

Table will show wrongful convictions at-a-glance: campaign needed

Civil Liberties Australia is working on an easy-to-read table that will set out – in one easy glance – how rife miscarriages of justice are in Australia.

The headline figures indicate there are probably more than 300 Australians in jails for murder and rape who are innocent. At least.

For less serious crimes, the numbers of innocent people in jail are likely in the many thousands.

It has been this way for years. No-one – police, lawyers, judges, the Crown – appears to be at all concerned that the “justice” system isn’t just.

Wrongful convictions also appear to be growing, as problems with DNA systems, software, people and processes have light shone on them around the nation.

The case for Australia to introduce a Criminal Cases Review Commission, like in Britain and Scotland and Norway, is becoming overwhelming.

Wrongfully-convicted people and their families and friends have campaigned for justice for decades. But their pleas ring out in isolation, one here, one there. It’s beyond time a mushrooming national campaign – perhaps part of CLA’s Better Justice push over 10 years – started to penetrate the blindness of justice officials in Australia to how serious the problem is.

We expect to be trialling our table on ‘live’ audiences, in July, and releasing it publicly later in the year.

Genes may tell more – and more people – about you

ANU law student Jyoti Haikerwal (photo) is undertaking an internship with CLA this month to study whether Australians need to better protect their own genes by better laws or regulations.

Since she began her research, the issue has assumed greater importance as the heritage giant, Ancestry, comes under fire for its DNA service claiming it has “full, worldwide license (sic)” to use anyone’s DNA and the results that come from taking an Ancestry “\$100” test.

Writing in *Future Tense*, a section of *Slate* online, Jacob Brogan revealed that AncestryDNA’s claims that, for \$99 in the USA, the company will analyse a sample of your saliva and then send back information about your “ethnic mix.” Ancestry offers a similar service in Australia and NZ.

“While that promise may be scientifically dubious, it’s a relatively clear-cut proposal. Some, however, worry that the service might raise significant privacy concerns.

“After surveying AncestryDNA’s terms and conditions, consumer protection attorney Joel Winston found a few issues that troubled him. (He noted that) the agreement asserts that it grants the company ‘a perpetual, royalty-free, world-wide, transferable license to use your DNA.’ (The actual clause is considerably longer.)

“According to Winston, ‘With this single contractual provision, customers are granting Ancestry.com the broadest possible rights to own and exploit their genetic information.’

“Winston also noted a handful of other issues that further complicate the question of ownership. Since we share much of our DNA with our relatives, he warned, ‘Even if you’ve never used Ancestry.com, but one of your genetic relatives has, the company may already own identifiable portions of your DNA.’

“Theoretically, that means information about your genetic makeup could make its way into the hands of insurers or other interested parties, whether or not you’ve sent the company your spit.”

Ancestry moved quickly to claim it had no malicious purpose in mind, and that it needed a “license” to be able to send people’s DNA to independent test laboratories.

However, the more Ancestry explained, the less clear became the issue of whether Ancestry was retaining rights to sell individual DNA results to insurance or marketing companies. <http://tinyurl.com/y73lpg4j>



CLA has been working on proposed new genes law for years

The research Jyoti Haikerwal is undertaking (see above) is part of a long-term drive, by CLA alone among liberties and rights organisations, for Australia to legislate to protect people from misuse of their own DNA.

In conjunction with then federal MPs, Melissa Parke (Labor, Fremantle WA) and Senator Bill Heffernan (Lib, NSW), we had prepared a draft bill for the federal parliament in 2015. Fortunately, the High Court of Australia ruled in July 2015 that a genetic firm's patent claims in relation to BRCA (breast cancer) gene tests were not valid. The US Supreme Court had earlier made a similar ruling for the USA.

But questions around people's rights to their own DNA remain clouded. If you have a genes test, must you tell your life insurance company? How about your superannuation provider? If you have a tendency towards a particularly nasty disease, are you obliged to tell your sister and brother? Or your children?

And these are just the tip of the iceberg of the dilemmas new gene technology is raising. Ms Haikerwal's ANU law internship is the first step in quantifying what questions need asking, and how Australia can go about legislating over rights and privacy issues in relation to our genes.

Qui Tam law may profit future whistleblowers

Financial Services Minister Kelly O'Dwyer is considering the introduction of a "US bounty-style reward system as an incentive for whistleblowers", among other measures.

The minister says she was inspired by US laws that allow workers to be rewarded if the whistleblowing results in a successful prosecution.

"In the US, for prosecutions which result in more than \$1 million worth of penalties, the whistleblower can get between 10 and 30 per cent," said Greg Golding, partner of law firm King & Wood Mallesons. "\$US30 million was the largest award ever made under that scheme." <http://tinyurl.com/ycv2x8ll>

Civil Liberties Australia has long advocated that the US law – known as 'qui tam', or payment for exposing the wrongdoing – be introduced here: see <http://www.cla.asn.au/News/blowing-whistle-might-profitable/> and other articles on the CLA website.

The abiding shame in Australia is that Customs whistleblower Allan Keesing, who first helped to alert the nation to the smuggling and organised crime problems at the nation's major airport, Sydney, was sacked, pilloried and taken to court by the Australian government, instead of being rewarded.

Australia condemns 1745 to a life of limbo, and physical and mental pain

Some 1745 people who have sought refuge in Australia still live in limbo on offshore islands.

The Refugee Council of Australia says no-one – refugees or the Australian government – has got any idea how many might go to America, or where else they might end up.

In November 2016, Australia announced a resettlement deal with the USA for some refugees on Nauru and Manus. They have to "express interest", then undergo stringent US security assessment, further interviews and medical checks.

US officials visited both islands and interviewed people but by late last month no refugee is resettled in the USA. As of 30 April 2017, 1745 people on Nauru and Manus Island are recognised refugees.

It is unclear how many the USA will take. In late January 2017, a US press secretary stated they would resettle up to 1250 refugees, Australian officials maintain it's not possible to quote a fixed number as it depends on variables, including the number of people expressing interest in that resettlement option and the security screening

The Australian government has not announced an appropriate resettlement plan for people who won't qualify for resettlement in the USA but who are officially refugees. Similarly, the future of those who have been found not to be a refugee but are unable to return home (due to statelessness or inability to source travel documents) remains uncertain.

Detention in PNG is illegal: In late April 2016, the PNG Supreme Court ruled that detention of asylum seekers on Manus Island was illegal and breached the right to personal liberty under the PNG Constitution. In mid May 2017, people in Manus Island detention centre were told that the centre would close by the end of October 2017 and some residential areas would close by end of May but the centre was still operating last month.

People in the detention centre were told that those found to be refugees, and those found not to be, would be separated. Refugees were given the option of living in the PNG community or living temporarily in the East Lorengau (on Manus Island) transit centre, or returning home. Those found not to be refugees were encouraged to return home voluntarily, otherwise they would be involuntarily removed.

Detention centre conditions: Accommodation standards, facilities and services in the detention centres remain well below international standards. UNHCR and Amnesty International have documented the harsh nature of the conditions and noted the physical and mental health impacts of indefinite detention on the asylum seekers. – Refugee Council of Australia website: <https://www.refugeecouncil.org.au/>

Politicians and police fail...then blame civil liberties people!

Criminals with demonstrated links to terrorism will be less likely to be granted parole under new national measures agreed by Australia's leaders at the most recent COAG meeting in Hobart, *Fairfax* has reported.

The move follows a siege in Melbourne last month by Jacqub Khayre, a career criminal granted parole in 2016, who was shot dead by police after shooting someone else. Two police officers were wounded.

Parole boards will now consider a prisoner's terror-related history even if they are in jail on charges unrelated to terrorism, as they already do in NSW.

In a bid to improve information transparency between agencies, security-cleared correctional officers will join the Joint Counter Terrorism Teams in each state. CLA says that's what Australians thought they were doing under the terror watchlist scheme.

Spooks and police and relevant officials were allegedly coordinating with each other and regularly and consistently swapping quality intelligence on terrorism-linked people.

Every recent new incident, here and in England, has demonstrated that the police and security services haven't been doing the jobs we were told they were set up to do, that they were given massive numbers of personnel and hugely increased funds to do.

Victorian Premier Daniel Andrews warned forthcoming decisions "may well be unpopular with the civil liberties community". If those in authority, from politicians down through the police leadership, were doing what they were supposed to be doing, what they have previously said they were doing, their actions would be very popular with civil liberties people and all Australians.

What civil liberties people want is the rule of law obeyed, by everyone. It's part of the rule of law that convicted people who are a danger to the community should not be running loose, turned out on parole because the authorities with relevant information can't get their acts together.

The politicians, spooks, police and parole boards are trying to blame civil liberties for their own failures.

Nothing to do with us mates, all your own work.

COAG: Council of Australian Governments <http://tinyurl.com/yb4j4qxv>

Cartoon: For many years the Coalition government has had problems with getting 'justice' and the rule of law right.



Parole decision likely to result in greater radicalisation: Williams

Prof George Williams, law dean at UNSW, said the COAG decision would result in more people being left in jail where they could be radicalised.

"This is a good example of immediate knee-jerk lawmaking," he said. "In general it's better to leave these things to the discretion of a judge but to make sure the judge takes into account all the relevant factors including community safety."

Professor Williams suggested the imposition of control orders to restrict an individual's freedom after release from prison "may be a more sensible solution".

Prof Williams is a civil liberties person: if only politicians would listen to the usually very sound advice provided by "civil liberties people".

Make the law, obey the law: court dresses down naughty Ministers

Of course, to leave the decisions that belong to judges to judges requires obeying the rule of law. Which three of our federal ministers conspicuously did not do last month. And all of them lawyers.

The three ministers avoided charges after apologising for comments about "weak" terrorism sentencing in Victoria, as the state's appeals court increased the jail terms given to two would-be terrorists.

Their "out of court" comments were made ahead of sentencing review decisions by the Victorian Court of Appeal (VCA). In those decisions, Sevdet Besim, who planned to kill a police officer during a 2015 Anzac Day attack, was given a four-year sentence increase to 14 years, and a teenager sentenced over a Mother's Day attack plot also got a four-year increase to 11 years.



The VCA ruled that it would not proceed with contempt of court charges against federal Human Services Minister Alan Tudge, Health Minister Greg Hunt and Assistant Treasurer Michael Sukkar after it heard their apology. The three men did not appear, but Commonwealth Solicitor-General Dr Stephen Donaghue (photo) told the court each apologised "unreservedly" for the comments, published in *The Australian* newspaper.

"The court states in the strongest terms that it is expected there will be no repetition of this type of appalling behaviour. It was fundamentally wrong," it said. "It would be a grave matter for the administration of justice if it were to recur."

<http://tinyurl.com/yaf09tjl>

Hand them over

The National Firearms Amnesty starts today (1 July 2017), meaning you can hand in unregistered and unwanted firearms with no questions asked.

It is the first nation-wide gun amnesty since 1996, when PM John Howard established a gun amnesty soon after the Port Arthur massacre in Tasmania. Some states have held amnesties since then.

Until September 30, anyone with unwanted and unregistered firearms or firearm-related items can legally dispose of or register them at approved drop-off points in each state and territory. <http://tinyurl.com/y8syayye>

AFP demonstrates need for updating slavery law

The Australian Federal Police charged two men with slavery offences last month.

Also last month, CLA made a submission to the 'modern slavery' inquiry of the Australian Parliament, which is investigating whether Australia should enact a new law specifically against slavery. See the CLA website: www.cla.asn.au CLA member Felicity Gerry QC wrote the submission.

In Melbourne, a 33-year-old man and a 31-year-old man were also both charged with possession of child exploitation material.

Later, the 33-year old was further charged with:

- facilitate the entry of another person into Australia, deceiving that person with regard to their exploitation in Australia, contrary to section 271.2(2) of the *Criminal Code* (Cth);
- intentionally exercise over a slave any of the powers attaching to the right of ownership, namely use, contrary to section 270.3(1)(a) of the *Criminal Code* (Cth).

The 31-year-old was further charged with:

- intentionally exercise over a slave any of the powers attaching to the right of ownership, namely use, contrary to section 270.3(1)(a) of the *Criminal Code* (Cth).

Both men have been bailed to next appear in Melbourne Magistrates Court on 12 October 2017. – AFP media release <http://tinyurl.com/y8a6l8jn>

It's enough to make the Treasurer wanna cry

Victoria's 280 red light and speed cameras re being reviewed to make sure they have not been infected with a software virus...but officials claim they will still be operational.

A total of 97 cameras have now been identified as having the virus, mistakenly put into the cameras by a contractor during a routine maintenance program.

The virus caused police to withdraw about 8000 fines issued between 6 June and 22 June, in case they were incorrect. A day later, police were forced to cancel another 600 speeding and red light tickets after 55 cameras in Melbourne and country Victoria were found to be infected with the 'WannaCry' software virus.

<http://tinyurl.com/y8osatbh>

NSW get full-time privacy commissioner

AG Mark Speakman has announced Samantha Gavel will become full-time NSW Privacy Commissioner.

The role has been part-time since the first appointment in 1999. For long periods there was an acting commissioner, including 2003-07 and 2009-2011, as well as recently. Dr Elizabeth Coombs has been acting in the job since her appointment as part-time commissioner expired in November 2016.

The NSW government budget also announced:

- \$27m for "measures to encourage offenders to enter early guilty pleas";
- \$5.9m to roll out ballistic vests for all NSW Sheriff's Officers and for a 12-month extension of 40 temporary Sheriff's Officer positions created under a counter-terrorism initiative; and
- An extra \$2.8m for the Office of the Director of Public Prosecutions' ICAC Special Prosecutions Unit that helps bring corrupt individuals to justice. <http://tinyurl.com/y92krzmt>

...looks like some more high profile corruption trials are in the offing in NSW.

Supermax to be supersized



NSW is spending \$47 million to extend the Supermax high-security unit at Goulburn jail to house 75 prisoners, up from 45 now.

The government's aim is to prevent those convicted of terrorism from spreading extreme views, even though Corrections' own figures show only about five inmates had been radicalised over the past decade.

ANU criminologist Clarke Jones said the total isolation of inmates in Supermax 2 would be counterproductive because it would remove any chance of rehabilitation, especially for young prisoners. It would also foster a belief in certain communities that the world was against them.

Dr Jones, a counter-terrorism expert, said the likelihood of radicalisation spreading within jails was very low because those convicted of terrorism were

at the bottom of the inmate-imposed pecking order and, if they needed to be separated, it was often to protect them from the rest of the prison population.

NSW Corrective Services Commissioner Peter Severin (photo) said only about five inmates within the NSW prison system had been radicalised over the past decade but "what we need to do is ensure that it remains that way". At present, 33 of the 45 inmates in Supermax at Goulburn have been convicted of, or charged with, terrorism-related offences. <http://tinyurl.com/yb4ucbgb>

Shoot-to-kill law passed in a hurry

The NSW government last month rushed a police shoot-to-kill law through parliament in one day.

The same new law restricts bail for anyone with a hint of a whiff of a connection to terrorists – even knowing one might mean you can't get bail under clause (e), "anyone who has any associations...with any persons advocating support for terrorist acts or violent extremism". Bad luck if you're in the same soccer team, or you play chess together, or you both support South Sydney.

The new law is a result of the Lindt Cafe siege or, more accurately, the result of the coronial inquest which followed.

The inquest found both police and bail laws were inadequate in relation to Man Haron Monis being free on bail to initiate the siege, in which two other people also died.

The *Terrorism Legislation Amendment (Police Powers and Parole) Bill 2017* allows the Commissioner of Police to declare an incident to which police officers are responding is or is likely to be a terrorist act. The police will then be able to take pre-emptive action against terrorists, including using "lethal force".

Other clauses change rules around granting parole to people deemed to be "terrorism related offenders."

Battlers face punitive income management

Dole battlers who test positive to illegal drugs could have their income managed for the full two years of the Federal Government's proposed trial, even if they do not require ongoing treatment.

Department of Social Security officer Cath Halbert told a Senate estimates hearing that people would stay on the income management card, even if they did not require ongoing treatment for drug addiction. "At least for the duration of the trial and potentially for up to two years," Ms Halbert said.

Greens Senator Rachel Siewert said the two-year timeframe showed the Government was "out to punish people". The trial of 5000 welfare recipients across three separate locations is due to start next year, although the department expects fewer than 10% to test positive.

Newstart and Youth Allowance recipients who initially test positive to cannabis, ice or ecstasy will have their income quarantined to some form of cashless debit card, which could only be used for certain purchases. Officials from the Department of Social Services told a Senate estimates hearing that a second positive test would see the welfare recipient charged for the cost of the test, and referred for treatment. <http://tinyurl.com/yb6xppws>

WordPress gives Aussie court the bird

Major blogging platform *WordPress.com* is defying an Australian court, refusing to pull down leaked documents related to Amber Harrison, the sacked former lover of Seven West Media boss Tim Worner.

The Federal Court was told last month that San Francisco-based Automattic Inc, WordPress owners, had advised Ms Harrison's legal team it would not remove an anonymously-posted blog containing confidential correspondence.

The case raises important questions about the power of Australian courts when dealing with digital tech giants who have worldwide reach, reporter Nick Toscano wrote on *Fairfax Media*. "It's an illustration," Justice North said, "of how the legal world is slowly lurching itself into the digital age."

Ms Harrison is under a temporary gag order preventing her from speaking publicly about the company or the relationship with Mr Worner. The case will resume this month (July). <http://tinyurl.com/y88cp8bn>

Eastman case eats up more of territory budget

The *Canberra Times* reported last month that the ACT government allocated about \$62m in the 2017-18 territory budget towards the already-underway \$160m facelift of the ACT law courts precinct.

Megan Gorrey's coverage said the government would "continue to spend millions on legal proceedings linked to a looming potential retrial of David Eastman over the alleged murder of ACT police chief Colin Winchester in 1989. More than \$3.3m for the case has been set aside for the Director of Public Prosecutions and ACT's court system, as well as \$1.7m for Legal Aid" in the financial year.

Inmates and staff at the newly-expanded Alexander Maconochie Centre, the ACT jail, will receive more than \$1m to expand the jail's laundry to provide extra employment opportunities for detainees.

Another \$1.14m will go to the Throughcare program to help offenders transition into the community and drive down traditionally high recidivism rates. <http://tinyurl.com/y8g2cfzo>

ACT acts against Adler multi-shot weapons

The ACT is the first Australian jurisdiction to pass a law restricting ownership of the Adler A110 lever-action shotgun.

The new law follows a commitment by all government to do so at a COAG meeting in December 2016.

ACT Police Minister Mick Gentleman said multi-shot lever action shotguns have moved classification to D. Cat D weapons are available only to professional shooters, primary producers and the like who can prove a genuine need for such guns. <http://tinyurl.com/ybdcc3tf>

SA spends on judge, prisons and juries

Another judge and his/her staff will join the SA Supreme Court in the coming year at a cost of \$778,000, according to the 2016-17 state budget.

The court already has 12 judges, and two masters, so the new judge may mean that more cases are on their way, CLA says.

They certainly will be if the State of SA holds the inquiry it should into wrongful convictions between for the 30 years before about 2000 when Dr Colin Manock was the states's chief forensic scientist. Legal academic Dr Bob Moles believes up to 400 SA murder, rape and baby-bashing convictions and exonerations need reviewing.

Premier Jay Weatherill has declined a formal request by CLA to hold an inquiry into the sorry state of justice in his state.

The 2017 budget also contained an allocation of \$38.8m for an extra 160 beds Mount Gambier Prison. This is the state hitting the taxpayer to pay for the politicians' over-the-top law and order promises at elections.

Another \$31m is going to redevelop the higher courts' precinct, with an extra two jury rooms for the Sir Samuel Way building.

There will be \$2.9m spent on extra resources for the Coroner's Court over the next two years, including the appointment of a second deputy coroner. Could it be that the state with a reputation for odd cases – remember the Snowtown bodies in the barrel case – is expecting even more murders and mayhem?

Conferring 'on the smell of an oily rag'

WA Chief Justice Wayne Martin (photo) was keynote speaker at the Criminal Lawyers Association of the Northern Territory (CLANT) 16th biennial conference, held in Bali Indonesia in late June.

Entitled 'Justice on the Smell of an Oily Rag', the 2017 conference attracted barristers, criminal lawyers and academics from throughout Australia, and from overseas.

We expect to have coverage of the always-interesting CLANT conference in the next CLArion, and on the CLA website.



NT pays price for holding so many on remand

Nearly 30% of 1612 people locked up in NT prisons are on remand, still awaiting their day in court.

They cost NT taxpayers about \$124,000 a day. In mid-June 2017, there were 1613 prisoners in the NT, of whom 476 were remanded in custody. Law Society NT president Tass Liveris has hit out at the high number of remandees and the cost to taxpayers. <http://tinyurl.com/yddz5oz4>

NT to get its own ICAC: Attorney-General, Natasha Fyles late last month released draft legislation towards developing an anti-corruption watchdog for the NT. More info: <http://justice.nt.gov.au/>

Justice get some more funds for initiatives

Queensland announced some significant justice initiatives in its budget last month:

- \$31.6m over five years (\$6.3m for 2021-22, reducing to \$4.2m a year, ongoing from 2022-23) to expand and upgrade existing audio visual capability in the criminal justice system;
- \$22.7m over four years and ongoing funding of \$6.5m a year across Justice Services and Corrective Services areas, the judiciary and Legal Aid Queensland to reinstate a Drug Court and to provide referral and support services to help people address issues associated with their offending;
- roll out of a further three High Risk Teams to Cairns, Brisbane and Ipswich to provide an integrated response across government and the community to domestic and family violence; and
- continue to roll out funding to community justice groups in discrete Aboriginal and Torres Strait Islander communities to tackle domestic and family violence in their communities with a further eight groups to receive funding. <http://tinyurl.com/ybhctggq>

ODD SPOT: What if a police officer receives very second-rate treatment

A member reports on chats with a friend who knows the ways of police.

One officer warned that you might be placed under surveillance due to adverse intelligence reports on a second-hand car.

It seems that, if you buy a used car associated under its previous ownership with an "outlaw" motorcycle gang member, you might well find yourself under surveillance if a police car calls your number plate in for checking on the cops' "intelligence" system.

Shades of Stalin in Russia, the Stasi in East Germany and J Edgar Hoover in the USA. This is the world of "1984" in Australia in 2017.

Govt rolled over mandatory sentences

Tasmania's Legislative Council last month rejected a bill to create mandatory minimum jail sentences for sexual offences against children.

Upper House members were divided evenly, with six for and six against. Following convention, the President cast a vote in the negative, defeating the bill.

The State Government has pressed ahead with an agenda of mandatory minimum sentencing, despite broad opposition from the Sentencing Advisory Council and the legal community.

- Four years for rape where a victim is under 17;
- Four years for maintaining a sexual relationship with a young person where there are aggravating circumstances and rape;
- Three years for maintaining a sexual relationship with a young person where there are aggravating circumstances; and
- Two years for sexual intercourse with a young person where there are aggravating circumstances.

<http://tinyurl.com/y8tdqmxr>

ODD SPOT: "Free" speech not so free when Anzackery speaks

When talking about past wars, we have well-honed rhetoric about "the fallen", "the supreme sacrifice", "dying for freedom and honour" ... Anzac – the honest approach – would say "dead" or "killed" rather than "fallen".

If the honest approach used the word "sacrifice" at all it would say "they were sacrificed" ...

Euphemisms and dishonest terminology are the essence of Anzackery.

An honest approach would not say "they died for our freedom", as if there was some direct link between squalid death a century or 70 years ago and such liberty as we have today or had then.

An honest approach would simply say "they died serving a government policy" and then it would go on to question whether that policy made sense then or makes sense now. When we hear that mantra, "They died for our freedom", it is usually a sign that someone is trying to stop us asking difficult questions about what they really died for.' – David Stephens, *The Honest History Book* (2017)

CLA report – main activities for June 2017

This month we welcomed new director Kavitha Burge to the board.

Kavitha, originally from Melbourne, moved to Canberra to study Arts/Law at the Australian National University. After admission in 2013, she has worked in the nation's capital with Malaganis Edwards Johnson, mostly on behalf of plaintiffs in personal injury compensation.

She says that working with and for injured and disadvantaged people has shaped her appreciation for what rights we do – and don't – have, and why basic liberties and freedoms are worth protecting and fighting for.

Kavitha is also a member of the Australian Lawyers Alliance and the Women Lawyers Association.

The new director's first formal meeting was with new MP Dr Anne Aly in Parliament House, Canberra.



Photo: CLA President Dr Kristine Klugman, MHR for Cowan (WA) Dr Anne Aly, and new CLA Director Kavitha Burge at a meeting at Parliament House Canberra, June 2017.

From the meeting in Dr Aly's office, we have sent emails to a number of other MPs to follow up individual points raised by Dr Aly's staff, and by CLA.

We are in discussion with some people with a view to their becoming the CLA spokesperson for WA, and co-spokesperson on national issues. We're also still seeking a person to be CLA Treasurer – please give this some thought and make suggestions to CEO Bill Rowlings.

CLA has two ANU law students doing internships: Nivedita Sankar (defamation, being supervised by former CLA member and ACT magistrate, Dr Bernadette Boss) and Jyoti Haikerwal (genes issues, see earlier item, being supervised by CLA Vice-President Tim Vines).

Meetings were held with CLA members Keith McEwan, Tim Vines, Saskia Vervoorn, Chris Mackay, Rosemary Jennings, Estelle Blackburn, Humphrey McQueen, and Peter Curtis. Skype sessions with Paul Wilson, Queensland, and Margaret Howkins, WA, covered future initiatives.

CEO Bill Rowlings has done significant, lengthy research on rate of miscarriages of justice in Australia, the first time this has been attempted in the way it is being done. A draft is being put to various experts for comment.

Adverse news came through this month that CLA member Barbara Etter, long-term (more than five years) pro bono lawyer on the Sue Neill-Fraser case in Hobart, has withdrawn from the legal team. While no public reason has been given, it is not unusual for legal strategies and tactics to cause divisions in thinking when final hearing dates are at hand. Neill-Fraser's appeal against her conviction, under the new 'Right-To-Appeal' provision in Tasmanian law which CLA was instrumental in achieving, is due to begin on 24 July. If Neill-Fraser is given justice at last, and freed, it will be due in large part to Barbara Etter, regardless of who is in court for the final decision.

In WA, CLA wrote to Police Minister Michelle Roberts asking her to consider expanding the first selection panel drawing up a shortlist for Police Commissioner to include a Victims of Crime and a civil liberties representative, to help ensure the process did not become political. We have received no reply as yet. Commissioner Dr Karl O'Callaghan is due to step down from September 2017, so the issue is becoming urgent. We are also working on a proposal to put to the Corrections Minister, Fran Logan, to better evaluate health and education status and needs of people in prisons in WA.

In Tasmania, the two Tasmanian Directors of CLA, Richard Griggs and Rajan Venkataraman, met with the Independent Reviewer of Tasmania's Unexplained Wealth Laws and former Commonwealth Director of Public Prosecutions, Damian Bugg, to discuss the CLA submission to the review. The review is examining the first three years operation of the unexplained wealth laws.

PRESENTATION: CLA VP Tim Vines presented a paper on Australia's Defence Trade Controls Act – which allows the Department of Defence to place export bans academic research in believe is contrary to Australia's national and international interests – at the 2017 Law and Society Association annual conference in Mexico City.

SUBMISSION: CLA made a submission to the 'consultation process on a proposed civil penalty regime for the non-consensual sharing of intimate images', being run by the federal Department of Communications and the Arts. Director Rajan Venkataraman was the lead author.

Note: The ACT Greens are consulting on possible revenge porn legislation for the territory.

INTERNATIONAL

Could/would Trump pardon himself?

With the appointment of Robert Mueller as a special counsel, the chatter about US President Donald Trump's impeachment has started to migrate from the purely hypothetical to the realm of potential practical reality, according to Michigan law professor Brian Kalt.

"All citizens have a duty to stay informed during such a moment. But legal and political experts have the added responsibility of anticipating the many constitutional dilemmas that loom on the horizon. Donald Trump is an unprecedented president in many ways, and there is good reason to think any early departure of his from office would be unprecedented as well," Kalt wrote on *FP*, the foreign policy web news journal.

"Consider the following situation. Whether or not presidents can be prosecuted while in office (no one knows for sure), the law is clear that they can be prosecuted after they have left. That makes it conceivable that President Trump, if he perceives that a team of prosecutors is closing in on him, could attempt to solve his problem by simply pardoning himself.

"I have been writing about presidential self-pardons for years. My position has always been that they would be legally invalid. I have also believed that a self-pardon is unlikely to ever happen because there are too many incentives weighing against it.

"But I am not sure that applies to Trump, who has proved he has a high tolerance for personal risk and a taste for attempting the never-before attempted," Prof Kalt wrote. Read more: <http://tinyurl.com/y9g38fwc>

Older age is a prison within itself

A combination of harsh sentencing policies and an ageing population has produced a startling effect: prisons are now the UK's largest provider of residential care for frail, elderly men.

The prison population is getting old. In the past 15 years, the number of prisoners over 60 has tripled. The rate of octogenarians serving time has almost doubled in the past two years, and there are now a dozen inmates in their 90s. There's even one of 101.

Incarceration in old age brings its own particular punishments. There are inmates with dementia who don't know they are in prison, or how they got there. Sick and dying elderly men are taken to hospital in shackles, chained to prison officers. Terminally ill prisoners are kept waiting so long for compassionate release that they die in their cells before they get an answer. <http://tinyurl.com/yb67578j>

Religion unseated in Israeli airline case

Flight stewards working for Israel's national carrier El Al cannot ask female passengers to move seats to accommodate ultra-orthodox men who do not want to sit next to them, a Jerusalem court ruled last month.

An 82-year old Holocaust survivor Renee Rabinowitz, a retired lawyer, had sued the airline for discrimination after being asked to move seats to accommodate an ultra-orthodox male passenger in 2015. When she challenged the practice, staff said the policy was approved at board level.

Judge Dana Cohen-Lekah described the practice as "discriminatory", and ruled that "under absolutely no circumstances can a crew member ask a passenger to move from their designated seat because the adjacent passenger doesn't want to sit next to them due to their gender".

Judge Cohen-Lekah said that the policy was a "direct transgression" of the Israeli discrimination laws relating to products and services. <http://tinyurl.com/ybs9wt3f>

Scanners will soon be as smart as cats

The US Department of Homeland Security (DHS) is funding a competition for data scientists to improve screening techniques at airports.

Working with Google, they will run a \$2m contest to build computer algorithms which automatically identify concealed items in images captured by body scanners.

The government is putting up the money, and the six-month contest will be run by Kaggle, a site that hosts more than a million data scientists, which was recently acquired by Google.

Although data scientists can apply any technique in building the algorithms, the contest is a way of capitalising on the progress in a technology called deep neural networks, said the Kaggle founder and chief executive, Anthony Goldbloom. Neural networks are complex mathematical systems that can learn specific tasks by analysing vast amounts of data. Feed millions of cat photographs into a neural network, for instance, and it can learn to recognise a cat.

The technology can do things like identify faces in online images, recognise commands spoken into smartphones and translate one language into another.

Earlier in 2017, Kaggle ran a \$1.3m contest to build algorithms capable of identifying signs of lung cancer in CT scans, helping to fuel a larger effort to apply neural networks to health care. Now, the hope is that neural networks can also help automated systems read body scans with greater accuracy, so checkpoint workers can spend less time pulling passengers aside and patting them down. <http://tinyurl.com/yaq54pvq>

Police may be armed to thwart terrorist attacks

Police chiefs will this month consider every frontline police officer in England and Wales wearing a gun to counter the threat of a marauding terrorist attack, the Guardian has learned.

A discussion paper will be on the table at the 12 July the next meeting of the National Police Chiefs' Council, which wants to look at how to boost armed police numbers to deal with a crisis, following the atrocities in Manchester and London.

The paper is intended to start a debate on the issue, although it is thought unlikely that any wider arming will be agreed upon. Routine arming is controversial within policing and many do not support it: most police officers in Great Britain are unarmed. <http://tinyurl.com/ybpbepkl>

Facebook post causes death sentence

Pakistan has sentenced a man to death for posting blasphemous content on Facebook.

Death penalties in blasphemy cases are common, but this is first time social media has been used as evidence in such a trial in the country.

A court in the city of Bahawalpur last month sentenced 30-year-old Taimoor Raza to death for posting blasphemous statements about Prophet Mohammed and his family on the social network.

While the contents of his post are yet to surface, Raza's brother Waseem Abbas defended his innocence: "My brother indulged in a sectarian debate on Facebook with a person, who we later come to know was a [counter-terrorism department] official with the name of Muhammad Usman," Abbas said.

In 2016, Pakistan passed a controversial Prevention of Electronic Crimes Act, which gives the government carte blanche to "remove or block" all electronic material. About 30m of the nation's 190m people use the internet. <http://tinyurl.com/ycq47j7k>

35 years in jail for 'insulting' a king

A Thai man is in jail for 35 years for Facebook posts deemed insulting to the royal family in one of the harshest sentences handed down for a crime that insulates Thailand's ultra-rich monarchy from criticism.

A Bangkok military court last month convicted him of 10 counts of lese-majeste for posting photos and videos of the royal family on a Facebook account that purported to belong to a different user.

Wichai, 34, whose last name was withheld to protect his relatives from ostracism, was accused of using the account to slander a former friend, said iLaw, a group that tracks royal defamation cases. "The court punished him with seven years per count. Altogether he was given 70 years, but it was reduced in half because he confessed," said Yingcheep Atchanont from iLaw.

Lese-majeste cases are routinely shrouded in secrecy, with media forced to heavily self-censor the details to avoid violating the broadly interpreted law. Reporters were barred from entering the military court where Wichai's verdict was read. <http://tinyurl.com/ybff3o8j>

Japan uses terrorism as an excuse to crack down on civil liberties

Japan has passed a controversial law targeting conspiracies to commit terrorism and other serious crimes, despite a warning by the UN that it could be used to crack down on civil liberties.

The ruling Liberal Democratic party and its junior coalition pushed the bill through the upper house of Japan's parliament as thousands of people protested outside. The vote on the bill, which has been delayed three times amid widespread public opposition, came after a UN expert called the legislation "defective".

Officials insist the law is needed to ratify a 2000 UN treaty targeting global organised crime, and to improve Japan's anti-terrorism measures before hosting the rugby world cup in 2019 and the Olympics in 2020.

The legislation criminalise plotting and preparing to commit 277 "serious crimes".

But the Japan Federation of Bar Associations and other critics point out that offences covered by the law include those with no obvious connection to terrorism or organised crime, such as sit-ins to protest construction of apartment buildings, or copying music. <http://tinyurl.com/ybyqqwq5>

Tinfoil test gets boost from across the ditch

Technology that can – allegedly – read the human mind sounds has booster NZ researchers claiming it's on its way to a courtroom near you.

Called forensic brain wave analysis for long, or "brain finger-printing" for short, the system allegedly analyses brain waves to confirm whether a test subject has knowledge of certain information, like "something in your memory of a (crime) scene, or of a weapon, or whatever," Uni of Canterbury neuroscientist Richard Jones said.

The tinfoil test was developed by American biological psychologist Lawrence Farwell in the 1980s: it has failed to gain much traction as accepted evidence in courts, an *ABC Australia* report commented. <http://tinyurl.com/y98qxnsy>

Govt uses spyware to target journalists, rights activists

Mexico's prominent human rights lawyers, journalists and anti-corruption activists have been targeted by advanced spyware sold to the Mexican government to be used only to investigate criminals and terrorists. The targets include lawyers looking into the mass disappearance of 43 students, a highly respected academic who helped write anti-corruption legislation, two of Mexico's most influential journalists and an American representing victims of sexual abuse by the police. The spying even swept up family members, including a teenage boy.

Since 2011, at least three Mexican federal agencies have purchased about \$80 million worth of spyware created by an Israeli cyberarms manufacturer. The software, known as Pegasus, infiltrates smartphones to monitor every detail of a person's cellular life — calls, texts, email, contacts and calendars. It can even use the microphone and camera on phones for surveillance, turning a target's smartphone into a personal bug. The company that makes the software, the NSO Group, says it sells the tool exclusively to governments, with an explicit agreement that it be used only to battle terrorists or the drug cartels and criminal groups that have long kidnapped and killed Mexicans. <http://tinyurl.com/yanobr9n>

ODD SPOT: Police discriminate based on race

Body-cam footage analysis show that police, at least in Oakland, California, show more respect to white people than to black people.

Stanford Uni researchers analysed the transcribed text from 981 traffic stops caught on body cams by 245 Oakland Police Department officers in 2014. White people pulled over were more likely to be called "ma'am" or "sir," and they were more likely to hear the words "please" and "thank you" from police officers. Black people, however, didn't get as much respect, and they were more likely to be called by their first names and even "my man."

"White community members are 57% more likely to hear an officer say one of the most respectful utterances in our dataset, whereas black community members are 61% more likely to hear an officer say one of the least respectful utterances in our dataset," according to the study. The results held constant no matter the race of the officer, the study said.

The researchers point out that their survey underscores that data collected from body cams can have more uses than for just police work. They say their research model can be duplicated with other police departments. "This work demonstrates the power of body-camera footage as an important source of data, not just as evidence." <http://tinyurl.com/y8ygc5nu>

Supreme Court reinforces its slant on free speech

The US Supreme Court last month ruled that the US government can't pick and choose which trademarks it registers based on whether they offend certain people or groups

The case (*Matal v. Tam*) was brought by the Slants, an Asian-American dance-rock band that had chosen its name — a familiar slur against people of Asian descent — to defuse its negative power. The US Patent and Trademark Office rejected the name under a 70-year-old federal law prohibiting registration of trademarks that "disparage" any "persons, living or dead, institutions, beliefs, or national symbols."



Writing for the majority, Justice Samuel Alito (photo) said the law violated a "bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend." The First Amendment bars the government from discriminating among speakers based on their viewpoints. In this case, the Trademark Office did that by blocking only registrations for trademarks it determined to have negative connotations. <http://tinyurl.com/y8yqolye>

Arrested! Your poor traits are a giveaway

Police in South Wales have used automatic facial recognition (AFR) software to identify a suspect and arrest him, the first arrest aided by this technology in the UK, according to *Wales Online*.

The police arrested the man, who had a warrant out for his arrest, on 31 May after spotting him via a "Slow Time Static Face Search." According to the South Wales Police, that search is linked to 500,000 mugshots.

The man was spotted by a camera in a police surveillance van, and then his face was found in the database.

The UK is already close to blanketed in cameras. There are 5.9 million closed-circuit television cameras in the United Kingdom, or about 1 camera per 11 people, according to the British Security Industry Authority.

<http://tinyurl.com/yawu8dr7>

...and beware also your phoney ID

The US Supreme Court has agreed to decide a controversial question: whether police need a warrant to obtain mobile phone location data from service providers.

The case will be heard in the October 2017 term, but no date has yet been set.

The case, *Carpenter v. United States*, stems from a series of armed robberies between December 2010 and December 2012 in Ohio, Maryland, and Michigan. Two suspects, Timothy Carpenter and Timothy Sanders, were convicted based on mobile phone evidence that revealed 12,898 location points for Carpenter and 23,034 points for Sanders.

This information was used to show that Carpenter and Sanders had been near the locations of the robberies at the time of the crimes. But Carpenter has appealed, saying police had no right to access the data without securing a warrant, which they did not do. <http://tinyurl.com/ydernq8g>

ODD SPOT: Laws rendered gendered are no longer appropriate

The US Supreme Court has issued a ruling that will have major implications for some “old” laws in the USA...and may cause an outbreak of legal ‘revisionism’ in Australia. The ruling is too complex to report here briefly, but basically the court decided that laws written 70 years ago which contained an inherent gender bias based on discriminatory presumptions could no longer stand in America. The question is, are there any such laws in Australia, and what would our High Court rule on a similar question? Details: <http://tinyurl.com/y8phl8hv>

International briefs

Human rights prince calls for end to occupation: The UN’s top human rights official has marked the 50th anniversary of Israel’s occupation of the Palestinian territories by calling for its quick end. Zeid Ra’ad al-Husseini, the Jordanian prince who heads the UN Human Rights Council, echoed the strong language of the UN secretary general, António Guterres, who earlier last month condemned the occupation’s “heavy humanitarian and development burden on the Palestinian people”, which he said had “fuelled recurring cycles of violence and retribution”. <http://tinyurl.com/y9xhzpo2>

Justice Gorsuch’s first vote is memorable: The first vote in the US Supreme Court of the newest judge, Neil Gorsuch, meant he got his chance to “make a difference”. He provided the necessary fifth vote for one of the 11 Arkansas executions scheduled over eight days to proceed. It’s worth reading about how the Supreme Court enabled Arkansas “justice” to play out: <http://billmoyers.com/story/did-arkansas-execution-rush-kill-an-innocent-man-last-week/>

DATES

29 Jun – 1 July, Canberra: 25th ANZSIL conference; Sustaining the international legal order in an era of rising nationalism. Keynote speakers include: Prof Balakrishnan Rajagopal (Massachusetts Institute of Technology), Prof Natasha Affolder (University of British Columbia), Prof Tim McCormack (University of Melbourne), Prof Kerrie Sadiq (Queensland University of Technology). Details: <http://anzsil.org.au/event-2443757>

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).

7 July, Melbourne: What Makes a Law Book Rare? Peter Tinsley and Carole Hinchcliff talk about collecting rare law books. Details: <https://events.unimelb.edu.au/20177>

3 Aug, Brisbane: Annual Sir Harry Gibbs dinner, 6.30–10pm, guest speaker is magistrate and award-winning author of ‘Saltwater’, Cathy McLennan, at Emmanuel College, U. Queensland. Details: <http://tinyurl.com/y9e6uk6a>

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



27 July, Perth: ‘Challenging Justice – Changing Lives’, 2017 Limina Conference public lecture. Author Estelle Blackburn (photo left), a CLA member, details how a Perth journalist with no legal training could gain exonerations for two men 40years after their “crimes” and after they had lost seven appeals, combined. Fox Lecture Theatre UWA, 6-7pm. [Details: http://tinyurl.com/ydejmko](http://tinyurl.com/ydejmko)

25 July, Hobart: Sue Neill-Fraser hearing, Supreme Court of Tasmania, two weeks set aside.

28 July, Launceston: Human Rights Act Campaign for Tasmania – panel discussion and public forum, an initiative of Civil Liberties Australia and 17 other groups. 5.30-7pm, Scotch Oakburn College, Horton Auditorium, 85 Penquite Road, Launceston. Details: <http://tinyurl.com/yc4ms8ky> Panellists include CLA Tasmanian Director Rajan Venkataraman, Rodney Croome, Kristen Desmond and Robin Banks.

28 July, Sydney: Australian Privacy Foundation celebrates 30 years of fighting for privacy, staff common room, Law faculty, UNSW, 5-8pm. Details: h.raiche@internode.on.net

2-30 August, Adelaide: To Tell Another’s Story: Australian Refugee Association Portrait Exhibition 2017, Kerry Packer Civic Gallery, Bob Hawke Prime Ministerial Centre, Uni of SA. Details: <http://tinyurl.com/y87s48rd>

17 Aug, Canberra: Accountability and the Law: Case for a federal anti-corruption commission, at Parl House. Details/ register: <http://tinyurl.com/mzor8sw> Speakers include: Nicholas Cowdery, Geoffrey Watson, George Williams, Brew Walker, Fiona McLeod, Gabrielle Appleby (photo right).



8-9 Sept, Sydney: 40th anniversary of the Federal Court – considering the court’s contribution to the development of Australian 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/jpmkkkp> .

26 Oct, Adelaide: 9th Southgate Oration, Julian Burnside on refugee harm, 12.30-1.30pm , Health Services lecture theatre 1.01, Bedford Park. Info: moira.mathieson@flinders.edu.au

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/kvpzg2v> NOTE: 9th of series to be held in Sydney in 2018.

5-8 December, Canberra: Acknowledging the past, imagining the future. Conference celebrating 50 years of criminology in Australia and New Zealand. Venue: QT Canberra. Details: <http://www.anzsoc2017.com.au/home.html>
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

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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)

ENDS ENDS ENDS

FROM THE ARCHIVES:

From a debate in the House of Representatives, 25 Nov 2015:

Speaker is Melissa Parke, then-MHR for Fremantle (and a member of CLA):

Deputy Speaker, 114 years ago in 1901—the first year of Federation—the federal member for Coolgardie, Hugh Mahon (photo), moved a motion calling for a royal commission into the treatment of Aboriginal people in WA's criminal justice system. That motion was never debated but Mr Mahon's point was well made.



More than 100 years later, the royal commission he called for is needed more than ever.

In January 2008, WA saw the appalling death of respected Warburton Aboriginal elder, Mr Ward, who died while being transported hundreds of kilometres in the back of a prison van in 50 degree heat with no air conditioning or ventilation.

On 2 August 2014, a 22-year-old Aboriginal woman, Ms Dhu, died horribly in police custody in South Hedland after being imprisoned for \$3000 in unpaid fines. As CCTV footage aired at the coronial inquest in Perth yesterday graphically showed, while Ms Dhu was moaning in pain and asking for help, police dragged her out of the police lock up by the legs like a carcass and tossed her into the back of the van. Police and staff at Hedland Health Campus dismissed her complaints, accusing her of suffering withdrawals from drug use or 'faking it', whereas she was, in fact, having a heart attack brought on by septicaemia and pneumonia caused by a broken rib. The footage of the last dreadful moments of Ms Dhu's life will not be released publicly because it is too distressing.

This incident, and many, many others, reveal serious issues with our policing, justice and health systems. There has already been one royal commission into Aboriginal deaths in custody, in 1987, but very few of the more than 330 recommendations have been implemented. This is an ongoing blight on our nation.

ENDS