities that allow him to prosecute numerous secret wars at the same time, imprison people with no due process, and target people (including US citizens) for assassination with no oversight; domestic law enforcement agencies that are constructed to appear and act as standing, para-militarized armies; a sprawling penal state that allows imprisonment far more easily than most Western countries; and a system of electronic surveillance purposely designed to be ubiquitous and limitless, including on US soil.

“Those who have been warning of the grave dangers these powers pose have often been dismissed on the ground that the leaders who control this system are benevolent and well-intentioned. They have thus often resorted to the tactic of urging people to imagine what might happen if a president they regarded as less than benevolent one day gained control of it. That day has arrived.

“One hopes this will at least provide the impetus to unite across ideological and partisan lines to finally impose meaningful limits on these powers that should never have been vested in the first place. That commitment should start now.” <http://tinyurl.com/p78f3fz>

CLA agrees. Imposing more meaningful limits on the Australian security and police state should be the prime focus of the 2017 “Independent” Intelligence Review announced by Prime Minister Turnbull last month. Excessive power ceded to anyone anywhere is inherently dangerous.

MPs abandon rule of law

Parliament's SIC body – the Security and Intelligence Committee – has waved through proposed legislation that directly dismisses traditional rights and all but kneecaps Australia's rule of law.

The Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 will mean people can be kept in jail even after they have served their full terrorism sentence of say 10

to 15 years...simply because police and security operatives think they “might” re-offend in future if released.

The hand-picked Australian Coalition and Labor MPs who are members of SIC – formally the Parliamentary Joint Committee on Intelligence and Security, PJCIS – have sunk to a new low. Their Nov 2015 report – <http://tinyurl.com/js5rvyc> – shows they have abandoned principle in the face of the “not on my watch” irrational fear that drives terrorism decision-making in this country.

As CLA said in its submission on the proposed law: ‘Make no mistake: this law allows people to be locked up for years when they have not been convicted of a crime.’

“To imprison a person who has committed no crime on the basis solely of opinion on possible future behaviour constitutes arbitrary imprisonment,” CLA said in its submission. The MPs on the committee are apparently unfazed by arbitrary jailing of Australians.

No MP who believes in the rule of law as a bedrock of Australians' rights and liberties should support this proposed law.

SIC has tried to salve its collective conscience by recommending a 10-year sunset clause, preceded by mandatory reviews of the legislation by the Independent National Security Legislation Monitor (INSLM) at the five-year mark, and by the SIC itself, presumably in year 9.

But nothing can hide SIC's contempt for the rule of law. This awful law will be on the books for a decade if passed by parliament: during that decade, it will become a model for other draconian legislation extended out to cover bikies, or protesting unionists, or striking nurses, or radical students... anyone the government of the day wants in jail, on the basis that they “might” re-offend.

There is no clear definition of any qualification required by the “relevant experts” who will advise a judicial figure on how a current prisoner “might” offend if released.

There are no validated risk assessment tools to help measure how a detained prisoner “might” offend.

There are no agreements with the States and Territories – who own and run the prisons in Australia – that they will lock up someone who has only been “convicted” of an “offence” he or she “might” commit.

And to top it off, the SIC recommends that the government seeks the Solicitor-General's advice on whether the proposed law would be constitutional.

A reminder: there is no Solicitor-General, because the government drove him to resign. – Bill Rowlings, CEO of Civil Liberties Australia

Intelligence committee ‘not even half decent’

Crikey's Bernard Keane has savaged MPs and the supposed “intelligence” committee of parliament.

“The biggest media story should be (journalists) Nick McKenzie and Richard Baker's revelation that the metadata of Telstra, Vodafone and Optus customers is available for sale in India via call centre employees.

It's frightening, disturbing – and illustrates just how dangerous to Australians the government's mass surveillance regime is,” Keane wrote last month.

“There's only one truly effective way to securely protect data, and that's not to store it at all. No one can steal what you don't retain.

"If we had a half-decent parliamentary intelligence committee, it would immediately launch an inquiry into this breach, its implications for national security and whether the data retention regime that it endorsed needs to be amended.

"Instead, we have a committee that's incapable of initiating its own inquiries, and which is currently led by a junior MP with minimal parliamentary or life experience, Michael Sukkar.

"And remember, this is all for a mass surveillance scheme that has zero actual benefit for reducing crime or terrorism or improving crime clearance rates." according to Keane. See [Crikey](#), behind a paywall.

Legal right needed to safeguard privacy: APF

The Australian Privacy Foundation has roundly criticised a Productivity Commission report that supports the importance of privacy, but fails to plump for a statutory right to safeguard it.

"The report recognises that Australians should have control of their personal information," APF chair Kat Lane said. "The PC agrees that privacy is much less about secrecy and much more about the control of personal information. The PC also acknowledged that trust is critical to any exploration of data use.

"Unfortunately, the Commission has failed to address the risks and harm that happen when personal information is released or misused. It is impossible to have a meaningful discussion about data use because Australians need a statutory right to redress and compensation when their data is released or misused without permission." - media release APF 161104

MPs starting to wake up to costly stupidity of locking up too many people

A federal treasurer-in-waiting, Labor's Andrew Leigh, last month highlighted the stupidity – and growing cost – of locking up more and more people because of "law and order" campaigns.

"You might not know it to watch the news, but on many measures, Australia is becoming safer," he wrote. "In the past two decades, the murder rate has fallen by one-third. The rate of armed robberies has dropped by one-third. Car theft is down by two-thirds.

"And yet while crime is falling, our prison population is rising at an alarming rate. In June 2016, 38,685 people were in jail. At the current pace, the prison population will soon pass 40,000. If our jail population were a city, it would be the 36th-largest city in Australia – larger than Albany, Bathurst or Devonport.

"As a share of population, I estimate that Australia now jails 207 in every 100,000 adults. That's a higher incarceration rate than in most other nations. To take just a few examples, imprisonment rates in Australia are higher than those in Canada, Japan, France, India, Germany, Indonesia or Britain.

"...the last time our incarceration rate was this high was 1901," Mr Leigh wrote.

"Prisons also cost the community a bomb. Locking up a prisoner costs around \$300 a day, or \$110,000 a year. In total, Australia spends more than \$3 billion a year on our jails. In recent years, the amount we spend on jails has been growing about twice as fast as spending on student assistance schemes such as Youth Allowance and Austudy." <http://tinyurl.com/hqpue65>

NOTE: Offshore refugee detention costs Australia about \$1 billion a year. <http://tinyurl.com/h9my7dm>

US firms try to patent cattle genes in Australia

Two American companies are trying to patent the bovine genome in Australia, that is, to patent cattle.

Meat and Livestock Australia has lodged action in the Federal Court against the Australian Patent Office for granting the patent to the companies, Cargill and Branhaven.

Cargill is a global meat and agriculture giant. The company has about 142,000 employees in 67 countries. The mysterious Branhaven LLC appears to be a gene technology speculator, punting on big profits from risky patent declarations.

Researchers fear the current patent concept could spread to other livestock research. Livestock Professor Rob Banks said he was appalled that a private company could be granted rights over genes that had been publicly available since the 1980s.

The situation is reminiscent of the fight over BRCA (Breast Cancer) genes, which was eventually settled by the US and Australian top courts basically ruling a company could not hold a patent over what occurred in nature. <http://tinyurl.com/gwm5q9d>

Sue Neill-Fraser – finally – to get 'day in court'

Sue Neill-Fraser's bid to appeal against her murder conviction will go ahead in March or April 2017...before a new judge.

SNF (shown in a recent *Mercury* photo being wheeled in to court because of feet problems developed in jail) first lodged the appeal a year ago, on 2 December 2015.



Tasmanian Supreme Court Justice Shan Tennent called a surprise directions hearing in Hobart late last month to announce she would step down after supervising the preliminary hearing process, David Killick reported in the *Mercury*. The judge said she was concerned by continuing delays in the case.

The mystery is why she was ever appointed to it, a question for Chief Justice of the Supreme Court of Tasmania, Alan Blow, to answer. Blow, now CJ, was the original trial judge in the SNF case. Tennent sat on the first appeal case and was one of three judges to rule against Neill-Fraser*. Most astute commentators believe she should not have been permitted within a bull's roar of the latest SNF appeal.

The current appeal bid – on new, fresh and compelling evidence, the applicant says – is based on the new "Right To Appeal" law which CLA was instrumental in having "mirrored" in Tasmania in November 2015 after it first emerged in South Australia in mid-2013.

Neill-Fraser, 62, is serving 23 years in prison for the murder of her husband, Bob Chappell, 65, who disappeared from the couple's yacht moored off Sandy Bay, on Australia Day 2009.

His body has never been found. She has been in jail for more than seven years, wrongly CLA believes. <http://tinyurl.com/juacch3>

* CLA's CEO Bill Rowlings has described the SNF appeal court judgement – oft-quoted by Tasmanian Police – as the most flawed use of basic logic ever to (dis)grace a court.

State plans to strip people of their assets

Tasmania's police and prosecutors are planning to strip \$2 million in cash and property from people they have decided are criminals, even if unconvicted, because of lavish habits.

A 2013 law allow the unexplained wealth unit – a Tasmania Police and Director of Public Prosecutions joint taskforce – to seize suspect assets from their owners even if they have not been charged with, let alone been convicted of, a crime.

In 2013-14 police seized about \$60,000 in a pilot of the program. In 2014-15, the Tasmanian government seeded \$350,000 to set up the combined unit of police and the office of the DPP, who reaped \$800,000 in cash and property, all assets seized from people trafficking drugs, they claim.

In 2015-16, the unit expects to gather \$2 million from three separate cases, Patrick Billings reported in the *Sunday Tasmanian* last month.

"There's an inherent problem here," CLA's CEO Bill Rowlings points out. "Police and prosecutors are being rewarded for asset-seizure, which they are legally entitled to do even if they can't prove a crime has been committed.

"The more assets seized, the more a government provides to police and prosecutors in terms of extra staff and resources. It's a recipe with a probability of fostering corrupt behaviour by both police and prosecutors: it is highly likely this scheme will go off the rails very soon, if it hasn't already.

"Such asset-seizure regimes should be independently inspected by a police force and/or DPP from another state every five years, at maximum...or perhaps by an integrity commission with teeth."

Mr Rowlings said such profit-seizure schemes could be minefields for state governments: one government was forced to pay out \$8m in compensation because it had wrongly seized a wealthy man's assets. But the compensation was no help to the man's wife and daughter, who had lived for years in near-poverty: the asset seizure had prevented the daughter undertaking university study, and ruined her life. <http://tinyurl.com/gwa8h7y>

Two week 'vacation' likely over immunisation

School students in NSW have to stay home for two weeks if disease breaks out.

Changes to the state's Public Health Act would see primary and secondary students forced to prove they are vaccinated; similar laws apply now to children in kindergarten

If accepted, the proposed changes would force all school students from kindergarten to Year 12 to provide their school with a certificate showing they were vaccinated. Students who failed to provide the information, or were not vaccinated, could be forced to stay home for up to two weeks if there was an outbreak of a serious disease.

Dr Vicky Sheppard, director of communicable diseases with NSW Health, said the proposed rules would only apply on "very rare" occasions. "The last time it happened was in 2012 when we had an outbreak of measles affecting high schools," she said.

The proposal was prompted by a review of the state's Public Health Act, and the recommendations are being provided to the government for consideration. Similar laws are already in place for children in kindergarten and enrolling in primary school in NSW.

Currently, children who are not vaccinated can get special exemptions based on medical grounds, and for what are known as conscientious objections, which are often used by parents who object to vaccinations. <http://tinyurl.com/zwkpeom>

Pollies get help to be honest and ethical

The ACT Legislative Assembly is advertising for an "ethics and integrity adviser" to keep the territory's politicians honest and on the straight and narrow.

According to the advertisement, the adviser will:

- confidentially advise MLAs (when asked) on issues, including on expenses and conflicts of interest; and
- give advice consistent with the Legislative Assembly's code of conduct...but not legal advice.

The job's worth \$14,000 a year. Strangely, the last incumbent who was also "not to give legal advice" was former ACT Supreme Court judge Ken Crispin.

High-flying CCC likely to have wing clipped

WA's corruption body will no longer prosecute alleged crimes it uncovers, under recommendations from a parliamentary committee.

The committee says the Corruption and Crime Commission (CCC) should refer potential prosecutions to the State Solicitor, rather than lay criminal charges itself.

The committee investigated the CCC's powers to prosecute after a WA Court of Appeal decision ruled "the commissioner's power did not extend to the prosecution of persons in respect of matters investigated by the commission". The ruling emerged from an appeal by a former police officer charged by the CCC over an assault, who then challenged the commission's power to charge and prosecute him. <http://tinyurl.com/hhwz75r>

Tomison to head measures to cut Aborigines in jail

Dr Adam Tomison is the new Director General of the WA Department of the Attorney General.

Tomison is internationally recognised as an expert in preventing child abuse and family violence, and developing child protection and family support systems.

He has been lecturing at the Catholic Uni in Canberra for the past year, after serving as Director of the Australian Institute of Criminology from 2009 to 2015. Before that he worked in child support services in the NT.

"He is an experienced public servant who has worked with Indigenous communities on health, welfare and justice issues, which will serve him well in his new role, particularly as the government implements a raft of measures to reduce the over-representation of Aboriginals in incarceration," Attorney-General Michael Mischin said. <http://tinyurl.com/jynrxp8>



Top cop calls for more stolen children

Police Commissioner Karl O'Callaghan last month called for more Indigenous children to be taken away from their parents. In a radio interview he said there were about 100 families around Perth needing significant wrap-around services to give their children any hope of a normal life. "There were about 4500 kids in care: there should probably be another couple of thousand that should not be at home but (in) some sort of care."

He called for authorities and the community to produce a better plan for helping dysfunctional families. "People that advocate that stronger punishments are going to be the answer to sorting out these kids are never going to get to the root of the problem," he said. <http://tinyurl.com/h6bp8z6>

'You ruined my life', former civil liberties boss tells WA's top cop

Former Claremont WA Mayor, Peter Weygers – once named as "a person of interest" by police for the unsolved Claremont serial killings – told the state's Police Commissioner Karl O'Callaghan that he had "ruined his life" during a chance confrontation last week.

The Post newspaper reported Commissioner O'Callaghan and a photographer pulled up in a car outside a house Mr Weygers owns, which he was visiting briefly, sparking the former child psychologist to "tremble with fear". "My first thought was that the Commissioner himself had come to arrest me on camera," the 72-year-old told *The Post*. "Either he was coming to apologise for the police leading people to believe I was the Claremont serial killer, or he was going to arrest me for it."

Mr Weygers said he had had post-traumatic stress since Mr O'Callaghan said publicly in 2004 that new evidence identified him as a person of interest in the unsolved 1990s disappearances of Sarah Spiers, Ciara Glennon and Jane Rimmer.

At the time, his Embleton house (the same house Mr O'Callaghan was at last month), was sprayed with luminol, a chemical that glows in the dark if it reacts with blood or other substances, and another home he owned was searched in the full glare of media cameras.

DNA samples of the offender recovered from the body of one of the victims did not match Mr Weygers, or any other known suspect.

Unbeknownst to Mr Weygers, Mr O'Callaghan had arrived at his house last month by coincidence, after a photographer for *The West Australian* arranged to meet him on the street to take a photo for a front-page story about children living in dysfunctional families. <http://tinyurl.com/jv9knhg>

The WA police have had a habit of destroying people's lives by too freely, without evidence, naming them as "persons of interest". They did something similar in the Lloyd Rayney case, when his wife Corryn was murdered, a crime the WA Supreme Court ruled he had nothing to do with...despite police naming him as the "only person of interest" in the case.

Mandatory sentencing may be scrapped

The Northern Territory's controversial mandatory sentencing laws could soon be scrapped.

Attorney-General Natasha Fyles said the laws were being reviewed as part of a new plan aimed at reducing indigenous incarceration rates.

"We will consider removing mandatory sentencing if that's the right thing to do, if that's what the evidence shows," the Labor Attorney-General told *Sky News*.

The NT move comes as the federal government announced an inquiry into rates of Indigenous incarceration. "It is a sad reflection on Australia that our first peoples are so grossly over-represented in our nation's prisons," Liberal federal AG Senator George Brandis said when announcing the inquiry, which will include a review of all 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Ms Fyles said the NT government's review of its mandatory sentencing laws will be done as part of its new Aboriginal Justice Agreement, aimed at reducing the number of indigenous people in jail.

The first mandatory sentencing laws for property offences were introduced by the Country Liberal Party government in 1997. Three years later a 15-year-old Aboriginal boy committed suicide at the Don Dale Detention Centre after being given a mandatory 28-day sentence for stealing school supplies valued at less than \$100.

Labor NT Chief Minister Clare Martin scrapped the laws after coming to office in 2001. But successive Labor and CLP governments re-introduced mandatory sentencing. <http://tinyurl.com/jow67kf>

Jails in 'devastating' crisis: report

The NT's corrections system needs a complete overhaul to address a "devastating" crisis for Indigenous Australians, says the executive summary of a report released last month.

NT AG Natasha Fyles released the summary from the review into adult prisons and youth justice. It was not legally possible to release the full report, she claimed.

The 'Safer Northern Territory Through Correctional Interventions', or the (Keith) Hamburger report, said the NT's imprisonment rate was among the worst in the world. The NT population comprises 1% of Australia but the NT accounts for 5% of Australians in prison.

The report highlights that 85% of the NT's adult prisoners and 95% of youth detainees are Indigenous. AAP report: <http://tinyurl.com/h869uab>

17yo Queenslanders get equal jail rights

Three crossbench MPs have sided with Queensland's Labor government to keep 17-year-old offenders out of adult jails. The new law, passed last month, will phase in over 12 months to bring Queensland in line with other states and territories. Independent MPs Rob Pyne and Billy Gordon voted with the government.

The Attorney-General Yvette D'Ath told parliament the laws would enshrine a change that was long overdue. "People who cannot vote, cannot purchase alcohol and cannot be sued because they are not adults should not be treated as adults in the justice system. It just does not make sense," she said, according to an AAP report. <http://tinyurl.com/h2zpfom>

Youth detention inquiry extended

Queensland Attorney-General Yvette D'Ath is broadening the terms of reference handed to the Youth Detention Review Commission and extending the timeframe for submissions.

It follows reports that the commission failed to issue notices to give evidence to at least two employees despite written submissions detailing incidents inside youth detention centres in Townsville.

The initial terms of reference released in October focused specifically on cases highlighted in the media in August. The amendment announced last month allows the commission to investigate a specific incident in 2013. <http://tinyurl.com/h77kmmr>

Australian briefs

Ramsay is ACT AG: The ACT's new Attorney-General is Labor's Gordon Ramsay, 52, described by ACT Bar Association President Ken Archer as "a lawyer with a strong commitment to social justice". Ramsay, who was previously a practising corporate lawyer in Sydney, has worked for the Uniting Church in Canberra for the past two decades. He may preside over the establishment of a new "ICAC-like" body for the ACT, perhaps modelled on an (improved, hopefully – says CLA) Integrity Commission in Tasmania. The new body is part of a power-sharing agreement between Labor and the Greens to ensure stable government: there are 12 Labor, 11 Liberals and 2 Greens. The Greens' Shane Rattenbury continues as a minister, holding the Justice, Corrections and Mental Health portfolios. <http://tinyurl.com/jr9jp6z>

Kat takes the chair: Kat Lane (photo) has been elected chair of the Australian Privacy Foundation. She has been a board-member since 2013, and a vice-chair since 2014. She is principal solicitor of the Financial Rights Legal Centre. Vice-chairs David Vaile and David Lindsay remain in place, as does secretary/treasurer Mark Walkom, and public officer Nigel Waters. Kate Mathews-Hunt was elected to the vacant vice-chair position. – email from APF 161031



Women get help to breast the bar: Big corporates – Telstra, Woolworths, Westpac – and 11 top-tier law firms (including Allens, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison and Clayton Utz) have agreed to hire more female barristers to improve gender equity. They have signed on to the Law Council of Australia's push for female barristers to be briefed on at least 30% of all matters and receive at least 30% of the value of all briefs by 2020. NSW Bar Association 2015 figures show women represent less than 10% of Senior Counsel members and less than a quarter of junior counsel, despite accounting for more than half the graduates from NSW law schools and outperforming male students academically. <http://tinyurl.com/guts2xz>

ATO denies illegality: former officer harassed for money: A former tax official, Ron Shamir, who blew the whistle on alleged ATO "covert operations" against taxpayers is jobless, broke and facing demands for \$88,000 in legal fees from the government. Shamir wants to continue his legal fight against

the Commonwealth, but lawyers are afraid to take the case against a bureaucracy with limitless access to taxpayers' money. The former tax intelligence analyst spoke out, alleging millions of dollars in tax returns were being illegally withheld, and was sacked soon after. The ATO won the most recent round of the dispute, an unfair dismissal appeal to the full bench of the Fair Work Commission. <http://tinyurl.com/h9ghocs>

Line-up for the ages: Queensland's 17-year-olds will become 'younger' in 12 months time when a bill before parliament comes into effect. No longer will 17-year-olds be treated as adults in the state's criminal justice system, which is inconsistent with the UN Convention on the Rights of the Child, and the law in all other Australian states and territories. It is also inconsistent with a substantial body of Queensland and Commonwealth law, which defines adulthood at 18 years. – source: Qld Bills before parliament

Noor is top female lawyer: Former CLA Vice-President Noor Blumer, of Blumers Personal Injury Lawyers, has been honoured as the Woman Lawyer of the Year in the ACT. She is a former president of the ACT Law Society and a member of the Law Council of Australia, as well as being a leading light in the female lawyers' movement in Australia.

Shoppies get a taste of Fast Food: A new union is reported to be moving in on the Shop Distributive and Allied Workers Union (SDA, or "the Shoppies"), which has represented retail workers for a century. The Retail and Fast Food Workers Union (RFFWU) launched last month, hoping to capitalise on cases in the retail sector where workers have been paid less than the award wage. One case saw an enterprise agreement struck by the SDA and Coles thrown out in May 2016, because the Fair Work Commission found workers were being underpaid and would have been better off being under the award. If successful, the new union could have repercussions for power within the Australian Labor Party, and within the Australian Parliament. <http://tinyurl.com/h6vhq5l>

Test pills for safety: The Ted Noffs Foundation of Sydney is running an online petition to convince authorities to allow pill-testing by doctors at music festivals. The pilot tests would tell youths with drugs they plan to consume whether the drugs were "safe" in the pharmacological sense. If you would like to add your name: <https://noffs.org.au/just-one-life/>

CLA report – key activities for November 2016

New board member Jennifer Ashton (photo) was welcomed at the Civil Liberties Australia Board meeting on Sunday 13 November 2016.

Jennifer is 'retired' from the UN High Commissioner for Refugees after two decades operating from Zambia to Kazakhstan, including two years with UNAIDS in Myanmar. However, in both 2015 and 2016 she was called back to UNHQ in Geneva for four-month periods to help kick start urgent refugee relief projects. Her career started with the then-



AUSAID and with Australian NGOs (in Cambodia from 1986-1989, work for which she received an OAM). Her first qualification in social work was followed by a Masters-by-correspondence through Deakin Uni as a nightly respite from the harsh daily realities of remote refugee camps.

“CLA is fortunate to be able to add such international experience and perspective to the talents of our directors,” President Dr Kristine Klugman said. Between the two-yearly elections for Board members, the President has the power to appoint a person to the role.

Jennifer’s appointment followed the resignation of Saskia Vernorn, who was thanked with great appreciation for her contribution over four years. Saskia brought the unique perspective of a person working in the public service and focusing on the rural and regional portfolio to her role on the Board.

Director Rajan Venkataraman, who was visiting Canberra privately, was able to attend in person for the first time, instead of by Skype as he and fellow Tasmanian Director Richard Griggs usually take part.

Other Board issues included:

CLA has met with 12 new federal MPs, who were briefed on the Optional Protocol for the Prevention Against Torture (OPCAT), Charter of Rights (Tasmania and elsewhere), and CLA’s Better Justice project, and who highlighted their particular concerns. Ratifying the OPCAT treaty would open Australian jails and juvenile detention centres to regular, external inspection.

Arising from the meetings, in 2017 CLA’s Vice-President Tim Vines will meet with new MHR for Macarthur, Dr Mike Freelander, to discuss genes issues relevant to CLA and the Australian parliament. Dr Freelander and his wife Sharon are new members of CLA.



Photo: CLA President Dr Kristine Klugman and CEO Bill Rowlings (right) meet with Dr Freelander in November 2016 at Parliament House.

The President congratulated Directors Griggs and Venkataraman on their Tasmania report and the extensive activities and initiatives under way. They will launch a Charter of Rights campaign on 10 Dec 2016.

The Board agreed to trial a wider and different media release distribution strategy in 2017:

- trial of releases commenting on national breaking issues, plus another trial on more usual local community concerns targeted particularly to rural/regional areas;

- promote media releases with CLA submissions more, especially involving the MPs who agree with CLA’s position

Marketing: Director Mark Jarratt provided an excellent options paper, and the Board agreed to trial “member get a member” month, plus “member community of interest – champions groups” (for example, a group on genes issues, or another on dissecting key annual reports).

The Board has approved up to \$500 for trialling further online promotion around the “Charter of Rights” in Tasmania.

Ongoing issues:

- same-sex marriage: CLA is keeping material suitable for a plebiscite on hold;
- royal commissions: mounting a watching brief on the increasing calls for such inquiries throughout Australia (federally and state/territory): CLA is considering providing other options for resolving “RC-like” issues and problems;
- inquiry into Indigenous rates of incarceration: CLA submission to promote uptake of OPCAT.
- Board positions and duties/time. Minor amendments noted: papers readied for eAGM process.

Meetings:

CLA members Thomas Mautner, Peter Bailey and Asmi Woods (Better Justice), Austin Ngo (re web site)

Christmas drinks: various at Parliament House

History: The history of civil liberties in Australia volume is in its final edit stage.

Court matters:

Sue Neill-Fraser: appeal hearing (argument both as to admissibility of evidence to whatever extent is necessary and also the substantive hearing for leave to appeal) in March or April 2017; directions hearing on administrative matters 4.15pm 1 Feb 2017.

Paul Wilson, noted criminologist, jailed last month for six months in Queensland for an assault on a girl in 1970s: demonstrates the problematic nature of memory recall in abuse cases (see below, DATES, 3 Jan 2017 lecture by a world memory-recall expert).

International

160 news sources closed in three-month spree

Turkey detained the editor and prominent writers of one of the country’s few remaining opposition newspapers early last month, one day after sacking 10,000 public servants the government claims have to have been involved in a failed coup in July 2016.

Murat Sabuncu, the editor in chief of *Cumhuriyet*, Turkey’s oldest secularist newspaper, and at least 12 other executives and journalists were detained during early-morning police raids.

Without providing evidence, the Istanbul prosecutor’s office said the government suspected the detainees had committed crimes on behalf of Kurdish militants and the network of the US-based cleric Fethullah Gulen, accused officially of organising a coup bid against President Recep Tayyip Erdogan.

The government also shut down 15 pro-Kurdish news outlets, including the only national Kurdish-language daily, bringing to

160 the number of news sources it has closed in three months. <http://tinyurl.com/hkb6dl3>

China fouls the fragrant harbour of Hong Kong

The Chinese government's decision to bar two elected lawmakers from taking up their seats marks the beginning of the end of Hong Kong, according to Claudia Mo (photo), a member of the HK Legislative Council and one of the founders of the Civic Party.



"China has said that in Hong Kong, patriotism is so vital that it trumps freedom of speech, freedom of expression and freedom of thought, which are all now completely irrelevant," she wrote in the *Guardian*.

"By preventing two pro-independence politicians from taking office, the Chinese government has opened the door to disqualify anyone from HK's government if they are determined to not be loyal to Beijing.

"This sets a very, very dangerous precedent because China has now started to form a habit of ruling Hong Kong by decree. Rule of law has become nonexistent in Hong Kong..." she wrote. <http://tinyurl.com/qju7kps>

The barring decision means that China has overturned a binding international agreement which came into effect as recently as 1997, putting in doubt any treaty that China has signed or will sign, C:A notes.

ODD SPOT: Name your sweet-smelling wi-fi network after a rose?

An 18-year-old Frenchman was convicted for "praising terrorism" last month and given a suspended sentence of three months jail because he named his wi-fi network "Daesh 21".

Daesh is the Arabic acronym for Islamic State, and "21" is the number where he lives in the French department, the Cote d'Or.

He was prosecuted under a French anti-terrorism law passed in November 2014 that makes it a crime to "directly provoke acts of terrorism or to publicly praise one such act". Those convicted can be punished by up to five years in prison and a \$100,000 fine. The penalty goes to seven years and \$145,000 if the crime was committed by using a "public online communication service".

NOTE: All those Australians with 'Police Surveillance Car' as the name of their wi-fi network are counselled to consider a change of name. <http://preview.tinyurl.com/hqd2ogp>

Canada's spies have been breaking data law

Canada's Federal Court has ruled the nation's domestic spy agency has been unlawfully retaining data.

At issue was whether the federal domestic spy service, the Canadian Security Intelligence Service, CSIS, had pushed past its legal boundaries in the name of collecting data to

round out the holdings of a little-known Canadian intelligence facility dubbed the "operational data analysis centre."

CSIS, like other corporations and other security agencies, wants to use "big data" computer analytics to predict patterns of future behaviour based upon records about what has happened in the past.

The fundamental question is whether CSIS should be allowed to do so by retaining information relating to its telephone and computer tapping indefinitely, and indiscriminately keeping information about as many people as it can...which appears to conflict with Canada's Charter of Rights and Freedoms

The Canadian Federal Court last month decided such retention does violate federal laws. Under the 1984 CSIS Act, the agency can only hold data deemed "strictly necessary" to keep.

Yet for a decade the spy agency has been secretly holding phone logs and email trails that it had mapped out around targets of past investigations, even when it was forced to destroy the underlying intercepted conversations. Retaining such communications metadata – what CSIS calls associated data – would mean the government was keeping records on the family, friends and acquaintances of former terrorism suspects.

Australia's security agencies should be asked similar questions. <http://tinyurl.com/z9e5kqv>

America goes to pot as Trump elected

Three US states legalised marijuana the day Donald Trump became President-in-waiting.

Before the election, recreational marijuana use was legal in four states: Alaska, Colorado, Oregon and Washington, along with Washington DC. With the addition of California, Massachusetts and Nevada, 20% of Americans now live in states where marijuana is legal for adults, up from 5%. A Gallup poll in October 2016 found nationwide support for legalisation at 60%, the highest level in 47 years.

The California measure allows people over 21 to possess limited amounts of marijuana for personal use and also permits the personal cultivation of up to six plants in private residences, provided they are shielded from public view.

<http://tinyurl.com/q8t9cfo>

ODD SPOT: More on the people's choice...

The American sage, H.L. Mencken (right), who died in 1956, wrote these words a century ago:

"The larger the mob, the harder the test. In small areas, before small electorates, a first-rate man occasionally fights his way through, carrying even the mob with him by force of his personality. But when the field is nationwide, and the fight must be waged chiefly at second and third hand, and



the force of personality cannot so readily make itself felt, then all the odds are on the man who is, intrinsically, the most devious and mediocre – the man who can most easily adeptly disperse the notion that his mind is a virtual vacuum.

“The Presidency tends, year by year, to go to such men. As democracy is perfected, the office represents, more and more closely, the inner soul of the people. We move toward a lofty ideal. On some great and glorious day the plain folks of the land will reach their heart's desire at last, and the White House will be adorned by a downright moron.” – H.L. Mencken. Baltimore Evening Sun, 26 July 1920.

EU nation stands up for migrants

MPs in Hungary last month voted down a proposed national ban on refugees relocating from the rest of the European Union, defeating the proposal of Prime Minister Viktor Orban.

The amendment needed two-thirds of sitting members of the 199-member parliament to pass. It got 131 votes – two short of the threshold. Three MPs voted no and the rest abstained.

PM Orban proposed a constitutional amendment for a ban after a similar proposal failed to pass by referendum because of insufficient voter turnout.

He has vowed to block an EU program that would resettle migrants from the Middle East and Africa who have gone to countries like Greece and Italy. Under that program, Hungary, a nation of 10 million, would have to accept 1294 of a total of about 160,000 migrants. <http://tinyurl.com/zmmoy4w>

Mursi and mates get ‘mercy’ from Egypt court

Egypt's Court of Cassation last month overturned both a life sentence, and a death sentence, against deposed president Mohamed Mursi of the Muslim Brotherhood and ordered a retrial over accusations of espionage with Palestinian group Hamas.

Democratically elected after the 2011 uprising in Egypt, Mursi was overthrown in mid-2013 by Abdel Fattah al-Sisi after mass protests against his rule. He was immediately arrested, and remains in jail on separate convictions.

Mursi was one of 22 high-ranking Muslim Brotherhood officials and supporters convicted in 2015 of spying for fellow-Islamist group Hamas. The Egyptian government deems the Brotherhood, Egypt's oldest Islamist movement, a terrorist group. The Brotherhood says it is committed to peaceful activism.

Control over Egypt is a fulcrum point for sway in the Middle East, CLA observes. <http://tinyurl.com/zovmhnk>

Diego Garcians lose their island home for good

Thousands of Chagos islanders, deported from their homeland in the Indian Ocean by the UK government to make way for a US military base in 1971, will not be allowed to return to resettle, the British Foreign Office announced last month.

The long-awaited decision follows more than 40 years of campaigning, court cases and calls for the UK to right a wrong committed by Harold Wilson's Labour government. But the wrong can't be righted because the US is in possession of the highly-strategic atoll airbase in the middle of the Indian Ocean. The “island aircraft carrier” is used as a refuelling base for US kidnapping flights and key strategic special forces raids.

Hundreds of Chagos islanders living in the UK and Mauritius have been waiting for an announcement for more than two years. But cost, economic viability and objections from the US military have been significant obstacles.

Announcing the long-awaited decision, the Foreign Office minister Baroness Joyce Anelay said there would be a \$67m support package over the next decade to help exiled islanders improve their lives. <http://tinyurl.com/jy6pt56>

Facebook? Or ‘Racebook’?

Facebook is in strife again, this time for allegedly running racist, discriminatory house ads.

Facebook has been allowing people to “EXCLUDE demographics” including “African American”, “Asian American” and/or “Hispanic” in targeting Facebook members who are online house-hunting.

The US Fair Housing Act of 1968 makes it illegal “to ... publish... any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin”. <http://tinyurl.com/zcsyg4c>

US's illegal killings drone on

“Over just a short period in early 2016, in other words, the United States deployed remotely piloted aircraft to carry out deadly attacks in six countries across central and south Asia, north Africa, and the Middle East, and it announced that it had expanded its capacity to carry out attacks in a seventh. And yet with the possible exception of the strike in Somalia, which garnered news coverage because of the extraordinary death toll, the drone attacks did not seem to spark controversy or reflection.

“Except at the highest level of abstraction, the law of the drone campaign had not been enacted by Congress or published in the US Code. No federal agency had issued regulations relating to drone strikes, and no federal court had adjudicated their legality.” – excerpts from the book, *The Drones Memos* edited by Jameel Jaffer. <http://tinyurl.com/hphb73b>

International briefs

UK judges backpedal on ‘joint enterprise’ reform: The first appeal case to be decided after a revolutionary ruling in February 2016 has taken law reform backwards, finding not one of 13 convictions was unsafe. The UK Supreme Court in February declared that judges had been misinterpreting the “foresight principle” in joint enterprise cases for 30 years. In lay terms, if a charged person did not know an accomplice was planning to commit a major crime, he or she should not be convicted jointly for the offence. But the panel of appeal court judges, led by the Lord Chief Justice, Lord Thomas of Cwmgiedd, last month refused to intervene in the cases of 13 men affected by the principle, technically known as “parasitic accessory liability”. <http://tinyurl.com/juzhu72>

Police to investigate crime allegations, not COs: Sexual assault, voyeurism and exposure are to be added to a schedule of the Armed Forces Act in the UK, meaning the crimes will now be automatically referred to the service police rather than left to a commanding officer to investigate, or

ignore. "This is a step in the right direction for equal justice for our service men and women and in challenging the pervasive and deeply damaging culture of sexualised behaviour and harassment," according to Mairi Clare Rodgers, head of campaigns for Liberty UK. – personal email, 161109

How to generate memes – call for a ban: Spain's ruling Popular Party has presented a proposal to the nation's Congress that could result in a ban on the way social network users gain comic revenge on politicians, using memes. The reform aims to curb the "spreading of images that infringe the honour of a person" and says Spain's 1982 law covering this area is outdated due to the internet. So far the only impact of the latest reform plan is a fresh wave of memes aimed at Prime Minister Mariaon Rajoy and the PP. <http://tinyurl.com/j38qwhz>

ODD SPOT: Porn seekers end up fully exposed: Adult dating and pornography site Friend Finder Networks has been hacked, exposing the private details of over 412 million accounts in the largest data breach ever recorded, according to monitoring firm Leaked Source. The October 2016 attack resulted in email addresses, passwords, dates of last visits, browser information, IP addresses and site membership status across sites run by Friend Finder Networks being exposed. <http://tinyurl.com/z9nu7bp>

Getting elected to cost more in PNG: Papua New Guinea is making it 10 times more expensive to stand in national elections in April 2017. The National Executive Council, PNG's equivalent of Cabinet, has approved a tenfold increase in the nomination fee for candidates – from 1000 to 10000 PNG kina (\$400 to 4000). That is double what PNG's Electoral Commissioner initially suggested in a submission to the Government. The cost of disputing an election result in court will go from 5000 to 20,000 kina (\$8000). <http://tinyurl.com/z5p4rz6>

DATES

1 Dec, Hobart: Prof Simon Marsden of Flinders U - Protecting the Third Pole (ie, high altitude): Can It Be Done. 1-2pm UTAS Law Faculty staff room. Details: <http://tinyurl.com/zhjp624>

2 Dec, Canberra: 'Reform and renewal in constitutional interpretation and legal education': conference in honour of Prof Michael Coper. <http://tinyurl.com/hpllek5> Speakers include Prof Duncan Bentley, Prof Tony Blackshield, Prof Tim Bonyhady, Prof Stephen Bottomley, Prof Hilary Charlesworth, Prof Richard Chisholm, Prof Rosalind Dixon, Prof Kim Economides, Prof Bill Ford, Justice Stephen Gageler, Justice Michelle Gordon, Prof Helen Irving, Michael Kirby, Prof Desmond Manderson, Sir Anthony Mason, Prof Brian Opeskin, Prof Adrienne Stone, Prof John Williams, Prof George Williams, Dr Asmi Wood »

7-9 Dec, Perth: Re-imagining Australia, Centre for Human Rights Education, Australia-Asia-Pacific Institute, and the School of Media, Culture and Creative Arts at Curtin U.. Venue: WA Maritime Museum. Details: <http://humanrights.curtin.edu.au/events/inasa-conference-2016/>

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:

3 Jan, Sydney: *The Fiction of Memory*, Prof Elizabeth Loftus, Prof of Psychology, Social Behavior and Law, School of Law, Uni of California – Irvine, USA, Eastern Ave Auditorium, U. Sydney 6-7.30pm: <http://tinyurl.com/jfn6g2m>

16 February, Sydney: 'Sir Owen Dixon Today', by Prof William Gummow, the 2017 George Winterton Memorial Lecture. Banco Cout, 184 Phillip St Sydney. 6.15-7.45pm. To register: <http://tinyurl.com/zzghacx>

20-24 March, Melbourne: 20th Commonwealth Law Conference, 20-24 March, 2017, with the Law Institute of Victoria: 'Building on the Rule of Law'. <http://tinyurl.com/jzc972o>

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

6-8 April, Sydney: A'sian Inst of Judicial Admin's *2nd International Conference on Non-Adversarial Justice: Integrating Theory and Practice*, at Darling Harbour. Details: mail@conferencedesign.com.au or 03 6231 2999 Register: <http://www.naj2017.com/>

20-21 April, Darwin: 17th international conference on knowledge, culture and change in organisations. Casuarina campus, Charles Darwin Uni. Details Alison Chin on 08 8946 6830 or lebaadmin@cdu.edu.au

24-30 June, Bali, Indonesia: 'Justice on the Sniff of an Oily Rag', the 16th biennial Criminal Lawyers Assn of the NT, conference. Info: russell.goldflam@ntlac.nt.gov.au

9-13 July, Brisbane: International Association of Genocide Scholars 13th conference – Justice and The Prevention of Genocide – at TC Beirne School of Law, U. of Queensland. Details: <http://tinyurl.com/zwzufbv>

17-21 Sept, Cairns: 2017 International Women & Law Enforcement Conference. Details: 1800 807 730 or info@destinationcairns.com.au

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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