

Parliament must be empowered to decide on Australia going to war

Urgent legislation to change the way Australia decides to go to war should be passed this month.

Currently, the Prime Minister alone is responsible for the decision, which is usually taken in consultation with his or her "kitchen cabinet" of three or four top advisors. Those consulted are frequently the Deputy PM, the Attorney-General and the Treasurer, but any of the PM's close inner circle may also be involved.

With President Donald Trump prepared to commit the US to unilateral action anywhere in the world, Australia has never needed an "opt out" capability more than we do today.

We have followed the UK and the USA slavishly and sheepishly into war for more than a century. It is time we legislated to ensure we have time and space to make a carefully-considered decision about going to war, Civil Liberties Australia believes.

The May Budget session of parliament should act as proposed by eminent law professor George Williams, Dean of Law at UNSW (and a CLA member).

"Parliament should pass a law requiring that it debate any proposal to commit Australian troops," Prof Williams says. "A decision by the Prime Minister to go to war should also be subject to a veto by a majority vote of both houses of the federal parliament. This would provide a much-needed circuit breaker, thereby reducing the possibility of Australia taking part in another inadvisable foreign conflict."

Williams is dead right. <http://tinyurl.com/msfq2e4>

Government plumps for censorship

Immigration won't comment on exactly why it blocked the visa of a prominent Palestinian activist, other than to say "to protect the community from abuse or danger".

Bassem Tamimi, 50, had his visa cancelled hours before he was due to travel to Australia, on the grounds his opinions on the Israeli-Palestinian conflict could provoke anger in the community. He was given permission to travel to Australia one day, but the next day the Department of Immigration and Border Protection revoked his visa.

Mr Tamimi had been invited to Australia for a speaking tour by the Palestine Action Group in Sydney, the Friends of Palestine in Perth and the Socialist Alternative's Marxism Conference in Melbourne.

<http://tinyurl.com/96mepe>

In 1934 and 1935, the federal government's attempts to ban Jewish communist and anti-war activist Egon Kirsch from a speaking tour of Australia was instrumental in 1936 in the founding of civil liberties in Australia. <http://tinyurl.com/khlc93t>

Major submissions made by CLA so far in 2017

Civil Liberties Australia is on track for making another 20-25 submissions federally and to the states and territories in 2017, keeping up a long-term average.

In one year, we made 39 submissions...before deciding to wind back our efforts in terms of subs.

Below, the lead author is identified for each, though in some cases a number of others (mostly Board Members of CLA), have contributed to the submission. In the case of our submission on modern slavery, CLA member Felicity Gerry QC brought world expert status to our contribution.

Any member can volunteer to help write a submission, or contribute a sentence, a paragraph or a page to one that interests you. Email the secretary (address above) if you would like to.

- Human right to freedom of religion and belief: Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) 170322 – Rajan Venkataraman (RV)
- Legislation to combat modern slavery: JSCFADT 170413 – Felicity Gerry QC
- Need for a national integrity commission: Select Cttee 170407 – Bill Rowlings
- Recognition of Indigenous people in the constitution: Referendum Council 170409 – RV
- Same-sex Marriage Bill: Select Cttee on Exposure Draft Marriage Amendment Bill January 2017 - RV
- Qld: Historical Homosexual Convictions Expungement: Letter to Qld AG, January 2017 – RV
- Tas: Expungement of Historical Offences Bill 2017 (Tas Dept of Justice) 170307 – RV
Court Security Bill (Tas Dept Justice) February 2017 – RV
Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017, April 2017 – RV
- ACT: Anti-consorting laws (letter to ACT Police Minister at his request) March 2017 – BR

Note: Submission requests from the federal government tend to come in large batches after each sitting of federal parliament. Requests from states and territories tend to come in more uniformly throughout the year. Director Rajan Venkataraman manages our submission process.

The federal parliament operates an arcane "censorship" system whereby we are not permitted to post our submissions on our own website until the relevant committee has "approved" the sub. Why the parliament believes it has control over the timing of release of our own thoughts and words is a battle yet to be joined.

Australians want anti-corruption body

Some 80% of voters want a federal Independent Commission Against Corruption, a nationwide poll shows.

The Australia Institute poll surveyed 1420 people, with only 8% strongly opposed or opposed to a federal corruption watchdog. Should such a body be established, 78% want hearings to be held in public.

In January another institute poll showed 85% of voters thought there was corruption in federal politics.

A select committee of the Senate is investigating whether the government should set up a national integrity commission.

CLA's and other submissions are here: <http://tinyurl.com/kgmufnh>

After the recent entitlements controversy that Health Minister Sussan Ley resigning, in January 2017, Prime Minister Malcolm Turnbull announced the establishment of an independent parliamentary expenses authority to oversee the work expenses of MPS, including ministers. He said Australia would follow the UK model.. Details here: <http://tinyurl.com/ke52k2w>

Focus turns to WA for positive change

The primary focus of civil liberties in May 2017 is restoring a working civil liberties organisation to WA.



President Dr Kristine Klugman and CEO Bill Rowlings will spend half of May in Perth, meeting members of CLA, potential members, politicians, journalists, lawyers, academics and others interested in the rule of law and people's freedom to be themselves without undue government supervision or control. The previous such visit was in 2007, when the circumstances for furthering liberties and rights activities in Perth were not propitious. For two decades, civil liberties have been in decline through a combination of circumstances personal, political and police-connected. But the stars are now better aligning for an entirely different attitude towards liberties, rights and personal freedoms to develop in WA:

- there is a change of government (Labor won the 11 March 2017 state election), which always provides the opportunity for a fresh look at rule of law settings;
- a new Attorney-General, John Quigley, takes over with the strongest possible personal track record of standing up for the little guy (he was one of the core four* who achieved the release of the 'stitched-up' Andrew Mallard after police misbehaviour led to nearly 12 years of wrongful imprisonment** (and a \$3.25m state compensation payment);
- a 'dose of salts' – with luck, leading to much better quality work (and a review of dozens of previous convictions) – which is currently passing through PathWest, the state's forensic facility: it was forced to fire a senior forensic biologist in August 2016 for "not demonstrating ethical behaviour", calling into question every case he ever worked on over 20 years <http://tinyurl.com/l6eajm3> ; and
- the arrival later this year of a new WA police commissioner, replacing Dr Karl O'Callaghan, who has been in the post since 2004 – 13 years is way too long, though O'Callaghan has done a good job in reforming what was, at least in key parts, an out-of-control force when he took over.

* The other three were journalist/author Colleen Egan (photo, now AG Quigley's chief of staff), former WA Governor and barrister Malcolm McCusker, and barrister-now High Court judge James Edelman. ** Mallard's conviction was quashed by the HC in 2006.



Anyone in WA who would like to get in touch with President or CEO while they are in Perth may care to send an email to: secretary@cla.asn.au

Another court looks inward instead of outward

A conference in Sydney will mark the 40th anniversary of the Federal Court of Australia.

On 8 and 9 Sept 2017, current and former Federal Court judges, leading legal academics and practitioners will consider the Federal Court's contribution to the development of Australian law.

Confirmed speakers include: Hon Chief Justice James Allsop AO, Hon Justice Michelle Gordon, Hon Justice Mark Weinberg, Hon Justice Andrew Greenwood, Hon Justice Alan Robertson, Hon Justice John Griffiths, Hon Justice Debra Mortimer, Prof Elise Bant, Prof Mick Dodson AM, Prof William Gummow AC, Prof Mary Keyes, Dr Jeremy Kirk SC, Mr Russell Miller AM, Assoc Prof Jeannie Paterson, Prof Joellen Riley, Prof Peta Spender, Prof James Stellios, Prof Miranda Stewart and Prof Fiona Wheeler.

CLA notes that users of the court – and their opinions – are glaring omissions from the conference, according to the promotional material !

Is epistocracy the answer to rule by the (informed) people?

Writing on President Trump's unexpected ascendancy, Australian political commentator Norman Abjorensen said last month:

"Somewhat surprisingly, only a third of the Australians surveyed knew that senators represented states; about the same proportion could identify Angela Merkel as the German Chancellor; and more than half had difficulty in identifying what the CPI was, a measure of inflation. With these three examples figuring frequently in the news, how much political information is actually absorbed?"

"The rise of populism – in the US, Europe and here, too – suggests democracy is once again in crisis and seemingly at the mercy of a politics that is neither rational nor informed (as the ideal would have it).

"A slew of new books is now questioning whether voting delivers good government. Christopher Achen and Larry Bartels, for example, in *Democracy for Realists: Why Elections do not Produce Responsive Government*, argue that democratic theory needs to be reformulated on the basis of identity groups and political parties, not on the preferences of individual voters.

"Even more radically, Jason Brennan in *Against Democracy* argues that democracy has become the rule of the ignorant and the irrational, and that a new system of government – epistocracy, the rule of the knowledgeable – may be better than democracy, and that it's time to experiment and find out."

Dr Abjorensen, of the ANU's Crawford School of Public Policy, is writing a history of democracy. <http://tinyurl.com/ldfgpot> CLA notes that the same arguments which claim democracy can no longer be entrusted to uninformed people are run in examining whether trial by jury is still an appropriate way to seek justice.



Brandis restores funding to legal aid

Attorney-General George Brandis says the government will restore funding to the community legal sector in this month's budget, backflipping on harsh cuts forecast in previous budgets. Legal centres had already started to cut services ahead of the previously announced 30% funding cut from 1 July.

Over the past year, CLA has joined the community legal sector, state attorneys-general, legal groups and media commentators in calling for the cuts to be reversed, particularly with a dramatic rise in domestic violence cases sapping funds.

Senator Brandis says the government will restore \$55.7 million to the sector over three years, including \$16.7 million for Aboriginal and Torres Strait Islander legal services. <http://tinyurl.com/n45k2kl>

Cairns legal aid receives funding: Community Legal Centres in the Cairns region will receive \$5.9m as part of the funding for 36 Queensland community legal assistance services over the next three years from 1 July. Cairns Community Legal Centre receives \$2m, with \$300,000 for the Environmental Defenders Office of Northern Queensland Inc. Two centres, which also service Townsville, receive funding: Court Network Inc, with \$1.2 million, and North Queensland Women's Legal Service Inc, with \$2.4 million. Qld AG Yvette D'Ath announced that Queensland had boosted its contribution because of the federal government's decision to slash \$2 million from Queensland's services. – media release, Qld AG, 29 March 2017. *See item above re federal AG Brandis's subsequent decision to restore funding.*

Criminologist dies

The foundation secretary of the ANZ Society of Criminology, David Biles, has died aged 84.

He was the society's president in the early 1980s, and received its Distinguished Criminologist award in 2014. Born in England in 1932, he died in Canberra on 16 April 2017.

Biles made a significant contribution to criminology in Australia. He was an academic at the Melbourne U. before joining the Australian Institute of Criminology, where he was the Deputy Director for many years.

While at the AIC, he wrote extensively on corrections. He was seconded to the Royal Commission into Aboriginal Deaths in Custody as head of research. In later life, he contributed feature articles to the *Canberra Times* on criminology matters – advice from CLA member and criminologist Peter Grabosky.

Cancer prognosis poor for Tasmanian AG

Tasmania's Attorney-General Dr Vanessa Goodwin has withdrawn from public life after a prognosis that she will not recover from an aggressive form of brain cancer, diagnosed only recently.

Premier Will Hodgman delivered the news from the floor of the state House of Assembly. Dr Goodwin's portfolios of AG, Corrections and Arts and her role as Government Leader in the Upper House have been temporarily reallocated, awaiting a permanent reshuffle. A by-election will be held in her electorate of Pembroke. <http://tinyurl.com/nyrbxrm>

Photo: CLA CEO Bill Rowlings and Dr Vanessa Goodwin discuss the Right To Appeal law which she gave an undertaking – made in Opposition – to consider. True to her word, when the Liberals won government she enacted the legislation, the second state to do so. It is under that new law that Sue Neill-Fraser is appealing her conviction for murdering her husband in the Tasmanian Supreme Court.



Games police get beefier powers

Queensland Police will get beefed up stop and search for the Commonwealth Games in 2018.

Police Minister Mark Ryan said police will be able to frisk search anyone entering or in a "protected security zone" and inspect anything they have with them. They will also be able to stop, detain and search a vehicle before entering, or in, a protective security zone. Without a warrant, police will be able to enter premises in a security zone.

During 11 days of competition, Queensland will host 6500 athletes and team officials from 70 nations and territories competing at 18 different venues on the Gold Coast, and in Brisbane, Cairns and Townsville.

The Police Powers and Responsibilities (Commonwealth Games) Amendment Bill 2017 has been referred to a parliamentary committee. <http://tinyurl.com/mm6n5fz>

Criminal's castle at risk under 'proceeds' laws

The Victorian government hopes to confiscate as proceeds of crime a \$10 million property portfolio allegedly controlled by convicted underworld boss Rocco Arico.

The properties include a luxury home, a development site, a coastal property and a bathing box on the Mornington Peninsula. Police claim the Moonee Ponds mansion bought by Arico's wife in 2015 is the "ice castle" because it was allegedly bought and renovated with the proceeds of his vast drug-dealing empire.

Arico was arrested in 2015 and convicted of drug trafficking, extortion and weapons offences. He was sentenced earlier this year to 14 years' jail for drug trafficking, extortion, and weapons offences.

Supreme Court judge Cameron Macaulay recently agreed to issue restraining orders over five properties after receiving sworn evidence from police that Arico had "engaged in serious criminal activity" under proceeds of crime legislation.

Increasingly, authorities are using such laws to reduce the profits, power and prestige of criminals. The laws were introduced to get the 'Mr Bigs' of crime: when used that way, they are reasonable, CLA believes. However, police sometimes use the laws to target petty criminals who are themselves puppets in street-level drug deals. <http://tinyurl.com/mlndu99>

Will WA Police ever learn?

At least once a decade, the WA police are formally found 'guilty' of abusing their interviewing and public pronouncements powers.

Gene Gibson, from the remote desert community of Kiwirrkurra, was set free last month from a seven-and-a-half years sentence over the death of a man found beside a Broome highway in February 2010.

Mr Gibson appealed his conviction as a miscarriage of justice because he did not have the cognitive ability or language skills to understand what was happening when in police hands and in court.

The WA Court of Appeal quashed Mr Gibson's manslaughter conviction because a series of flawed police interviews with Gibson two years after Mr Warneke died had been deemed inadmissible in court, forcing prosecutors to drop a murder charge and accept Mr Gibson's guilty plea to manslaughter. A Corruption and Crime Commission report had concluded the botched interviews had exposed systemic failures in the police force. <http://tinyurl.com/kbhngvp>

A decade before this case, Andrew Mallard was freed from jail because of police abusing their interviewing powers in the mid-1990s. That case cost the WA Government \$3.25m in compensation.

In a current case, still being decided, the husband Lloyd Rayney of a murdered person, Corryn Rayney, is seeking compensation for his naming as the "only suspect" and the "primary person of interest" by Senior Sergeant Jack Lee. Lloyd Rayney has been found not guilty of his wife's murder in the Supreme Court, a decision endorsed in the WA Court of Appeal.

Why are top judicial speakers from the West?

The two leading commentators on things legal and judicial in Australia are from the West: current WA Supreme Court Chief Justice Wayne Martin (photo), and just-retired CJ of the High Court of Australia, Robert French.

Martin CJ delivered his latest thought-provoking article in Sydney in early April. In it, he "reflected on the practice of non-adversarial justice" at a conference on the same topic.



“Over the last few decades, many governments in Australia have embraced and applied policies with respect to criminal justice which criminologists would describe as ‘popular punitivism’,” he said.

“Politicians anticipating electoral support for these policies claim that they are ‘tough on crime’, and many State and Territory elections turn into a ‘law and order auction’ in which participants endeavour to outbid each other with increasingly punitive policies. Those decades have been characterised by increases in maximum penalties and, more significantly, by the expansion of mandatory minimum penalties for an increasing number of offences.

“So, in Australia at least, the political and public policy environment in which non-adversarial justice practices have been developed in the criminal justice system has been antithetical to those practices.”

To read Martin’s full speech: <http://tinyurl.com/lacyd24>
French’s speeches: <http://tinyurl.com/p454wpt>

ODD SPOT: What one Chief Justice thinks of Australia’s legal system

In the same speech as mentioned above, CJ Martin had this to say about Australia’s legal system:

“In the criminal justice system we have an elaborate and extremely expensive system involving numerous taxpayer-funded agencies, primarily police, courts and corrective services, which have resulted, at least over the last two decades, in the incarceration of ever increasing proportions of our communities, with little or no evidence of any causal effect upon re-offending rates.

“Our civil justice systems retain many of the characteristics described by Dickens in ‘Bleak House’ and by Dean Roscoe Pound more than 100 years ago in his paper descriptively entitled ‘The Causes of Popular Dissatisfaction with the Administration of Justice’ – namely, cost, delay, complexity and uncertainty of outcome.

“Of course, we are all familiar with the proposition that insanity can be defined by doing the same thing again and again and expecting different outcomes, but that description characterises the justice systems in most of our jurisdictions.

“There is, however, one notable exception to that characterisation - the development of systems of non-adversarial justice...” CJ Martin said.

For ways to improve Australia’s legal and ‘justice’ system, see CLA’s 10-year plan for ‘Better Justice: email the secretary for a copy (email address at top of newsletter).

Man fired up over gender bias in trainee selection

A would-be firefighter is challenging ACT Fire and Rescue’s equal opportunity recruitment policy of 50-50 gender representation of new trainees – he claims the policy discriminates against men.

In documents filed with the ACT Human Rights Commission in 2016, he said that there were 802 applications for new firefighters in that year, of which 144 were women. That meant women had a much greater chance at securing a spot in 2016, even though many men had scored higher in the required tests, including for strength, fitness and the beep test.

“Career firefighting is a dangerous role that requires an exceptionally high degree of fitness and endurance and strength,” he wrote. “Only the very best should be offered positions. A burning building, raging storm or any other event won’t back off in the name of gender equality.”

Alexandra Back, reporting in the *Canberra Times*, wrote that the complainant also argued the policy was unfair to existing women firefighters who had been recruited before the policy was introduced, and whose positions it undermined. The bottom line, he said, was that “females have an unfair advantage in this recruitment process and so this is a violation of equality and therefore gender-based discrimination.”

The ACT Human Rights Commission rejected his complaint.

The policy was introduced in 2016. A corresponding recruitment drive resulted in a five-fold increase in women applicants for the college that year and four of the 16 new firefighters were women. Before then, there were 6 women among 300 firefighters in the ACT.

Similar policies for 50-50 gender recruitment of firefighters exists in NSW, Victoria and the NT.

The man’s case is now being considered by the ACT Civil and Administrative Tribunal. ACAT is expected to hand down its decision this month (May, 2016).

Note: Civil Liberties Australia President Dr Kristine Klugman was pivotal, when Deputy President of the Board of Fire Commissioners in NSW in the early 1980s, in introducing opportunities for selection of the first female firefighters in that state. <http://tinyurl.com/lpwysf5>

Police ‘intelligence’ may not be all it’s cracked up to be

CLA is collating information on how police and security services have misused and abused the “intelligence” collecting systems within state and territory police forces.

We are seeking concrete examples of normally “hidden” abuses by police.

We have been told of cases where police confront someone on the street or in a vehicle, but have no proper reasons to detain or charge the person.

If the two-way exchange is “unsatisfactory” to the police – for example, if a person knows and stands up for their rights, or is a bit “sassy” in conversing – the person can end up with a secret “black mark” on their record in the particular police force’s databases.

For example if you get ‘tagged’ by the NSW police on its general COPS database, you are likely to also appear on the bikie database and the organised crime database, if the officer logs you as “possibly” having links to bikies.

“Possibly” can easily become “probably” simply by the invented rating the lodging police officer puts on the “reliability” of the report.

We suspect some police are using the secret reporting system to “get even” with someone who has bested them verbally on the street.

Even more worryingly, your innocent – but now made suspicious – exchange with a police officer quickly joins the Australian Criminal Intelligence Commission’s national database in Canberra. Suddenly, you have a national reputation for mixing with bikies.

Every time police decide to access your name or your car vehicle plates – maybe just checking – they are informed that you need close watching because a police officer has linked you to motorcycle gangs,, and automatic systems have subsequently tagged you as possibly connected to organised crime.

Think this can’t happen to you? There’s a case trundling its way through the NSW legal system in which an innocent victim of police mislabelling, possibly as “punishment” for an attitude, suffered the wrongs described above.

Australian briefs

Vets dept drops 'blame the customer' in public option: The Veterans' Affairs Department may not release client information after veterans voiced fears the move would open them to harassment and silence criticism. The department struck out provisions for releasing personal information when "in the public interest" to secure passage of its new digital regulations through parliament. Among a list of reasons the DVA's secretary could release the information included "misinformation in the community", a memorandum issued to MPs said last year. The Vets dept backdown follows public outrage after Human Services Minister Alan Tudge disclosed a welfare recipient's personal information to a journalist. <http://tinyurl.com/ls944sh>

Sofronoff appointed: Queensland's former Solicitor-General Walter Sofronoff is now President of the Court of Appeal. He replaced Justice Margaret McMurdo, who resigned in early April. Sofronoff became a barrister in 1977 and a Queen's Counsellor in 1988. He was Queensland's Solicitor-General from 2005-2014. He recently led a review of the state's parole system, and was Commissioner for the Grantham Floods Commission of Inquiry. – media release, Qld AG, 31 March 2017

First female judge retires: Tasmania's first female Supreme Court justice – who trained in Queensland – will retire on 3 November after more than 12 years on the bench. As a Hobart magistrate, Shan Tennent headed a 2001 inquest into prisoner deaths in custody at Risdon Prison. The small numbers of local candidates to choose from suggests to CLA that interstate applicants should be encouraged so the government can find a well-qualified and broadly experienced replacement to bolster the quality of the island court. <http://tinyurl.com/m86nmyt>

Academies to review remote domestic violence: The NT Government has allocated \$350,000 to Charles Darwin University and Menzies School of Research to review key domestic and family violence reduction programs in the NT, particularly their impact and effectiveness in remote communities. - media release, Min. for NT Families, Dale Wakefield, 18 Apr 2017.

CLA report – main activities for April 2017

Concentration over the past month has been on organising two weeks of meetings while in Perth.

As well as a general gathering of CLA members and supporters, the president and CEO will meet with prominent lawyers, bureaucrats, academics, members of state and federal parliament and journalists. We will be accompanied to most meetings by local CLA activist Margaret Howkins. A report on the visit will be included in CLArion.

There were Skype meetings with Tasmanian Director Richard Griggs re the Tasmanian Human Rights Act and with Margaret Howkins in Perth re the WA visit arrangements.

Two working sessions with Director Jennifer Ashton were held on managing the membership data base, including entering CLA members' interests and skills. If you would like to email a short list of what most interests you in the liberties, rights and freedoms area, we can make sure you're aware of any opportunities to contribute your thoughts to submissions and other initiatives. Just email the secretary with your interests, and a brief description of skills you might be able to contribute to CLA's work.

Our Treasurer for six years, Phil Schubert, handed over documentation and 'trained' secretary Bill Rowlings on the membership system. The secretary will be treasurer as well

until changes are introduced to the membership system... and a suitable volunteer is identified. With the aim of improving the members' database interactions, we met with webmaster Austin Ngo to discuss updating the web site and joining-renewing interfaces.

Meetings with CLA members John Passant (including CLA Director Frank Cassidy) and Chris Mackay discussed options for different ways forward for the organisation as we seek to increase numbers and reach.

Submissions: see page 1 of this newsletter.



Photo shows CLA Director Frank Cassidy, President Dr Kristine Klugman and new member John Passant, a noted blog commentator and tax expert..

INTERNATIONAL

UK would-be polities called on to protect rights and liberties

The UK group, Liberty, is calling on all political parties to stand up for the principles and laws that protect the rights of ordinary people across the UK in the surprise election on 8 June 2017.

It is urging them to commit to protecting the UK's Human Rights Act and maintaining its membership of the European Convention on Human Rights.

"Drafted by UK lawyers and politicians in the aftermath of World War Two, the convention is one of our country's proudest achievements," Liberty says. "For 60 years, it has been crucial in supporting democracy, the rule of law, and respect for human rights in Europe and further afield. It is a beacon of hope for others still fighting for basic freedoms the world over.

"Our Human Rights Act brings the convention home, incorporating its freedoms into our own law. It obliges public bodies to protect and uphold our rights, and lets us defend our rights in UK courts. Millions of people have benefited from its improvement of our laws, policies and practice, and it has made life in our country better and fairer."

Pity Australians don't have similar protections, in the form of a Bill of Rights, like UK people and those of New Zealand, Canada and the USA have. "Australia is a partner in Five Eyes security with these nations," CLA President Dr Kristine Klugman said "but we're blind to the injustices that would not be tolerated in any of those countries because they have legal protection we lack."

Prison numbers rise sharply in 2017

Indonesia's Law and Human Rights Minister Yasonna Laoly revealed last month that in January the country recorded a total of around 202,000 prisoners – in March, the number had jumped to 214,675, most of whom are drug-related criminals.

“What will happen if we keep putting people behind bars?” Yasonna said during a hearing with the House of Representatives’ commission overseeing human rights, security and legal affairs.

The more prisoners inside jails, he said, the more difficult for the ministry to handle problems in prisons, such as sanitation and food supply, as well as illegal levies by prison guards on visitors, not to mention the riots that frequently break out among prisoners as they have to share very confined spaces.

One cell could accommodate around 40 prisoners, while it was supposed to accommodate only five, he said. The minister is considering an amnesty for drug convicts, moving them out of jails to rehabilitation centres. <http://tinyurl.com/l8mkrxd>

Rape ‘em, then marry ‘em, Malaysian MP says

Rape victims can ward off a “bleak future” by marrying their rapists, an MP and former judge proposed last month in the Malaysia parliament.

Former sharia judge Datuk Shabudin Yahaya made the comments during a debate over a bill on sexual offences against children.

He acknowledged rape as a criminal offence, but suggested that rapists and their victims could solve social problems and “turn a new leaf” by getting married.

“Perhaps through marriage they can lead a healthier, better life. And the person who was raped does not necessarily have a bleak future.

“She will have a husband, at least, and this could serve as a remedy to growing social problems,” he was quoted in the local daily, the *Star*.

An MP from Barisan National – the coalition that has ruled Malaysia since independence from Britain in 1957 – Yahaya also suggested that girls as young as 12 might be “spiritually and physically” ready for marriage. <http://tinyurl.com/mdv3ecg>



Canada set to legalise pot

Honouring a campaign pledge, Prime Minister Justin Trudeau last month introduced legislation to make recreational marijuana in Canada legal.

Canada will become only the second nation, after Uruguay, to completely legalise marijuana for consumers. Homes will be able to grow four plants legally. Legal sales are expected to start by mid-2018.

The federal government will license and regulate growers, but Canada’s provinces must decide how the drug will be distributed and sold within their boundaries.

The government will have to develop the marijuana equivalents of breathalysers to test drivers for impairment and workers for safety on the job. <http://tinyurl.com/m7twz4v>

Lesson in leadership:

Sweden’s prime minister, Stefan Lofven, after a terrorist truck attack killed people in Stockholm last month:

“Our message is clear: You will never, ever win. We are determined never to let the values that we treasure — democracy, human rights and freedom — be undermined by hatred.”

Liberty seeks to retain rights as Brexit unfolds

Liberty UK says it will concentrate on three main areas as Brexit unfolds over the next two years:

- Securing the rights of EU citizens resident in the UK, and those of UK citizens in the remaining 27 EU member states
- The legal status of the Charter of Fundamental Rights of the EU, and those rights held under the charter with no domestic UK equivalent
- Ensuring any changes to policy areas subject to negotiation between the UK and EU don’t lead to a weakening of human rights protections

“Both sides of the negotiating table need to recognise that citizens are not bargaining chips,” Liberty UK’s EU law and policy specialist, George Wilson, said.

“Unlike the European Convention on Human Rights (ECHR), the charter is tied to EU membership. It sets out the rights and freedoms found in the case law of the Court of Justice of the EU and the common constitutional traditions of EU member states – as well as additional rights in areas like data protection, and guarantees on bioethics and transparent administration.

“The ECHR has been incorporated into UK law by the Human Rights Act, but the charter is directly applicable (and applies to national authorities when implementing EU law). Importantly, it’s possible we could lose the additional rights it enshrines after withdrawal,” Wilson said.

Court refuses man’s plea for help to die at home

Terminally ill Noel Conway has lost – in a 2-1 majority ruling – his High Court bid in England to change the law so that he can be helped to die at home surrounded by his family.

Conway, 67, was diagnosed with motor neurone disease in November 2014. His condition is incurable and he is not expected to live beyond 12 months. Assisted dying is prohibited by section 2(1) of the Suicide Act 1961 and voluntary euthanasia is considered murder under English and Welsh law.

Lord Justice Burnett said that the last time the issue was considered by the Supreme Court in 2014 the justices had asked parliament to reconsider the issue. “Parliament has done precisely what the Supreme Court suggested was necessary,” Burnett ruled. “Having done so, it remains institutionally inappropriate for a court to make a declaration of incompatibility, whatever our personal views of how the underlying policy issues should be resolved.”

Conway plans to appeal to the Supreme Court (note, the Supreme Court is the senior court in England and Wales, above the High Court). <http://tinyurl.com/k8nlt9y>

ODD SPOT: Chips to go in the work cafe

A Swedish firm is injecting staff with microchips for free, with about 150 employees so far taking up the offer.

The RFID (radio-frequency identification) chips are roughly the size of a grain of rice, implanted using a syringe into the fleshy part of the hand (see photo).

The chip gives Epicenter’s workers access to doors and photocopiers, but soon they will be able to pay in the cafe as well.

<http://tinyurl.com/l3emcng>



Stunning cameras capture stunning police

The company whose stun guns have become a household name is offering all American police free body cameras...and changing its name to Axon.

A year's worth of access to the company's cloud storage service comes free also in a bid to dominate the market.

The company is already the single largest vendor of body cameras in America, on the back of the the Obama White House's three-year, \$250 million grant program for police body-cameras on 1 December 2014.

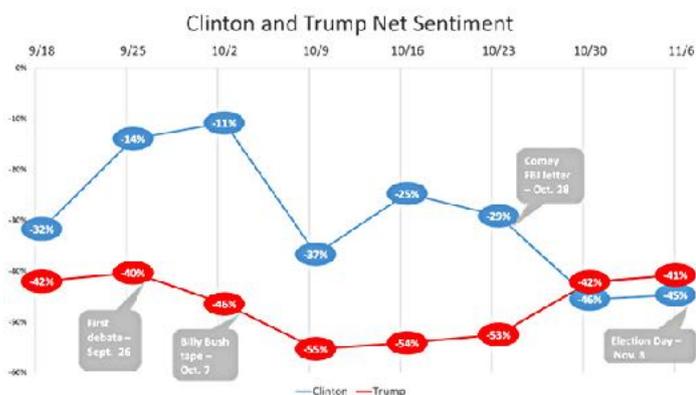
The offer is only for police within the USA now, but may be extended to police forces of other nations. <http://tinyurl.com/mr57u2z>

Is Trump the first President of the USA elected by the FBI?

Did FBI Director James Comey, an acknowledged Republican, personally elect Donald Trump President?

CLA's man in Washington, Fitch Esq, suggests the answer is 'yes' in his recent column in the *Justinian* legal blog.

In late October 2016, Clinton led Trump by 24 points in the survey by Engagement Labs.



Two days after Comey released a letter saying he is further investigating Clinton emails, Trump was ahead by 4 points. Trump kept that lead until election day.

Just before election day, Comey said the further investigation revealed nothing about Clinton. <http://tinyurl.com/zuky4s4> or <http://tinyurl.com/mfs3zz7>

In late April 2017, the New York Times ran a major analytical piece, effectively coming to a fence-sitting conclusion about the propriety of Comey's actions. <http://tinyurl.com/m3rxcn8>

Support for death penalty is dropping in US

Support for the death penalty, as measured by use, is at its lowest point since the US Supreme Court reinstated it in 1976, according to a *New York Times* report by Adam Liptak last month.

American courts imposed 30 death sentences in 2016, down from 315 in 1996, the largest number in recent decades.

Similarly, there were just 20 executions in 2016, a decline from the 98 executions in 1999, the highest in the modern era.

State and federal courts have, in recent times, issued rulings blocking some of the executions based on the inmates' mental competence, DNA evidence, the clemency process, the chemicals to be used and how those chemicals were obtained. Some of those rulings have been stayed or reversed, and the welter of legal actions continues to grow more complicated.

Some drug companies seem to be acting from moral conviction and economic self-interest in trying to prevent the use of their products.

For instance, McKesson Corporation, the nation's largest pharmaceutical distributor, sued to stop Arkansas from using one of its drugs in executions. <http://tinyurl.com/lpuj3z>

International briefs

Breach of trust? President Trump last month signed to repeal online privacy rules limiting the ability of ISPs to share or sell customers' browsing history for advertising. The Senate and House had earlier voted to eliminate the rules issued by the Federal Communications Commission during Barack Obama's presidency. "President Trump has signed away the only rules that guarantee Americans a choice in whether or not their sensitive internet information is sold or given away," said Chris Lewis, VP of consumer advocacy group Public Knowledge. Trump's action also "eliminates the requirement that broadband providers notify their customers of any hacking or security breaches." <http://tinyurl.com/k9a2cce>

State killings down: Executions worldwide fell by more than a third to 1032 across 23 countries in 2016, compared with 1634 in 25 countries in 2015, an Amnesty report said last month. Iran (567), Saudi Arabia (154) and Iraq (88) were the top executioners, with the USA killing 20 people. Amnesty estimates that China executes thousands of people, but Beijing does not release statistics and considers the number of death sentences a state secret. <http://tinyurl.com/k5qxmb>

US customs searches nearly double: Customs officers at the borders and airports almost doubled their searches of electronic devices of people entering the USA in the past six months, according to Customs and Border Protection data. Despite the surge in searches — nearly 15,000 from October to March, compared with 8383 in the same period in 2015 and 2016 — agency officials said the latest numbers represent less than one percent of the 189.6 million travellers who arrived in the USA in that period. <http://tinyurl.com/mj7d2fy>

Parents advised not to comply with government form: UK parents are being told not to supply information on their children's nationality and birthplace which being demanded by the government, amid fears the information could be used to enforce immigration laws. The National Union of Teachers' annual conference passed a motion last month condemning the Dept for Education's attempts to record pupils' nationality and country of birth in England's national pupil database (NPD). Parents are not legally obliged to supply the information. Controversy emerged when it was revealed that the department regularly passed on NPD information in response to requests from the police and Home Office. <http://tinyurl.com/mzqw7n>



Anwar tries again for justice:

Malaysia's former opposition leader Anwar Ibrahim (photo) has filed a new legal challenge to his five-year jail sentence on sodomy charges widely seen as politically-motivated. His conviction in Malaysia's highest court in February 2015 barred him from running for office, in a crushing blow to

the country's opposition alliance that has since splintered ahead of elections expected later this year. His new bid seeks a civil court ruling to invalidate the conviction because a key witness lied, and to order his immediate release from jail where he is held in isolation. <http://tinyurl.com/khszaku>

Trump checks his posture: The US is engaged in a Nuclear Posture Review — a major look at all aspects of America's military nuclear capabilities. The Obama administration conducted the previous NPR in 2010, when geopolitics were different. The current NPR will also look at technology as the

Pentagon prepares to revamp its entire nuclear arsenal, building new nuclear-capable submarines, bombers and intercontinental ballistic missiles, as well as the command and control structure to support them. Estimated cost over 10 years? Northwards, well northwards, of \$US400 billion. CLA believes not one nuclear ploughshare will be built. <http://tinyurl.com/msdp7wx>

Unrestrained fearmongering, says NYT: The *New York Times* editorial board has labelled a recent talk by the head of the US Department of Homeland Security, John Kelly, to his staff as an “incendiary message” which can “only encourage abusive behaviour among his officers”. “That apocalyptic talk turns the Islamophobia and immigrant scapegoating that turbocharged the Trump campaign into marching orders for federal law enforcement agents and bureaucrats,” the NYT said. <http://tinyurl.com/mz5fxnc>

DATES

8-9 May, Surfers Paradise: Qld Community Legal Centres conference. Details: <http://tinyurl.com/gp4g8gq>

12 May, Melbourne: The Mythology of Modern Law: all-day conference with visiting Prof Peter Fitzpatrick, Woodward conference centre, 185 Pelham St, Melbourne. More info: law-iilah@unimelb.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.



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

9-17 June, Venice: The Venice School of Human Rights – Human Rights as Our Responsibility, European Inter-University Centre for Human Rights and Democratisation. Boo <https://www.google.com.au/maps/@-35.7089846,149.7797929,9z> k 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

2-8 July 2017, London and Dublin: Australian Bar Association conference. www.abaconference2017.com.au

(No, we don’t know why the “Australian” BA conference is on the other side of the globe but it is, every two years).

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>

16-18 July 2017, Gold Coast: 30th ANZ Society of Criminology conference. Details: www.icccf2017.com.au

8-9 Sept, Sydney: 40th anniversary of the Federal Court – considering the court’s contribution to the development of Australia law. Venue, Law Courts Building, Queens Square. Details: <https://law.anu.edu.au/news-and-events>

11-29 Sept, 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

23 Sept, NZ: Election

8-13 Oct, Sydney: International Bar Association conference: 8 -13 October 2017 www.ibanet.org/Conferences/Sydney2017.aspx (We don’t know why the “international” bar association conference is in Sydney, and the “Australian” conference is in England and Ireland - see 2-8 July)

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/jpmkkip>

1 - 3 Nov, Melbourne: 50 years of naming institutional racism: realising racial equity or intensifying injustices? 9am-7.30pm, Deakin University Downtown, 727 Collins St, Melbourne. Chair, organisers: Prof. Yin Paradies yin.paradies@deakin.edu.au

30 Nov - 3 Dec, Montreal, Canada: 8th International Conference on Human Rights Education: Bridging Our Diversities. Details: <http://tinyurl.com/kvpzq2v> NOTE: 9th of series to be held in Sydney in 2018.

5-8 December, Canberra: International Conference on Cybercrime and Computer Forensics: Collaboration Imperative – Acknowledging the past. Imagining the future. Details TBC.

2018:

Late 2018 (Timing/venue TBC): 9th International Conference on Human Rights Education. Contact: Dr Sev Ozdowski AM, Coordinator, International Human Rights conference series; President, Australian Council for Human Rights Education. Email: S.Ozdowski@westernsydney.edu.au

CLArion is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA’s Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: [Secretary\(at\)cla.asn.au](mailto:Secretary(at)cla.asn.au)

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