

CLA asks PM, AG for long-term national inquiry into state of justice and the law

Civil Liberties Australia has asked the Prime Minister Malcolm Turnbull and Attorney-General Senator George Brandis to hold a long-term national inquiry into the state of justice and the legal system in Australia.

The plea is contained in CLA's Australia Day letter for 2017. Each year, CLA selects a major issue to focus on – this year, it is the need for a sweeping inquiry into all aspects of how justice and the law works, or doesn't.

CLA President Dr Kristine Klugman has pointed out in the 2017 letter that, regularly, "industry sectors in Australia come under major reform scrutiny...however, a key industry – the justice and legal system – has never been subjected to a national, whole of system review aimed at making Australia a more efficient, less costly, more productive, fairer, better and more just society in relation to laws and their administration."

She called on the two national leaders, who are barristers in private life, to launch the inquiry.

"We envisage a long-term, 7-8 years, inquiry by a group or groups tasked with investigating individual aspects of the system. There could be up to 10 such panels, she said, with an individual "life" of from 1-5 years.

Dr Klugman (photo) pointed out that CLA had been promoting the concept behind the call for a national inquiry for more than a year



"In January 2016 we launched our Better Justice campaign, which comprises 10 initiatives over the next 10 years to improve justice in Australia," she said. "That program has been well received in widespread discussions at all levels of the legal system over the past 12 months.

"It is now time that the government weighed in with support for national justice and legal system reform, just as it usually supports reform regularly in other sectors of the economy," Dr Klugman said.

To read a copy of CLA's Australia Day 2017 letter, and to a reminder of the CLA 10-year Better Justice program, go to: <http://www.cla.asn.au/News/>

Crime journo joins call for inquiry

In a scathing article, veteran Melbourne crime journalist John Silvester has joined CLA's long-standing plea for a thorough inquiry into the legal and justice system.

"...tweaking the system is no longer enough." Silvester wrote last month in *Fairfax Online* in a piece headed: *We need to update a justice system opposed to change* <http://tinyurl.com/hpk3epf>

"Many of those charged with serious offences are bailed, because if they are remanded in custody they may stay in jail for well over a year before their cases come to trial.

"Imagine being charged, spending 18 months in jail to be acquitted, having lost your job, reputation, self esteem and possibly your family and friends. Is that justice?," Silvester asked.



Above: In a cutting summary of the inertia against change in the Australian legal and justice system, artist-cartoonist Andrew Dyson drew this illustration to go with the Silvester article. (*Fairfax Online*).

"The simple truth is that we have a system that is no longer fit for purpose. Cases are unnecessarily complex and ridiculously lengthy. Accuseds are left bewildered and victims further traumatised.

"Stand there (in the court precinct) on any given day and you will see legal staff using industrial size trolleys to move massive volumes of briefs into court. Superior court hours remain the same as they were when shops closed at midday Saturday and pubs shut at 10 pm.

"When the courts are closed operating theatres remain open and while highly paid surgeons will respond to emergencies – try getting a QC on the phone after hours."

Silvester's plea – a result of the Bourke St mall vehicle deaths – is the latest in a series of close observers of the "justice" system calling for radical overhaul. We think it is time the PM and the AG took notice, and acted, along the lines of CLA's Australia Day letter.

'No better time in recent decades': President

The CLA Australia Day 2017 letter points out that Chief Justices around Australia, law societies and bar associations, civil liberties and human rights groups, plus a range of other interested people all want the justice and legal system improved.

Government leadership is the missing cog in the wheel, CLA President Dr Klugman said.

There have already been two seminal inquiries into aspects of the problem: the Productivity Commission inquiry into Access to Justice Arrangements, which reported publicly in December 2014, and the Freedoms inquiry by the Australian Law Reform Commission, which reported in March 2016.

"The PC and ALRC reports comprise the yin and yang underpinning of a once in a lifetime opportunity to create better justice through a better legal structure and system(s) for Australia. There has been no better time in recent decades to hold such an inquiry," Dr Klugman told the PM and AG.

Obama frees one of three we asked for

One of Barack Obama's last acts as US President was to end the jail sentence of Chelsea (formerly Bradley) Manning, who leaked military secrets: CLA's Australia Day letter in 2016 was to Mr Obama, asking precisely for that course of action.

Under the terms of Mr Obama's commuting of her sentence, Ms Manning will be freed on 17 May 2017 instead of in 2045.

While Civil Liberties Australia can't claim to have been the only influence on the decision, we were probably first or among the first: our letter reached the White House in early February 2016.

Unfortunately, the former president failed to respond to two other requests in our letter – to pardon, by granting immunity from prosecution in or by the USA, both Edward Snowden and Julian Assange. <http://tinyurl.com/j4lucp8>

Big Brother is coming for your eyes and fingers

The government is planning to use fingerprints, iris or facial structure scanning at major sea and air ports, instead of scanning passports.

And the move is just part of new national surveillance, under which the Big Brother federal government will hold ID data on every Australian – biometrics, including photos, and private, personal information – in a central database. So pervasive is this behind-the-scenes checking that in 2015-16 police and security bodies were running the equivalent of 17,400 checks on average every working day. <http://tinyurl.com/zlboakf>

“Operational police all over the country now have instant access to 10 million records with seven million photographs,” the relevant intelligence website boasts.

The new passport system will only add to the national surveillance program.

“International passengers would be whisked through immigration and customs without stopping or even encountering humans, while passport scanners and paper cards would be a thing of the past, under a radical overhaul of Australia's airports due to start this year,” was how Michael Koziol described the latest move in *Fairfax Online*. <http://symposium.qls.com.au/about/>

“The Department of Immigration and Border Protection has sought technology that would abolish incoming passenger cards, remove the need for most passengers to show their passports and replace manned desks with electronic stations and automatic triage.” <http://tinyurl.com/htdgupl>

Immigration Minister Peter Dutton said more than 90% of passengers would be processed automatically by technology. “(People) will still have to carry their passport, (but) may not have to present it,” he said.

The change would cost \$78 million. “Biometrics collections is much more reliable than people just scanning manually passports,” he said. <http://tinyurl.com/zrecjch>

Unstated, but part of the plan, is to capture personal information and the biometric “signature” of every Australia for use internally, not just as people leave Australia and arrive back. Some 65,000 police and many thousands of other security operatives already have instant access, wherever they are in Australia, including from police vehicles.

AG's Department admits remand sub-standard

Australia's Attorney-General's Department says the nation's remand centres are not good enough to meet our human rights obligations for holding charged but not convicted people “for longer than a few days”.

The AGD says so in a submission on a parliamentary committee inquiry into the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016.

The bill proposes to give power to magistrates to send people to jail, without passing go and without collecting \$200.

“Without the power for a magistrate to remand a person to prison while they await their transfer, the police may need to place the person in a remand centre in the custody of a police officer. *Placing a person in a remand centre for a period of up to*

two months is not appropriate and could interfere with a person's right to humane treatment in detention, as remand centres do not have adequate facilities to hold a person for longer than a few days.” the AGD submission says, at para 117.

TPP slain by Trump: what is needed now?

Writing in *Fairfax Online* last month Dr Patricia Ranald outlined what she believes fair trade policies would look like.



Left: Dr Ranald speaking at a forum against the TPP. Seated is former Labor Trade Minister Craig Emerson.

- First, the purpose of trade policy as part of balanced economic policy is to contribute to employment and higher living standards in an environmentally sustainable economy. This should mean a range of jobs in manufacturing, services, agriculture and other sectors, supported by high quality education, health and other services.
- Second, trade rules should be agreed through a multilateral system that includes all governments in an open, democratic process, not secretly made behind closed doors.
- Third, trade agreements should not prevent governments from regulating in the public interest.
- Fourth, trade agreements should not give additional legal rights to global corporations that already have enormous market power, and should not be used to extend monopolies, and finally
- Trade agreements should be based on internationally agreed and enforceable labour rights and environmental standards.

Dr Ranald is convener of the Australian Fair Trade and Investment Network, [AFTINET](http://www.aftinet.org.au), which is closely allied to the trade union movement.

Dutton dept: 'cash aplenty, no responsibility'

While proper treatment, education and rehabilitation services are being denied prisoners in jail, the Immigration Department can apparently waste billions illegally without anyone facing demotion or the sack.

The Australian National Audit Office (ANAO) last month revealed billions of dollars were shovelled into the hands of the private contractors running offshore detention centres without adequate authorisation or value-for-money assessments.

In a scathing report, ANAO said that the Department of Immigration and Border Protection had “fallen well short” of expected standards in managing contracts for Manus Island and Nauru.

Out of \$2.3 billion paid over 40 months, \$1.1bn was approved by officers without appropriate authorisation and another \$1.1bn was paid with “no departmental record” of who had authorised the payments. *Fairfax Online* <http://tinyurl.com/hy7g8v7>

ANAO said: “DIBP's Contract Management Manual provided that contract variations be justified on value for money grounds. A variation to Transfield's 2014 contract, with a combined whole-of-life value of \$1 billion, was made in 2016 without documented consideration of value for money.” <http://tinyurl.com/j7yspzl>

Because parts of the Australian government function so poorly, the Australian poor don't have access to sufficient funds for their reasonable needs, CLA believes.

Volunteers to undergo heavy security vetting?

Volunteers look likely to undergo national security verification – and may have to pay for the privilege – before they can work at the 2018 Commonwealth Games.

Changes giving power to Australia's behind-the-scenes vetting entity, AusCheck, are included in the bill mentioned in the item above:

The bill says people will be checked for:

- the individual's criminal history,
- matters relevant to a security assessment (as per the *ASIO Act 1979*) of the individual, and
- the individual's citizenship and residency status or the individual's entitlement to work in Australia, including whether the person is an Australian citizen, a permanent resident or an unlawful non-citizen.

The big brother vetting will apply to any "national event"...and the Minister in charge of the scheme has open slather to declare any event is covered simply by signing a regulatory letter to that effect.

"For example, the amendments could support AusCheck's ability to conduct and coordinate background checks in relation to the Gold Coast 2018 Commonwealth Games," the explanatory memorandum with the bill says. "The amendments will authorise the collection of personal information of individuals who undergo a background check in relation to a major national event".

"Costs will be fully cost recovered," it says. If the volunteers aren't paying, who is?

CLA aims to get genes law on MPs' agenda

One of CLA's main targets for 2017 is to get the Australian Parliament to take seriously the need for new legislation about genes to protect Australians financially, in sickness and in health...and in privacy.

The need for the parliament to act is urgent.

DNA sequencing giant Illumina last month announced at a San Francisco conference that it was working on a new device that could push the cost of decrypting the human genome from about \$1350 to just \$135.

Illumina's chief executive, Francis deSouza, said the cut-price sequencing was still about 10 years away, but the announcement shows how much faster and cheaper decoding DNA is becoming.

A decade ago, when Illumina unveiled its first DNA sequencer, it could sequence a human genome for about \$400,000. In 2011, the late Steve Jobs of Apple paid \$135,000 to have his DNA sequenced.

Now Illumina does it for just \$1350 "making sequencing not just available to university labs but also to biohackers trying to making glowing puppies," as *Gizmodo* comments. <http://tinyurl.com/zfs33me>

Time to tackle those leery of equal investigation

Jack Waterford, *Fairfax Online* columnist, last month highlighted the double standards of people in positions of pre-eminence and power:

"...questions of just where one draws the line about the surveillance state, or the intrusive powers of police and the security services, can be resolved by determining that the

national security is as much imperilled by tax dodgers and corrupt politicians and officials as it is by terrorists.

"Ergo, both the tax commissioner and the long-awaited federal independent commission against corruption ought to have the same powers of investigation, bugging, pre-emptive arrest, dragnet raids and free use of Uzi submachine guns as ASIO, the federal police and our ludicrous Border Force.

"A good many citizens would agree but, in the Australian manner, it would be amazing how many politicians, lawyers and policemen would be leery if it were to be thought that the real power of the state could be exercised against them."

<http://tinyurl.com/gtakorp>

Pill-testing could save lives, says doctor

Drug experts are calling for pill-testing facilities at music festivals after the death of a man from an unknown substance at a New Year's Eve rave in Queensland.

Australian politicians remain averse to the move, saying it would encourage people to take illegal drugs.

Emergency physician doctor David Caldicot said pill testing at music festivals in parts of Europe had seen fewer people use and mix drugs. "And as a consequence, reduce the chance of people overdosing," he said. "The tragedy is the inevitability of it and we're not doing everything we can to stop it."

The pill testing would be the same technology as that used by customs. <http://tinyurl.com/jrc3jg7>

Drug plan is failing: new trial needed

In a letter to the editor last month, drug campaigner Marion McConnell urged a new approach to drugs:

*"In October 2016, what was then the largest drug haul for 2016 was achieved when approximately one tonne of crystal MDMA was saved from entering the community. At the end of December 2016, 500 kilograms of cocaine was halted in NSW and 600 kilograms was intercepted in Tahiti. Most recently a boat was intercepted off the coast of Tasmania carrying 186 kilograms of cocaine ('Arrests follow seizure of cocaine', *Canberra Times*, 19 Jan, p14).*

"No matter the size of drug seizures, the amount of drugs on the streets continually increases. One would think if seizures were having a positive impact that they would decrease over time but data collected by the AFP shows this not to be so. The AFP annual reports state that in 2009-10 drug seizures were 1244.9 kilograms, but in 2015-16 they were 9528.5 kilograms.

"Whether so much money should be allotted to a system that is making little real impact surely deserves government attention. Alternative strategies such as decriminalisation and sharing the available resources more equitably with health deserve a trial.

– M. McConnell, CLA member, Giralang ACT (awarded an OAM in the 2017 Aust Day honours)

Triggs: Aboriginal death/jailing rate 'intolerable'

The Social Justice and Native Title Report 2016, tabled during the most recent sitting of parliament, includes an agenda for reform based on solutions proposed by Indigenous Australians.

Australian Human Rights Commission President, Gillian Triggs, said governments must genuinely engage with Aboriginal and Torres Strait Islander Peoples to address issues such as property rights, justice targets and escalating incarceration rates.

Professor Triggs, who spoke as acting Aboriginal and Torres Strait Islander Social Justice Commissioner, said significant numbers of Indigenous Australians were passing away from violence, illness or a combination of both while detained by the state.

"This rate of incarceration and death, 25 years after the Royal Commission into Aboriginal Deaths in Custody, is intolerable," Professor Triggs said. <http://tinyurl.com/jh5wp6v>

Creative police ring up manufactured crime

The first alleged bikie to be charged under Queensland's new SAO laws says he will fight the charges.

Phillip Bruce Main, 44, was arrested by detectives from Taskforce Maxima while driving in suburban Hamilton on Brisbane's north side.

Police alleged Main was wearing two large gold rings — a diamond 1% ring (example in photo) and another with a Mongols outlaw motorcycle gang (OMCG) motif. He was charged with wearing OMCG colours or paraphernalia, which are prohibited from being worn in public under new "serious and organised crime" (SAO) laws introduced late last year.

When Main appeared in Brisbane's Magistrates Court the matter was adjourned until February. Outside court, his lawyer Michael Gatenby said his client intended to fight the charges "Very keen to resolve the matter by way of a trial, that is if the prosecution decides to continue with a charge," Mr Gatenby said. "It's an offence to wear a ring in a public place. He's not wearing it in a public place until such time as (he was) directed to get out of the vehicle (by police)." <http://tinyurl.com/zvor7fd>



AMA wants needle safety programs in jail

The Australian Medical Association last month urged all Australian governments to instigate needle exchange programs in prisons, singling out the ACT as "former leader" in the field.

The ACT government had planned to trial a regulated needle and syringe program and a safe injecting room at its Alexander Maconochie Centre jail in July 2016 after lengthy consultations on the ideal model.

But prison officers overwhelmingly rejected the proposal in an all-staff vote in September, leading to the government abandoning the idea weeks out from the ACT's October 2016 election.

The proposal was dropped from the new Labor-Greens power-sharing agreement after the election.

AMA president Dr Michael Gannon told *ABC Radio* that, while the ACT's approach to the issue was "novel", and prison officers' views were important, the evidence showed such programs were effective at reducing rates of blood-borne viruses among both inmates and officers.

Dr Gannon called for such programs as a "front-line approach to preventing blood-borne viruses".

Doing so should not be seen as having a permissive attitude towards drugs, but instead realised the realities of drug use in prisons. "We should do what we can to reduce harm". <http://tinyurl.com/zygu9fe>

Lawyer calls for balanced cannabis-driving laws

Legalising medicinal cannabis will come head-to-head with the territory's strict drug-driving laws, unless all interconnected legislation is changed, a leading ACT lawyer said last month.

Solicitor Adrian McKenna (right), of Ben Aulich and Associates, said it would be "nonsense to reform one without the other". ACT penalties for drivers caught with cannabis in their system, even if it was a "minuscule" amount, were the country's harshest, he said.



McKenna said drivers tested even weeks after consuming cannabis could face a criminal conviction and six months to three years licence disqualification for a first offence.

The ACT government is planning to establish a medical cannabis scheme in the ACT, allowing residents safe and legal access to cannabis products as soon as practicable.

The decision followed a reclassification of cannabis by the Therapeutic Goods Administration from prohibited to controlled substance, and the passing of laws by the federal government to allow legal cultivation of the drug.

But the ACT's existing drug-driving laws do not exempt people who use cannabis for medical purposes, and also do not account for level of impairment.

Roadside drug testing can also pick up marijuana in the system days after use, while a positive result means a driver could lose their licence and face fines.

"This is likely no matter the concentration, or if their job depends on their licence," Mr McKenna said. "Any changes to medicinal cannabis laws really should make some allowance for users to drive if the concentration of cannabis is sufficiently small and has no discernible impact on their driving." <http://tinyurl.com/gtqeygh>

State planning to become land 'privacy vandals'

A private operator of NSW's land titles registry would have access to all property and ownership data, plus sensitive information about bankruptcies, marriages, divorces and deaths, experts are warning.

The NSW government is privatising the 150-year-old registry despite condemnation from property and legal peak bodies, including the NSW Real Estate Institute and the Law Council of Australia.

The Concerned Titles Group, which consists of legal, titles and surveying experts, says if the NSW government leases the registry, the private operator could easily get its hands on the supporting documents that allow a person or company to sell, lease, buy or register property.

"An application for transfer subsequent to the death of a joint tenant will include the death certificate, (with) cause of death, parents' names and place of abode, marriages and offspring," the CTG said, as one of a number of examples illustrating how the deal would shatter privacy. <http://tinyurl.com/j4q7tf3>

Religious dress becomes an election issues

WA Premier Colin Barnett last month made the extraordinary claim he would not "encourage" Muslims to wear the burqa in public because "it's not part of our culture".

In the same week, One Nation leader Pauline Hanson hit the headlines after saying she would ban the burqa in all official buildings if her party wins the Queensland election. <http://tinyurl.com/z87rd77>

With One Nation strongly contesting the WA election in March 2017, and the Qld election likely in late 2017 or early 2018, it looks like religion-based comments about Muslims will join "law and order" as the bandwagons to be jumped upon over the coming 18 months, CLA says.

Nudge-nudge, crash-crash for car chases

An unseemly "auction" of who can be toughest on people fleeing police in cars is one lowlight of the upcoming WA election.

The governing Liberals have promised automatic jailing for at least six months, with no chance of earlier parole, as well as increases in mandatory minimum sentences. The Opposition is in lockstep with the WA Police Union, which wants the right to ram offenders off the road.

Since 2011, 25 people have died in police pursuits and 19 were the offenders or their passengers, say police. In 2016 police engaged in 1164 pursuits, 674 of which were aborted because it was deemed too dangerous.

If five people a year are dying in police chases, the main aim should be to reduce the number of chases, CLA says. <http://tinyurl.com/gq75o54> The first duty of police is to protect public safety.

Stunning, arrest lead to uncontrollable shakes

An Indigenous man suffered whole-body tremors more than a week after being electronically stunned and allegedly stomped on by police in WA, according to a video.

Clifton Wayne Penny, 28, was stunned while being arrested by police on Armadale Road near the Great Eastern Motor Lodge in Rivervale, Perth, on 2 January. He was arrested and taken to Royal Perth hospital, where he was assessed in emergency and released, on 3 January, back into police custody.

He was later taken to court, refused bail, and checked into Hakea remand prison, where he was allegedly given a wheelchair because he was unable to walk.

Video taken by prisoner advocate Mervyn Eades at Perth's Fiona Stanley hospital nine days later, on 11 January, showed Penny's arms and legs shaking and his eyes unfocused. Family who saw Penny on the day of his arrest said he appeared healthy before being taken into hospital. <http://tinyurl.com/zjbj4tj>

WA imprisons 1 in 13 Indigenous residents

Writing in *The Lancet* last month, Sophie Cousins reported that Australia had one of the world's highest incarceration rates... "one of Australia's most shocking statistics: one in 13 Aboriginal and Torres Strait Islander males in Western Australia are imprisoned."

According to statistics from the Institute of Social Justice and Human Rights, people are ten times more likely to die by suicide in the first year post release than while in prison. Indigenous prisoners, who often enter the system homeless and unemployed, are not only at high-risk of suicide but also of reoffending, usually with crimes associated with stealing.

In 2015, more than 150 Indigenous people died by suicide, the highest figure ever recorded nationally and double the rate of non-Indigenous people, according to the Australian Bureau of Statistics. – *The Lancet* Vol 389, No 10066, 21 Jan 2017, p242.

CLA's push for Charter of Rights goes public

Under the heading, *'Human rights poll push: Liberals slap down proposal from Civil Liberties Tasmania'*, *The Mercury's* Blair Richards reported publicly for the first time on CLA's initiative to again promote adoption of a Charter of Rights in Tasmania.

"Ten years after the Tasmanian Law Reform Institute recommended the state should establish such an Act, a petition has been launched to put the issue back on the agenda. The Greens and Labor support a human rights framework, but the (Liberal) government has rejected the idea, Richards wrote.

"The government has no plans to introduce a human rights Act. We have a long term plan for Tasmania which prioritises jobs, health, education and supporting the vulnerable," a spokeswoman said.

"Lead petitioner Richard Griggs, of Civil Liberties Tasmania, said he supported the government's priorities, arguing a human rights Act would align with them.

"A human rights Act would guarantee all Tasmanians had access to the basic building blocks of life, such as the right to health care, the right to education and the right to housing," Mr Griggs said. "We discuss these issues a lot in our state and it's often assumed that there are enforceable legal rights in these areas, but there are not.

"Current rights protection in Tasmania is partial, fragmented and inaccessible and a human rights Act would bring much needed clarity to this critical area."

Victoria and the ACT have human rights Acts and Queensland has plans for one.

Tasmanian Law Reform Institute director Terese Henning said it was time for Tasmania to act on the recommendations of the 2007 report. "We're very willing to prioritise things in economic terms but we don't tend to judge things in terms of their impact on human rights and that is inimical to civil society," she said.

<http://tinyurl.com/jk6hxyo>

CLA members are encouraged to sign the petition, particularly if living in Tasmania...and to send this link to any Tasmanian friends, whether they are on the little island or on the mainland: please share the petition with anyone you think will be interested. The link for sharing is - www.tashumanrightsact.org

Goodwin says no to 'simplistic, awful' law

Tasmania's Attorney-General, Dr Vanessa Goodwin, has ruled out a "me-too" approach to the awful law – "no body, no parole" – gaining status around Australia.

"In Tasmania, the Parole Board takes into account a number of factors when considering an application for parole, including the protection of the public, the rehabilitation of the prisoner, the circumstances and gravity of the offence," she said. She said Tasmania was not considering changing the relevant part of parole law.

Elsewhere though, notably in Victoria, SA, and the NT, a person convicted of murder cannot get parole if they do not disclose the location of the victim's missing body. NSW and Queensland are thinking about adopting a similar, simplistic law which would further penalise people who are wrongfully jailed.

The problem with such a law is obvious: if an innocent person is convicted of a crime where no body is found, the innocent one can never get out of jail under any circumstances, even after serving 23 years.

ODD SPOT: Churches religious about tax avoidance

The Sex Party's MLC in the Victorian Parliament, Fiona Patten, has started a petition to help convince governments, state and federal, that religious bodies should pay tax.

Religious organisations in Australia make about \$30 billion annually from their activities, she says. They don't pay any tax, though, because 'advancing religion' is deemed to be a "charitable purpose" under Australian law, and charities are exempt from tax.

"Rather than a blanket exception for advancing religion, State and Federal tax exemptions should only be available to organisations that actually do charitable work," Patten says. "Any part of a religious organisation's earnings that are not

used to help people in need should be taxed, just like every other organisation has to pay tax.”

You can sign the petition here: <http://tinyurl.com/hdqhnwn>

Disclaimer: Patten is a member of CLA.

Australian briefs

The Lancet notes possible new dignity dying law: “The Victorian Government in Australia has announced that it has accepted a cross-party committee's recommendation to legalise so-called assisted dying for terminally ill people in their last months of life, provided that they are aged at least 18 years and are mentally competent,” the article originally published on 15 Dec 2016 by The Lancet medical journal reported. “A conscience vote will be held (in 2017) on the issue. Many health advocates believe that the proposed assisted dying legislation will work in parallel with palliative care and help to clarify the law surrounding the administration of pain relief medication.” – Lancet Oncology Vol 18, No.1, e8, Jan 2017.

New app will put you to rights: The Australian Human Rights Commission and publisher LexisNexis have developed RightsApp, the world's first mobile application to quickly and easily search international human rights conventions and declarations by topic and right. RightsApp links to some of the world's most important international human rights treaties and agreements, as well as signatory information and relevant UN committees' general comments. It is available free from the App Store. <http://tinyurl.com/j9rglet>

More police: Chief Minister Michael Gunner has outlined a four-year recruitment plan to increase NT Police numbers by 120 over the next three years. Mr Gunner said he would guarantee funding for the recruitment campaign to maximise front-line Police numbers in the NT. – media release, CM NT 4 Jan 2107

People want a federal watchdog: 82.3% of Australians want a federal, independent, anti-corruption watchdog, The Australia Institute says. It is running an open letter campaign, seeking signatories, which asks Prime Minister Malcolm Turnbull to create such a commission. – email from TAI 20 Jan 2017.

Bill Grant dies: Former Secretary-General of the Law Council of Australia from 2007 to 2011, William (Bill) Grant OAM, died last month. Before that role, he had been a long-standing CEO of Legal Aid NSW. CLA joins in acknowledging the extensive contribution Bill Grant made to the cause of justice in Australia.

CLA report – key activities for January 2016

Australia Day letter: each year, CLA writes a forward-looking letter on an important, fundamental topic. This year, we asked Prime Minister Malcolm Turnbull and Attorney-General George Brandis to initiate a formal, long duration inquiry into all aspects of the justice-legal system in Australia, in the same way that inquiries are held semi-regularly into other ‘industry’ sectors like transport, or education or ports, which are also fundamental enablers of civil Australian society. For a copy, go to: <http://www.cla.asn.au/News/>

Memory: False or True? Sydney Member and former Director Diana Simmons attended the Sydney Uni lecture by world expert on memory, Prof Elizabeth Loftu. See website for her report: *Loftus: ‘false’ memories become ‘true’*: <http://www.cla.asn.au/News/>

Formal representation:

Organising for DFAT-AG's departments' consultation early February with Australia NGOs (CLA has been attending these consultations for more than a decade, putting our points of view to the public servants who prepare policy and legislation in relation to international treaties, UN bodies, human rights, and federal domestic laws, and occasionally interacting with human rights delegations, such as from China).

Administrative:

- Notices for eAGM voting sent to CLA members from Dec 2016 via posted and emailed CLArion.
- Annual report and financial statements in production: several Directors involved
- History of civil liberties in Australia, including Civil Liberties Australia, in production.
- Website re-design being initiated
- Looking for selected sponsorship activities with young influencers: VP Tim Vines is managing.
- Director Jennifer Ashton re CLA membership database
- Director Mark Jarratt working on marketing issues
- Directors Richard Griggs and Rajan Venkataraman holding meetings in Hobart to organised widespread liberties/rights/society entities support for CLA's initiative for a Charter of Rights

Meetings:

Jan 2017:

With member of refugee advisory bodies and other refugee experts; and

MLA Tara Cheyne re path of proposed dying choice legislation in ACT Legislative Assembly.



Photo: Adviser Mattie Manning, CLA CEO Bill Rowlings, MLA Tara Cheyne during the Jan 2017 meeting.

Feb 2017:

- Arranged for Feb parliamentary sittings with new federal MPs missed on the last round of meetings.
- ACT AG who has carriage of Right To Appeal law change submission to ACT Cabinet.
- With senior governance/law academics at U. Canberra and Australian National University.

May 2017:

Planning under way for an official visit and meetings in WA in early May.

Networking:

- Member Father John Parsons re developments in Islam, Israel, the Middle East and Europe
- Skype with CLA member Elizabeth Brancaccio re her work for UNESCO in Trieste, Italy

- CLA members Des and Janette Griffin, Jane and David Timbrell re unionism, police corruption, genes, Better Justice program
- Interchange of letters with prisoners CLA has supported Paul Wilson, Sue Neill-Fraser: NB SNF's (hopefully) final Directions Hearings scheduled for 1 Feb, with new appeal case (hopefully) to follow later in 2017.

Media:

Extensive coverage of CLA's initiative in Tasmania re a Charter of Rights as a cross-party issue for the 2018 state election.

Releases sent to Fairfax, Crikey, Guardian, etc re CLA's [Australia Day letter](#).

Submissions this month: managed by Director Rajan Venkataraman:

Same-sex marriage: Lodged, to the Senate Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill

Human trafficking: Parliamentary Joint Committee on Law Enforcement has reinitiated its inquiry into human trafficking, opening up to new submissions. CLA is considering making an addendum to our submission already lodged in late-2016.

Expunging convictions: Confidential (at state AG's request) comment on Historical Homosexual Convictions Expungement Bill in Queensland.

Annual General Meeting dates: CLA's AGM will take place electronically (and by mail for members without individual email addresses) 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. Full details are in the January CLArion, available here if you have misplaced your copy: <http://www.cla.asn.au/News/jan-2017-clarion-age-genes-drugs-terrorism-likely-dominate-year/>

International

NYT calls for slashing jail numbers to employ more police and teachers

The editorial board of the New York Times has come out harshly against "draconian sentencing policies that drove up the (US) prison population from 200,000 at the start of the 1970s to a peak of about 1.6 million in 2009."

"...total inmate population has declined by 2.9% since then, (and) several states that approached reform more aggressively have already reduced their prison populations by far more. California, New Jersey, New York and Rhode Island have done so by more than 20%.

"Even bolder reforms to the sentencing system will be necessary to bring the prison census down to where it should be and reverse the corrosive effects of mass incarceration.

"The mandatory sentencing craze began in the 1970s with New York's Rockefeller drug laws, which were based on the mistaken premise that locking up people for as long as possible would dissuade them from committing further crimes.

"A new report by the Brennan Center for Justice at New York University School of Law says, nearly 40% of the country's inmate population could be released from prison without jeopardizing public safety.

"This would save states \$200 billion (\$Aust 278bn) over the first 10 years — enough to hire 270,000 new police officers, 360,000 probation officers or 327,000 teachers." <http://tinyurl.com/zmm8h6a>

Brits' Brexit means rights are in limbo

The British government has accepted that it will have to put former Prime Minister David Cameron's plan to publish a British bill of rights on hold until after Brexit (Britain leaving the EU) is finalised.

Senior Conservatives are pressing current PM Theresa May to fight the 2020 general election on a pledge to pull Britain out of the EU convention on human rights.

Cameron, May's predecessor as PM, had planned to repeal the Human Rights Act, passed by the last Labour government to enshrine the ECHR in domestic law, and replace it with a distinct, and more limited, British bill of rights.

The European Court of Human Rights, which was set up to safeguard basic human rights across the continent in the wake of world war two, is a separate matter from European Union membership.

May's suggestion that Britain should leave, which was not government policy, sparked a furious row.

The ECHR was set up by 10 European states in 1949, with Britain as a founder member, and inspired by a proposal by the Conservative prime minister Winston Churchill, for "a charter of human rights, guarded by freedom and sustained by law". <http://tinyurl.com/zqawhww>

President pardons female killer

A French woman convicted of murdering her allegedly violent husband has been freed from prison by President Francois Hollande.

He gave Jacqueline Sauvage, 69, a complete pardon after more than three years in jail. French courts twice rejected applications for her release.

The case drew attention to the issue of domestic abuse. Sauvage was sentenced to 10 years for fatally shooting her husband, Norbert Marot, three times in the back with a hunting rifle in 2012.

During the trials in 2014 and 2015, Sauvage said her late husband had beaten her for 47 years. The couple's adult daughters also claimed Marot had abused them. AAP and <http://tinyurl.com/z9pq9sk>



Above: French women had mounted increasing pressure on President Hollande, including bare-chested protests outside the prison where Sauvage was being held. – FEMEN photo

Swiss enforce non-gendered swimming lessons

Switzerland has won a case at the European court of human rights over its insistence that Muslim parents send their children to mixed-sex school swimming lessons.

The Strasbourg-based court ruled that Swiss authorities had not violated the right to freedom of religion by insisting that two Muslim parents send their daughters to mixed-sex swimming lessons.

In a unanimous ruling, seven ECHR judges decided that the children's integration into "local customs and mores" took precedence over the parents' desire to exempt their children from mixed-sex swimming lessons. Two Swiss citizens of Turkish origin brought the case to the ECHR in 2012 after a long-running dispute with national authorities. <http://tinyurl.com/zlkymxl>

Mass killer claims jail isolation is inhumane

A Norwegian court is hearing a government appeal against a ruling that the isolation of the mass murderer Anders Behring Breivik is inhumane and violates his human rights.

The 37-year-old rightwing terrorist, who killed 77 people in a bomb and shooting rampage in 2011, sued the government last year, saying his solitary confinement, frequent strip searches and the fact he was often handcuffed during the early part of his incarceration violated his human rights.

The Oslo district court ruled in April that Breivik's treatment in the maximum security Skien prison did breach the European convention on human rights. <http://tinyurl.com/jjac79r>



ODD SPOT: Little Ms Echo may spill the beans

Detectives investigating a murder in the US state of Arkansas are seeking access to audio that may have been recorded on Amazon's Echo electronic personal assistant, a voice-activated device which may have "overheard" the killing. So far, the online retail giant has resisted demands by the police and prosecutors for the information. Without addressing the specifics of the case, Amazon said in a statement that, as a matter of course, it "objects to overbroad or otherwise inappropriate demands." Keep listening for the outcome! <http://tinyurl.com/glsu4u6>

Police and their 'friends' kill 30 people a day

Filipino police allegedly confirmed last month that the number of citizens killed in the crackdown that began when President Rodrigo Duterte took office on 30 June 2016 has now surpassed 7000 – an average of more than 30 deaths a day.

This includes 2503 accused drug users or dealers supposedly killed by police while they were resisting arrest and a further 3603 killed by so-called "unidentified gunmen".

Particularly egregious is the killing of South Korean businessman Jee Ick-joo in Angeles City, 80 kilometres north of Manila. Two policemen have been arrested over the murder of Mr Jee, one of only a few cases where police have been called to account for deaths under the guise of the crackdown.

President Duterte's office has said there will be no cover-up or whitewash of Mr Jee's case although the President's past comments suggest police impunity in drugs cases, including his telling them to shoot suspects on sight if they refuse to give themselves up. <http://tinyurl.com/zkukhzs>

Open slather now on US security data

Just before handing over power, the Obama administration gave National Security Agency more freedom to share its vast trove of intercepted communications with the 15 other US government agencies that make up the Intelligence Community. Previously, agencies like the Drug Enforcement Agency and the FBI had to request information on a target from the NSA. The NSA would retrieve communications relating to that target and "scrub" the documents of information considered irrelevant to the search, including the names of innocent Americans – a process called "minimisation."

Under the new powers, the middle step has been removed. Agencies only need approval from the NSA to access its data, and agents from the agencies are expected to carry out minimisation on their own. <http://tinyurl.com/jyuj92n>

Dignified dying spreads in US

Close to 20% of Americans live in jurisdictions where adults can legally end their lives if they are terminally ill and meet eligibility requirements.

The laws, all based on the Death With Dignity Act which the state of Oregon adopted in 1997, allow doctors to write prescriptions for lethal drugs when patients qualify.

The somewhat complicated procedure involves two oral requests and a written one, extensive discussions, and approval by two physicians. Patients must have the mental capacity to make medical decisions. <http://tinyurl.com/gqq8j5j>

British govt to be sued over rendition, torture

A top UK court has ruled that the British government cannot avoid being sued for the 2004 kidnapping of a Libyan dissident and his wife.

Devastating claims that the rendition and torture of Abdel Hakim Belhaj and Fatima Boucher breached rights enshrined in the Magna Carta should be put before an English court, a unanimous judgment by seven justices concludes.

Dismissing the government's appeal in the Belhaj case to the Supreme Court, Lord Mance said the use of torture "has long been regarded as abhorrent by English law", as individuals must be protected from deliberate physical mistreatment while in custody. "The critical point in my view is the nature and seriousness of the misconduct alleged ... at however high a level it may have been authorised."

Quoting from the Magna Carta, Mance said: "No free man shall be taken, or imprisoned, or dispossessed, of his ... liberties ... or be outlawed, or exiled, or in any way destroyed ... excepting by the legal judgment of his peers, or by the laws of the land."

<http://tinyurl.com/jfaw254>

ODD SPOT: Man stays in jail four decades... even though acquitted

Jerry Hartfield is in prison in the USA, having spent 40 years behind bars for a murder of which he was officially acquitted 32 years ago... a fact the prison and legal system ignored. Texas still wants to re-try the man, who has an IQ of under 60, even though witnesses and evidence exhibits are gone, the murder weapon is missing, as are blood and semen samples. Hartfield's bizarre case is still on foot through the miasmic Texan legal system. <http://tinyurl.com/hl6bmdt>

Police stun their own race relations advisor

The UK's Independent Police Complaints Commission police watchdog has launched an investigation after officers

electronically stunned a race relations adviser who has worked to improve links between the force and the black community in Bristol.

Judah Adunbi, 63, was stunned by police outside his home last month when officers apparently mistook him for a wanted man. Video footage recorded by a neighbour shows police scuffling with Adunbi as he tries to get through the gate of his home. He falls to the ground after a stun gun is discharged. Adunbi said later he thought he was going to die.

Adunbi has sat on Bristol's independent advisory group, which is designed to forge links between the police and the community, and has also worked with the Crown Prosecution Service's local community involvement panel. <http://tinyurl.com/j9b5x92>

Trump to go a courtin'

New US President Don Trump is expected to face a wave of court cases over his behaviour and finances.

One suit claims he is violating the US constitution by allowing his businesses to accept payments from foreign governments. The Citizens for Responsibility and Ethics in Washington want a court order forbidding President Trump from accepting such payments, which it will allege violate the constitution's emoluments clause.

Trump did business with China, India, Indonesia and the Philippines, lawyers noted in a statement. "When Trump the president sits down to negotiate trade deals with these countries, the American people will have no way of knowing whether he will also be thinking about the profits of Trump the businessman," it said.

A Trump representative referred questions to a law firm representing the president on ethical matters. <http://tinyurl.com/j98ap3d>

Sides gear up for protest 'wars'

Over January, Republican legislators across the USA have quietly introduced proposals to criminalise and discourage peaceful protest, even as Democrats prepare for years of anti-Trump marches and protests.

The proposals, which strengthen or supplement existing laws addressing the blocking or obstructing of traffic, come in response to a string of high-profile highway closures and other actions led by Black Lives Matter activists and opponents of the Dakota Access Pipeline.

In North Dakota, Republicans introduced a bill that would allow motorists to run over and kill any protester obstructing a highway as long as a driver does so accidentally. In Minnesota, a bill seeks to dramatically stiffen fines for freeway protests and would allow prosecutors to seek a full year of jail time for protesters blocking a highway. In Washington state, a bill proposes reclassifying as a felony any civil disobedience protests that are deemed "economic terrorism." Republicans in Michigan introduced – and then shelved – an anti-picketing law that would increase penalties against protestors and would make it easier for businesses to sue individual protesters for their actions. <http://tinyurl.com/zykoo08>

International briefs

Crime and prisoners down: US Bureau of Justice figures show there were 1.5m inmates in state and federal prisons in calendar 2015. The overall imprisonment rate – 458 prisoners per 100,000 US residents – was the lowest since 1997. Half the federal inmates were in jail for drug offences, while 7% had been convicted of violent crimes. By contrast, about 53% of state prisoners were in prison for violent offences, 16% for drug

crimes and 19% for property crimes. The national imprisonment rate dropped 8% from 2010 to 2015, while violent and property crime dropped 14.6% over the same period. <http://tinyurl.com/jdptfdl>

Drug deaths up: During 2015, drug overdoses accounted for 52,404 deaths in the USA, including 33,091 (63.1%) that involved an opioid. More people died from heroin-related causes than from gun homicides in 2015. <http://tinyurl.com/luovnr> As recently as 2007, gun homicides outnumbered heroin deaths by more than 5 to 1. For comparison, motor vehicle deaths in the USA for 2015 were 35,092. <http://tinyurl.com/h6l6c36>

Bahrain reverts to executions: Bahrain last month used a firing squad to execute three Shiite men for killing three police officers in a bombing in 2014. Abbas al-Samea, Sami Mushaima and Ali al-Singace were convicted for being part of a militant group accused of the bombing. A Bahraini court in 2015 found 10 men guilty in the case. Three were sentenced to death and seven given life in prison, and eight of the 10 had their citizenship revoked. The recent executions were the first in Bahrain since 2010. <http://tinyurl.com/jx3qe6j>

Kuwait hangs a prince: Kuwait hanged seven prisoners, including a member of the royal family, last month in a mass execution. Prisoners from Bangladesh, Ethiopia and domestic servant Jakatia Pawa (photo) from the Philippines, as well as two from Egypt, were hanged according to the state-run KUNA News Agency. The prince who was executed was Faisal Abdullah al-Jaber al-Sabah, a captain in the Kuwaiti Army. He was convicted of premeditated murder and illegal possession of a firearm, the government said. The other Kuwaiti citizen executed was Nusra al-Enezi, a woman convicted of murder after setting fire to a tent at her husband's wedding, apparently in revenge for his taking a second wife. The fire killed at least 50 people, including women and children.



Gbay down to 41 prisoners: Oman, the UAE and Saudi Arabia last month took in 14 inmates from the US military prison at Guantánamo Bay, leaving the number of remaining Guantánamo detainees at 41, based on figures issued by the Pentagon. When Barack Obama became president of the USA, there were 242 detainees. <http://tinyurl.com/jjluapr> and <http://tinyurl.com/gngtrw8>

Scientists gagged: Since taking office, the Trump administration has issued at least two gag orders on scientists and researchers — instructing employees at the Environmental Protection Agency not to discuss a recent freeze on grant funding, and forbidding the research unit of the the U.S. Department of Agriculture from releasing "public-facing documents." <http://tinyurl.com/h5orynm>

Trump limits abortion advice worldwide: President Trump has reinstated the rule which effectively blocks US international family-planning help to organisations that use funds to discuss or pay for abortions in other countries. The decision means US non-profits abroad will have to end patient counseling in which abortion is mentioned or forgo US funding support. The on-off

rule has see-sawed depending on whether Republicans or Democrats occupy the White House.

Re-learning about 'facts' and porkies: George Orwell's classic book '1984', about a dystopian future where critical thought is suppressed under a totalitarian regime, saw a surge in sales after the inauguration of President Trump, which generated a rise to the top of the Amazon best-seller list. Craig Burke, the publicity director at Penguin USA, said that the publisher had ordered 75,000 new copies of the book in late January and that it was considering another reprint. Interest in the book soared when the phrase 'alternative facts' was fed into news speak by a Trump staffer. <http://tinyurl.com/hyv69f8>

DATES

15 Feb, Adelaide: 2017 Civil Justice Research and Teaching Symposium, 8.30-5.30, Flinders U Adelaide campus. Details: Karen Nunes-Vaz (karen.nunesvaz@flinders.edu.au, 08 8201 5028)

16 Feb, 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>

17 Feb, Perth: Law Summer School – Australia's Place in the World, University Club, Crawley. Speakers include Oxford UK AssPro Law, Sarah Green. Details: membership@lawsocietywa.asn.au or 08 9324 8638.

17-18 Feb, Melbourne: Inaugural A. Lawyers for Human Rights conference. <http://www.aomevents.com/>

24 Feb, Hobart: Criminal Law conference, Wrest Point, 10am-5pm, Law Society of Tas. Details: info@lst.org.au or 03 6234 4133.

4-5 March, Canberra: *Brave New Worlds: Challenges for Evidence in the 21st C.* National Judicial College of Australia and ANU College of Law annual conference, John Curtin School of Medical Research, ANU. Details: <http://tinyurl.com/hfxqdwX>

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.lawsocietysa.asn.au/na2jpb2017>

27-28 March, Melbourne: Excellence and Innovation in Courts conference. Joint: Vic Supreme Court and A'sian Inst. Judicial Admin. Info: <http://tinyurl.com/jrkldu5>

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

16 May, Canberra: Prof Gillian Triggs will deliver the ACT Law Society's annual Sir Richard Blackburn lecture, 12.30-2pm. Details: mail@actlawsociety.asn.au or 02 6274 0300.

15 June, Perth: Law Society of WA celebrates 90 years.

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)

ENDS ENDS ENDS

DID YOU KNOW...?

Wrongful convictions - how many are there?

Think about the number of drug cheats in sport

Wrongful convictions occur at about same rate as doping in sport, or perhaps about 50% more than that.

"...behind the publicity, the number of athletes detected for doping has remained stable at around 1–2%," *The Lancet* reported 28 May 2016, Vol 387, No. 10034

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

Like doping in sport, the failings in legal and justice systems are also kept hushed up for fear people will lose faith in the system and the establishment powers of the state, the executive, the courts, the judiciary and the legal system.

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

CLA estimates the wrongful conviction rate in Australia is about 2.9% (about 3 in every 100 people sent to jail are innocent: in murder and sexual offences, this can mean decades in jail in error). <http://tinyurl.com/zf7rsqa>

ELECTION timetable in Australia

2018:

17 March, SOUTH AUSTRALIA: state election

24 Nov, VICTORIA: state election

26 May, on or before: – TASMANIA state election

In or before 2018: QUEENSLAND state election (after that election, fixed four-year terms)

AUSTRALIA: except for a double dissolution, an election must be held between August 2018 and May 2019 for HALF of the state senators; an election must be held before 2 November 2019 for the House of Reps and the territory senators.

2019:

23 March: NSW election

2020:

probably 22 August: NT election

17 Oct, ACT election