

## Ratifying OPCAT would open local prisons to external inspection

Attorney-General George Brandis has promised publicly to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by December 2017.



He made the promise at the annual consultation between NGOs, such as Civil Liberties Australia, and the Departments of Attorney-General and Foreign Affairs and Trade, in Canberra in February.

*Left: the consultation meeting at which Senator Brandis made the announcement. Former CLA Director Amanda Alford is in the centre foreground, attending as an executive of a Sydney NGO. CLA President Dr Kristine Klugman and Director Jennifer Ashton were present at the consultation.*

Ratifying OPCAT opens Australian jails and detention centres to independent, international inspection.

The AG claims ratification of OPCAT as “another significant human rights achievement for the Turnbull government”. In fact, it is the correction of a long-term failure of many Liberal and Labor governments: Australia first signed the OPCAT agreement in 2009, but federal government departments and the states and territories have only been dragged kicking and screaming to ultimate agreement after eight years of campaigning by CLA and many other groups.

Under OPCAT, places like Australia’s prisons and juvenile and immigration detention facilities will be independently monitored by a network of Australian “inspectorates”, which will operate under government control. Australia must also facilitate periodic visits by the UN sub-committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which will mean genuine, independent, external inspection.

Senator Brandis and the government are moving, at last, to ratify OPCAT simply to claim adherence to international rights, liberty and anti-torture standards, so as to win a seat on the UN Human Rights Council at the election in Geneva in September 2017.

Anyone who has observed the government’s treatment of refugees seeking asylum in Australia at detention centres in Australia and on Manus Island and Nauru can have no doubt that the government is a serial abuser of people’s rights and liberties...when it suits the Immigration Minister and the Cabinet to appear to be “tough on refugees”. <http://tinyurl.com/z4evy8b>

### Two provisos:

The AG’s promise to ratify OPCAT could be overturned if Australia doesn’t win a seat on the UN’s Human Rights Council in September. Senator Brandis will have three months to do a backflip after finding out the election result.

Also, the monitoring – by an Australian “inspectorate” group and by an international UN body – is likely to NOT happen on Manus and Nauru: Australia maintains a fiction that these refugee detention centres are NOT funded and effectively controlled and managed by Australia.

## Humans with edited genes get go-ahead

Editing the genomes of human embryos should be allowable to treat or prevent serious diseases and disabilities – but only amid stringent oversight and safety protocols and only if no reasonable alternatives exist – according to a report released last month by the National Academy of Sciences and the National Academy of Medicine in the USA.

The expert panel is made up of 22 leading experts on genetics, bioethics, medicine, and law.

The endorsement, however cautious, is a reversal from some previous recommendations from experts and ethicists, who have considered making heritable alterations to humans unequivocally off-limits.

Among other concerns about the idea is the fear that unscrupulous scientists could try to create “designer” or enhanced babies, with heightened intelligence, beauty, strength, etc.

The panel is still completely opposed to such efforts. But amid new, powerful genome-editing tools becoming available, the experts were forced to reconsider genome editing’s potential for good.

“For now, the discussion is all theoretical,” *Ars Technica’s* health reporter, Beth Mole, commented. “Though technology is advancing swiftly, real human applications and clinical trials are still years away. In the meantime, the panel recommends that policy makers foster public discussion and engagement on the issues to make sure that any new rules account for social, ethical, and legal considerations,” she wrote.

<http://tinyurl.com/jezhdlh>

Developments such as this panel decision in the USA have ramifications for Australia, CLA observes.

## **CLA Board decides to put focus on genes, health issues**

The CLA Board decided that health in general but particularly in relation to genes would become a “core concern” for future CLA activity.

The Board will monitor and develop policy, including possibly draft legislation, on privacy, insurance, patent freedom and collection-storage issues around human genes.

In a paper for the February Board meeting, Vice-President Tim Vines outlined that the rapid pace of developments in gene technology was outstripping the safeguards needed for people to not suffer discrimination or abuse by misuse of their genes.

CLA will become an ‘honest broker’, on behalf of Australians generally, in a field that runs the risk of domination at various times by big pharmaceutical and insurance companies, not to mention doctors’ organisations and scientists, patent concerns, international legal corporations...and police and security services.

## **Government has no idea about your data**

The government has no idea where Australians’ metadata, compulsorily retained under its mass surveillance laws by communications providers, is being stored.

Officials of the Attorney-General’s Department admitted so last month, Bernard Keane reported in *Crikey*, during hearings of the Joint Committee on Intelligence and Security, which is examining the [Telecommunications and Other Legislation Amendment Bill 2016](#).

That bill establishes new notification requirements relating to Australian companies’ data security and requires them to “do their best to manage the risk of unauthorised access and interference to networks and facilities” as well as giving AGD and the AG additional powers of information-gathering and direction.

Committee member Anthony Byrne quizzed AGD officials about how much metadata retained under the government’s data retention laws is stored offshore by service providers. Officials said they didn’t know, despite an industry consultation process that began in 2012 – *Crikey*, 16 Feb 2016.

## **High Court to rule whether 1971 conviction was wrong**

The High Court of Australia has granted special leave to appeal in one of the most iconic cases in Australia’s legal history, that of Frits Van Beelen being accused of murder in 1971.

The SA appeal court has accepted that the ‘expert evidence’ put forward at the trial relating to time of death (based upon stomach contents) was not scientifically sound.

The Chief Justice of South Australia has ruled that this amounts to a substantial miscarriage of justice, but the other two judges disagreed. The difference of opinion will now be settled by the High Court with the opportunity to provide clear guidance on the interpretation of the new right to appeal (R2A), which was enacted first in SA in 2013 and ‘mirrored’ in Tasmania in 2015\*.

Van Beelen, who is now in his 70s, served 17 years in prison for murdering 15-year-old Ms Leach at Taperoo Beach in Adelaide’s north-west in July 1971.

His appeal is one of several to follow a landmark ruling in the case of Henry Keogh, in which the SA Court of Criminal Appeal found that former SA chief forensic pathologist Dr Colin Manock presented flawed

evidence at Keogh's original trial. Keogh was released after serving 19 years in jail: he is suing the State of SA for wrongful imprisonment.

Mr Keogh was freed from prison in December 2014 after the SA appeal court quashed his murder conviction, the first such ruling under the new R2A legislation which allows for new appeals on the grounds of fresh and compelling evidence.

Van Beelen lodged an appeal under the same legislation in 2015, some 25 years after completing his jail term. <http://netk.net.au/VanBeelen/VanBeelen.asp> There are several similar cases "in the wings" in SA.

\* Sue Neill-Fraser's appeal over what CLA believes is her wrongful conviction by the State of Tasmania for murdering her husband on Australia Day 2009 is likely to be heard later in 2017. It is due for yet another directions hearing on 6 March 2017: there is something wrong with the legal system in Tasmania if the Supreme Court there takes a year to finalise the directions process. While judicial authorities dilly-dally, an innocent woman (CLA believes) continues to sit in jail, now rising seven years.

## Committee recommends major improvements to treaty negotiations

The TPP – Trans-Pacific Partnership – agreement is dead, Trumped...but an Australian Parliament report into that treaty has produced two excellent proposals which should immediately be implemented.

### Report – Reform to the treaty-making process recommendations:

5.10 The committee welcomes and supports the recommendations of the JSCOT majority report on the TPP which relate to broader treaty-making processes. These include that the Australian Government:

- consider changing its approach to free trade agreement negotiations to permit security cleared representatives from business and civil society to see the Australian Government positions being put as part of those negotiations (Recommendation 1); and
- consider implementing a process through which independent modelling and analysis of a proposed trade agreement is undertaken by the Productivity Commission, or equivalent organisation, and provided to the committee alongside the National Interest Assessment to improve assessment of the agreement (Recommendation 2).

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/TPP/Report/c05](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/TPP/Report/c05) – report by CLA VP Tim Vines

## FM Bishop blows whistle on her own government's poor negotiating

Foreign Affairs Minister Julie Bishop has admitted Australia's negotiating of "free" trade treaties was poor.



China's foreign affairs minister, Wang Yi (photo), asked Ms Bishop over dinner last month about the Trump White House's stated intention to renegotiate US trade agreements with 11 countries, including Australia.

"I can't believe it", she replied, according to one official present, and "I don't take it credibly", according to another. She reportedly said the Trump statement made no sense because the trade balance favoured the US and, since the Australia-US free trade agreement took effect in 2005, the balance had moved increasingly in America's favour.

An Australian trade expert, Professor Tim Harcourt of NSW University, said he supported Ms Bishop's disbelief of the US threat to renegotiate the Australia-US free trade agreement: "Why would you, honestly?" he said. The US trade surplus with Australia under the so-called AUSFTA had grown from \$14 billion a year to almost \$25 billion in the decade since it took effect, according to Mr Harcourt.

CLA recalls that, just as with the recent TPP, Australians were repeatedly told by their governments, Liberal and Labor, that AUSFTA would deliver massive benefit to Australia, when in fact it has been of much greater benefit to the USA. When it comes to trade agreements, governments lie. <http://tinyurl.com/hu53ctn>

## New data shows who is buying influence: do you know more?

ABC News has analysed official political donations data to reveal the industries and people using their riches to buy influence.

The analysis reveals property and construction companies are the country's biggest donors — despite a NSW ban on donations from property developers.

Finance and mining companies are the other major players in the political purse, along with unions. The ABC is making the dataset public and asking for people to help improve it. <http://tinyurl.com/j5u2bvl>

## **Former AG wants potential death penalty cases to be decided ‘politically’**

Former Attorney-General and Immigration Minister, Philip Ruddock, last month argued that the decision as to whether to share intelligence with countries in cases over alleged criminals which may lead to the imposition of the death penalty should be taken out of the hands of public servants, a system he described as “grossly unfair”.

He said if such a decision rested with the foreign minister, they could assess what it would mean “for their political future”. As the decision currently rests with the gung-ho AFP, Peripatetic Parliamentary Pensioner Phil’s proposal would be a choice between the devil-you-know...and a politician, CLA says.

Mr Ruddock believes the fact that a foreign minister must put him/herself up for re-election is a better guarantee of good decision-making. CLA believes it guarantees at least one thing: the decision will be taken more with an eye to the media than if it is a public servant’s decision.

The erstwhile Minister for scaring people away from Australia\* was speaking at Monash Uni Law Chambers on how Australia should help the world abolish the death penalty.

Ruddock also argued that Australia needed to put more pressure on the USA to abolish the death penalty, saying such a step would “change the whole conversation worldwide”. Given the seemingly fraught relationship between President Trump and PM Turnbull, one wonders when Australia will next be in a position to pressure the US on anything, Charlie Lewis observed.

\* Mr Ruddock, when Immigration Minister, used to take flip charts with photos of crocodiles, snakes and creepy-crawlies with signs saying things like “Snakes, Beware” in seven languages as he trotted around the world warning off would-be boat refugees. –from a Charlie Lewis report in *Crikey*.

## **CLA asks whether any forward thinking on refugees**

CLA has passed this question to a Senator for consideration as a question during Senate Estimates:

There are over 30,000 so-called “illegal” maritime arrivals in Australia, all of whom require refugee status determination. If found to be refugees they will be granted temporary protection visas or safe haven visas, valid for three years.

In 2015-2016, 1552 persons were found to be refugees and TPVs issued. The Minister last year said that it would take a decade to process all the claims. Mental health specialists describe the uncertainty facing these applicants as leading to problems such as depression, trauma and suicidal impulse.

At what rate are claims now being assessed and can the process be accelerated?

Given that these visas are only valid for three years, has the Department of Immigration and Border Protection developed plans for the continuous reassessment of visas as they expire?

Has any thought been given to regularising these TPVs, such that all those found to be refugees are given a route to permanent residence and citizenship (as is done for all other refugees arriving in Australia), if for no other reason than the efficiencies of the system. – Jennifer Ashton, CLA Director

## **Speaker denies photographers’ right to report breaking parliament news**

President Trump has banned some US news outlets from media conferences at the White House, right? That would never happen in Australia, right?

Photographers and the bureau chief of wire service Australian Associated Press will be banned from entering Parliament House in Canberra for a week at the end of March 2017 for taking photographs of protesters in the House of Representatives.

The reason for the ban, imposed by the Speaker of the House of Representatives, Tony Smith? Photos of protesters might mean that other citizens decide to protest in their own parliament building!

“Protesters interrupted question time at the end of November 2016, with several gluing themselves to the leather seats and barriers, while others were dragged out into the public area. Speaker Tony Smith said that security has been beefed up in the public galleries of both the House of Representatives and the Senate,” *Crikey’s* Josh Taylor reported last month.

“Parliament’s serjeant-at-arms has suspended the press passes of all AAP photographers and the AAP bureau chief over the incident. An AAP photographer took photos of the protests in the public gallery and

passed them to the wire service's photo gallery. Under rules for media in Parliament, disturbances in the galleries, or on the chamber floor, must not be photographed.

"All AAP photographers will be banned from Parliament for one sitting week at the end of March, along with the bureau chief Richard Lawson. The serjeant-at-arms warned other journalists in the gallery that publishing images from protests in the chambers of Parliament risks encouraging others seeking publicity in the same way," Taylor reported.

Can't have the peasants getting ideas above their station, and actually protesting in the "people's house" where MPs are making decisions the people don't like, CLA observes.

## **AFP: raid over-zealous, legally un-warranted – must pay \$200k**

The Australian Federal Police must pay more than \$200,000 after they mounted an illegal raid on the Canberra offices of the Construction, Forestry, Mining, Energy Union.



The CFMEU's ACT branch secretary Dean Hall said the entire affair was "a disgraceful waste of police resources". "The warrant was exercised unlawfully," he said. "It was designed to maximise negative publicity on the eve of our appearances in the Trade Union Royal Commission."

The CFMEU sued the AFP, calling for the material seized to be returned. Officials said much of it was private information, of no relevance to the royal commission.

The ACT Supreme Court found police acted unlawfully and ordered material returned, and copies destroyed, as well as ruling that the AFP must pay costs of more than \$200,000. <http://tinyurl.com/zk4dbqr>

## **ODD SPOT: 'Alternative fact': born to be un-free**

"Babies born in Australia to women moved from offshore detention are regarded by the department (of immigration) as 'illegal maritime arrivals' to the country, despite having never been on a boat nor having left Australia," quote from *The Guardian* article by Ben Doherty. <http://tinyurl.com/zt9t6j9> CLA wonders whether the babies get seasick while floating in a sea of amniotic fluid?

## **Brandis, Dutton, cause Australia's ranking drop**

The Australian government's own action have caused us to drop six places in the open, trustworthy scale. The "unrelenting attacks on the Australian Human Rights Commission and its president Gillian Triggs" (mostly by AG Brandis and Immigration Minister Dutton) have destroyed Australia's international reputation for transparency, Bernard Keane and Glenn Dyer wrote in *Crikey* last month.

"(They have left Australia) in an embarrassing 13th place in the latest [Transparency International Corruption Perceptions Index](#) which is assembled from eight independent indices by multilateral bodies like the World Bank, NGOs and media sources like the *Economist* Intelligence Unit.

"In 2012, when Labor was in office, Australia was ranked equal seventh, with a score of 85. Since then, our score has fallen to 79, meaning we are now equal 13th," *Crikey* reported. "Denmark and New Zealand remain the top-ranked countries; Australia is ahead of the United States (74) and France (69) but behind countries like Switzerland (86), the UK (81) and Germany (81)."

## **Indigenous people do it tough in Canberra**

"Aboriginal and Torres Strait Islander people comprise 1.8% of the ACT population, 12% of those charged and 23% of detentions in the Alexander Maconochie Centre, that is 2% of the general population but almost one-quarter of the prison population," the ACT Chief Justice, Helen Murrell, said earlier this year.

"The ACT prison population averages 413 detainees, of whom there are, on average, 31 ATSI detainees on remand and 65 sentenced detainees." – speech, ACT Chief Justice Helen Murrell, opening of the law year in the ACT, 30 Jan 2017 <http://tinyurl.com/hojcrpp>

## **NT throws money, resources at its juvenile problems**

The NT is introducing a wide-ranging juvenile justice reform package.

Some 52 youth diversion workers based in Darwin, Palmerston, Katherine and Alice Springs will be co-located with police, education and NGO providers, and in place by early May 2017. They will:

- support courts and police to improve sentencing and diversion decisions;
- intervene early, manage cases and co-ordinate after-hours youth activities; and
- support enforcing bail conditions.

NGOs will get an extra \$6m a year for evidence-based diversion programs.

Youth justice and victims' conferencing will be expanded so victims can tell the offender about the impact of their behaviour (to be set up by May 2017).

The NT Government last month announced 18 extra, experienced police will target youth crime as part of Taskforce Sonoma, a Territory-wide operation. The government is employing 120 additional police to permit the youth allocation.

"This reform package is about investing not only in our kids, but in the NT to ensure the right system in place for a strong, safe and connected community," NT Families Minister, Dale Wakefield, said. – Chief Minister Michael Gunner media release 8 Feb 2017.

## Big Brother council wants to doubly spy on you

The Queensland privacy commissioner has raised "grave concerns" about a local council's roll out of listening devices for surveillance in public, including that they may be a criminal breach of privacy laws.

The commissioner, Philip Green, has also rejected a claim by the mayor of the Moreton Bay regional council that he endorsed the scheme as legal, saying "it wasn't run by (passed by) me".

The council, covering areas north of Brisbane, last month switched on new listening devices attached to its CCTV cameras, which number more than 330, in selected areas of Caboolture, Burpengary and Redcliffe.

Council mayor, Allan Sutherland, told *Seven News* that the privacy commissioner "said that what we're doing isn't against the laws".

However, Green said it appeared the only notice his office had of the scheme came in a draft press release sent to them by the council and "we haven't endorsed it any way". "I certainly have some grave concerns about this and whether it breaches both the Information Privacy Act and also the Invasion of Privacy Act in Queensland, which is enforced by the Queensland police service and the Department of Justice and Attorney General," he told *Guardian Australia*. <http://tinyurl.com/zny5z6g>

## Who judges the judges, and people who appoint them?

Two retired Tasmanian Supreme Court judges are among four jurists temporarily appointed to the state's Supreme Court to help clear a cases backlog.

Former Supreme Court judges Pierre Slicer Lautalatoa and David Porter will be joined by former Federal Court judge Shane Marshall and former NT Chief Justice Brian Martin on the Tasmanian Supreme Court bench, the *Hobart Mercury* reported.

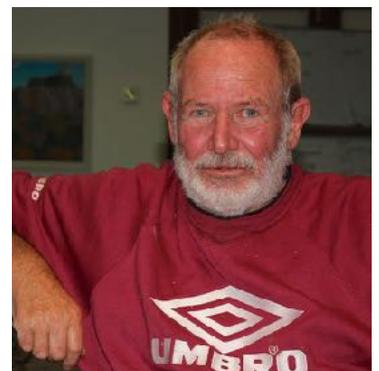
Civil Liberties Australia questions the common sense of the people who recommended/appointed them.

Pierre Slicer (photo) is a Matai – a chief of Samoa – and was named Lautalatoa (child born in the shadow of the mountains) by the Village of Satua. He is returning to the bench despite telling the *Hobart Mercury* in June 2015, after returning from Samoa, that he had "judged enough" and would only return to the bench if needed back in Samoa, which he regards as his second home.

<http://tinyurl.com/jpg6ytn>

Mr Slicer retired from the Tasmanian Supreme Court in 2009.

Brian Ross Martin was originally a Supreme Court judge in SA (he did the Snowtown bodies-in-barrels murder cases), and then went to the NT as Chief Justice in 2004 (he sat on the Murdoch-Falconio-Joanne Lees case). Not to confuse your Martin-ets, there is a fellow judge, Brian Frank Martin – both were chief justices in the NT, Ross after Frank.



Brian Ross Martin – soon to judge in Tassie – retired from being CJ in the NT in 2010. Since then, he has also been a very "temporary" judge in the NT (Royal Commissioner, appointed by the federal government...he stepped down before starting the current youth justice inquiry, due to possibly perceived bias from his earlier term as NT CJ). He has been an auxiliary judge in his home SA, and a temporary justice of the ACT (Eastman inquiry). He was appointed a temporary judge of the WA Supreme Court (Rayney case). His further appointment to Tasmania takes the notion of "Uber Judge for Hire" to cross-continental levels of farce.

Are we so short of competent judges in Tasmania and Australia that one judge has to serve in five jurisdictions, after retiring, and that another has to be resuscitated after retiring twice, in two countries, and stating publicly that he would not judge in Tasmania again?

The recent appointments follow the passing of the Tasmanian Supreme Court Amendment (Judges) Bill last year, which enabled the appointment of part-time, acting judges. The four judges have been appointed immediately for two-year terms.

Despite calls from the Tasmanian legal profession, the Tasmanian government has refused to appoint another full-time judge to return the state's Supreme Court bench to seven members, the *Hobart Mercury* reported. <http://tinyurl.com/zd5mdhv>

Is anyone trying to work out why there is a backlog of cases, CLA asks?

## Adult prison guards provoked boys' riot, lawyer says

There were chaotic scenes after guards indiscriminately capsicum sprayed boys in a confined space last month at the Barwon maximum security adult prison, a lawyer claims.

The Victorian Government has been detaining around 21 boys aged between 15 and 18 years old in the adult jail.

A lawyer from the Human Rights Law Centre, Alina Leikin, said she was shocked to hear reports from her clients – 10 of the young men – of systematic violence. "Numerous children (say) they were pinned to the floor by guards from the adult section of the prison and kicked and punched in the head," she said.

She said:

- the incident rapidly escalated after an adult prison officer threatened two boys by drawing his capsicum spray canister;
- many adult prison officers used the spray indiscriminately in a confined space; and
- boys eating dinner, not part of a disturbance, were sprayed directly and deliberately. <http://tinyurl.com/zxun6rf>

## Australian briefs

**Government pays "alleged" compensation:** The Australian government has paid about \$1 million and formally apologised to nine Save The Children charity workers ejected from Nauru in 2014 after unsubstantiated claims of political activism and impropriety. Former immigration minister Scott Morrison cited an intelligence report when he accused them of encouraging asylum seekers to self-harm in order to be brought to Australia. Reviews have found that decision "not justified", being based on "no conclusive evidence". The \$1m settlement to individual former employees is on top of an undisclosed sum paid last year to Save the Children itself. Mr Morrison has not apologised: he claims he always said "allegedly".

<http://tinyurl.com/hb5mwkc>

**Myers tasked to solve over-jailing of Indigenous people:** Attorney-General George Brandis has appointed Judge Matthew Myers as an Australian Law Reform Commissioner to lead the new ALRC Inquiry into the high incarceration rates of Aboriginal and Torres Strait Islander peoples, announced in October 2016. On the same day, 20 February 2017, he released the final terms of reference: <http://www.alrc.gov.au/inquiries/indigenous-incarceration/terms-reference> They require the ALRC to look broadly at laws and legal frameworks that inform decisions to hold or keep Aboriginal and Torres Strait Islanders in custody and juvenile detention. The report is due by 22 December 2017. For information about the Inquiry please subscribe to the Inquiry's e-news feed: <http://eepurl.com/cnIDFv>.

**Committee finds compromise on same-sex marriage:** A parliamentary committee, chaired by anti-same-sex-marriage advocate, Liberal Senator David Fawcett, last month showed politicians could reach consensus on how to legalise same-sex marriage if a free vote was held. The committee's report called for religious celebrants to be allowed to refuse services to couples based on their religious beliefs, while civil celebrants would be required to marry all couples. Report: <http://tinyurl.com/jat4bom> See CLA's submission: <http://tinyurl.com/zy6wpdo> No 23.

**New Judicial Council:** The ACT last month set up a Judicial Council to investigate "minor" complaints about the judiciary that wouldn't merit removal from office. It comprises Chief Justice Helen Murrell, Chief

Magistrate Lorraine Walker, barrister Bryan Meagher and Aboriginal and Torres Strait Islander community member, Diane Collins. The Judicial Complaints Bill passed the Legislative Assembly in early 2015, creating a new statutory framework for the handling of judicial complaints in the ACT. <http://tinyurl.com/hmpffxp>

**Government hardens detention centre:** The federal government is upgrading security in a big way at the Melbourne Immigration Transit Accommodation facility in Broadmeadows, Victoria. The plan is for 140 beds across two high-security compounds, with amenities and lockdown capability, because of a trend towards a higher-risk detainees. Work is due to start in March 2017 and finish by October 2017 at a cost of about \$33 million. – media release, Public Works Cttee. <http://tinyurl.com/jrn6xh>

## CLA report – main activities for February 2017

The CLA Board met on 19 February 2017. The most significant decision was for CLA to make health rights and liberties a core concern: see item above.

In a further push to extend the **Right To Appeal** (R2A) law throughout Australia, President Dr Kristine Klugman and CEO Bill Rowlings will meet in March with new AG of the ACT, Gordon Ramsay to discuss how the proposal will be taken to the ACT Cabinet, under an agreement between the governing Labor and Greens parties. The R2A law was passed first in South Australia in mid-2013, then “mirrored” in Tasmanian in late-2015 after initial lobbying by CLA in Hobart from 2013.

**eAGM 2017:** CEO reported on the ‘mechanics’ of the CLA eAGM, for Board awareness; President’s Report and Annual Report, including Treasurer’s Report, tabled.

**Facebook:** Director Rajan Venkataraman reported on increased posting by him and Vice-President Tim Vines. Expenditure is planned on small ads promotion in future.

**Members’ community** – analysis of membership: Director Jennifer Ashton has analysed the full membership database of CLA, with a view to attracting more like-minded people. Her excellent report was noted by the Board, with thanks for such detailed work. She will allocate “categories” of issues to be used as ‘buttons’ on join/renew web pages, to allocate members into “keep advised” lists for automatic updating and involvement so they can share more fully in specific areas of liberties and rights which interest them most.

Following invitation from Sen Nick McKim to submit **questions for Senate Estimates** to the Attorney-General’s Department, the Dept of Foreign Affairs and Trade. and the Dept of Immigration and Border Protection, Board Members devised a number of questions for him to ask.

The Board noted the announcement (to the AGD-DFAT Non Government Organisations – NGO – forum) by AG Brandis that Australia would **ratify OPCAT**, the convention against torture, by the end of December 2017. CLA has proposed a question to the Senate Estimates process as to whether inspections under a ratified OPCAT will include Manus Island and Nauru detention centres, over which Australia has effective control. To ensure compliance with OPCAT the government must allocate adequate new staff and funding: CLA will consistently follow up to see if sufficient resources have been provided, as recommended by outgoing Commonwealth Ombudsman, Colin Neave (a CLA member, now the new internal banking ‘ombudsman’ for the ANZ Bank).

### Tasmania report:

**Human Rights Act for Tas:** Tasmanian Director Richard Griggs reported on the high-profile committee CLA has helped to assemble: the committee is developing strategies and materials for various groups, with targets being highly differentiated. For the next 15 months, all Tasmanian issues will be looked at through a ‘human rights’ lens. This approach was adopted in late February for a CLA media release run in the *Hobart Mercury* over access to clean water throughout the state.



**Clean drinking water a basic human right, Tasmanian politicians warned**  
By Emilio Gramenz  
Posted about an hour ago

Civil libertarians are urging all levels of government to approach Tasmanian's access to clean drinking water as a human rights issue, ahead of a much-anticipated meeting about TasWater's upgrade plans.

Treasurer and Local Government Minister Peter Gutwein is taking on local governments over what he says is a failure to provide adequate water and sewerage infrastructure.

Four towns in the north-east are currently on "do not consume" alerts, and a further 21 are directed to boil their water before drinking.

PHOTO: "Pioneer or Ethiopia" reacts graffiti on a water tank in Pioneer, north-east Tasmania. (ABC News: Michael Atkin)

**WA verbal report**, including state election: CLA member Margaret Howkins reported on liberties issues emerging in the lead-up to the 11 March 2017 state election. Plans are under way for a formal CLA visit to WA (first two weeks of May).

Other activities:

The next directions hearing in the Sue Neill-Fraser search for justice through a new appeal hearing in Tasmania is on 6 March. The directions process alone has taken nearly a full year. Neill-Fraser, a CLA member, has now been in Risdon Prison, wrongly CLA believes, for seven and a half years.

Meetings: To encourage more interaction with students, so as to help lower the average membership age, CLA has met during the month with ANU College of Law academics Professor Simon Rice, Associate Professor Mark Nolan, Margie Rowe and Prof Tony Foley. As well, The President and CEO attended the first showing of a new edition of the seminal Australian legal text on citizenship, by Prof Kim Rubinstein, a CLA member.



#### **Continuing meetings with new federal MPs:**

Meetings during February with MHRs Tim Hammond (Perth) and Clare O'Neil (Hotham, Shadow Justice Minister) discussed CLA's Better Justice campaign, genes issues, submissions and appearing before committees, as well as liberties and rights issues of direct concern to the two Members.

*Photo left shows Clare O'Neil and CLA President, Dr Kristine Klugman.*

**Submissions:** We strive to not allow submissions to governments to overwhelm us\*, but the number of requests from government continues to mount. For example, at the end of the second month of 2016, we are already involved in submissions on proposed new laws or major reviews of ASIO questioning and detention powers (as well as concerns over ASIO and ASIS in

relation to the Timor Leste oil and gas contracts), slavery and human trafficking, same-sex marriage, expunging historical homosexual convictions in Queensland, court security in Tasmania, and "mirroring" in the ACT the Right To Appeal legislation that is in place in SA and Tasmania.

\* We prefer to put CLA's issues on the public agenda, rather than be reacting to the demands of government agenda-setting, which is what the committee call-for-submissions process is.

## **International**

### **Dutch run out of prisoners: no such problem in Australia**

The Netherlands has a problem: a shortage of prisoners.

The Dutch have so many unused cells that they have rented some prisons to Belgium and Norway, and turned about a dozen former prisons into centres for asylum seekers.

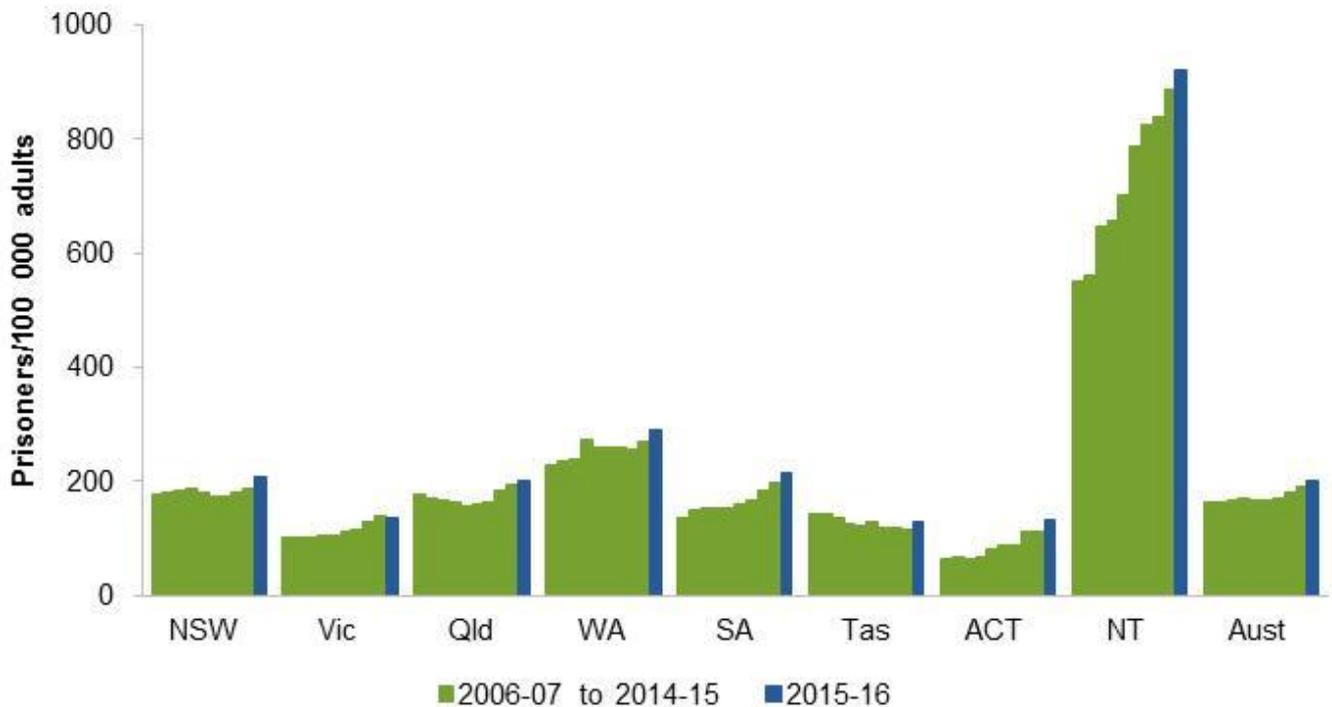
About a third of Dutch prison cells sit empty, according to the Ministry of Justice. Criminologists attribute the situation to a spectacular fall in crime over the past two decades and an approach to law enforcement that prefers rehabilitation to incarceration.

Recorded crime has shrunk by about a quarter over the past nine years, according to the country's national statistics office, and that is expected to translate into a surplus of 3000 prison cells by 2021. The government has shuttered 19 of nearly 60 prisons over the past three years, and a government report leaked last year suggested that more cuts were coming.

Like Scandinavia, the Dutch imprison about 60 people per 100,000. In the USA the figure is 666 per 100,000. <http://tinyurl.com/hqblwzq>

In Australia, the equivalent figure is 201 per 100,000. Of those jailed, about 28% are Indigenous (though they comprise about 3% of the population). Australia operated 112 custodial facilities nationally at 30 June 2016, 86 government-operated, nine privately-run, four transitional centres, one periodic detention centre (ACT) and 12 x 24-hour court cell complexes (NSW).

The national imprisonment rate in Australia has risen about 23% over the past decade. – Report on Government Services 2017, page 8.3 including Figure 8.1 below.



Trump causes private prisons to thrive: <http://tinyurl.com/z7n7w8o>

### Court records should be kept permanently, say activists

Investigations into miscarriages of justice in the UK are being hampered by premature destruction of court records, activists say.

The Open Justice Charter wants restrictions on access to evidence to be lifted and courtroom recordings of prosecutions made available for free to prisoners appealing against convictions. The activists, who are supported by lawyers who have worked on innocence projects in the US and the UK, call for court recordings to be preserved for at least seven years after the end of any prison term and a transcript of the judge’s summing up to be kept permanently and made publicly available.

Recordings of UK crown court hearings are not routinely transcribed for review and are destroyed after five years. Digital recordings are only held for seven years. <http://tinyurl.com/jt3rnoq>

### ODD SPOT: Racial graffiti comes with a double cost

It has been just over a month since someone spray-painted the word “nigger” on an interracial US couple’s home in Stamford, Connecticut, over the Martin Luther King Jr Day weekend.

However, the couple have refused to remove it, saying that authorities are not properly investigating the incident. And now the couple have received a blight citation from the city, carrying a \$US100 (\$Aust130) daily fine. <http://tinyurl.com/j6de83o>

*Photo: Michael Cummo / Hearst Connecticut Media*



### US terrorists behave too well for security

The US Transportation Security Administration's may as well flip a coin as spend \$1.5 billion on its program to weed out terrorists based on their behaviour.

A review by the General Accountability Office found defects in the agency's studies validating the program. Analysis of about 400 studies on the issue concluded that the chances of spotting deceptive behaviour was about in line with flipping a coin.

Reports say that the TSA's own files are loaded with research questioning the behaviour detection program.

The program has cost taxpayers more than \$1.5 billion to deploy 3000 detection officers at 176 airports nationwide over the past decade.

"Documents in the TSA's own files reinforce that behavior detection is unscientific and unreliable," the American Civil Liberties Union said. "The TSA repeatedly overstated the scientific validity of behavior detection in communications with members of Congress and the GAO."

In response, the TSA defended the Screening Passengers by Observation Program, which is meant to single out terrorists at airports by their actions and verbal clues.

During 2011 and 2012, according to a GAO report, detection officers in uniform or in plain clothes referred about 8700 travellers at 49 airports to law enforcement officers. That led to 365 arrests, the bulk in connection with drug and immigration violations—but none for terrorism. <http://tinyurl.com/gp535r6>

## Teachers use police video cameras on students

Teachers in two UK schools are using body cameras in class because they are “fed up with low-level background disorder”, a criminal justice academic has revealed.

Tom Ellis, principal lecturer at the Institute of Criminal Justice Studies at the University of Portsmouth, said all classroom teachers at the two state secondary schools are being given the option of the cameras to film “when necessary”.

The technology, worn by police, parking wardens and even school crossing-patrol officers in Britain, was rolled out in US schools from 2015. <http://tinyurl.com/zowjgtd>

## Exit likely to end rights protection, legal experts say

Leading British lawyers and legal experts are warning that Brexit could trigger a human rights crisis in the UK that threatens to have a ‘domino effect’ across Europe.

They claim in a letter to a newspaper that the UK’s departure from the EU may see the removal of fundamental rights from UK law, leaving its citizens with legal protection akin to Belarus, a dictatorship.

Signed by more than 50 prominent lawyers and academics, including Helena Kennedy, Sir Geoffrey Bindman, Professor Francesca Klug, Lord Lester and Sir Paul Jenkins, the letter states: “ (Prime Minister) Theresa May has repeatedly stated her feelings that Britain would be better served by leaving the European Convention on Human Rights than it would leaving the EU. As we enter Brexit negotiations, there is now every possibility that both these scenarios could easily come to pass.” <http://tinyurl.com/zetazo6>

## ODD SPOT: Toddlers kill more Americans than terrorists do: deport toddlers!

An American is at least twice as likely to be shot dead by a toddler than killed by a terrorist – <http://tinyurl.com/hqmkxv3> – and, in 2014, 88 Americans were shot dead, on average, every day: 58 killed themselves while 30 were murdered. In that same year 18 Americans were killed by terrorist attacks in the US: <http://tinyurl.com/jutvc9l>

## Same-sex marriage leads to Supreme Court case about flower power

A florist who refused to sell flowers for a same-sex wedding cannot claim religious belief as a defence under Washington state’s anti-discrimination laws, the state’s high court ruled last month.

The unanimous ruling by the nine-member state Supreme Court, which a lawyer for the florist said would be appealed to the US Supreme Court, addressed sweeping questions about public accommodation, artistic expression and free speech.

At its heart was a very human story about Arlene’s Flowers in the small city of Richland, in south-east Washington, and what happened there in 2013 when Robert Ingersoll and Curt Freed started planning their wedding.

The shop’s owner, Barronelle Stutzman, knew that Mr. Ingersoll and Mr. Freed were gay and had sold them flowers for years, but then refused to provide flowers for their wedding because of her Christian faith. From that simple floral refusal, the case is on its way to the highest court in the USA. <http://tinyurl.com/gleb3bb>

## Citizen wins right to film police...just

A divided US federal appeals court has ruled for the First Amendment, saying the public has a right to film the police, David Kravets writes in *Ars Technica*.

But the 5th US Circuit Court of Appeals, in upholding the bulk of a lower court's decision against an activist who was conducting what he called a "First Amendment audit" outside a Texas police station, noted that this right is not absolute and is not applicable everywhere.

In September 2015 Phillip Turner was 25 when he decided to go outside the Fort Worth police department to test officers' knowledge of the right to film the police. While filming, he was arrested for failing to identify himself to the police.

Officers handcuffed and briefly held Turner before releasing him without charges. Turner sued, alleging violations of his Fourth Amendment right against unlawful arrest and detention and his First Amendment right of speech.

The recent decision is the result of that case...but still outstanding is a Supreme Court ruling on similar sets of circumstances in other cases, which would define the law completely. <http://tinyurl.com/hbxraf7>



### **Zim to trump the US election's oddness?**

Zimbabwe's 92-year-old president, Robert Mugabe (photo), should run "as a corpse" in next year's election if he dies before the vote, his wife said last month.

Grace Mugabe accused some ruling Zanu-PF party officials of plotting to take over from her husband and said that, if he dies, supporters should put his name on the ballot to show their love for him.

"If God decides to take him, then we would rather field him as a corpse," she told thousands of supporters at a rally in Buhera, eastern Zimbabwe, speaking in the local Shona language.

The president has just turned 93. His wife, who is 51, has become increasingly visible in politics. Mugabe has been in power since white minority rule ended in 1980 in Zimbabwe after years of war. <http://tinyurl.com/jxuzbkl>

### **ODD SPOT: Alleged arsonist caught by the three-cardio trick**

An Ohio man has been indicted on arson and insurance fraud charges after police reviewed data collected from his pacemaker.

Ross Compton pleaded not guilty last month to setting his home on fire on in September 2016 in a blaze that caused \$525,000 worth of damage.

AP reported Compton told police that a fire broke out in his house, he hurriedly packed items in a suitcase and bags, busted a window with his walking stick, tossed the stuff out the window, rushed out of the house, and carried everything to his car. He also told the cops that he had an artificial heart.

Suspicious because of other evidence, the police sought a warrant for Compton's pacemaker data, which they later described as some of the "key pieces of evidence."

Pacemakers monitor and help control the heart's rhythm. The data reviewed by police from the night of the fire would reveal three key facts about Compton's heart rate, the activity level of the pacemaker, and heart rhythms. A cardiologist who reviewed the data said that it was "highly improbable" that Compton had carried out all of the activity he described to police the night of the fire.

Police also found petrol on Compton's shoes, pants, and shirt, as well as multiple origins of the fire. Authorities estimated the fire caused \$400,000 worth of damages. <http://tinyurl.com/j3xmc4r>

### **International briefs**

**What defines a police state?** In darkest body armour, bearing special forces warfare weapons, more than 1000 German police officers swooped one day last month on homes, offices and mosques in high profile raids centred on Germany's financial capital, Frankfurt, and eight other districts, targeting 50 sites. The raid was a thundering demonstration of official resolve to counter terrorism. The raids resulted in one arrest and 15 people placed under investigation and released. When does security behaviour reveal that a nation is a police state? Surely 1000 police, 50 raids, 1 arrest is proof positive, CLA says. <http://tinyurl.com/hbjkgu6>

**41 men continue to live at Gbay at \$14m a pop:** As the Barack Obama presidential clock ran out on 20 January, just 41 prisoners were left in Guantanamo Bay. The cost of maintaining them now works out to \$14,353,000 each (correct, each) a year. – from Fitch, our (and *Justinian's*) Washington insider.

**Brits backflip on rescuing lone-child refugees:** After virtually promising to take 3000 lone-child refugees from Europe, the British government has closed the scheme after just 350. An estimated 90,000 lone child refugees, some as young as eight, arrived in Europe in 2015. <http://tinyurl.com/zpgeand>

**The greater the need, the higher the price:** There are fears that health product prices could go through the roof in a USA where commerce is trumps. More than 30 US Senators have sent a letter to Kaléo Pharmaceuticals questioning its price hike of opioid-overdose-reversing device, Evzio, The price rose from \$905 in 2014 to \$5900 currently, according to the letter, in line with an increasing national epidemic of drug overdoses. Evzio is an auto-injector that delivers a dose of naloxone, a generic drug that blocks and reverses an opioid overdose. The US Centers for Disease Control estimates that 91 Americans are dying every day from an opioid overdose: some hard-hit areas have even run out of morgue space. <http://tinyurl.com/zazjc82>

**Police accused of illegally taking child DNA:** San Diego police have been accused of taking DNA mouth swabs from juveniles illegally. The local civil liberties group has appealed to the courts to order the police to destroy the DNA sample of five children, taken without cause or warrant. <http://tinyurl.com/zjgfdgm>

## DATES

**2 March, Perth:** 50 years of the International Convention on the Elimination of all forms of Racial Discrimination, Anastasia Crickley, chair of the UN Committee on the Elimination of Racial Discrimination. 6pm University Club, UWA. More info: [ailsa.mannell@uwa.edu.au](mailto:ailsa.mannell@uwa.edu.au)

**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/hfxqdw>

**15 March, Hobart:** Andrew Inglis Clark: an Architect of the Australian Constitution, by Prof Henry Reynolds. 6pm (refreshments from 5.30) Stanley Burbury Theatre, Sandy Bay campus. Details: <http://tinyurl.com/j6agc9f>

**16 March, Brisbane:** Qld Supreme Court oration 2017: CJ High Court of Australia Susan Kiefel on 'Judicial Method in the 21st C'. Register: <http://tinyurl.com/zh53nxi> or 07 3006 5130.

**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>

**30 March, Perth:** The Immediate Dangers of Nuclear War: Dr Sue Wareham, Medical Association for Prevention of War. Murdoch Lecture Theatre, UWA, 6pm. Details: <http://www.ias.uwa.edu.au/lectures/wareham>

**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](mailto: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](mailto: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](mailto:mail@actlawsociety.asn.au) or 02 6274 0300.



**25 May, Canberra:** *When and why do legal professions seek to influence law?* Prof Leslie Levin (photo) of U. Connecticut USA examines circumstances under which mandatory and voluntary lawyer associations attempt to influence the law by either advocating for legal change or opposing it. ANU College of Law staff library, 1-2pm. Info: [events.law@anu.edu.au](mailto:events.law@anu.edu.au)

**9-17 June, Venice:** The Venice School of Human Rights – Human Rights as Our Responsibility, European Inter-University Centre for Human Rights and Democratisation. Book until 27 April, early bird 30 March with discount. <mailto:giulia.ballarin@eiuc.org>

**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](mailto: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>

**11-29 Set, Geneva:** UN Human Rights Council meeting. <http://www.ohchr.org/EN/Pages/Home.aspx>

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

**23 Sept, NZ:** Election

**24 Oct-4 Nov, Hobart:** 'An Inconvenient Woman', the play about the Sue Neill-Fraser case, Pop-Up Theatre No 9, Evans Street. Info: <http://tinyurl.com/jpmkkkp> .

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*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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