

## Can you help with our aged care submission?

Members are invited to email suggestions to be added to the submission Civil Liberties Australia is preparing to focus on liberties and rights in a major federal inquiry into aged care in Australia.

While the inquiry, by a committee of the parliament, is focussing on issues in residential facilities, we believe it will be forced by weight of submissions to consider wider aspects of aged care concerns.

CLA considers the issue so important that preparing the submission is being led by the President, Dr Kristine Klugman as well as Submissions Director Rajan Venkataraman, rather than just by one Director.

If you would like to suggest something to be included in the submission, or can give an example of a problem area, please email the CLA Secretary, Bill Rowlings, at the email address above. The formal terms of reference (shortened) for the inquiry are:

1. Mistreatment of residents, reporting and response, including the treatment of whistle blowers;
2. 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. Adequacy of consumer protection for residents who do not have family, friends or others to help them exercise choice and their rights in care. Details: <http://tinyurl.com/ycb7awm9>

Standing Committee on Health, Aged Care and Sport Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia (deadline for submissions 8 Feb 2018 – please send us any proposed contributions by 5 Feb).

## Govt bolsters its repressive, police state laws

Government whistleblowers and journalists who report on leaked information could face 20 years in jail if changes to Australia's official secrecy laws pass parliament, *The Guardian* has warned.

In an article by Kieran Pender, *The Guardian* said newly-drafted provisions, introduced to the parliament in December 2017 by the Prime Minister, Malcolm Turnbull, are part of the Coalition government's broader crackdown on treason, espionage and foreign interference.

The proposals increase maximum penalties tenfold for communicating information potentially harmful to the national interest, where the information comes from a government official without permission.

"This is 'creeping Stalinism,'" said Ethicos Group specialist Howard Whitton, who has advised governments and the UN ethics office on whistleblower policy. "The absolute protection of principled disclosure of wrongdoing – unfettered by government – must be preserved, or Australia will become a laughing stock internationally."

CLA remembers when Malcom Turnbull was a fighter for civil liberties and human rights, a freedom-loving lawyer, who fought censorship and stood up for little guys. Change over time is not always for the better. One day we will once again get a statesman as national leader...provided we fight for change until we do.

<http://tinyurl.com/y93sqwt8>

## Melissa Parke one of three-person team to investigate human rights in Yemen

Former Australian MP and CLA member Melissa Parke (photo) has been appointed one of three members of an "eminent expert" group to investigate human rights (HR) abuses in Yemen.

The UN High Commissioner for HR, Sheik Zeid Hussein, late last year named Parke, Tunisian HR activist Kamel Jendoubi and UK prosecutor Professor Charles Garraway for the tough job.

"The group's creation is an important step toward accountability and ending impunity for the serious violations of human rights committed by all sides in Yemen amid a worsening humanitarian crisis in the country, and ensuring justice and remedy for the victims," Hussein said.



The Yemen group is to submit a comprehensive written report to Hussein by Sept 2018.

In Sept 2017 the UN HR Council resolved to establish such a group to investigate Yemen, parts of which – Aden particularly, but also Sanaa and Hodeidah – have been bombed and suicide-bombed to near oblivion. About 10,000 civilians have been killed, the damage to buildings and infrastructure is enormous, there is widespread cholera and even worse famine.

The ethnic-religious-tribal-panArab conflict has been fuelled from numerous directions since it began in about 2014. The Houthis are supported by Iran and the exiled President Hadi supported by Saudi Arabia (and the USA). ISIS and Al Qaeda are striving to expand footholds.

The UN expert group will investigate alleged human rights violations and violations of international law committed by all parties to the conflict since September 2014. <http://tinyurl.com/yd4ddgsg>

## CLA election AGM is under way

Civil Liberties Australia Inc's 2018 annual general meeting is under way. Keep an eye out for information in your email inbox, or in the post if you are a member who doesn't have an email address.

CLA's formal business is conducted by email whenever and wherever possible, including our AGM, so that members throughout Australia have equal and timely access to both information and making comments.

## ODD SPOT: Can we please finger this man for security supremo?

Something white was on the ground in a public area of Parliament House. A security manager wet his finger, picked up a few grains, put it to his tongue, and said: 'It's salt'. This is a process repeated by housewives and househusbands hundreds of times a day throughout Oz.

But the security wallahs are now on his back. He should have declared an

emergency Type 2, called the Hazmat team plus AFP officers and bosses, summoned more security staff, cordoned off the area from Parliament House visitors, rushed the mobile testing paraphernalia up from the basement, and generally caused chaos.

More power to his finger, Civil Liberties Australia says. Make him National Security Supremo, so we can at last get some common sense back into the overblown reaction and massive expenditure on anti-terrorism extravagance and fear-raising by MPs. Go Finger Man! <http://tinyurl.com/y74gv2zp>



## Personality trumps issues in today's politics

"The ideological gap that once separated major political parties in Western liberal democracies has narrowed in a protracted convergence that has been apparent since the 1980s. This shift has been accompanied by a growing focus on personality over issues and performance over policy. Political parties themselves have become little more than fund-raising bodies and marketing organisations. Slogans have replaced policy arguments."

– Dr Norman Abjorensen, writing on why politics is becoming more like show business in *Fairfax Media* <http://tinyurl.com/yb9k94c6> Abjorensen, a visiting fellow at the ANU, is writing a history of democracy.

## Parliament's Ring a Ring o' Roses fiasco continues

High Court judge Geoffrey Nettle has declared vacant the South Australian seat of Senator Skye Kakoshcke-Moore, and ordered a full bench hearing this month to decide who should take the seat.

The seven HC judges, sitting as the Court of Disputed Returns, will decide whether a special recount is needed. They will also rule on whether former Senator K-M, from the Nick Xenophon Team, is newly eligible to be included in a recount because she has now renounced her British citizenship.

The judges will also decide whether the NXT candidate next in line for the Senate seat, Tim Storer, should be included in any recount: he was expelled from the party and has since resigned.

At a preliminary hearing in the Court of Disputed Returns last month, Judge Nettle said he found it "very difficult" to think that Mr Storer could be excluded. "However, given the issue is novel and could arise again in the near future, it is appropriate to be determined by the full court," he said. <http://tinyurl.com/y84k88pu>

Allied with abuse of expenses, the fiasco that so many candidates for federal parliament could stand for election without knowing or abiding by the law indicates the contempt with which many, if not most, MPs hold the other citizens of Australia, CLA says.

## Privacy breaches: firms must tell

From this month, Australian companies that have to comply with the Privacy Act 1988 must notify customers and users about any breaches of data.

The Privacy Amendment (Notifiable Data Breaches) Act 2017 means that from 22 Feb 2018 firms and bodies covered by the Australian Privacy Principles must report eligible data breaches within 30 days.

They must inform each person whose data was breached or who are at risk, and recommend what steps they should take to safeguard their data. Companies must also formally notify the Australian Information Commissioner. <http://tinyurl.com/y7xys9vr>

## Big Brother now rules, KO!

We've lost! Security cameras and facial recognition are now so ubiquitous that the War FOR Privacy has been lost.

There's now a national photo ID database, which will have 99% of Australians on it within a decade. And this *Fairfax* story – <http://tinyurl.com/y6vwktqn> – explains how buying a coffee, shopping in a mall, going to a sporting event, nightclub or casino, or even just flying interstate, can capture you for life.

And the way police, governments and private enterprise safeguard your personal data and details is so poor and error-riddled that no-one even assumes your private data will be protected: instead, there's a new law which operates on the basis of what should happen WHEN your data is mislaid, not IF. <http://tinyurl.com/yc9tu7xg> Photo: NEC Meanwhile, the Australian Criminal Intelligence Commission and NEC as in serious strife for the massive time and cost over-run on their attempts to gather facial photos of all Australians. <http://tinyurl.com/ybrrwfwv>



## Is Australia a 'mushroom' nation, keeping citizens in the dark?

Australians are going backwards in being able to access important public information, according to Bernard Keane writing in *Crikey* online news last month.

"The (Public Service) attempts to roll back FOI and 'game' existing laws comes at a time when the government is ever-more obsessed with collecting personal information about citizens, through mass surveillance laws, a radical expansion of the census into a lifelong monitoring document, releases of badly-anonymised personal data, releasing personal information about its critics and using the Australian Federal Police to track down whistleblowers who have embarrassed it. The more government wants to know about us, it seems, the less it wants us to know anything about it." – *Crikey* 17 Jan 2018 <http://tinyurl.com/y9epv3z3> You could sum it up as: *Government over the people, in spite of the people*, CLA believes.

## Hey presto! 'Togs' Cosgrove GG could become a President!

There's a simple, less costly way to change status of the governor-general, according to an academic. Prof Justin Malbon of Monash Law School said you could simply pass a law that adds the extra title of "president of Australia" to that of the governor-general.

"This would not involve any constitutional change," he wrote. The office-holder would therefore be titled 'governor-general and president of Australia'.

"The legislation could further provide that the title 'president' is to be used when the governor-general is representing Australia in international forums and for relevant ceremonial and other occasions within Australia.

“The legislation could deem that any use of the term "President of Australia" is to be taken as a reference to the Governor-General of Australia for constitutional validity. That is, if the office-holder signs a document as President, the document's validity cannot be challenged on the basis it should have been signed under the title Governor-General,” Prof Malbom wrote in *Fairfax Media*. <http://tinyurl.com/y97k6ngm>  
With a stroke of pen, Peter ‘Cossie’ (or ‘Togs’) Cosgrove could go from Australian GG to Pres.

## **Military should adopt inquisitorial system: Brigadier**

Military prosecutors should more actively investigate cases to improve confidence in the military discipline system, the Director of Military Prosecutions, Brigadier Jennifer Woodward, said last month.

Laws governing defence force disciplinary investigations were also decades out of date and urgently needed reviewing, she said.

The top legal military prosecutor warned that, without reform, most fraud offences committed by service people would need to be investigated and prosecuted by civilian authorities.

In her annual report, Brig Woodward argued that the Australian Defence Force should abandon the current military discipline system – based on the largely adversarial civil criminal justice model – and adopt alternative approaches, such as an inquisitorial system, bequeathed by Napoleon to France and Europe.

In such systems, judges and magistrates actively gather evidence and question witnesses.

The Brigadier said there was a "level of dissatisfaction with the military discipline system" with concerns it was "overly complex and difficult to use, unresponsive and characterised by delay, and costly to operate".

“There have been a number of initiatives to reform the discipline system to ensure it would become responsive, and enable command to take timely and effective action in response to allegations of misconduct,” she said. <http://tinyurl.com/yc4drva6>

CLA notes there are many people in Australia who think justice in Australia would improve if the inquisitorial system was adopted here for civilians.

## **Trade deal may be too high a price to pay**

Civil Liberties Australia welcomes the benefits of free trade under the ‘New’ TPP deal, but continues to be alarmed that we will give up our legal sovereignty in terms of Investor State Dispute Settlement clauses.

While the Australian rural sector in particular and manufacturing may benefit in selling their goods overseas, such trade deals frequently transfer wealth to selected sectors to the detriment of the mass of Australian consumers who live in the urban environment of our capital cities.

Meanwhile, Australia laws are no longer final. Any aggrieved company from any of 11 countries can seek external, not-necessarily legally qualified, arbitrators to rule on whether they have suffered financially from an Australian law. If the ‘new’ Trans Pacific Partnership is endorsed by parliament, our High Court loses status and puts at serious risk the enforcing of its trade rulings on all international and local companies, local government, state and territory governments and the federal government. Sources: various government and news reports 24 Jan 2018, <http://tinyurl.com/y947fzuk>

## **Approving patents makes the wheels go round**

Does Australia have a patent system problem, like the one outlined in the US?

- The United States Patent and Trademark Office is funded by fees, and the agency gets more fees if it approves an application.
- Unlimited opportunities to re-file rejected applications means sometimes granting a patent is the only way to get rid of a persistent applicant.
- Patent examiners are given less time to review patent applications as they gain seniority, leading to less thorough reviews.

These are the conclusions of a paper published recently by the Brookings Institution, as reported by *Ars Technica* <http://tinyurl.com/ya3kst2b> Does anyone have equivalent information on the Australian patent system?

## **Dying man kept in leg irons: Senator calls for reform**

There has apparently been no progress on new ‘duty of care’ regulations for how NSW Corrective Services deals with seriously ill prisoners.

Senator Pat Dodson (Labor, WA) late last year called on state governments to create laws to protect prisoners, saying he was "absolutely appalled" at the shackling of an Indigenous inmate on his death bed in Sydney.

He also called on the federal government to take a lead, but there seems to have been no action federally either.

Prison guards from Parklea jail kept ankle cuffs on Eric Whittaker, 36, who was taken to Westmead Hospital after a brain aneurysm that led to his death on 4 July 2017.

The father of four had been unresponsive for at least 15 hours when his family discovered his legs chained together (photo) and complained to guards, who removed the chains 40 minutes later.

"It's so sad the family have to be exposed to that level of inhumanity to their loved one," said Prof Dodson, shadow assistant minister for Indigenous affairs and a commissioner on the 1991 Royal Commission into Aboriginal Deaths in Custody.

He said the treatment of Mr Whittaker and other Aboriginal people showed Corrective Services needed formal definitions of a "duty of care" enshrined in acts of state Parliament and the federal government should lead a national push.

NSW Corrective Services Commissioner Peter Severin said "protocol" was the reason the dying prisoner had been shackled. <http://tinyurl.com/yat4ew59>



## Trainee lawyers provide advice on the beach

Newcastle's innovative, summer 'Law on the Beach' program will continue until 21 February with a final meeting for this year at Newcastle Surf Life Saving Club.

The free community legal advice clinics run over summer, bringing University of Newcastle law students and lawyers from their Hunter Street CBD location to Newcastle Beach.

The program gives later year law students and social work students the opportunity to gain practical experience towards their degrees as they work to help members of the community.

Law on the Beach is a student-run program which has provided free legal advice to hundreds of clients in a highly accessible and atypical setting, on a drop-in basis between 9.30am to 2.30pm one day every week. <http://tinyurl.com/y9vqknh9>

## Emergency boss under cloud

The executive director of the Northern Territory's recently merged fire, rescue and emergency services has reportedly been suspended as part of an internal investigation, 18 months after being appointed to the role. Jennifer Reilly was stood down last month as the administrative boss of the NT Police, Fire and Emergency Service, according to newspaper reports. No details behind the standing down were given.

She was appointed admin supremo of the agency, one rung under commissioner Reece Kershaw, in July 2016. Reilly had previously run the NT agency's training college and earlier led the administrative division of the Queensland Police Service for over five years, after performing various roles in the public sector going back to 1992.

Management of the formerly separate firefighting and emergency services was merged to create "a more agile organisation" on the basis of a capability review completed in the first half of 2016, the agency explained at the time. <http://tinyurl.com/y9ee3sy2>

## Both northern leaders plump for a republic

NT Chief Minister Michael Gunner and Opposition leader Gary Higgins (photo) both support an Australian republic.

"Let's just get on with becoming a republic," Mr Gunner said. "I see no reason (for) any delay." Mr Higgins said he supported an Australian republic, (but) the issue of NT statehood was "far more important". <http://tinyurl.com/y84suanx>

Prime Minister Malcolm Turnbull has said a plebiscite or postal survey would be a way to kickstart debate ahead of a binding referendum.



## NT government sends 12% of its people to the polls

An election for the City of Palmerston Council in Darwin will be held on 17 March.

Last month, the NT government dismissed the council, which it had suspended in June 2017.

A report commissioned then by the government found the council had made financial commitments without assured funds, aldermen and women and the CEO had missed crucial council meetings, and staff positions had been reclassified without advertising or independently evaluation roles and responsibilities.

Palmerston, just 11 minutes from the Darwin CBD and with 18 suburbs, has about 35,000 residents (about 12% of the NT's population) and is the second largest city in the NT. – media release, Community Development Minister Gerry McCarthy 23 Jan 2018

## Andrews wants special ID database for Australian youth

Victorian Premier Daniel Andrews last month continued his worrying lean towards repression by asking for a new federal ID system just to monitor young Australians.

He even promised to pay a quarter of the cost of setting one up, while blaming Sydney for crime problems. "When we get dozens or more young kids playing up from Sydney who are here in Melbourne, if we've got a database we'd know about those kids and what their history is, what their status is," he said last month.

The newspaper nicknamed the 'police gazette' – the *Herald Sun* – had reportedly blamed a wild house party at Werribee and a brawl at St Kilda on visiting basketball players from interstate.

Mr Andrews said he would kick in 25% of funding for a federal crime database.

The move to blame interstate youth follows the federal government trying to ramp up fear in Victoria to help the Coalition ahead of a state election: crime and spook supremo, Minister Peter Dutton, blamed Sudanese gangs for a 'crime wave' in Melbourne. The former Queensland beat cop also blamed "civil libertarian" judges for youth crime.

At the same time, the Victorian Opposition promised a "law and order" campaign in the upcoming state election battle. The election will be held in November 2018.

Oh dear, don't they have any fresh ideas, CLA asks: 'law'n'order' – and ramping up community fear – is the first refuge of shallow, policy-deprived campaigns.

Meanwhile, Victoria Police Deputy Commissioner Andrew Crisp said the state was not facing a crime crisis. <http://tinyurl.com/y7aqaex4> and <http://tinyurl.com/y97hsdzb>

## Law'n'Order on agenda even before election date announced

A re-elected Liberal Tasmanian government would spend \$340m to build new jails in the state's north and south, Premier Will Hodgman promised last month, even before announcing the election date.

The state election will be held on 3 March.

The Liberals have pledged \$340m for prison infrastructure, including a 270-bed prison in the state's north and a new remand centre in the south for up to 70 inmates. <http://tinyurl.com/yicsgydkd>

## ODD SPOT: 50 shades of reality in doublespeak

"The civil penalty provisions contained in the Bill should not be considered 'criminal' for the purposes of human rights law. While a criminal penalty is deterrent or punitive, these provisions are regulatory and disciplinary."

– explanatory memorandum, Bankruptcy Amendment (Debt Agreement Reform) Bill 2018, currently before the federal parliament

## Prisoners up, particularly Indigenous

December 2017 ABS figures for 2016-17 show Indigenous prisoners rose 7% in Australia, while total prisoners rose 6% which was a 4% rise in prisoners per 100,000 population.

Nearly a third – 31% – of prisoners nationally are on remand, awaiting their day in court, many not guilty.

The 11,307 Aboriginal and Torres Strait Islander prisoners at 30 June 2017 accounted for 27% of total Australian prisoners, compared to their 2% representation in the population.

Adult ATSI prisoners ranged from 9% in Victoria to 84% (1349 prisoners) in the NT. The rate was 37% for adult prisoners in WA, while nationally about 27% of prisoners are Aborigines.

WA has a major prison problem. From 30 June 2016, the male imprisonment rate increased nearly 9%, from 562 to 612 prisoners per 100,000 male adult population, while the female imprisonment rate increased at a slightly greater rate, from 63 to 69 prisoners per 100,000 female adult population.

These were the highest growth rates in WA over the past decade, and reflect the failure – and the hidden cost – of “cheap” political law-and-order promises trotted out before previous election campaigns. The promises are like fairy floss: appealing in prospect, but with no substance and very costly when the ‘sugar’ hit has to be paid for with real and rising cash contributions from taxpayers.

The current Labor government, in power for a year, has a major problem trying to solve the political promise “sins” of recent Liberal and past Labor governments. ABS figures - <http://tinyurl.com/y9e8q9ne>



### **Police union boss calls for end to ‘sneaky’ speed cameras**

Queensland Police Union President Ian Leavers (photo) says “sneaky” covert speed cameras are just for revenue.

He called last month for police to stop using unmarked and covert speed cameras, saying they only raise government revenue. They did not reduce the state’s road toll or stop people speeding.

“Getting a ticket in the mail up to a month after speeding when you can barely remember even where you were back then, has no effect and is quite rightly cynically viewed as revenue raising,” he said.

Behind his call appeared to be a customary cry for more police: “Only a highly visible policing presence and highly marked police speed camera

vans with large police decals all over them staffed by police are the way to address the road toll.”

Mr Leavers said covert cameras had damaged the reputation of police officers across Queensland. <http://tinyurl.com/ybqywlby>

...but in NSW, police are getting their way with new roadside tests for cocaine, adding to the state’s mobile drug testing regime. Police in NSW can now conduct a roadside test for cannabis, amphetamines and methamphetamine or “ice”, and MDMA. The test – a saliva swab – will not need to be changed to test for cocaine. <http://tinyurl.com/y842xdok>

CLA has long called for police to run as many drug tests outside corporate boardrooms in the city as they do outside pubs and clubs in the suburbs.

### **Teens claim torture-like treatment in Banksia Hill**

Two teenagers are claiming they were subjected to prolonged solitary confinement, obscene threats by guards, and the refusal of meals, visits and showers at WA’s Banksia Hill Juvenile Detention Centre.

The claims, revealed by Amnesty, included those of one boy who said he had been threatened by a guard and told he had two options left; one was a coffin, the other was being “bent over” in an adult prison.

The boy claimed to have been “locked in isolation”: he said the pain of self-harming was better than the pain of the “Intensive Support Unit”.

Corrective Services Minister Fran Logan said Banksia Hill had improved considerably since the current government came to power in March 2017. <http://tinyurl.com/ya773txf>

### **Police union president confirms rate of criminal police**

The vast majority of WA police officers convicted of crimes in recent years have kept their jobs.

*The Sunday Times WA* last month disclosed 105 police officers were charged with 279 offences between 2013-14 and 2016-17. Of those, 79 officers ended up with convictions for 213 crimes.

Nearly 85% of them were allowed to continue in the force. Of those charged and convicted, 13 resigned and five were sacked by the Police Commissioner in “loss of confidence” proceedings. Many others received internal ‘penalties’ like warning notices and “managerial action” which can involve reprimands, fines and demotion. The courts fined most of the 79 convicted police (87%).

Three officers were jailed for their crimes; two were handed suspended prison terms. About 16% now have criminal records for assaults.

WA Police Union president George Tilbury said police officers were held to a higher standard than the rest of the community, and noted the 1.22% offending rate of police was lower than the statewide rate of 1.77%. “There are roughly 50,000 “sworn” police officers in Australia: on Mr Tilbury’s figures, at least 600 are likely to be criminals,” CLA President Dr Kristine Klugman said. “Of course, that number is in addition to those police officers who ‘bend the rules’ to gain a conviction and use tunnel vision to reinforce their confirmation biases, sending innocent people to jail, sometimes for a decade or more.

“Not to mention cunning police who know the system so well that they never get caught. Like in the general community, 1.22% of offending police is probably the very, very tip of a much larger ‘policeberg’,” Dr Klugman said. <http://tinyurl.com/y8toekdr>

### **ODD SPOT: The opposite of police-planted evidence?**

Despite six police officers in three cars last month guarding a marijuana crop overnight in Ankatell, a southern Perth suburb, thieves were able to steal 100 mature plants. None of the officers reported seeing anything unusual during their shift. It was only when detectives returned to the property at sunrise to begin the job of removing the estimated 170 plants (that were there when dusk fell) that the crime was discovered. <http://tinyurl.com/y8y33r6n>

### **Australian briefs**

**Moses leads:** Rolf Moses will be CEO of Queensland Law Society from 12 March. He has more than 20 years’ experience in Queensland, nationally and globally, and joins QLS from Norton Rose Fulbright where he was the Director of People and Development based in Brisbane. With QLS, Moses has been chair of the Mental Health and Resilience Working Group and also a faculty member of the Practice Management Course. <http://tinyurl.com/y722cfcl>

**Bloody Awful Elapse of time:** A contractor, BAE Systems, took nearly a year to update its reporting requirements after physically losing a 1000-page security manual written to safeguard the Australian Parliament. The manual was lost in Nov 2016, but the loss was only made public in October 2017 at Senate Estimates. The lost manual, which contained confidential details about the recent and controversial security upgrades – including a high metal ring fence around the national parliament – has still not been found. <http://tinyurl.com/ycvwaya7>

**Police happy-snappers of children urged to desist:** In Queensland, the Council for Civil Liberties is calling out the police for their newfound practice of taking photos of juveniles on the streets. Under Operation Tucson, police in Mt Isa are recording the names of the children, noting their addresses, clothing, where they are going and, in many cases, taking their photograph. QCL VP Terry O’Gorman is planning to write to Police Minister Mark Ryan to urge him to put an end to the practice, and to the Privacy Commissioner to check on the legality of the police tactic. <http://tinyurl.com/y783wjhh>

### **Member correspondence:**

#### **Reformist social justice program is missing**

My main overall concern is the abdication and disappearance of the left (wing of politics) and any sign of a reformist social justice program, including a national bill of rights. Even something in that direction could be introduced as a first step like a limited justiciable charter for a five-year trial.

Other ideas include the restoration of habeas corpus for asylum seekers, incorporation of the Aboriginal flag in the Australian flag in place of the Union Jack, the introduction of a number of seats in all parliaments for Aborigines, widespread parental training including literacy and numeracy programs, an investigation of the causes of youth suicides and programs to address them, reform of the penal and prison systems to reduce imprisonment (especially of young people and non-threatening offenders) and the abolition of imprisonment for driving offences not resulting in harm. – CLA member from Sydney NSW.

#### **Rights and privacy continue to erode**

Our main concern is the wholesale erosion of civil rights, something CLA has done much to publicise. In the name of prevention of terrorism, we are being deprived of basic rights to avoiding unfair detention, access to legal advice, maintenance of silence under interrogation, and a host of other egregious restrictions on basic liberties. The deprivations are never adequately explained or debated before enactment, in the name of secrecy provisions usually associated with police states.

The erosion of privacy seems to proceed in lockstep with this loss of liberty.

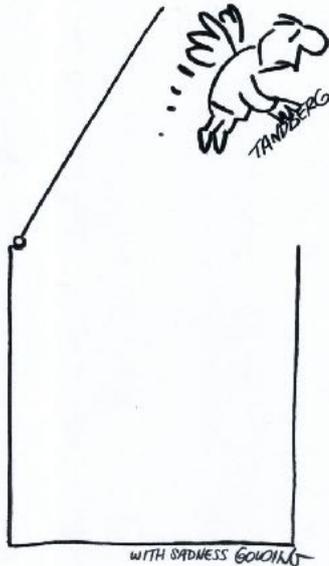
Unfortunately, it seems impossible to interest either major political party in debate on these issues, as each is frightened of appearing soft on terrorism. A bill of rights, however, might be an excellent way to give the debate some profile and momentum.

– CLA member (different one), also from Sydney.

### Ju\$lice unaffordable to vast majority

I've (fortunately) never had to come into contact with the justice system but it's always concerned me that justice (such as it is) is only available to the wealthy or the destitute (through Legal Aid, and even that's appallingly under-resourced). To the vast majority of us justice is simply unaffordable – a disgraceful state of affairs. Justice should not depend in any way on the size of your bank account.

– CLA member from Canberra ACT.



### CLA report – main activities for January 2018

In honouring Ron Tandberg, the recently deceased cartoonist who made an art form of the 'pocket' cartoon on *The Age's* front page, we pay homage to Aussie cartoonists in general for their contribution to civil liberties and human rights.

All cartoonists we have ever approached to use their work to help civil liberties have been extraordinarily generous in granting permission.

In 2007, we held an exhibition of political cartoons based on that generosity.

There's no group within Australia that does more to prick the pomposity of politicians, or to point out the hypocrisy of bureaucracy, than cartoonists.

Ours in Australia are among the very best in the world, and we'd be a much poorer nation without them. As we are with Tandberg's passing.

– Bill Rowlings, CEO.

*Left: Matt Golding's pocket commentary on Tandberg 'going aloft'.*



Founding webmaster and former Director Lance Williamson has been engaged by CLA to help sort out and update the membership data base. We apologise to members who were not sent renewal notices or otherwise inconvenienced by errors and miscommunications over the past year.

In late December 2017 and January several meetings have been held between Lance, Treasurer Sam Tierney and CEO Bill Rowlings re this matter. After sorting out the members' database, we expect to upgrade the CLA website.

*Left: Lance Williamson (left) with CLA Director Frank Cassidy.*

**We posted two Australia Day letters:** one to federal and state AGs re a requirement for extra training before judicial appointment, and one to the Senate President and House Speaker regarding the need for complete reform of the federal parliamentary committee system. Check the website: [www.cla.asn.au](http://www.cla.asn.au)

Directors submitted reports for the CLA annual report, which the CEO is finalising. The Tasmanian and West Australian groups are continuing to be very active and achieving successes. Director Richard Griggs is managing the petition for a Tasmanian Human Rights Act, while Margaret Howkins is pursuing an Independent Police Complaints Commission for WA, by way of expanding the number of petitioners at the moment, and meeting with WA MPs to introduce CLA and our support for progressive local initiatives, as well as promoting our national campaigns. Rajan Venkataraman is capably managing our submissions process, while Jennifer Ashton is organising the production of a small number of CLA T-shirts with a catchy new slogan devised by VP Tim Vines.

The hearing in the Sue Neill-Fraser case is set for Friday 23 February, when hopefully her appeal under new legislation – 'right to appeal' (R2A) – will be successful. CLA played a significant role in lobbying the Tasmanian government parties and opposition from 2013 to pass the enabling law, first legislated in SA. A correction of what CLA believes is a gross miscarriage of justice in Tasmania is well overdue: Sue has been in jail for 8.5 years.

We are also working on other jurisdictions to 'mirror' the same R2A legislation, with hopes for WA, the ACT and Queensland in the near term, and possibly Victoria in the longer term.

Another correction in Tasmania will hopefully also occur on 8-9 March, when lawyer Barbara Etter can be restored to full rights to practise law in the state if three Supreme Court appeal judges agree. The justice and legal system in Tassie is often a mystery, even to born and bred Taswegians, much less 'Mainlanders'. The CLA submission on aged care issues (see lead story) will stress the need for continuing education of the elderly (and aged care facilities management) re their personal liberties and guaranteed human rights. As part of our submission process, we have asked the new Attorney General, Christian Porter, to follow up and report on the outcome of the referral of the Freedoms Inquiry recommendations to government departments.

The Australian Law Reform Commission reported to then-AG Senator George Brandis in 2017, after nearly two years of detailed consideration of how freedoms had been truncated, emasculated and removed in Australia over the past 25 years. But the AG did nothing other than "refer the report to federal departments for their consideration". It's way past time Australians found out what recalcitrant departments and agencies are going to do about restoring and expanding our liberties and rights, CLA believes.

In another submission, we are trying to get the government to curtail the worst excesses of its proposed new law to rein in 'third parties' who get involved in election campaigns. The bill has some good bits (restricting foreign political donations) but is over the top in some areas, as the Coalition tries to curb the influence of alleged Labor "fronts" such as GetUp without similarly reigning in right-wing organisations.

The next DFAT NGO forum on Human Rights is scheduled for Thursday 8 February, when President Kris Klugman and Membership Director Jennifer Ashton will attend.

Meetings with CLA members:

- Former Director and now ACT prosecutor Anthony Williamson re DPP matters;
- Estelle Blackburn (photo), noted wrongful convictions author (she helped free Button and Beamish in WA) re miscarriages of justice, revelations of payouts for defamation in the Lloyd Rayney trial in WA, future 'justice' TV productions and a documentary on a possible major air crash investigation cover-up;
- Keith McEwan re aged care issues;
- Margaret O'Callaghan re rights and issues in Africa;
- Membership Director Jennifer Ashton re CLA T-shirts and NGO consultations;



- Rosemary Jennings re editing and proofreading of CLArion and other CLA publications;
- Italy-based member of CLA, Elizabeth Brancaccio, re UNESCO and staff rights issues;
- Sophie Bouris re NSW Parliament and state issues (with Lara Bouris on youth matters);
- Former Commonwealth and NSW Ombudsman and Privacy/Information supremo, Prof John McMillan re CLA's Better Justice program, Australia Day letters and paper on the rate of Wrongful Convictions in Australia.

LEFT: CLA President Dr Kristine Klugman and Prof John McMillan.

## INTERNATIONAL

### Trumpeting repression causing surge in civil liberties membership

The American Civil Liberties Union is gearing up for a crucial showdown in the US Supreme Court in 2018 over President Trump's Muslim travel ban, Ed Pilkington reported last month in *The Guardian*.

"The oldest and largest (US) civil liberties group has found itself on the frontline of legal resistance to an executive branch proving to be historically hostile towards constitutional rights. Since Trump took power on 20 January, the organization has launched 113 legal actions attempting to block his extreme rightwing ambitions," he wrote.

Those actions included 57 lawsuits brought against the most egregious Trump actions. It has successfully challenged the administration in its efforts to deport 11 million undocumented immigrants, cut off access to abortion, ban transgender people serving in the military and overturn Obamacare.

“Donald Trump is certainly the most dangerous president we’ve had in my lifetime, and possibly ever,” said David Cole, the ACLU’s national legal director.

The ACLU’s national team has 100 lawyers working under Cole as well as 200 additional lawyers deployed through 53 ACLU affiliates in each of the US states, and there are plans to bring on a further 100 staff on board to meet the Trump challenge.

“On top of that, the organisation has been propelled by the rocket fuel of its membership which has exploded from 425,000 before the (Trump) election to 1.6m today,” Pilkington wrote.

“The ascent of Trump has inspired citizens in the US to engage in civil rights and liberties. Apathy right now is not our problem,” Cole said. <http://tinyurl.com/ybz87bzu>

Apathy in Australia is still a big problem, Civil Liberties Australia says, which is why CLA members are literally “outstanding” individuals!

## **Beware what’s on your devices when you enter Tantrumland**

The American Civil Liberties Union and the Electronic Frontier Foundation arguing that a warrant should be required to search phones, tablets and laptops at the US border.

The Trump administration has asked a judge to dismiss the case.

The lawsuit follows a surge in agents looking through and copying data mobile phones and laptops. Midway through 2017, Customs and Border Protection was on pace to search 30,000 travellers’ electronics — more than tripling the annual searches since 2015, when it combed through 8503 people’s devices.

A June 2015 complaint is typical of outrage felt by citizens, according to the *NY Times*.

A man described himself as an American citizen, a Muslim, and an education professor in Texas. He described being “treated like a terrorist” when he, his wife and their toddler daughter arrived at San Francisco International Airport after visiting relatives in Iran.

They were detained for nearly four hours while agents searched “my phone, my university-owned laptop, and all electronic devices,” he wrote. “My family and I feel belittled, ashamed, humiliated and disgraced.”

Australians, like other non-Americans, have even fewer rights at the US border than American citizens. So beware what’s on your phone and e-devices when you visit Tantrumland this year. <http://tinyurl.com/y8zcbvad>

## **Forensic science fail: miscarriages of justice inevitable: regulator**

Police forces are failing to meet the official standards for forensic science, making miscarriages of justice inevitable, the British government’s forensic regulator has said.

In her annual report, Gillian Tully highlighted growing concerns about the failure of some forensic firms used by the police to meet basic quality standards. It means innocent people could be wrongly convicted and offenders escape justice, she believes.

The routine outsourcing of criminal forensic work to unaccredited laboratories worries Tully, with some not subject to independent oversight.

She said that without urgent action there would inevitably be miscarriages of justice, including in cases involving murder, rape and child abuse. “If you’re not finding indecent images of children on someone’s phone when you should be, that’s a miscarriage of justice as much as if someone was wrongly convicted of a crime,” Tully said.

The UK government abolished the Forensic Science Service in 2012, which was the primary provider to the police and courts, resulting in forensic work being transferred to in-house police laboratories and private providers. <http://tinyurl.com/y9324apz>

## **Supreme Court takes new position on sex**

The Indian Supreme Court has ordered a review of a colonial-era law reinstated in 2013 that criminalises consensual sex between men, which will probably lead to freeing up Indian society in mid-2018.

Three judges referred Section 377 to a larger bench for reconsideration, noting that Indians who are gay “should never remain in a state of fear,” and that “societal morality also changes from age to age.”

In August 2017 the Supreme Court ruled that all Indian citizens have a constitutional right to privacy. In the judgment, the court wrote that “sexual orientation is an essential attribute to privacy.”

Introduced in 1861, Section 377 of the Indian Penal Code imposes a 10-year prison sentence on "carnal intercourse against the order of nature with man, woman or animal." It most often applies to sex between men, but also extends to oral and non-vaginal sex of any kind.

The highest court in New Delhi, the capital, ruled in 2009 that Section 377 was unconstitutional. <http://tinyurl.com/y7j8ceoj>

### **ODD SPOT: Homeland Security is breaking the rules: report**

A new report concludes that a Department of Homeland Security pilot program improperly gathers data on Americans when it requires passengers embarking on foreign flights to undergo facial recognition scans to ensure they haven't overstayed visas.

Researchers at the Center on Privacy and Technology at Georgetown University's law school have released a report that says the US Dept of Homeland Security is improperly gathering data on Americans by forcing them to undergo facial recognition scans at airports. The report says the department has installed technology at nearly a dozen airports without going through a required federal rule-making process. <http://tinyurl.com/yghtka2d> and <http://tinyurl.com/yatl6zpz>

### **'Your' genes? Not if testing companies get their hands on them**

You probably wouldn't hand out your (tax file) number without having a pretty good idea of how that information was going to be used, right? That would be dumb. It's extremely sensitive information.

But, as Kristen V. Brown further writes in *Gizmodo*, the consumer genetic testing market is booming thanks to people readily giving up another piece of their identity: their genetic code.

It's worth a read of the entire article – <http://tinyurl.com/yalgcyzp> – but here are some scary highlights:

When you spit in a test tube in hopes of finding out about your ancestry or health or that perfect, genetically optimised bottle of wine, you're giving companies access to some very intimate details about what makes you, you. Not only that -- your genes reveal all of that information about other people you're related to, too.

"It's basically like you have no privacy, they're taking it all," said Joel Winston, a consumer protection lawyer. "When it comes to DNA tests, don't assume you have any rights.

*Illustration: BRCA 1 cancer gene. Credit: Emw*

(The testing company) can claim ownership of the DNA sample you send them, and the analysis they run on it, including the resulting information on the makeup of your genome.

Genetic information is shared within the company and in certain circumstances with third parties for research and business purposes.

The other thing that's clear is that genetic testing companies are definitely selling information to third parties for medical research in order to make money.

If you choose to share your genetic information with your doctor or others, it may be used against you and impact the (insurance/health) coverage you receive.

If you do not read (terms of service and privacy) documents -- and many don't -- you're missing the fine print that explains how your DNA can be used, misused, leaked, hacked, sold and commodified without your knowledge or deliberate consent.

The consumer genetic testing market was valued at \$88 million in 2015, but estimates expect it to expand to \$430 million by 2022. <http://tinyurl.com/yalgcyzp>

### **International briefs**

**5000 on death row to be spared?** The lives of more than 5000 prisoners on death row in Iran could be spared as a change in the law abolishes capital punishment for some drug-trafficking offences. Iran executed 500 in 2017, most for drug offences. The Iranian parliament passed measures in August 2017 raising the threshold for a death sentence to possession of 50kg of opium, 2kg of heroin or 3kg of methamphetamine. Under the previous law, possessing 5kg of opium or 30g of heroin was a capital offence. The new limits are set to be applied retrospectively, potentially saving the lives of thousands on death row. <http://tinyurl.com/y8aam3g2>

**Three little words lose their power:** India's lower house of parliament has voted to make the Muslim practice of instant divorce, known as "triple talaq", illegal and punishable with up to three years in jail for India's 170 million Muslims. Previously, at any time and via any medium, including text message or social media post, a husband saying 'talaq' (divorce in Arabic) has meant instant divorce: it did not work for women the other way around. The bill must be approved by the upper house before becoming law. Late last year India's Supreme Court struck down the practice as unconstitutional. <http://tinyurl.com/y9x2gds3>

**Sacrificed for justice?** Two decapitated chickens were discovered last month in the USA under a bench in a Bridgeport state courthouse, decorated in silver, green and gold glitter. The *Connecticut Post* reported that decapitated chickens have been found outside city courthouses before, but never inside. The placement of decapitated chickens is used in Santeria, an Afro-Caribbean religion, to protect a person from being found guilty of a crime. <http://tinyurl.com/yc6tewwa>

## 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>



**22 Feb, Melbourne:** 2018 Law Oration 'Human Rights and Good Corporate Citizenry', Professor Mervyn King SC, former Judge of the Supreme Court of South Africa, 5.30-7.30 at Deakin Edge, Federation Square. Details: <http://tinyurl.com/y76d3p3e>

**22 Feb, Bunbury WA:** One-day cyber security awareness workshop for business and individuals run by Edith Cowan Uni (note: costs \$750). Details: <http://tinyurl.com/yb9q92nn>

**23 Feb, Sydney:** Constitutional law conference and dinner, Art Gallery 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>

**25 Feb, Newcastle:** Newcastle Law School 25th anniversary reunion dinner at the Newcastle Club 6.30-10pm. Speaker Rebecca Silberberg, alumna and legal counsel at Google Australia. Details: <http://tinyurl.com/y8dce6uk>

**1 March: Perth:** One-day cyber security workshop: see 22 Feb Bunbury above.

**2-3 March, Brisbane:** Bar Assn of Qld annual conference on 'Access to Justice'. Keynote by Wayne Martin, Chief Justice of WA.

**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/yahnulh>

**9-10 March, Brisbane:** Qld Law Society symposium, Convention Centre. <http://symposium.qls.com.au>

**17 March, Sydney:** Rotary Peacebuilding Conference, Sydney Town Hall, 12 Noon. Speakers include Mohammad Yunus. Details: <http://tinyurl.com/ycjncxen>

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

**14-15 June, Newcastle:** 'Newcastle as a Restorative City Symposium: Justice Community Education and Health' at NeWSpace, 409 Hunter St. Details: <http://tinyurl.com/y77avcx4>

**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>

**15-17 Nov, Sydney:** Australian Bar Association conference, Intntl Conf Centre. Info: <http://tinyurl.com/yczmcvsc>

**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](mailto: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)

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