

OPCAT provides first win in CLA's 'Better Justice' campaign

Australia has ratified the Optional Protocol to the Convention against Torture, which means that in future there will be both regular and random, independent inspections of all places of detention in Australia.

...but not of offshore detention centres, nominally run by other countries but actually controlled by Australia.

OPCAT builds on the 1985 UN Convention against Torture. Australia's ratification – bringing the provisions formally into national law – completes our end of the treaty, which we signed nearly a decade ago. Then AG George Brandis and Foreign Minister Julie Bishop earlier in 2017 promised the ratification as part of Australia's seeking a 2018-2020 seat on the UN Human Rights Council, which was successful.

The formal signing chalks off the first of Civil Liberties Australia's 10 'Better Justice' targets, which we launched in January 2016, long before ratification was even a gleam in the then-AG's eye.

The reason CLA has campaigned for years for ratification is that it opens jails, juvenile detention centres and some psychiatric premises in Australia to regular, external inspection by the UN subcommittee on the prevention of torture.

Under OPCAT, Australia must also set up an independent watchdog, a 'national preventive mechanism', with standing powers to conduct regular and random inspections of prisons, immigration detention centres, juvenile detention centres and psychiatric facilities.

The Commonwealth Ombudsman will coordinate Australia's domestic oversight arrangements. <http://tinyurl.com/y7lo2h4s> and <http://tinyurl.com/y9htqv3k>

What was the fuss all about? 3 words

On Thursday 7 Dec 2017, the Australian Parliament changed the definition of marriage.

It used to be:

'The union of a man and a woman to the exclusion of all others'.

The parliament voted about* 130-4 (with some dozen abstentions) to change it to:

'The union of two people to the exclusion of all others'.

The change – 5 words became 2 – was publicly supported in poll after poll, decade after decade, caused widespread angst among opponents and supporters for the past many years, cost a lazy \$100m-plus in public money, and occupied days of delaying parliamentary debate and motion-moving by a rump of MPs who knew they could not win.

If this saga illustrates what will be involved in the struggle to restore all Australia liberties and freedoms to their rightful place when 'terror-idiocy' finally ends, prepare for a long haul.

The one subliminal bright spot is that there emerged a group of MPs across all parties for whom principle mattered: if only they will stay true to such core beliefs when other important issues of Australian liberties come before the parliament, particularly a bill of rights.

* No formal recording of votes was made. Photo shows the celebrations on the winning side, and in one of the House of Representatives galleries.



Formal notice given for Annual General Meeting

The 2018 AGM of Civil Liberties Australia Inc will be held, mostly online by electronic (e) means as covered in the CLA Constitution, in February and March.

Formal voting will take place between 9 and 23 March, either by members using an e-token sent to them by email, or by posted ballot papers for the few members without an email address.

Please keep an eye out for AGM emails, which will include the Annual Report (including the Treasurer's Report and Financial Statement) and the President's Report, which will be sent out by 5 March.

If you have changed it, PLEASE UPDATE your EMAIL ADDRESS by sending a message to: secretary@cla.asn.au The 'second' member of a household membership might like to also confirm their email address by the same means.

The first eAGM email (giving notice) will go out on 5 January, and between 4 and 17 February there will be a call for notices of motion – if any – from members. Such notices are usually kept for major matters: please contact the President Dr Kristine Klugman email: president@cla.asn.au if you would like to discuss any issue.

Submission being prepared on aged care

CLA is preparing its first formal submission to help restore rights and liberties to older people.

Concern about the liberties and rights of the aged was one of the top priorities identified when we asked members in the 1 Dec 2017 CLArion what CLA should concentrate on in 2018.

It was timely that the Australian Parliament's standing committee on Health, Aged Care and Sport on 7 Dec 2017 announced it would inquire into :

1. The incidence of all mistreatment of residents in residential aged care facilities and associated reporting and response mechanisms, including the treatment of whistle blowers;
2. The effectiveness of the Australian Aged Care Quality Agency, the Aged Care Complaints Commission, and the *Charter of Care Recipients' Rights and Responsibilities* in ensuring adequate consumer protection in residential aged care; and
3. The adequacy of consumer protection arrangements for aged care residents who do not have family, friends or other representatives to help them exercise choice and their rights in care.

Closing date for submissions is 8 Feb. Anyone who would like to access background information can go to: <http://tinyurl.com/ycb7awm9> Members are invited to propose material or comments for CLA's submission to E: president@cla.asn.au by 24 Jan 2018.

As the committee points out, there are more than 175,000 Australians living in permanent residential aged care. Many of them have no family or friends to look after their interests and their rights.

Three groups call for AG to reverse erosion of rights and liberties

Civil Liberties Australia, the Law Council of Australia and the Institute of Public Affairs are all urging new Attorney-General, Christian Porter, to tackle the erosion of liberties and rights in Australia.

CLA has highlighted in its newsletters and media releases throughout 2017 how far and fast in the wrong direction Australia is heading, including proposals from the security forces and police for new terror laws which lower the age for locking up children to 10, when all other experts are calling for the age of responsibility to be raised to 14 following recent Royal Commissions.

CLA's concerns are being collated into an action list for the new AG to tackle in 2018: they will be presented to him formally in the traditional CLA Australia Day letter, sent on 26 Jan 2018.

The right-wing, libertarian Institute of Public Affairs last month identified 19 breaches of rights contained in laws passed in 2017, taking its total count to 324. IPA research fellow Morgan Begg (photo) said the breakdown of basic legal rights "seems to be entrenched in the law-making process" in Australia.

He said it was hugely concerning that the government had not responded to a 600-page report on the trashing of Australian freedoms and rights by the Australian Law Reform Commission in late-2015. Then AG Senator George Brandis had commissioned the Freedoms Inquiry in May 2014.



Law Council of Australia president Fiona McLeod joined the call for Mr Porter to prioritise a response to the long-overlooked inquiry.

"We have been concerned over a number of years that traditional protections, including the right to silence, protection of legal professional privilege, the right to a fair trial ... are not being properly protected and respected. We would welcome the government reviewing the ALRC report and moving forward with some of those recommendations in the new year," she said. <http://tinyurl.com/y6whg9wn>

Brandis leaves behind possible time-bomb for class actions

Just before packing for his new job as Australian High Commissioner in London, then-AG Brandis tasked the Australian Law Reform Commission with inquiring into class action and third party litigation funders.

The move looks like the start of a crackdown on class actions, Civil Liberties Australia believes.

“With class actions becoming more common in courts across Australia, the Turnbull Government wants to ensure the costs of such proceedings are appropriate and proportionate and that the interests of plaintiffs and class members are protected,” then-Senator Brandis said.

“There is a significant risk, in such proceedings, that members of plaintiff groups may be required to pay lawyers’ fees which are exorbitant and unjustifiable. Unlike lawyers, third party funding entities are not bound by professional ethical obligations, despite playing a significant role in enabling and maintaining class action proceedings.”

He wants the ALRC to consider what new federal laws are needed around class actions and third party litigation funders, including the proportionality of lawyers’ costs and the lack of ethical constraints on their operation such as those binding legal practitioners. The ALRC is due to report by 21 December 2018.

<https://www.alrc.gov.au/>

Govt looks set to extend ways of grabbing people’s assets

The question of whether personal superannuation should be captured by the government to compensate victims of crime is up for consideration.

Whenever governments float ideas with mealy-mouthed words, the end result is usually a new way to extract money from people.

Revenue Minister Kelly O’Dwyer last month released an issues paper on superannuation benefits covering the early release of superannuation on compassionate and severe financial hardship grounds, and for victims of crime compensation. This consultation is part of the Treasury-led review of these rules, announced on 8 Dec 2017, which will make recommendations to government early in 2018, Minister O’Dwyer said.

Among other things, the paper asks whether a perpetrator’s superannuation should be accessible to pay compensation or restitution to a victim of crime and, if so, in what circumstances.

Submission are to be lodged on the [Treasury website](http://www.treasury.gov.au) by 12 Feb 2018. <http://tinyurl.com/yc9xptl7>

Report calls for modern slavery law

A new report released last month proposes 49 initiatives the Australian government should take to tackle modern slavery, mostly of women exploited for sex work and in Big Brand supply chain factories.

Prime recommendation is that an Australia modern slavery law be enacted.

The report focuses on ensuring victims of slavery receive the support that they need while holding those responsible for these practices to account.

CLA member Felicity Gerry QC (photo), a global guru on modern slavery legislations and cases who practises in Darwin and London, prepared an influential submission on our behalf and gave evidence twice before a special sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade.



Recommendations include:

- Australian business entities be mandatorily required to report on the practices involved in their supply chains to ensure that Australian goods are not the product of slavery;
- A national compensation scheme for victims of modern slavery in Australia be established;
- A national labour hire licensing scheme with random audits and inspections by government to ensure compliance;
- Ongoing funding of NGOS and civil society supporting victims of modern slavery;
- Appointing an independent Anti-Slavery Commissioner to oversee these initiatives.

Senator Lisa Singh of Tasmania, a member of the committee, highlighted the recommendation that the Australian Institute of Criminology develops better research and monitoring to scope the prevalence of modern slavery in Australia.

– ‘*Hidden in Plain Sight*’: An Inquiry into establishing a Modern Slavery Act in Australia, report by the Joint Standing Committee on Foreign Affairs, Defence and Trade <http://tinyurl.com/yaq7j28v>

Australia may yet get a bill of rights

There are distinct moves under way at national level for Labor to introduce a bill of rights for Australia if elected at the next federal election, expected in late 2018 or early 2019.

Sources indicate that talks have begun between Labor and the Greens and with key cross-benchers.

In the mid-1990s, when Labor was last in power, there was a full-blown national consultation headed by Father Frank Brennan which sought opinions extraordinarily far and wide, and produced a strong recommendation for a bill of rights. Because those ‘hard yards’ have been done, introducing a bill could proceed with only terminology consultations under normal committee hearings.

If Labor is elected, and if they introduce a bill of rights – or a charter of rights and responsibilities – it would simply give Australians the same rights as enjoyed by the British, Americans, Canadian and New Zealanders with whom we usually compare ourselves.

Why a tiny number of ex-politicians, academics and other elites believe Australians alone should not have a bill of rights is one of the great mysteries of national democracy, CLA believes. Perhaps it’s because their privileged positions mean they don’t need underpinning safeguards of a bill of rights to ensure they are not wronged by the state.

ODD SPOT: Democracy on the lam

“Democracy can be two wolves and a sheep voting on lunch. Successful democracies need properly enforced separation of powers and constitutional protection of basic rights – a bill of rights”.

– comment on a Fairfax article about loss of rights. <http://tinyurl.com/y6whg9wn>

...and another state bill or charter is possible

Meanwhile, Tasmanian Labor would also introduce a state bill of rights by 2022 if elected in March 2018.

Labor would also establish a Premier’s Human Rights Advisory Council with representation from government, human rights specialists, the community sector, advocacy groups and Aboriginal Tasmanians within the first 12 months of government, the party announced last month.

“Protecting and promoting human rights is a fundamental part of a just, inclusive and free democracy. Human rights ensure that everyone is treated equally, with dignity and respect,” the policy document says.

“Many places around the world protect the rights of their citizens through either a Constitutional Bill of Rights, as in the USA and Canada, or through legislation as in the United Kingdom, Australian Capital Territory and Victoria. Australia is the only common law country that does not have a national Bill or Charter of Rights. Ten years ago, the Tasmanian Law Reform Institute consulted with the Tasmanian community and found overwhelming support for a comprehensive Charter of Human Rights in Tasmania.”

The Tasmanian Human Rights Act Campaign group welcomed the Labor announcement. Its spokesperson, CLA Director Richard Griggs, said more than 1000 Tasmanians and 19 organisations had added their name to the petition calling for implementation of the human rights model recommend by the TLRI in 2007.

“Internationally recognised and adopted human rights should be supported by all three established political parties here in Tasmania and we will continue communicating with the Liberals and Greens and encouraging them to make similar commitments as made by Labor,” he said.

Queensland Labor has also committed to a bill of rights for that state, but the party failed to implement its promise in its first term in government.

DNA boosted by ‘mathematical tricks’

The use – or abuse – of DNA testing to convict people by questionable statistical analysis is coming under greater scrutiny in US and Australian courts.

‘*Wired*’ online journal has details of cases where the sample size of DNA is so small that ‘mathematical tricks’ need to be employed to wrest from the data possible likelihoods. <http://tinyurl.com/y8nsnqut>

TrueAllele, a program sold by US company Cybergenetics, analyses DNA where regular lab tests fail. They do it with probabilistic genotyping, which uses complex mathematical formulas to examine the statistical likelihood that a certain genotype comes from one individual over another.

STRMix, a product of forensic science labs in NZ and South Australia, is another DNA analyser with a longer track record, which uses similar techniques.

Longtime Australian DNA guru Prof Barry Boettcher is wary of attributing too much to technology.

“What has been said is that a mixture of four DNAs is 100 billion times more likely to come from the accused and three others, than from four unknowns in the population. This is correct, however:

- It is not logical to assume what you are trying to prove, viz. that the DNA of the accused is in the mixture.
- The same statistical figure would be arrived at with an assumption of any DNA profile that could be in the mixture. The statistics given by three unknowns will always be more favourable than the statistics given by four unknowns. In other words, the calculation is simply a matter of arithmetic rather than identifying DNA from the accused in the mixture.”

His caution appears to be backed up by a reported 2013 survey in which the US National Institute of Standards and Technology asked 108 forensic labs to interpret a made-up sample with four people in it and, as a test, provided the DNA profile of a fake suspect who wasn't in the sample: 70% of the labs pinned the fake suspect, *BuzzFeed* reported. <http://tinyurl.com/y9f8wrko>

New Department of Affairs at home with muddle, in-fighting and misses

Australia formally became a police and security state on 20 Dec 2017 when the Home Affairs portfolio was established under supremo ministerial spook, Peter Dutton.

“Home” is obviously tautologous: where else would the department operate, but here at “home”?

Cobbled together “at a time when nations face a growing number of challenges” (Dutton media release of that date), the Affairs department will instead inevitably increase the muddle among police and security agencies, heighten in-fighting for position and influence, and be itself the cause of miscommunication and missed anticipation of one or more major threats within a handful of years.

That's the way such agencies always deteriorate over time, based on international experience over the past century. They also throw up autocrats and bullies who elbow their way to positions of dominance.

The worse such “super” agencies get, the harsher the laws that emanate from and around them, and the more power and control they exert over the day-to-day living of citizens, CLA historians note.

Eventually, there is a terrible error of intelligence collation, a monumental stuff-up of coordination, or an explosion of egos that causes the state to re-take control by splitting the mega-monster into more manageable units, in a process of “reverse boast-mosis”.

"I look forward to working with Alan Tudge as Minister for Citizenship and Multicultural Affairs, Angus Taylor as Minister for Law Enforcement and Cyber Security and Alex Hawke as Assistant Minister for Home Affairs to oversee this major reform," Mr Dutton said in a media release announcing his ascendancy.

Hardline ex-Immigration chief Michael Pezullo will be in charge of Affairs, including not answering Senators' questions at Estimates hearings due to “security”.

The new Department of Home Affairs combines the Department of Immigration and Border Protection with elements of the existing departments of Prime Minister and Cabinet, Attorney-General, Social Services and Infrastructure and Regional Development.

Under the portfolio also comes Australian Border Force, Australian Criminal Intelligence Commission, Australian Federal Police and the Australian Transaction Reports and Analysis Centre.

The Australian Security Intelligence Organisation (ASIO) will become part of the Home Affairs portfolio after enabling law passes early this year. <http://tinyurl.com/y79hvg3a>

Warner and Symon given top spook roles

Spy chief Nick Warner is heading the newly established Office of National Intelligence, part of Affairs.

Warner is noted recently for his “fist-pumping” photo with Philippines President Rodrigo Duterte (see *CLArion*, p1, 1 Sept 2017).

PM Malcolm Turnbull announced Warner's appointment as director-general of the Office of National Assessments and director-general designate of national intelligence.

The existing Office of National Assessments is subsumed by the new super department while the Australian Signals Directorate becomes a stand-alone agency. The Office of National Intelligence will be formally set up in 2018, to “coordinate strategy and capability across intelligence agencies”.

Paul Symon (photo) replaces Warner as director-general of the Australian Secret Intelligence Service, ASIS. He was previously deputy chief of the Australian Army and director of the Defence Intelligence Organisation. ASIS is Australia's overseas spy agency, whereas ASIO operates within Australia.



The Warner-Symon tag team goes back to 2003 when Symon was Warner's senior military adviser on Australia's RAMSI intervention in Solomon Islands. (Note that RAMSI only officially ceased in mid-2017, though it was virtually dead from mid-2013) <http://tinyurl.com/y9fvdgb8>

Former Telstra chief information security officer and deputy director of the Australian Signals Directorate Mike Burgess was named director-general designate of the Australian Signals Directorate.

The current ASD boss Paul Taloni will move to a senior position within the Office of National Assessments. Office of National Assessments boss Richard Maude becomes deputy secretary in DFAT. Former Australian ambassador to Japan and temporary ONA boss Bruce Miller will retire. <http://tinyurl.com/yacp7fdl>

Dutton expands Defence spying into civvy life

Home Affairs Minister Peter Dutton immediately flagged a greater domestic focus for the Defence Department's cyberspy agency under his stamp on the new super-portfolio.

He said the Australian Signals Directorate – whose main function has always been supporting Defence by gathering foreign electronic intelligence – would be used more in Australian investigations into terrorism, drug-smuggling, child exploitation and other cross-border crimes. <http://tinyurl.com/ybggfgro>

There you go! Even before his feet were literally under the new desk, spook supremo Dutton was expanding the role of a military agency into civilian spying, CLA observes.

High profile trials to begin next month

Some of the highest-profile Australian crimes come back before the courts in WA and the ACT next month. And in Darwin, the former Northern Territory Police Commissioner John McRoberts is shortly to face charges of attempting to pervert the course of justice by deflecting a criminal investigation into roting during an alleged sexual affair with a travel agent.



In 20-year-old cases in WA, the alleged notorious 'Claremont killer', Bradley Robert Edwards (photo), 48, faces eight charges including the murders of 23-year-old child care worker Jane Rimmer in June 1996 and 27-year-old lawyer Ciara Glennon in March 1997. Also facing other rape and assault charges, he is due in court on 28 February 2018. He was arrested and charged in December 2016. He has been in prison on remand ever since.

In the ACT, 300 people are listed to give evidence in the next phase of the 30-year-old saga that resulted from the Mafia-style rifle execution in the driveway of his Canberra home of AFP Assistant Commissioner Colin Winchester in 1989.

David Eastman is again charged with murder, having been convicted in 1995, serving 19 years in jail, then being freed after a judicial inquiry in 2014 recommended the sentence be quashed, due to errors by the Australian Federal Police and the Office of the DPP in the ACT. The ACT Supreme Court endorsed the decision later in 2014.

The present territory DPP, Jon White, has chosen to prosecute Eastman again, even though the chances of his serving further jail time even if found guilty again are almost miniscule. Estimates of the cost to the state of the Winchester murder–Eastman legal imbroglio are of the order of \$15-20 million...and climbing, with a further \$5m set aside in recent years. – sources: *CLArion* Nov 2017 and news sources.

CLA makes submission on proposed Proceeds of Crime changes

In December, CLA made a formal submission to the Australian Parliament on proposed changes to proceeds of crime laws.

We pointed out that the laws already:

- reverse the burden of proof, which undermines the presumption of innocence; and that
- the way the laws are applied targets the Mr Littles of crime, rather than the Mr Bigs as promised.

“ In short, the thoughtless enthusiasm for broadening legislation of this kind is causing enormous hardship to individuals outside the contemplation of members of parliaments at the time of original enactment and, at the same time, doing significant and on-going constitutional damage. It is time for a rethink,” CLA said.

“CLA also believes that members of parliaments should be very concerned that these laws are being used to circumvent the usual processes in cases that can and should be dealt with through normal investigations and legal proceedings. “

And the Parliament’s Joint Committee on Human Rights agrees with CLA. The committee’s analysis of the bill said “it would be of considerable assistance” if the POC Act were subject to a foundational human rights assessment. The Act pre-dated the existence of the Human Rights committee.

“The existing human rights concerns with the POC Act mean that any extensions of the provisions in that Act by this bill may raise similar concern..” the PJCHR said.

“In particular, applying a broader basis on which a person's assets may be frozen, restrained or forfeited to include property subject to a mortgage in which mortgage payments have been serviced by illicit funds, without a finding of criminal guilt beyond reasonable doubt, may limit the right to be presumed innocent and the prohibition against double punishment should the POC Act provision be criminal in nature.

“Further, several aspects of the bill operate retrospectively, which may engage the absolute prohibition against retrospective punishment in criminal proceedings.

“A person may still be liable for their property to be forfeited where a person has been acquitted of an offence, or where their conviction has been subsequently quashed. There does not appear to be a safeguard in place to allow the court to revoke the forfeiture order upon an acquittal. – Report 12, PJC on Human Rights, 28 Nov 2017.

New Senator speaks up for human and digital rights



Senator Jordon Steele-John – the young, wheelchair bloke – gave his first speech in the Australian Parliament the day the same-sex marriage legislation passed the Senate.

“It is the 21st century, and in the 21st century it is necessary not only to properly codify those human rights which we all presume to have – but which we so often find do not actually exist – within a bill of rights but also to extend that work to the digital realm and to ensure that when we participate in that space as citizens, we are protected and that our rights are safeguarded,” he said in the speech.

An hour later, the Greens WA Senator and CLA President Dr Kristine Klugman met for the first time at the Greens Christmas drinks in the parliament gardens. <http://tinyurl.com/y9yb4ue2>

Treatment of Indigenous children worsening

Aboriginal and Torres Strait Islander children are nearly 10 times as likely to be removed from their family as non-Indigenous children, a disparity continuing to grow according to a report released late last year.

The *Family Matters Report 2017* revealed:

- AATSI children are 9.8 times more likely to be living in out-of-home care than non-Indigenous children.
- Projected out-of-home care population growth suggests the number of ATSI children in care will more than triple by 2036.
- From 2010 to 2018, the over-representation of ATSI youth in child death statistics has grown from a rate ratio of 1.84 to 2.23.
- Only 67% of ATSI children in Australia are placed with family, kin, or other ATSI carers. <http://tinyurl.com/ycagr8wu>

Portugal showing how to treat addiction

Family and Friends of Drug Law Reform have been encouraged by a major feature piece last month in *The Guardian* newspaper which highlighted success with helping drug addicts in Portugal. <http://tinyurl.com/yavupowf>

The group is actively trying to broaden support among diverse civil society and social welfare organisations so that addiction can be treated across the community, not just by a police war on drugs.

“Reforming drug laws can address poverty, child protection, indigenous disadvantage and the like,” FFDLR President Bill Bush said, supporting the approach in Portugal. “We need to focus on the harms of existing drug policy which accords the criminal law the role of gatekeeper and ultimate enforcer.”

Interestingly, he said, the Guardian article comments of Portugal that: "The official policy of decriminalisation made it far easier for a broad range of services (health, psychiatry, employment, housing etc) that had been struggling to pool their resources and expertise, to work together more effectively to serve their communities."

Bush pointed out “another radical good story that gets even less publicity here” was Paraguay, with their virtual legalisation of cannabis under control of a government monopoly.

Productivity Commission fails to produce change

In Sept 2014, the Productivity Commission submitted a fulsome report on a broad ranging inquiry into Australia's system of civil dispute resolution with a focus on constraining costs and promoting access to justice and equality before the law.

One of its prime recommendations was:

- Addressing power imbalances: More effort is needed to ensure that model litigant guidelines are adhered to by governments and their agencies.

There is absolutely no evidence that the federal government has taken any step whatsoever in this area, which is totally within its own control. It has a long-standing mechanism, within the Attorney-General's Department, to report annually on model litigant issues, and there is a prime and personal responsibility on the head of every government department to report on how it has adhered to these principles.

Ex-policeman's 'record' court win stems from his PTSD suffering

Now a private citizen, a former Senior Sergeant in the Queensland Police Service, Chris Hurley, has had two convictions for assault – grabbing someone by the throat and threatening him with a stun gun – not recorded against him because he suffers from Post Traumatic Stress Disorder (PTSD).

Hurley's PTSD stems from several coronial inquiries and court cases after the death of Cameron (Mulrunji) Doomadgee, aged 36, on Palm Island, off Townsville, on 19 November 2004. Hurley was charged* with assault and manslaughter. After 10 years of hearings, he was cleared of any criminal offence.



Doomadgee was 181cm tall and weighed 74kg. Hurley was 201cm tall and weighed 115kg in 2004. Hurley took the Indigenous Australian into custody for allegedly swearing at police and then checked him in to the small island cell block, where he died alone and unwatched within an hour.

Photo: Hurley at left: Michelle Rafferty, ABC

One coroner found that Hurley had killed Doomadgee with three fatal punches, a finding that was subsequently overturned. Other coronial possibilities later were that Hurley had fallen on Doomadgee accidentally or dropped a knee into his torso, and that was how Doomadgee suffered the four broken ribs which ruptured his liver and spleen...but ultimately there was no definitive coronial finding.

In the more recent case, from an incident on 15 November 2013*, then Senior Sergeant Hurley thought he heard someone in a passing car swear at him while he was attending a traffic accident. He jumped in his police car, chased the vehicle, and eventually pulled it over, himself swearing and ordering Luke Cole out of the middle of the back seat where he was a passenger.

Cole was 170cm tall and weighed 86kg; at the time Hurley was 200cm tall and weighed 100k, it was noted in court.

Outside the car, there was a contretemps, with various versions told by Cole and mates, and by Hurley. Eventually, a magistrate convicted Hurley of placing his hands around Cole's throat* and of threatening that he would discharge a stun gun at him.

Hurley appealed the convictions, but District Court Judge Catherine Muir (photo) last month upheld them. However, she decided no conviction should be recorded, because Hurley was suffering from PTSD resulting from matters to do with the long-running Palm Island affair. – Hurley v The Commissioner of the Queensland Police Service [2017] QDC 297



* Hurley was the first police officer ever charged over an Aboriginal person's death

in custody in Australia. The Ides of November appear to be a difficult time for Hurley, as the two incidents occurred 9 years and 4 days apart. It had been previously alleged, on Palm Island a decade earlier, that Hurley had grabbed and squeezed at least one other person by the throat.

Dawson sweeps new broom through WA Policing

WA Police Commissioner Chris Dawson unveiled a plan last month for a total overhaul of state policing. He has not released the full report he ordered when appointed in August, but the review has been described as “damning”.

Eight new districts — based out of Perth, Mirrabooka, Joondalup, Midland, Fremantle, Mandurah, Cannington and Armadale — will replace the four current districts of North West, Central East, South East and South by July 2018.

Maylands Incident Control Centre, which has been used for major events, will become a round-the-clock, centralised communications hub, known as the State Operations Centre.

The Dawson strategic plan for the WA Police Force is meant to set the agency up for 2018 and beyond. It includes cutting red tape and bureaucracy, improving standards, behaviour, governance and accountability, better training and development of staff and improving how WAPOL information technology and systems operate together. <http://tinyurl.com/y8uqetp3>

Meanwhile, the ruling Labor Party’s platform, endorsed in mid-2017, officially includes the creation of a new Independent Police Complaints Commission. Civil Liberties Australia looks forward to that policy being brought to fruition in 2018, as well as the party’s policy for “enhancing human rights”. A bill of rights would be an excellent “enhancement”.

Police incompetence costs WA \$13m...and a barrister his irrecoverable good repute

Barrister Lloyd Rayney has been awarded a total of \$2.623 million because inept WA Police incompetently and inaccurately accused him of murdering his wife, Corryn (photo) in August 2007.

Then Detective Senior Sergeant Jack Lee named Rayney in a public media conference as the “prime” and “only” suspect.

The total cost to the State of WA of the wrongful accusation and trials of Rayney, as well as the defamation case, is expected to be about \$13m. This figure takes into account legal fees for both the State (about \$3.3m) and Rayney (about \$2m) for the defamation case alone.

Judge John Chaney last month handed down his decision in the defamation case brought by Rayney, finding police formed a prejudicial view of Mr Rayney's involvement in his wife's death very early.

"I am satisfied that by the end of August (2007) the police involved in the investigation construed events and information that they learned with a suspicious bias rather than objectively," he said.

"Each of those [police] witnesses was at pains to construe every snippet of information they had as pointing to Mr Rayney's involvement with his wife's murder. Many of the matters that they relied upon as pointing to Mr Rayney's guilt were at best equivocal, simply not probative of anything or inconsistent with any cogent case theory."

Corryn Rayney’s body was eventually found tucked up and buried in sand, under leaf litter, in King’s Park, Perth’s majestic gardens situated between State Parliament House and the University of WA.

She had disappeared on her way home from a bootscooting class, dressed in tassels and dancing boots. Rayney was waiting at home, looking after their two daughters, to have a divorce discussion both parents were keen to conclude.

Someone killed Corryn Rayney. But, instead of finding the killer(s), WA Police managed to ‘persecute’ the husband Lloyd, naming him outright on 20 Sept, about six weeks after she disappeared.

The award to Rayney is meant to cover the income he lost over a three-year period — from when the comments were made in September 2007 to December 2010, when he was charged with her murder.

The sum includes the \$600,000 payment Justice Chaney last week ruled Mr Rayney should receive for the non-economic loss he suffered to compensate him for "the damage to his personal and business reputation, personal hurt and distress" caused by the defamation.



Of course, that sum goes nowhere near compensating Rayney, who still suffers verbal abuse on the streets of Perth from people who can't believe the five – 5 – judges who have now formally ruled him not only not guilty of murder, but not appropriate to have been accused publicly in the first place. <http://tinyurl.com/y8g5ezdt> and <http://tinyurl.com/yac23h5m>



None of the Major Crimes Squad investigating police, who have been excoriated by judges for their approach involving confirmation bias and tunnel vision, appear to have suffered any public punishment for their efforts.

Lee (photo) has since been promoted to Inspector.

Corryn Rayney's killer is still at large.

For those with access to *The Australian*, see: <http://tinyurl.com/y9vj94bk>

Prison corruption allegedly revealed

The head of WA's corruption watchdog has stood down two prison officers at a privately-run jail and warned more could follow in an ongoing investigation into the smuggling of drugs and other illegal items. Corruption and Crime Commission boss John McKechnie said the investigation had discovered "disturbing information and evidence about the ease by which serious drugs and steroids can be smuggled into prisons".

The two custodial officers who were suspended are employed at Perth's Acacia Prison, run by private company Serco. The officers were suspected of engaging in serious misconduct following a joint inquiry by the CCC, Department of Justice and WA Police, a statement said. <http://tinyurl.com/y7zf2qq9>

Rioting prisoners show need for urgent 'justice-health' summit

Seven prisoners allegedly rioted at WA's main remand facility, Hakea prison, last month.

Special operations officers were summoned when inmates trashed part of a wing and threatened staff.

Secretary of the WA Prison Officers Union, John Welch, said it was urgent that the government fixed "chronic overcrowding" in the state's prisons. He said Hakea was about 300 prisoners above design capacity, and most inmates were double-bunked.

WA's adult prison population increased from 4964 to 6776 over the past five years, according to Department of Justice statistics. Remand prisoners are up 14%, from 1754 to 2002, in just the past year.

The two sets of numbers indicate that the prisons and the magistrate's courts are both becoming clogged. <http://tinyurl.com/y737zfun>

Civil Liberties Australia believes the WA government should call a summit of prisons, police, justice, health and court authorities, along with civil society, to develop an urgent plan to stop locking up juveniles for petty crimes, to treat at least minor drug crimes as a health problem, and to fast-track release of suitable non-violent inmates nearing the end of their sentences.

Without such initiatives, the only option is to build and staff new prisons, at huge and ongoing expense to WA taxpayers. <http://tinyurl.com/y737zfun>

Gulled AG gives police holus-bolus home entry powers

The ACT government has rejected calls from Civil Liberties Australia, the ACT Law Society and the ACT Bar Association to not give police unwarranted, excessive powers to raid people's homes on a whim.

A new law, passed a month ago, for the first time allows police to enter anyone's home without a warrant. The new ACT powers are even greater than those elsewhere in Australia for raiding suspected terrorists.

The ACT Attorney-General specifically rejected a detailed, written critique of the proposed laws by CLA, compiled after CLA had taken part in consultations – at their request – with the Justice and Community Safety Directorate and a special representative of the Commissioner of ACT Policing.

"Supposedly aimed at only drive-by shooting bikies and organised crime, the laws are so badly drafted they will be abused within a decade by police in minor crimes, probably committed by poor people and Aborigines. That's what inevitably happens with such over-the-top legislation – it's exactly what happened in NSW with consorting laws," CLA President Dr Kristine Klugman said.

"AG Gordon Ramsay has been gulled by police into believing such draconian laws are needed in the ACT. They are not: what is needed is competent police diligently doing their jobs, using pre-existing laws...of which there are hundreds available...to tackle the ordinary 2018 problems the ACT faces," she said.

The ACT Bar Association and ACT Law Society also warned that the new "warrantless" police entry powers threaten traditional protections.

In a joint statement, Bar Association president Ken Archer and Law Society president Sarah Avery said that "even in the field of preventing and fighting terrorism, the Commonwealth has not sought powers granting police the right of entry without a warrant."

Most concerning, they said, was that the laws were so broad officers can use the powers to investigate relatively trivial crimes such as shoplifting or bike theft. <http://tinyurl.com/y9nkjr7u>

Appeals court acts 'sparingly' towards accused rapist

Three NSW Court of Criminal Appeal judges late last year were deeply concerned to spare Luke Lazarus the "expense and worry of a third trial", noted legal commentator Richard Ackland wrote in November 2017. The appeal judges exercised a discretion to deny a third trial for Lazarus because "in the interests of justice" it would be oppressive and unfair.

Lazarus was alleged to have anally raped a drunk, 18-year-old virgin in a laneway at the rear of his father's Soho bar in Kings Cross in May 2013.

In February 2015 he was convicted. In Feb 2016 the conviction was overturned on appeal after he had served 10 months. He was found not guilty in a second trial in May 2017. The Crown appealed, and its appeal was dismissed in Nov 2017.

The NSW appeals court said it has a duty to ensure that the continued operation of the criminal justice system is not "a source of oppression or unfairness". Account was also taken that, if a retrial was ordered, it would not take place until the latter half of 2018, by which stage it would be five years after the incident.

"For the respondent (aka Luke Lazarus) it's too drawn out, too expensive, too stressful, too unfair. One might also wonder how 'the complainant' feels (in earlier court cases, she had been described as "the victim")?" Ackland said. <http://tinyurl.com/y84ncxdb>

Civil Liberties Australia wonders how NSW appeal judges would treat the David Eastman case (see '*High profile trials to begin next month*', above).

Freedom is a religion? I'll vote for that!

A NSW court last month agreed with a man charged with not voting in the 2016 federal election that doing so would have made him feel "morally corrupt" and so it was his "religious duty" to not vote.

Adam Easton used s245 (14) of the Commonwealth Electoral Act 1918 which says "...the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote".

The self-described agnostic said he believed in "freedom", which ideology forms the basis of his view of life and his moral framework.

NSW magistrate David Heilpern dismissed the charge, finding Easton had provided evidence of a valid and sufficient reason not to vote, saying that section of the act was "remarkably subjective".

"The provision allows for a form of conscientious objection in my view and that is what has been evidenced here," he said. <http://tinyurl.com/ycgv8y2y>

IBAC tries to stay mum on police complaints

Victoria's corruption watchdog received more than 3000 complaints of police misconduct over 2016-17... and only about half that number were dismissed by the agency over the period.

The Independent Broad-based Anti-corruption Commission (IBAC) failed to provide detailed figures on how police complaints were handled in its annual report, so parliament demanded them.

The figures show there were 3164 new complaints against police in 2016-17: 18 cases were investigated, 921 were referred to other agencies and 1432 were dismissed. <http://tinyurl.com/y89mkwln>

Secret armed forces escalate danger on city streets

New secret teams of heavily-armed police are roving Melbourne's streets and major events.

"Critical Incident Response Teams" are to be deployed at events like the Australian Open tennis and the Formula 1 Grand Prix.

The theory is that they can respond quickly to rogue attacks...but arming secret force on the streets with sub-machine guns, handguns and stun guns is likely to escalate the likelihood of increased violence, CLA believes.

Let's hope one secret group doesn't mistakenly attack another secret group. <http://tinyurl.com/ybe7a9c8>

'Shoot from the lip' judge stood down...partially

NT judge Greg Borchers has been removed from the Alice Springs youth court after an inquiry found a series of "gratuitous and unnecessary" comments had brought the judiciary into disrepute.

The judge lacked "courtesy, tolerance, patience, and sensitivity", resulting in his removal from the Alice Springs youth court until his return was deemed appropriate. But he continues to sit in other courts.

In June, Borchers drew criticism for his handling of a case at the Tennant Creek youth court, involving a 13-year-old boy he was sentencing for a break-in and property damage. The boy's mother had been killed in January, and the mother's partner had been charged with the offence.

When the boy's lawyer appealed to the judge for some leniency, judge Borchers reportedly criticised the boy for not having anyone to look after him. <http://tinyurl.com/ybax8ooq>

Australian briefs

Penalties up, engagement down: The ACT is considering more than trebling its penalty for failing to vote to \$75, as in federal elections, but that would still be short of Queensland's \$126. An ACT parliamentary committee also recommended that civics and citizenship education become part of the Year 11 and 12 curriculum, because of low enrolment among 18-year-olds. The suggestion mirrors a plan Civil Liberties Australia put to the federal government 11 years ago...which was ignored. <http://tinyurl.com/y9gatebe>

Derrington heads ALRC: Prof Sarah Derrington is the new President of the Australian Law Reform Commission until 2022. She replaces Prof Rosalind Croucher, recently appointed President of the Australian Human Rights Commission. Prof Derrington comes to the new role from the post of Academic Dean and Head of School at the TC Beirne School of Law at Queensland Uni. Her specialities are admiralty, maritime law and insurance law. <http://tinyurl.com/y8kfdxlg>

Pine Gappers fined up to \$5000: The NT's Justice John Reeves last month fined members of a Pine Gap protest group between \$1250 and \$5000. He did not jail the ringleader, James Dowling, 62, for fear of turning him into a political martyr. The group had been taking part in protests marking 50 years since Australia and the USA signed a treaty allowing the construction of the spy base outside Alice Springs. <http://tinyurl.com/ybua2eaq>

Police camera surveillance rises: WA is becoming even more of a police state: the first half of 2017 saw a 25% rise in the hours speeding cameras operated and a 32% jump in the number of vehicles monitored. Speeding fines totalled 427,843 in the first half of 2017, up 13% on the same period in 2016. Total traffic infringements rose more than 8%, while fines for using mobile phone in vehicles soared nearly 40%. <http://tinyurl.com/y7fav8lb>

CLA report – main activities for December 2017

Feedback from members

Asked in the December 2017 CLArion newsletter to help set priorities for CLA in 2018, members responded with groups of concerns that covered aged and children's issues, freedoms around euthanasia, privacy and non-exploitation of images, and crime and justice related issues, such as wrongful convictions and both abuse and rapidly rising numbers in prisons. Backroom and background lobbying of Ministers and bureaucrats to foster internal climates for change were also important activities, some members said.

The members' priorities provided a strong reinforcement of the areas that CLA concentrated on in 2017, meaning for the most part CLA can continue focusing on similar areas.

However, the lack of liberty and rights in professional sports was considered a lower-order priority, ranking down the list. We will continue to monitor this "sleeper" issue during the year, and only act if needed. The Board of CLA will be guided by the feedback from members in deciding on any new campaigns for 2018. Thanks to all members who contributed.

We wish all CLA members and families very best for health and happiness in 2018. We might even get a national bill of rights!...and hopefully, finally, justice for Sue Neill-Fraser.

December was a quiet period for CLA, with members intent on festive season activities. Significant gains in marriage equality nationally and voluntary assisted dying in Victoria were very welcome.

Congratulations to CLA member Rosemary Jennings' daughter Elizabeth Tynan for winning the PM's 2017 Literary Prize (History) for *Atomic Thunder :the Maralinga Story*. We recommend it as an engrossing read. A competitor for the same award was Charlie Ward's *A Handful of Sand: The Gurindji Struggle, After the Walk-off*, which features pertinent historical reminiscences and great photos from CLA member Rob Wesley-Smith.

Meetings

Australian launch *Women, Peace and Security: a new global index* (Georgetown Inst for Women, Peace and Security and Peace Research Inst of Oslo) at Crawford School ANU (lead author Dr Jeni Klugman);

Treasurer Sam Tierney re roles, memberships and database;

Former Director and Webmaster Lance Williamson re web role and advice for future options;

Preparation of reports for the CLA Annual Report is under way, as well as a submission on the rights of people in aged care, a review of judicial education, and possibly a submission on electoral issues.

Submissions:

- Proceeds of Crime Amendment (Proceeds and Other Matters) Bill 2017: lodged Dec 2017
- Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia (federal, Standing Cttee on Health, Aged Care and Sport, deadline 8 Feb 2018)
 - written exchanges with the ACT equivalent over the rights of residents to have pets.
- Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (federal, deadline 25 Jan 2018): covers possible registration regime for third-party campaigners, clarifying 'associated entities', restrictions on political donations and limiting public election funding to demonstrated electoral spending.

Talking up the need for a bill of rights

Tasmanian Director Richard Griggs and CLA member Bernard Goh took part in an hour discussion on ABC Radio last month on the need for a state Bill of Rights. Participants were ABC presenter Louise Saunders, Richard Griggs, Bernard Goh, Tenants Union solicitor Ben Bartl and Michelle Parker of Equal Opportunity Tasmania). You can listen here: <http://www.abc.net.au/radio/hobart/programs/drive/drive/9214570>



INTERNATIONAL

Rape trials collapse because police withheld evidence

A man's trial for rape collapsed after three days when Scotland Yard detectives and the prosecutor were finally forced to disclose vital evidence proving his innocence...from the alleged victim.

The evidence on a computer disk containing 40,000 messages revealed the alleged victim pestered Liam Allan, 22, for "casual sex". She also told her friends that she enjoyed sex with him and even spoke about her fantasies of having violent sex and being raped by him.

But police originally told both prosecution and defence barristers the messages were not relevant to the case. Prosecution barrister Jerry Hayes accused police of "sheer incompetence".

Allan was charged with 12 counts of rape and sexual assault, restricted on bail for two years and subjected to three days in Croydon Crown Court's dock on trial before the crucial evidence reached his defence team. The Greenwich Uni criminology student had faced more than 10 years in jail if found guilty.

Judge Peter Gower called for an inquiry at the 'very highest level' of the Crown Prosecution Service and a review of disclosure of evidence by the London's Metropolitan Police. The Met said it was "urgently reviewing this investigation". <http://tinyurl.com/ycaxshfl> and <http://tinyurl.com/ydf7nv77>

Days later, the Met admitted the same circumstances had arisen in another rape trial. Apparently material recovered from the phone of the complainant by police was handed over to defence lawyers. It undermined the prosecution's case, so they could offer no evidence.

The Met now plans to review every sexual assault case on their books. <http://tinyurl.com/ycv8q6z2>

Critics in the UK and in Australia are calling for anonymity equality for both victim and accused, CLA observes. There is also unease over apparent tacit acceptance by police and the media in the UK, US and Australia of any claim of sexual misconduct, with the accused person hung out to dry sometimes before even being formally advised of the accusations, as in the case of the Lord Mayor of Melbourne last month. <http://tinyurl.com/yb7k6kgn>

More drug cases dropped after frauds by forensic scientists

An estimated 7500 drug convictions based on testing conducted by disgraced Massachusetts state chemist Sonja Farak will be dismissed, prosecutors said last month.

District attorneys told the Supreme Judicial Court they would dismiss cases that Farak signed off on while a chemist at the state's drug lab in Amherst, where she stole from drug samples and seized evidence for nearly a decade before her 2013 arrest.

Authorities say Farak was "high" almost every day she went to work at a state drug lab for eight years: in 2014 she pleaded guilty to stealing cocaine from the state crime lab, and was sentenced to 18 months.

Last year, Hampden Superior Court judge Richard J. Carey wrote:

"...in many ways more damning, the conduct of two assistant attorneys general, (Anne) Kaczmarek and (Kris) Foster, compounded and aggravated the damage caused by Farak. Their intentional and deceptive actions ensured that justice would certainly be delayed, if not outright denied, and in the process, they violated their oaths as assistant attorneys general and officers of the court."



The Farak (photo, left) damage toll comes months after an April court order tossed out more than 21,000 cases connected to another evidence-tampering scandal involving ex-chemist Annie Dookhan (photo, right), who fabricated evidence, possibly tainting as many as 40,000 cases. (*Boston Herald photos*)

Both cases unfolded against the backdrop of scandals involving police evidence rooms and lawsuits filed against the state's drunken driving testing system that have put tens of thousands of other cases in jeopardy. <http://tinyurl.com/y83td756> and <http://tinyurl.com/ycoeml73>

The two cases have cost the state more than \$130m in compensation so far...but no supervisor or manager has yet been found at fault.

Lifer, having served 20 years, mounts new appeal

Convicted NZ double murderer Scott Watson has filed a new appeal, claiming the latest forensic report challenges crucial evidence that led to his conviction on circumstantial evidence.

Watson was jailed for life after being found guilty of murdering Ben Smart, 21, and Olivia Hope, 17, on New Year's Day in 1998. The pair went missing after attending a party in Marlborough Sounds.

Watson has previously appealed to the Court of Appeal, the Privy Council: he filed an earlier application for mercy in 2009. He has now appealed for NZ Governor-General Dame Patsy Reddy for her to grant a Royal Prerogative of Mercy.

The only physical evidence police presented that linked Watson to the young couple was two blonde hairs that were believed to be Hope's which were found on his sloop following the high-profile disappearance. The new forensic science report challenges whether the hairs belonged to Hope.

While Watson has hopes for this plea, he and other prisoners are eagerly awaiting the promised Criminal Cases Review Commission being established in NZ.

NZ Labour's pledge to establish such a body is part of its recent coalition agreement with New Zealand First. England and Scotland already have similar bodies which investigate cases of wrongful conviction and refer them back to appeal courts. <http://tinyurl.com/y8uolpk7>

Doctors may not honour even a tattoo

Florida emergency department doctors faced an unconscious, drunk, 70-year-old with bad general health and a tattoo on his chest reading 'Do Not Resuscitate', with the man's signature apparently beneath it.

What to do?

The doctors tried several times to revive him to check his wishes, but to no avail. They opted to not honour the tattoo but consulted medical ethicists, who believed the tattoo should be honoured.

Fortunately, the Florida Department of Health found a copy of the patient's "enduring power of attorney" document which confirmed he did not want to be revived in such circumstances.

With his welter of health issues, his condition continued to decline during the night. Without further efforts at resuscitation, he died. <http://tinyurl.com/y9t3quu8> and <http://tinyurl.com/y8qkzldt> (New England Journal of Medicine photo - the signature has been blocked out).



Prison so dirty it could not be cleaned

Conditions at Liverpool prison in the UK are the worst inspectors have ever seen, with one area so dirty, infested and hazardous it could not be cleaned, according to a leaked report.

Inspectors who made an unannounced visit to Her Majesty's Prison Liverpool in September 2017 found there was an "abject failure ... to offer a safe, decent and purposeful environment".

The report, leaked to the BBC, described prisoners living in "squalid conditions", where rat and cockroach infestations were rife and cells had exposed electrical wiring.

Inmates said they felt victimised by staff, with some left locked in their cells for 22 hours a day, the report said. Incidents of self-harm and violence had increased and prisoners reported that it was "easy or very easy" to get hold of drugs. <http://tinyurl.com/yaqxdeeq>

Prisoner visits now by video – only

Under a new system in the USA, in-person visits are no longer allowed to prisoners in some jails.

Instead, all visits now must be done by video, either from a smartphone, computer, or at an offsite location.

A pamphlet, published by Securus Technology, makes using a video feed to talk to your loved one seem appealing. It says:

"Do you want to see your loved one more often? Stop missing out on:

- Watching your favorite TV show.
- Singing Happy Birthday.
- Reading a bedtime story ... Never miss another moment."

Under the new system, each video visit made from home costs \$16.75 for 20 minutes. In-person visits used to be free.

The shift also raises a legal question: is in-person visitation an inmate's legal right?

Video technology run by Securus and other companies is now used in hundreds of correctional facilities across the country. <http://tinyurl.com/ycct8p5> Apparently 74% of US correctional facilities which implement video calling end up either reducing in-person visits, or eliminating them altogether.

Assange gains formal media status

A British tribunal has recognised Julian Assange's WikiLeaks as a "media organisation".

The issue of whether Assange is a journalist and publisher would almost certainly be one of the main battlegrounds in the event of the US seeking his extradition from the UK.

The definition of WikiLeaks by the UK information tribunal, which is roughly equivalent to a court, could help Assange's defence against extradition on press freedom grounds.

Assange, an Australian, remains holed up in the Ecuadorean embassy in London. He fled there in August 2012 in breach of a British bail ruling, which hangs over him. Sweden is no longer seeking his extradition for alleged rape, but the USA is believed to have a sealed (secret) grand jury deposition lying in wait for him if ever he leaves diplomatic asylum. <http://tinyurl.com/y7h0dt76>
US attorney general Jeff Sessions said in April 2017 that the arrest of Assange was a priority for the US.

ODD SPOT: Lawyer jailed for 'rape is national duty' comment

Egyptian lawyer Nabih al-Wahsh has been sentenced to three years in jail and fined \$2000 for stating that it was a "national duty" to rape women who wear ripped jeans. He sparked fury after making the comments during a TV debate on a draft law on prostitution in October. "Are you happy when you see a girl walking down the street with half of her behind showing?" he said. "I say that when a girl walks about like that, it is a patriotic duty to sexually harass her and a national duty to rape her." <http://tinyurl.com/yau4co6h>

Child sex abuse rises significantly

Reported cases of child sexual abuse in the UK rose by almost a third last year, according to National Society for the Prevention of Cruelty to Children figures that apparently show a greater public willingness to report the problem.

The charity said it referred an average of 90 calls a week to police and social services over concerns that a young person had been sexually assaulted. This was an increase of 31% on the year before.

The NSPCC said it made a total of 4677 referrals UK-wide last year, up from 3578 in 2015-16. NSPCC Scotland reported the biggest year-on-year increase in referrals from 78 to 265 cases last year. <http://tinyurl.com/ygy4mnzn>

Media freedom down, journalists jailed and killed

Media freedom worldwide had fallen to the lowest level for at least a decade, with journalists threatened by government censorship, organised crime and commercial pressures caused by internet growth.

These are the findings of activist groups, Article 19 and V-Dem, who released their report in late-November. Turkey has experienced the biggest decline in freedom of speech over the past decade but Brazil, Burundi, Egypt, Poland, Venezuela and Bangladesh have also had a disturbing decline in the diversity and independence of the media, according to the report.

The authors measured freedom of expression in 172 countries between 2006 and 2016 through a metric they have described as the Expression Agenda, based on 32 social and political indicators such as media bias and corruption, internet censorship, access to justice, harassment of journalists, and equality for social classes and genders.

There were 426 attacks against journalists and media outlets in Mexico in 2016 alone. The report found that 259 journalists were jailed last year and 79 were killed.

On a brighter note, Article 19 said there were improvements in countries including Tunisia, Sri Lanka and Nepal, and also praised the introduction of freedom of information laws in 119 countries.

On the other hand, Iranian authorities have frozen the assets of at least 152 BBC Persian journalists and former contributors – preventing them from conducting financial transactions or selling properties in their homeland – and summoned family members of BBC staff who live in the country for questioning. The BBC has appealed to the United Nations about the conduct of the Iranian government. <http://tinyurl.com/y9s4dwmr>

Ghana holds freedom day dear to Australian hearts

UNESCO and Ghana will partner to organise the 25th global celebration of World Press Freedom Day in Accra on 3 and 4 May 2018, with a conference focussing on 'Media, Justice and the Rule of law'.

The same issues resonate in Australia, which hosted the world day in 2010.

The Ghana event will bring together leading actors from media, civil society, policy makers, representatives of the judiciary and academia to discuss latest developments and challenges related to press freedom and the safety of journalists.

Some 100 national events throughout the world are expected to reinforce the Ghana event. WPFJ has been celebrated annually since 1993, when the UN General Assembly proclaimed 3 May as World Press Freedom Day. <http://tinyurl.com/yaxzdqj>

Chinese jail human rights activist

Chinese human rights activist Wu Gan was last month jailed eight years, the harshest sentence so far in a government crackdown on activism that began more than two years ago.

Wu championed sensitive cases of government abuses of power, both online and in street protests, and he was convicted for “subverting state power”. He has been in pretrial detention for more than two years.

“The court found that the defendant Wu Gan became dissatisfied with the existing political system,” according to the verdict. “Wu Gan has long used information networks to spread a great deal of rhetoric and to attack state power and the system established by the constitution.”

On the same day Wu was sentenced, lawyer Xie Yang was retried but not punished after he previously pleaded guilty to subversion charges. While in detention he gave an explosive account of being tortured, beaten and threatened by interrogators, Ben Haas reported in *The Guardian*.

Xie was arrested more than two years ago as part of a sweeping crackdown on human rights lawyers and activists that saw nearly 250 people questioned or detained. Wu had been detained two months earlier.

<http://tinyurl.com/y73hjo5s>

International briefs

Another nation chooses SSM: Austria’s Constitutional Court ruled last month that same-sex couples can marry from 2019, bringing the conservative Catholic country into line with more than 20 others, 16 of them in Europe. The Constitutional Court said a current ban on same-sex marriage (SSM) would remain until 31 December 2018 unless Austria’s parliament changes the law before then. <http://tinyurl.com/y9lcb3fx>

UN rapporteur calls it ‘genocide’: Myanmar’s security forces “deliberately and massively targeted civilians” in operations that drove more than 626,000 Rohingya, half the population of Rakhine State, into neighbouring Bangladesh, Zeid Ra’ad al-Hussein, the UN high commissioner for human rights, told a special session of the Human Rights Council in Geneva last month. “Can anyone rule out that elements of genocide may be present?” Mr. al-Hussein, said, detailing “acts of appalling barbarity” committed by the security forces since August 2017 after decades of systematic discrimination and persecution. The human rights chief had previously described Myanmar military operations in Rakhine as a textbook example of ethnic cleansing <http://tinyurl.com/y8ckalwx>

PM off the hook: PNG’s Supreme Court has thrown out a three-year-old arrest warrant for official corruption against Prime Minister Peter O’Neill. Anti-corruption police had accused Mr O’Neill of directing corrupt payments to law firm Paul Paraka Lawyers, but the PM refused to comply with the warrant and fought it in the courts. He has now won. <http://tinyurl.com/y8dabea5>

Security accuracy unacceptable: US Senator Ed Markey (Democrat, Massachusetts) has praised new research of airport facial surveillance. The senator pointed out that the Department of Homeland Security has a goal of a “96%” accuracy rate. “That means that 4% of travellers will be improperly flagged by the scanning program,” Sen. Markey said. This could result in 1-in-25 travellers going through major US airports being falsely denied the right to travel. The new research comes from Georgetown University in Washington DC. <http://tinyurl.com/y23jxa>

DATES

16 Feb , Canberra: Aulich Criminal Law Master Class, presented by Ben Aulich (photo), Peter Woodhouse and Jane Carey, part of the ANU graduate diploma in legal practice program. 9.30-5pm. <http://tinyurl.com/y8tq3f6g>

23 Feb, Sydney: Constitutional law conference and dinner, ArtGallery of NSW, organised by the Gilbert + Tobin Centre of Public Law, 8.30am-5pm. Dinner at NSW Parliament House with guest speaker the WA CJ Wayne Martin. Details: <http://tinyurl.com/yb5tb7qe>

3-4 March, Canberra: Sentencing – New Challenges, two-yearly conference of the National Judicial College of Australia. Details: <https://njca.com.au/program/2018-conference/>

8-9 March, Brisbane: Community Legal Centres Qld conference 2018. Oakwood Hotel, 15 Ivory Lane. Details: <http://tinyurl.com/yahnulhl>

24-26 May, Brisbane: Forces of Change – Defining Future Justice, Australasian Institute of Judicial Administration, Stamford Plaza Brisbane. Details: <http://tinyurl.com/y23jxa>



9-12 July: Greece: Hellenic Australian Lawyers Association conference, Contemporary Legal Issues and the Influence of Hellenism Keynote by CJ of Australia Susan Kiefel, Sheraton Rhodes Resort, details: <http://tinyurl.com/y7y74grh>

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)

ENDS ENDS ENDS

ELECTIONS in Australia

17 March, SOUTH AUSTRALIA: state election

March (likely) but on or before 26 May: TASMANIA state election

24 Nov, VICTORIA: state election

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

2019:

23 March: NSW state election

2020:

probably 22 August: NT election

17 Oct: ACT election

2021:

WA state election, on 13 March

ELECTIONS – WORLD:

4 March: Russia, President

6 November: USA, House of Reps and Senate (one-third)

By 23 May: Italy

By 31 July: Zimbabwe

2019:

Indonesia: on 17 April 2019 general elections the presidency, the national legislature, all governorships, all state legislatures, and mayoral and regential seats will be contested simultaneously for the first time.

2020:

7 May: Britain

7 May: Scotland

November: USA, President

By 21 Nov, NZ election

2021:

Singapore general election