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CLA holds first electronic annual general meeting (eAGM)

Civil Liberties Australia is holding its first-ever electronic annual general meeting (eAGM) process over the next three months.

The 'annual general meeting' becomes the 'electronic annual general meeting'...or eAGM. It will elect office bearers for 2009-2011, and consider notices of motion, if there are any.

All nominations, notices of motion, discussions and voting will be handled electronically, online. There will be no 'physical' AGM - members will conduct the full range of normal 'AGM' business, including voting, online.

We believe we are the first entity in Australia to go to full a electronic general meeting, involving annual reporting, discussion/decision and voting processes. So this is a still a learning process.

Members at last year's 2008 physical annual general meeting in Canberra voted for the new electronic format to give CLA members throughout Australia an equal chance of participating in major decisions without having to travel thousands of kilometres.

The 2009 eAGM will involve a possible ballot for directors (if there are more nominations than the 12 positions available) and possible discussion and voting on a motion or motions (if members put one or more forward). Traditionally, CLA has not held a ballot for the board of directors, and notices of motion have been confined to amending the constitution every second year, as we did last year.

This CLArion/email notice comprises a formal call for nominations for the board and for draft notices of motion to change major policy/constitutional provisions. Please note that there are guidelines for nominating or putting forward a motion – go to <http://www.cla.asn.au/eagm.php> . Please read these before doing so, so as to not inconvenience other CLA members unnecessarily.

Broadly, there is a period for nominating, followed by a period of debate and discussion if needed for notices of motion, and then a period for formal voting. The timetable is:

NOMINATING PHASE:

1 Jan 09

Nominate for board (to 23 Jan)

Nominate possible motion for consideration by electronic General Meeting (to 23 Jan)

23 Jan

Board nominations close; draft motions close

30 Jan

Board nominees' details publicised, with 300-word statement (if provided)

Draft notices of motion put up on website: Debate/comment period opens (for 4 weeks)

DEBATE PHASE: from 30 Jan to 27 Feb (4 weeks)

- 27 Feb - Option to comment on draft wording of motion closes
- 01 March
 - Board verifies/certifies financial status/seconder/etc of board nominees;
 - Board endorses/signs off final version of motions to be put to members

VOTING PHASE: from 6 March to 27 March

- 06 March
 - Board nominations and notices of motion put up on website - for VOTING;
 - Annual report, audited financial statement, etc posted online - for VOTING.
- 21 March - Voting closes
- 04 April

- Declaration of electronic AGM: meeting at National Europe Centre, ANU, with guest speakers(Prof. Simon Bronitt on a charter of rights for Australia - c.f. European charter)

Note: Because all voting will be online, there will be no voting or moving of motions at the DeAGM – Declaration of electronic Annual General Meeting – on 4 April.

Unique email address needed: For e-voting, each CLA member must have a personal email address (rather than, say, one email address covering two or three members of a family, as happens in a few cases). Without a unique email address, a member can't participate in e-voting, but can still vote personally by post to the Secretary.

If you're setting up a new email account – or, if you have changed your email address in the past year – please [advise the Secretary](#) of the new address, online or by letter (Box 7438 Fisher 2611 Australia).

Those members not on email will receive information by post, and will be able to vote by post.

Full details are on the website. The website will be updated as the new electronic AGM (eAGM) process occurs – keep an eye on it for developments.



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Sedition laws to go, according to Attorney-General; at last, CLA says

Attorney-General Robert McClelland has committed to major changes in anti-terrorism law in 2009, and particularly to getting rid of the current sedition laws.

He was speaking at a press conference in late December.

His plans include:

- Firstly, with counter-terrorism offences, ensuring that they cover psychological as well as physical harm; ensuring that the offences apply equally to threats of terrorism, as they do to an act of terrorism; and creating a new offence covering terrorist-related hoaxes.
- Secondly, the Government will introduce a national security legislation monitor to review the practical operation of counter-terrorism legislation.
- Thirdly, the Government will establish a parliamentary joint committee on law enforcement by extending parliamentary oversight to include the Australian Federal Police. And the Government will also establish mechanisms to enable the Parliamentary Joint Committee on Intelligence and Security to review aspects of the conduct of the AFP when intelligence or security matters arise.
- Fourthly, the Government will extend the mandate of the Inspector-General of Intelligence and Security, Mr Ian Carnell, who currently has jurisdiction in respect of intelligence agencies, to also inquire into the conduct of other agencies when asked to do so by the Prime Minister.
- Fifthly, the Government will implement the recommendations of the Australian Law Reform Commission on federal sedition laws. These include changing the title of the offences from sedition to urging violence, and clarifying and modernising the elements of the offence consistent with the recommendations of the ALRC.

Mr McClelland said there would also be an offence of urging violence against a group or individual on the basis of race, religion, nationality, national origin, or political opinion.

"I should stress that this covers situations that is not mere vilification but rather applies to the actual urging of violence, that is, physical harm or death of an individual on the basis of race, religion, nationality, national origin, or political opinions," he said.

There will be a discussion paper and exposure draft of the legislation in the first half of 2009, leading to consultation on the proposed changes before they are introduced into parliament.

CLA welcomes Mr McClelland's announcement. However, Australia has been promised removal of the sedition laws since 2007...and it hasn't happened yet. We still wait, with hope.

Kevin 07 begets Super-Duncan 09 and AKBURPS

The Australian Government has scrapped a pre-election promise to introduce a department of homeland security and a coastguard.

Instead, they are renaming the Australian Customs Service as the Australian Customs and Border Protection Service (ACBPS, or a-k-b-u-r-p-s), and introducing a new role of national security adviser (NSA) and deputy NSA.

Establishing a National Security College looks like the next step, probably in the the 2009 Budget.

Former SAS Commander Duncan Lewis, the first NSA, will "essentially coordinat(e) a whole of government response", according to Attorney-General Robt McClelland. In other words, he's the spook supremo, Super-Duncan. He will chair the new National Intelligence Coordination Committee (NICC).

"He will chair secretaries' committees and supervise and evaluate just what's happening in terms of this cross-government organisation. So he's going to have a very significant position. Instead of a secretary of a department of homeland security, he will have a very significant coordination function to make sure all the other government agencies are working as effectively as they possibly can be," Mr McClelland said.

And Prime Minister Rudd has indicated that SCoNS – the Secretaries Committee on National Security – will be expanded to include health and other departments if needed. For instance, if there was a pandemic, to be able to call in all these other resources.

The 'intelligence service' that's currently in the Immigration portfolio will move into AKBURPS.


– base details from an interview by David Speers of Sky News' PM Agenda, 4 Dec 08

In a statement to Parliament, PM Rudd said: "Our national security interests must also be pursued in an accountable way, which meets the Government's responsibility to protect Australia, its people and its interests while preserving our civil liberties and the rule of law. This balance represents a continuing challenge of all modern democracies seeking to prepare for the complex national security challenges of the future. It is a balance that must remain a conscious part of the national security policy process. We must not silently allow any incremental erosion of our fundamental freedoms."

In 2009 the Government will release a Counter-Terrorism White Paper which will "make adjustments to our counter-terrorism policy arrangements. This will include our bilateral arrangements and capacity building activities with regional countries."

Full Statement at: http://www.pm.gov.au/media/Speech/2008/speech_0659.cfm

The move to promote Mr Lewis to Spook Supremo is surprising: it has been reported that, internally within the Prime Minister and Cabinet Department, Mr Lewis has had previous coordinating roles where the outcome may have been sub-optimal, including on the Haneef case. It is to be hoped that Mr Lewis can live up to the high opinion that obviously some people – not least himself – have of him.

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There is also the inherent danger that promoting 'uniformed' people to such coordinating roles enforces and endorses 'group-think', where the attitudes and decisions of the more senior members of the group are never properly questioned, as is often the case in military hierarchies.

When this happens, you get an Haneef fiasco or a situation where government ministers are too scared to tell their leader that his use-by day is up, or an intervention in the Northern Territory where the Australian Parliament has to take away all Territorians' rights under anti-discrimination law to make sure some Territorians are not treated fairly.

For commentary on Mr Lewis and the Haneef fiasco, see: [Lewis fiddled, Haneef burned](#), by Jack Waterford, Canberra Times, 31 Dec 08.

LAST WORD: Law pokes its nose online

Master Harper of the ACT Supreme Court last month ordered that a plaintiff could notify a defendant about a judgement against him by using Facebook. You have been (legally) poked! *Read more at the end of this bulletin...*

National human rights consultation announced

The Rudd Government last month announced a six-month 'national consultation' on whether Australia should change its human rights laws and practices.

Melbourne's Human Rights Law Resource Centre and law firm Allens Arthur Robinson (AAR) have produced a report to provide information, evidence and background material. The report, entitled *National Human Rights Consultation: Engaging in the Debate*, outlines arguments for and against a Federal Charter of Rights (or Human Rights Act). It also addresses the central issues in the debate by discussing three broad questions:

- Is a Federal Charter necessary? – discusses the current state of human rights, and legal protection of rights and freedom, in Australia.
- What would a Federal Charter do? – discusses what rights might be protected, whether protections should be subject to limitations, whose rights would be protected and who would have to comply with a Federal Charter.
- How would a Federal Charter work? – considers mechanics of a federal human rights law, and whether it would be part of the Constitution or an ordinary piece of legislation, role of the courts, impact on parliamentary sovereignty and democracy, potential constitutional issues, and remedies available for people whose rights have been breached.

The section also analyses existing models for human rights laws in the ACT, Victoria, the UK, NZ, Canada, South Africa and the USA.

Submissions to the National Human Rights Consultation Committee are due by 29 May 2009.

The committee is due to report by 31 July 2009 on 'the issues raised and the options identified to enhance the protection and promotion of human rights': see www.humanrightsconsultation.gov.au

The HRLRC/AAR report is available at www.hrlrc.org.au

CLA supports national consultation, wants definitive 'Liberties List'

CLA supports the national consultation process, but is concerned that the outcome may be – nothing, zero, total inaction.

There is no commitment on the part of the Rudd Government to make any change whatsoever to Australia's human rights system after the consultation concludes.

In the case of a 'no change' reaction by the Rudd Government, CLA wants the Australian Parliament's Legal and Constitution Committee (either the House of Representatives' version, or the Senate version – or a joint initiative of both) to hold hearings to find out what Australians believe their liberties and rights are, and to determine what they should be.

The parliamentary committee would produce a foundational definition, comprising a list of statements, of Australia's civil liberties and rights, and ask the Parliament to vote to formally endorse the 'Liberties List'.

The benefits of the consultation process, and the awareness it raises in the Australian community, should not be lost because of political dilly-dallying...which is the likely outcome, according to CLA's analysis of the political situation and likely evenly-split future public polling.

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Dreyfus, Legal and Con Committee chair, argues the 'For' case...

Mark Dreyfus is chair of the House of Representatives Legal and Constitutional Affairs Committee. Speaking in Parliament last year on the upcoming national consultation, the former Melbourne barrister said:

"I hope the debate will not be dogged by some of the baseless myths that have been spread in recent years about a charter of rights. These myths include arguments like there is no need for it, that a charter of rights usurps parliamentary sovereignty, that it gives power to unelected judges, that it is constitutionally impossible or that it will encourage litigation.

"This consultation should be conducted without these uninformed and emotional arguments, which can be quickly dispelled.

"Blindly asserting that there is no need for human rights protection pre-empts the very debate which the consultation is for. We have only to consider the history of injustices in our country, which are contrary to the fundamental human rights of women, Asian people, homosexuals, religious groups and Aboriginal peoples—or the more recent mistreatment by detention of refugee children by the Howard government—to understand that there is a need for some protection of human rights. "A legislated charter similar to the model adopted in the Australian Capital Territory, Victoria and the United Kingdom would at least ensure consideration of basic human rights.

"The idea that a charter of rights would give too much power to unelected judges is also hollow. We trust our judges to make countless difficult decisions in criminal law, in family law and in all areas of life. We must trust our judges to stand between citizens and government.

"It is a strange criticism indeed to suggest that there may be some danger in involving judges in deciding whether fundamental rights have been breached.

"I hope the national consultation does lead to a legislated charter of rights. If it does not, the consultation will still serve a useful educative purpose. As Labor's national platform states, 'An awareness and understanding of the human rights enjoyed by all Australians is essential to their maintenance and protection'," Mr Dreyfus said.

SA moves to control society, group by group

South Australian police are moving to ban the Finks motorcycle gang using world-first legislation to crack down on the activities of one section of society.

Police Commissioner Mal Hyde confirmed last month that an application had been forwarded to Attorney-General Michael Atkinson to have the Finks named a "declared organisation" under new laws.

Under SA's Serious and Organised Crime (Control) Act, group members with serious criminal convictions would be prohibited from "congregating, mixing or communicating" with other members.

The new laws came into effect in September. Magistrates can issue control orders against members, and there's a new offence of criminal association to stop members and their supporters from gathering.

The Finks are the first group targeted by the new legislation, but further applications to outlaw other bikie gangs are expected, with police likely to move against street gangs as well.

Police claim there are about 250 initiated members of eight bikie gangs operating in South Australia, with a further 150 people closely associated with them.

Motorcycle Rider Association SA president Phil McClelland calls the police move an "abomination" that targeted motorbike riders who had already served time for their crimes. "You don't get to see the evidence, you don't get to challenge it," he said. "How could you not be offended by this legislation if you have a shred of social value?"

A legal challenge to the legislation has been foreshadowed on the basis it does not allow for judicial review of the A-G's decision. The laws have also been criticised for their draconian nature and their removal of the presumption of innocence.

The Attorney-General must allow a 28-day period for public submissions before making any declaration.

<http://www.theaustralian.news.com.au/story/0,25197,24809384-2702,00.html>

<http://www.news.com.au/adelaidenow/story/0,22606,24809115-5006301,00.html>

<http://www.news.com.au/adelaidenow/story/0,22606,24699527-2682,00.html>

http://en.wikipedia.org/wiki/First_they_came...

90-day limit proposed for immigration detention

An inquiry into immigration detention is recommending a maximum 90 days for security and identity checks before a detainee must be released on a bridging visa.


The Joint Standing Committee on Migration recommends a maximum time limit of 12 months detention for all detainees, except those considered a significant and ongoing risk to the community.

A dissenting report by Petro Georgiou (Lib), Senator Alan Eggleston (Lib) and Senator Sarah Hanson-Young (Greens) called for broader access to judicial review of detention.

The report is the first of three, with two more scheduled in 2009. They will address alternatives to detention, service provision and the infrastructure to support a new framework for immigration detention.

The Rudd Government has opened – for the first time ever – the Christmas Island Detention Centre (the Indian solution?).

Built at a huge cost (close to \$500 million) by the Howard Government, the mid-Indian Ocean refugee jail was not in commission when a handful of refugee boats arrived in Australia. By commissioning the facility, the Rudd Government is signalling that its policies towards boat people will be not dissimilar to those under PM Howard.

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AFP and Telstra to work together

The Australian Federal Police (AFP) and Telstra are teaming up to fight techno crime. Telstra will help the AFP better understand how telecommunications works, including: Identity fraud and internet-enabled crime such as 'phishing';

- Online paedophile activity;
- Child protection and education;
- Botnet networks and organised crime syndicates;
- Online terrorism activities;
- Targeted attacks on public, government and private sector computer networks.

Telstra and AFP staff will train together and swap workplaces.

http://www.telstra.com.au/abouttelstra/media/announcements_article.cfm?ObjectID=44122

Bell steps up to a higher court

Virginia Margaret Bell will replace Michael Kirby as a High Court Judge from early February. She is the 48th person and the fourth woman appointed to the High Court since Federation. Currently an appeal judge of the NSW Supreme Court, she started her career at Redfern Legal Centre in 1978, then practised as a lawyer for more than 20 years before being appointed to the NSW Supreme Court in 1999.

She has been a Public Defender, counsel assisting the Royal Commission into the NSW Police Service, and a part-time Commissioner of the NSW Law Reform Commission, as well as recently being President of the Australasian Institute of Judicial Administration.

Victoria tops the police shooting table

Until a drop in the number of shootings in recent years, Victoria Police have had a dubious reputation for being trigger-happy.

Liberty Victoria statistics show 42 people were shot dead by an officer between 1987 and 2005; more than double that of NSW in the same period.

The Mental Health Fellowship of Victoria wants police to get more training in mental health problems. Chief executive Elizabeth Crowther says there needs to be more community input into officer training.

<http://www.abc.net.au/news/stories/2008/12/13/2445656.htm?section=australia>

Secret police files leaked to alleged crime bosses

Top secret Victoria Police files have been leaked to alleged crime bosses and killers, compromising federal and state drug trafficking investigations, a report in The Age claimed last month.

The leaked information came from the state surveillance squad, which conducts physical and technical surveillance on crime targets. Alleged drug baron John Higgs, a founder of the Black Uhlans outlaw motorcycle gang, received information from the leaked files, as did other members of his syndicate.

At least two other Melbourne men – one an alleged murderer and the other a suspected drug trafficker – also received their confidential surveillance records. One fled overseas after obtaining copies of the files.

The leak is the latest in a series of corruption scandals to entangle the Victoria Police since 2001 and will prompt new calls for a full inquiry into the links between organised crime and serving and former police.

The Office of Police Integrity and the Victoria Police are investigating the latest leak. The Australian Federal Police, the Australian Crime Commission and other agencies have been informed of the security breach.

– from a report by Nick McKenzie and Richard Baker, 2 Dec 08

<http://www.theage.com.au/national/secret-police-files-leaked-to-alleged-crime-bosses-20081201-6ot1.html?page=-1>

Qld gets greater powers to tap communications

New federal legislation allows Queensland law enforcement agencies to use telecommunications interception powers already available to police forces in all other states and territories.

Queensland's Public Interest Monitor had been the stumbling block to full national effect of the Telecommunications (Interception and Access) Act 1979 (Cth), but the new laws lets Queensland bring in legislation to satisfy the record-keeping, reporting and inspection obligations under the federal law.

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NSW doubles 'tax' on captive audience

NSW knows when it has an audience so captive that it can double its 'tax' without a squeak of protest.

The State Revenue (Budget Measures) Bill 2008 amends the law to increase the victim compensation levy paid by people sent to jail from \$30 and \$70 to \$60 and \$140 respectively (depending on whether they are committed on indictment or not).

It also introduces a provision which indexes these levies to movements in the Sydney consumer price index to ensure these levies maintain their real value. "The levies have not increased for 11 years, and in these tough times we are making criminals pay their dues," the authors of the Bill say.

The money goes into the Victims' Compensation Fund.

Woman wins damages for partner showing off sex video

A woman whose former de facto filmed them having sex and tried to distribute the tape to her friends, family and employer has been awarded \$40,000 damages for "breach of confidence".

Victoria's Court of Appeal found by majority that a judge had erred in dismissing Alla Giller's claim for damages against her former de facto partner Boris Procopets because she had suffered distress but not psychiatric injury.

The case includes judicial discussion of whether a tort of privacy should/could be established in Australia.

– from a report by Kate Hagan, The Age, 11 Dec 08

<http://www.theage.com.au/national/woman-wins-damages-payout-over-sex-video-20081210-6vw3.html>

<http://www.austlii.edu.au/au/cases/vic/VSCA/2008/236.html>

Calls for judicial review of WA's CCC widen

Brian Burke has called for a judicial inquiry into the activities of the WA Corruption and Crime Commission.

The former WA premier, jailed but later released over fraud and stealing charges, is often a figure of cartoon fun for his lobbying activities – which are usually legal and successful, judging by reports.

This month he will appear in court in Perth on eight charges brought by the CCC, including acting corruptly, giving false evidence, and disclosing official secrets. Mr Burke says he will mount a legal challenge to the CCC's over-broad powers.

CLA has long called for an investigation of the CCC – and of similar bodies in other States. We agree with Mr Burke that such bodies are becoming laws unto themselves. As time passes without a fundamental review of their behaviour, their impact on society appears to be becoming more pronounced, and not for the good.

A national review of all such bodies could save face for State Parliaments and produce a national outcome that was positive for democracy and the law in Australia.

BRIEFS:

Legislation review due to report: The review of the Legislative Instruments Act (2003) is due to report to the Attorney-General, Robert McClelland, by 31 March. A committee of three is undertaking the five-year review, mandated under ss59.1 of the act. They are Anthony Blunn, Ian Govey and Prof John McMillan.

Killestyn to head electoral commission: Special Minister of State, Senator John Faulkner, last month announced Ed Killestyn PSM as the Electoral Commissioner for five years from 5 January 2009. He replaces Ian Campbell, whose term expired in September 2008. Mr Killestyn is currently Deputy President of the Repatriation Commission and a Deputy Secretary at Veterans' Affairs, after 23 years in the public service, including four years as a Deputy Secretary at the then Department of Immigration and Indigenous Affairs. He was one of two senior people shoved sideways from Immigration after the Cornelia Rau-Vivian Solon scandals.

Pan sues for \$120m: Pan Pharmaceuticals has begun a \$120 million class action against the Federal Government, saying its decision to suspend the company's manufacturing licence and recall its products was motivated by suspicion and gossip. More than 165 sponsors, customers, creditors, distributors and retailers of Pan products have joined the action against the Therapeutic Goods Administration, which suspended the licence in April 2003. Pan chief Jim Selim has already received \$55m compensation from the government. He is a CLA member. The Pan situation is likely to highlight 'model litigant' principles – or lack of them – in a federal government agency.

<http://www.canberratimes.com.au/news/national/national/general/pan-slaps-120m-class-action-against-commonwealth/1394509.aspx>

Faulkner continues to action his promises: Special Minister of State, Senator John Faulkner, has introduced a Bill into Parliament to remove the power to issue conclusive certificates in the Freedom of Information Act 1982 and the Archives Act 1983. "The repeal of the certificates power will mean that all exemption decisions under the FOI Act and the Archives Act will be subject to full external merits review by the Administrative Appeals Tribunal (AAT)," he said. "This Bill marks the first step in the Government's plan to undertake the most significant overhaul of the FOI Act since its inception in 1982. As early as practicable in 2009 the Government will release exposure draft legislation for public comment addressing broader reform measures aimed at promoting a pro-disclosure culture."

New kit for women's rights: The Australian Human Rights Commission and the Australian Government Office for Women have released *Women's Human Rights*, an educational kit of fact sheets about the Convention to Eliminate All Forms of Discrimination against Women (CEDAW). Sex Discrimination Commissioner, Elizabeth Broderick said: "The Women's Human Rights education kit provides people with a clear and basic understanding of international human rights, particularly as they relate to women." Downloaded the kit from: www.humanrights.gov.au/sex_discrimination/publication/CEDAW/



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Key CLA activities for December 2008

Media

Canberra Times article on stun guns
Radio interviews, Bill Rowlings, stun guns

Web

Creation of new website, by webmaster: CensorFree - <http://www.censorfree.com.au/> - to fight mandatory internet filtering (MIF)
Liaison with GetUp re MIF campaign

Networking meetings

Arranging new auditor: Bob Digan (Treasurer)

Kerry Rea (MHR, Bonner, Qld), chair, Human Rights sub-cttee, Joint Standing Committee on Foreign affairs, Defence and Trade:
Charter of Rights fall back strategy
Model Litigant campaign
Mandatory Internet filtering
Protest rights outside Parl House
War Powers bill
Bali 9 guidelines
Extradition monitoring and reporting

Simon Corbell A-G, ACT Legislative Assembly:

Sexual assault legislation
ACT Policing/ AFP annual reporting, accountability
Expansion of CCTV surveillance
Use of stun guns
ACT Law Reform Commission
Long delays in Inquests: written submissions/ reserved judgments
Car chases and Clea Code
ACT FOI legislation: c.f. Commonwealth
Review terror laws
National medical directives
Act of Limitations: lack of judicial discretion

Ms Sue Wilkinson, Executive Officer, Australian New Zealand Police Advisory Agency (ANZPAA: set up in 2002 to coordinate all 17 interest advisory groups to police (women, Aborigines, etc). Key themes are:
Community Policing (crime prevention, safety)
Science and Technology (Crimtrac, intelligence)
Professionalism (standards, health and safety)
Workforce planning (diversity, race/gender)
Emerging issues (environment, terrorism, e-crime)
Sent copy of Clea Code

Mr Andrew Taylor, ACT Public Trustee
Role of office, activities of and bequests to CLA

Prof Simon Bronitt, National Europe Centre ANU, launch of Human Rights Photographic Exhibition

Mr Paul O'Callaghan, Executive Director, Australian Council for International Development, re contacts for student internship

Membership activities
Preparation for electronic communication for AGM

Meetings with members/students
David Mathews re censorship campaign
Ken Davidson and Lesley Vick, publishers *Dissent* and CLA members
Jennifer Saunders re current legislation and media activities

Submissions
Amendment to Crimes Act re charge of murder, to ACT Legislative Assembly, AG Simin Corbell

New projects
Australia Day letters 2009
Cartoon exhibition in cooperation with National Europe Centre, ANU

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INTERNATIONAL

How much is a life worth?

When a kidney cancer spread to a near 70-year-old man's lung, his doctor recommended an expensive new pill from Pfizer, but British health authorities have refused to buy the medicine.

"Everybody should be allowed to have as much life as they can," Bruce Hardy's wife, Joy, said in the couple's modest home outside London last month.

If the Hardys lived in the USA or most other European countries, Mr Hardy would most likely get the drug, although he might have to pay part of the cost. A clinical trial showed that the pill, called Sutent, delays cancer progression for six months at an estimated treatment cost of \$83,000.

But at that price, Mr Hardy's life is not worth prolonging, according to a British government agency, the National Institute for Health and Clinical Excellence. The institute, known as NICE, has decided that Britain, except in rare cases, can afford only about \$34,000 to save six months of a citizen's life.

For years, Britain was almost alone in using evidence of cost-effectiveness to decide what to pay for. But skyrocketing prices for drugs and medical devices have led a growing number of countries to ask the hardest of questions: How much is life worth? For many, NICE has the answer...about \$68,000 a year.

In Australia, Medicare's Pharmaceutical Benefits committee is forced to answer similar questions, but has not put a definitive dollar amount on a life.

<http://www.nytimes.com/2008/12/03/health/03nice.html?th&emc=th>

Amnesty slams stun guns: not 'less-than-lethal' weapons

Amnesty International warned last month against a proliferation of stun guns, saying they were responsible for dozens of deaths in the USA and should only be used in extreme cases.

In a report entitled "'Less than lethal?' The use of stun weapons in US law enforcement," the London-based human rights group urged governments to either limit their deployment to life-threatening situations or to suspend their use.

Industry claims that so-called "Conducted Energy Devices" are safe and non-lethal do not stand up to scrutiny, it said. Amnesty said 334 people had died in the USA between 2001 and August 2008 after being zapped with stun guns, with medical examiners and coroners concluding that stun gun shocks caused, or contributed to, at least 50 of the deaths.

"(They) are not the 'non-lethal' weapons they are portrayed to be," said Angela Wright, the Amnesty researcher who wrote the report. "They can kill and should only be used as a last resort."

Darts fired by stun guns pack a 50,000-volt punch that can paralyse targets from 10 yards (metres) away.

Amnesty report: <http://www.amnesty.org/en/library/info/AMR51/154/2007/en>

See CLA comment: <http://www.cla.asn.au/0805/index.php/articles/2008/stun-guns-will-kill-australians-cla-says>

Death penalty abolitionist front gains ground

The UN General Assembly has adopted a second resolution calling for a universal moratorium on the use of the death penalty.

Supported by an increasing number of co-sponsor countries (89), it reaffirms resolution 62/149 of 18 December 2007, "Moratorium on the use of the death penalty", and recognizes "the global trend towards the abolition of the death penalty".

A slight change can be seen in the Arab World. Algeria voted in favour of the resolution for the second time, while seven other Arab countries abstained in 2008 whereas four of them voted No in 2007 (Bahrain, Jordan, Mauritania and Oman).

The resolution was supported by 106 (+2) countries; 46 (-8) voted against the resolution and 34 (+5) abstained. Chad, RDC, Equatorial Guinea, Kiribati, Seychelles and Tunisia were absent.

The next resolution will be put for consideration to the United Nations General Assembly in December 2010. <http://www.fidh.org/spip.php?article6181>

US expands its non-voluntary DNA collection

A new US government policy authorises collecting DNA samples from all 'non-citizens' detained by authorities and all people arrested for federal crimes.

The new Justice Department rule, published last month and effective from 9 January, dramatically expands a federal law enforcement database of genetic identifiers, which is now limited to storing information about convicted criminals and arrestees from 13 states. Congress authorized the expansion in 2005, citing the power of DNA as a tool in crime solving and prevention.

The FBI created its National DNA Index System in 1994 to store profiles of people convicted of serious violent crimes, such as rape and murder, but the system has been expanded repeatedly, first to include all convicted felons, then misdemeanants and state arrestees. The data bank contained more than 6.2 million samples as of August 2008. Officials estimate that 61,000 cases have been solved or assisted using DNA.

The new rules could add as many as 1.2 million people a year to the national database, U.S. officials said.

Last month, the European Court of Human Rights unanimously ruled that a British policy to collect fingerprints and DNA of all criminal suspects, including those later deemed innocent, violated privacy rights (see below).

http://www.washingtonpost.com/wp-dyn/content/article/2008/12/11/AR2008121103337_pf.html



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EU rules against UK's DNA database

The Grand Chamber of the European Court of Human Rights last month ruled that the UK DNA database violates Article 8 of the European Convention on Human Rights.

The database contains the DNA of hundreds of thousands of innocent people, including 40,000 children.

The UK has been the world leader in promoting collecting fingerprint and DNA and this decision should have world-wide ramifications. The case decided by the EU should force the government to destroy 4.5m samples taken from people acquitted or never charged that are currently stored in the national DNA database.

The court examined a number of issues including familial searching, social stigmatisation and protection of children's rights that will be of interest.

Some highlights from the decision:

- The Court observes that the protection afforded by Article 8 of the Convention would be unacceptably weakened if the use of modern scientific techniques in the criminal-justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests.
- In conclusion, the Court finds that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard.

Details: Grand Chamber judgment 04/12/2008 In the case of S. and Marper v. the United Kingdom, <http://www.echr.coe.int/echr/> and/or <http://www.privacyinternational.org/article.shtml?cmd>

Private national database would be 'hellhouse', says ex-DPP

The UK private sector will be asked to manage and run a communications database keeping track of everyone's calls, emails, texts and internet use under a key option contained in a consultation paper to be published this month by the Home Secretary, Jacqui Smith.

The British Cabinet is considering putting management of the managing \$25 billion database of all UK communications traffic into private hands. The government has promised tougher legal safeguards to guarantee against leaks and accidental data losses.

But in his strongest criticism yet of the super database, the former Director of Public Prosecutions, Sir Ken Macdonald, who has first-hand experience of working with intelligence and law enforcement agencies, told the *Guardian* such assurances would prove worthless in the long run and warned it would prove a "hellhouse" of personal private information.

"Authorisations for access might be written into statute. The most senior ministers and officials might be designated as scrutineers. But none of this means anything," said Mr Macdonald. "All history tells us that reassurances like these are worthless in the long run. In the first security crisis the locks would loosen."

Mr Macdonald, who left his post as DPP in October, told the *Guardian*: "The tendency of the state to seek ever more powers of surveillance over its citizens may be driven by protective zeal. But the notion of total security is a paranoid fantasy which would destroy everything that makes living worthwhile.

"We must avoid surrendering our freedom as autonomous human beings to such an ugly future. We should make judgments that are compatible with our status as free people. "This database would be an unimaginable hell-house of personal private information," he said. "It would be a complete readout of every citizen's life in the most intimate and demeaning detail. No government of any colour is to be trusted with such a roadmap to our souls."

<http://www.guardian.co.uk/uk/2008/dec/31/privacy-civil-liberties>

Munir case: prosecutor asks for 15-year sentence for planner

The prosecutor requested a 15-year prison sentence for intelligence chief and former Kopassus commander, Muchdi Purwopranjano, for allegedly organising the 2004 assassination by arsenic poisoning of Indonesian human rights activist, Munir Said Thalib. Munir was murdered by an Indonesian state intelligence (BIN) agent and former Garuda airline pilot, Polycarpus Priyanto, who spiked arsenic into his drink during a stopover at Singapore airport, on the way to Amsterdam, in September 2004. Polycarpus was sentenced to 20 years.

Muchdi was a deputy director at BIN at the time. Earlier, he had been commander of Kopassus, Indonesia's special forces unit, but was relieved of his post after Munir revealed details of its role in the disappearance of student activists.

On New Year's Eve, Muchdi was acquitted by the court, which said he had no case to answer.

"Muchdi Purwopranjono cannot be proved legally and convincingly to have ordered the murder of Munir," Judge Suharto said. "He should be removed from detention immediately." Munir's widow, Suciwati, said that she was disappointed by the court's decision. "It's painful. It shows that the bad guys have won ... we'll fight on," Suciwati said. "Today we move one step back. But we'll move 10 steps forward. We have to stand united to fight for justice," she said.



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Iraq's key court fails fairness test

Iraq's central criminal court, the country's chief judicial institution, has fallen short of international and Iraqi constitutional standards of due process and has failed to provide "basic assurances of fairness," according to a report released last month by Human Rights Watch.

The report says defendants are often abused in custody and held for months or years before being referred to a judge. When cases are heard, the defendants are often left without adequate defense counsel to answer charges, which are frequently based on secret informants, coerced confessions and flimsy evidence. Juveniles are often held with adults, it found, despite an Iraqi law requiring they be held separately.

The court was created in 2003 by the United States-led Coalition Provisional Authority to hear cases of serious offenses, including terrorism. One factor in the court's systemic failures is an overwhelming caseload, a result in part of widespread arrests in 2007 related to the surge operations in Baghdad, the report said.

– Campbell Robertson, NY Times

http://www.nytimes.com/2008/12/16/world/middleeast/16iraq.html?_r=1&th&emc=th

Epitaph for Guantanamo

Roger Cohen summed up Guantánamo rather well, the whole sorry tale, in a *New York Times* op-ed for Thanksgiving 2008.

He describes a single sheet of paper given to Afghans released after years of detention, without any hint of "an apology or compensation for their season in hell":

"An Administrative Review Board has reviewed the information about you that was talked about at the meeting on [xxxx] and the deciding official in the United States has made a decision about what will happen to you. You will be sent to the country of Afghanistan."

As Cohen sadly notes: "We have 'the deciding official', not an officer, general or judge. We have 'the information about you,' not allegations, or accusations, let alone charges. We have 'a decision about what will happen to you,' not a judgment, ruling or verdict. This is the lexicon of totalitarianism."

<http://www.nytimes.com/2008/11/27/opinion/27cohen.html>

Report on detainee abuse blames top Bush officials

The US Senate Armed Services Committee concluded last month that former Defense Secretary Donald Rumsfeld and other top Bush administration officials were directly responsible for the harsh treatment of detainees at Guantanamo Bay, and that their decisions led to more serious abuses in Iraq and elsewhere.

The committee accused Mr Rumsfeld and his deputies of being the authors and chief promoters of harsh interrogation policies that disgraced the nation and undermined US security.

It contends that Pentagon officials later tried to create a false impression that the policies were unrelated to acts of detainee abuse committed by members of the military, such as at Abu Ghraib prison.

http://www.washingtonpost.com/wp-dyn/content/article/2008/12/11/AR2008121101969_pf.html Report: <http://armed-services.senate.gov/>

Meanwhile, in Europe, Mr Rumsfeld and others face torture charges for what happened in the Middle East and Cuba, and at secret torture centres around the world.

The Center for Constitutional Rights (CCR), the International Federation for Human Rights (FIDH), and the European Center for Constitutional and Human Rights (ECCHR) have filed three cases against Mr Rumsfeld and others in Germany and France under universal jurisdiction laws, for the torture of detainees in Iraq, Afghanistan, Guantanamo, and in secret sites.

Plaintiffs had demonstrated that Mr Rumsfeld, in violation of the Convention against Torture, was responsible for having directly and personally crafted and ordered the use of "harsh" interrogation techniques constituting torture.

The complaints, accompanied by several hundred pages of evidence, also alleged that such techniques were implemented under Mr Rumsfeld's supervision, and that, starting in 2002, he personally managed several torture sessions of terrorist suspects.

The decision in Germany to dismiss the groups' criminal complaint filed in 2006 on behalf of 12 plaintiffs is currently being reviewed by Frankfurt's High Regional Court.

Rwanda genocide man convicted

The man accused of masterminding the 1994 Rwanda genocide, Theoneste Bagosora, was jailed for life by an international court last as prosecutors described his conviction as the most significant since the Nuremberg trials in the late 1940s, following World War Two.

Mr Bagosora, 67, a former colonel who was the chief of staff in Rwanda's defence ministry, was convicted of genocide, crimes against humanity and war crimes after a five-year trial. Judges ruled that he used the military and an extremist Hutu militia to kickstart the massacre of about 800,000 Tutsis in 100 days.

The international criminal tribunal for Rwanda, sitting in Tanzania, also found Mr Bagosora responsible for overseeing individual massacres, as well as the murder of Rwanda's prime minister, Agathe Uwilingiyimana, and the killing of 10 Belgian peacekeepers. After the 10 died, the UN withdrew most of its forces and abandoned the Tutsi population to slaughter. Two other army officers on trial with Bagosora, Aloys Ntabakuze and Anatole Nsengiyumva, were also given life sentences for genocide. Prosecutors called them "enemies of the human race". A fourth defendant, Gratién Kabiligi, the former chief of military operations, was acquitted of all charges and released.

<http://www.guardian.co.uk/world/2008/dec/19/rwanda-united-nations>



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BRIEFS:

Iranians shut down rights centre: Civil liberties people worldwide, including CLA, have condemned the closing by Iranian authorities of the offices of the Defenders of Human Rights Center, led by Nobel peace prize winner Shirin Ebadi, in Iran. Iranian police raided and closed the centre on 21 December, just before they were due to hold a celebration of the 60th anniversary of the Universal Declaration of Human Rights. Details:

<http://www.fidh.org/spip.php?article6183>>

Journalists' deaths down - but still more than one a week: Journalists, media workers and bloggers killed in 2008 totalled 62 down from 106 the previous year. Fewer deaths was not necessarily a good sign, Reporters Without Borders (RWB) said: in many area, violent repression had forced reporters to abandon their work. State censorship was spreading to the internet, RBW claims. "Intimidation and censorship have become more widespread, including in the West," it said.

DATES:

7-14 Jan, Aspen, USA: Australian Accountants & Lawyers conference, www.aalc.com.au

19 Jan, Adelaide: international workshop on e-forensics law, www.e-forensics.eu or E:

nigel.wilson@barchambers.com.au

28 Jan, Toronto, Canada: inaugural "Privacy by Design Challenge" - Ontario's celebration of International Data Privacy Day. <http://www.privacybydesign.ca/>

7-8 Feb, Canberra: Judicial Reasoning: Art or Science? conference at ANU, http://law.anu.edu.au/nissl/JudReas_09.htm Email: judicialreasoning@njca.anu.edu.au

20 Feb, worldwide: World Day of Social Justice

20 Feb, Sydney: Constitutional Law Conference and dinner, www.gtcentre.unsw.edu.au or E: gtcentre@unsw.edu.au

5-6 March, Dili, Timor-Leste: Women for Peace conference, including Interactions between formal and traditional justice. Details: Peace conference co-ordinator mena.peace@alolafoundation.org or filpau@yahoo.com

16-17 March, Melbourne: Human Rights Conference, Victorian Equal Opportunity and Human Rights Commission, at the Melbourne Park Function Centre. Call for abstracts open until 3 Nov. <http://www.humanrightskonference.com.au/>

19 March, Canberra: annual Kirby lecture in international law: Prof Hilary Charlesworth of ANU, 6.30-7.30pm

5-9 April, Hong Kong: 16th Commonwealth Law Conference, www.commonwealthlaw2009.org

7 Apr, Canberra: *Covert Policing*, 4th workshop on social implication of national security, hosted by National Europe Centre, ANU. Call for papers: Email 250 word abstracts to katina@uow.edu.au by 30 January; 2009 Workshop http://www.anu.edu.au/NEC/conferences_workshops/2009_CrossingBorders/CrossingBorde rs.php?&p=1

8-9 Apr, Canberra: Crossing Borders - Promoting regional law enforcement cooperation: European, Australian and Asia-Pacific perspectives, http://www.anu.edu.au/NEC/conferences_workshops/2009_CrossingBorders/CrossingBorde rs.php?&p=1

29 Apr - 2 May, Manila, Philippines: Inter-Pacific Bar Association meeting and conference; details <http://www.ipba.org/>

1-6 June, Oslo, Norway: Global Forum on Freedom of Expression, week-long membership meetings, open conference sessions and festival events, all dedicated to exploring and celebrating free expression. Contact: Christopher Wilson (+47 2301 4696) Info: <http://expressionforum.org>

1-4 June, Washington DC, USA: Computers Freedom and Privacy conference, http://www.cfp2009.org/wiki/index.php/Main_Page

5-9 June, Fiji: 11th Australian Family Lawyers' Conference, www.aflc.com.au

14 June - 3 July 2009, Montreal, Canada: Applications close 21 Nov 2008. The International Human Rights Training Program (IH RTP) is an annual three-week training session with 120 participants from 60 countries. Information: <http://www.equitas.org/english/programs/IH RTP.php>

20 June, world: World Refugee Day (World Refugee Week June 14-20)

27 June - 3 July, Bali, Indonesia: 'Criminal Justice - Diagnosis Terminal' conference, contact: jodi.truman@johntooheychambers.com.au

2-4 July, Wellington, NZ: Australian and NZ Society of International Law annual conference, call for papers deadline 2 March 09. Details: <http://law.anu.edu.au/anzsil/conferences.html> or cipl@law.anu.edu.au

5 July, Australia: NAIDOC Week (National Aborigines & Islanders Day of Celebration)

1-4 Sept, Sydney: XIX World Congress, International Society for Labour and Social Security Law, <http://www.labourlawssydney.com/>

17-20 Sept, Perth: 36th Australian Legal Convention, <http://www.law09.com.au/>

21 Sept, world: International Day of Peace

12-13 Nov, Canberra: CIPL/ANU Public Law weekend, including annual Sawyer lecture and dinner.

10 Dec, world: Universal human rights daywww.cla.asn.au

2010:

4-7 May, Melbourne: Non -adversarial Justice: Implications for the Legal System and Society conference, E: aija@law.monash.edu.au (Call for papers closes 1 Feb 2010)

10/10/10, World: Target date to start the CLA-promoted death penalty moratorium – 10/10 for Life.

LAST WORD: Law pokes its nose online

Master Harper of the ACT Supreme Court last month ordered that a plaintiff could notify a defendant about a judgement against him by using Facebook.

This breaks new technological ground for delivering the fruits of justice: traditionally, if a defendant does not appear to defend the case, the magistrate can issue a default judgement...the problem is then notifying the defendant.

Usually, servers find innovative ways of delivering the notifying letter in person, or it they post it. Email has been used before, and even a mobile phone in the case of Rugby League player Sonny Bill Williams who had moved to France.

Now, though, you can be 'poked' on Facebook with the bad news. Master Harper said the plaintiff could send the fact and terms of the judgement to the Facebook pages of the defendants in the case.

– with thanks to Nick Abrahams of Deacons, writing in the *SMH* Technology pages.

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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: <mailto:secretary@cla.asn.au>

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