

McClelland is the Minister for Disasters

Attorney-General Robert McClelland had issued 71 media releases from 1 January 2011 to 28 March – 38 of them, or 53%, related to disasters.

While there has been a preponderance of regional disasters recently, the imbalance reflects the problems of combining the “disasters” portfolio with a function as important as Attorney-General. There was a time when being Attorney-General, the First Law Officer of the land, was a prestige position where the holder of a once-influential position gave virtually his* full time effort to improving the laws of Australia, monitoring and maintaining Australians’ civil liberties and human rights, and ensuring we remained the ‘fair go’ nation.

No more. The Attorney-General’s job has been turned into chief police and emergency services spokesperson and spinner, promoter and apologist for the secret agencies, and dispenser of relief monies.

The way the AG position has been devalued under the current government and incumbent will need longer-term study and evaluation by legal history and political academics.

However, under McClelland and Rudd/Gillard, it is becoming obvious that the societal forces broadly captured by the term “uniformed” (including the police, military security and the spook agencies like ASIO and ASIS) have swamped government thinking. In general terms, they have been allowed to crowd out “civilian” community advice and counsel, even more so than under the Howard government.

This lack of balance in governance by the current government will warp Australian society for a decade or more unless the Prime Minister and other senior members of the Executive realise what damage is being done, and correct the scales, particularly in the area of justice and the law.

CLA expects to be saying and writing much more in future about this dangerous trend. Your comments would be welcomed.

* *Australia has only ever had male AGs*

Online safety survey encourages youth to break the rules

Two online surveys are trying to get young internet users to share their online experiences, concerns and knowledge...but is breaking the online “rules” for children in doing so.

The surveys are the brainchild of the Joint Select Committee on Cyber-Safety, whose chair is Senator Dana Wortley.

There are two surveys – one for younger children up to age 12 and the second for 13-18 year olds. Closing date is 27 April. Access: www.apf.gov.au/cybersafety

Of course, children are taught not to disclose any details about themselves online: trouble is, CLA says, that you can’t complete the survey without disclosing how old you are!

Would the committee advise that kids disobey their parents and what they’ve been taught...or obey the “Safety” committee’s instructions, and give their age online?

Family law changes may make things worse for kids

New family law provisions may worsen outcomes for children of ‘broken’ marriages, critics say.

The *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, which passed last month, significantly expands the definition of what is family violence to cover a range of types of emotional abuse, such as ‘repeated derogatory taunts’ or ‘intentionally damaging property’. The bill also removes mandatory costs orders against people who knowingly make false accusations of violence or abuse.

Supporters and the government claim that the amendments will provide extra protection from domestic violence for people going through the family law system.

However, allegations of domestic violence can have an important bearing on parenting orders, which in turn influence the division of property in family law cases. Opponents claim that the amendments will water down the shared parenting reforms introduced by the Howard Government in 2006 because they divert the court's attention toward allegations about how the parents treated one another during the marriage rather than protecting the child's relationship with his or her mother and father.

Opponents argue that in doing so, the bill will reverse the marked reduction in family law litigation which followed the 2006 reforms, will increase entrenched conflict in families and, as a result, may even worsen outcomes for children of divorce – RS.

New director joins CLA's board



The recent election process for CLA's board of directors added one new face to the board: Darren Churchill (*pictured left*).

He joins eight other re-elected 2010 board members who have served for periods ranging from several weeks to seven years. The 2011 board is: Noor Blumer, Frank Cassidy, Kristine Klugman, Bill Rowlings, Phil Schubert, Tim Vines, Anthony Williamson, Lance Williamson...and Mr Churchill. The board will elect its office-bearers next month: current office bearers are expected to stand for re-election.

(One member of the 2010 board, Treasurer Kevin Popple, decided to not seek re-election after serving for four years and doing a magnificent job in regularising and helping to improve CLA's financial and membership systems).

Mr Churchill is originally from Goulburn in rural NSW. His civil liberties history goes back to opposing marijuana laws and the Australia card in the 1980s, and he has been a member of CLA for many years. He has broad experience as an organiser and activist, in both political and community groups, and he has stood as a Democrat candidate at several elections.

Australia has become a police (drugs) state

The annual reports for the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, tabled in parliament last month, show how drugs dominate police and security agency time and effort.

Of the 3079 times intercepted information was used in evidence, 1568 times (in more than 50% of cases) was for serious drug offences.

If we decriminalise and/or legalise drugs – and develop a system whereby it doesn't pay a criminal to run a drug operation – possibly half police time and effort across Australia could go back to patrolling the beat and police could revert to being real local police officers.

The over-concentration on drug crime has a real cost to the community by police not being available to counter day-to-day crime in the community.

In terms of convictions achieved last year as a result of interceptions, the extent of concentration on drug crime was equally apparent: 1119 convictions for serious drug crimes out of a total of 2198 convictions overall.

The 16 police and security agencies spent \$46 million on interception last year.

'Non-police' take to phone tapping with gusto

A whole range of "non-police" bodies can now tap into your telephone, mobile phone, fax and data records for possible criminal offences.

In the tapping category, the overall number of authorisations went from 245,297 to 274,134 last year. They included 46 for the RSPCA in Queensland (up from 0 the year before), and RSPCA Victoria 16 (up from 7 the previous year). "Law and order" is definitely going to the dogs!

Phone tapping can also be used to catch out people who dud the financial system: Australia Post applied 361 times for tapping, the Australian Building and Construction Commission used it 12

times, the NSW Officer of Fair Trading 1012 times, Consumer Affairs in the NT on 2 occasions, and the Officer of Consumer and Business Affairs in SA 201 times.

Even the Victorian Taxi Directorate used tapping on 3 occasions.

But, instead of highlighting how widespread secret surveillance is becoming, the Attorney-General chose to spin his comments by claiming "interception and surveillance are becoming even more vital in combating serious and organised crime".

The RSPCA? Victorian Taxi Directorate?

Mr McClelland claimed a 4% increase in convictions from interceptions. But the number of interceptions is rising exponentially over the years, and the number and type of agencies being able to use secret surveillance is widening alarmingly.

From this report to parliament, Australia is well down the path of being a secret surveillance state. The reports are available at: www.ag.gov.au

Spooks get to play together more, swap toys

The *Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010* passed federal parliament last month.

It lets the Australian Security Intelligence Organisation (ASIO), the Australian Secret Intelligence Service (ASIS), the Defence Signals Directorate (DSD) and the Defence Imagery and Geospatial Organisation (DIGO) work more closely and swap more information.

It also means ASIO can swap intelligence and information as well. ASIO will be able to help police and other spooks with telecommunications intercepts and other areas of surveillance, logistics and analytical advice.

Legislation to back new criminal asset taskforce

The government continues to expand laws to seize criminal assets and attack the bank accounts of organised crime.

Unfortunately, the laws are skewed to penalise spouses and children immediately, and for years after, a crime boss is targeted.

"Organised crime costs Australia an estimated \$15 billion a year and the social and environmental repercussions are immeasurable," Justice Minister Brendan O'Connor said. The figure the government was using in late 2009 was "more than \$10 billion" so, if Minister O'Connor is to be believed, organised crime has increased by nearly 50% on his watch.

The new *Crimes Legislation Amendment Bill (No. 2) 2011*, introduced to parliament in March, gives even more power to the Criminal Assets Confiscation Taskforce by enabling the Australian Federal Police Commissioner to litigate under the Proceeds of Crime Act 2002 on behalf of the Taskforce.

The Criminal Assets Confiscation Taskforce combines the resources of the AFP, Australian Crime Commission, Australian Taxation Office and the Commonwealth Director of Public Prosecutions to boost the identification and seizure of criminal assets.

The legislation will also amend the *Family Law Act 1975* to extend provisions that currently apply to Commonwealth proceeds of crime matters to State and Territory proceeds of crime matters. More wives and children will be punished, in other words, without having committed a crime.

Attorney-General Robert McClelland said that since the introduction of the Proceeds of Crime Act in 1987, more than \$210 million of assets have been confiscated by the Commonwealth. This is a bucket of black hole money, off budget, that the government can use for patronage purposes to reward states, territories and local government areas that toe the line. It is an official 'slush' fund.

"The profits from seized criminal assets are used for community-based crime prevention and law enforcement initiatives as part of the Proceeds of Crime Act Scheme," Mr McClelland said.

But CLA has been singularly unsuccessful in getting the O'Connor/McClelland Axis to allow civil liberties and human rights bodies to access these funds to run research and submission writing projects to make criminal laws better. All that is needed is a one line addition to the legislation, to allow such bodies to apply for funding for crime-related projects, and to compete against other interests for the funds available. At the moment, CL and HR groups are locked out.

The money in this largely unaccountable bucket has risen to \$210m a year from \$30m annually a few years ago. But it is mostly only the forces of repression, who want to install hundreds of CCTV cameras everywhere for surveillance for example, which get funding.

“Community groups can apply for funding through the scheme to help with initiatives such as youth diversion projects, CCTV and other projects to make public spaces safer,” Mr McClelland said.

Precisely! Mr McClelland apparently does not believe that CL and HR bodies, who contribute millions of dollars a year in voluntary effort to improving criminal legislation by working with parliamentary committees, make any valuable contribution to society. CCTV rules!

Stupidity flowers in the hothouse of the AG's Department's

South Australia's floral emblem – Sturt's Desert Pea – would join marijuana on a banned list of plants, including some wattles, under a proposed change to federal law.

The federal Attorney-General's Department is floating a crazy discussion paper that would make most backyards illegal, CLA says. The draft law would make gardening a criminal hobby.

Several species of the national floral emblem, wattle, as well as wisteria and ornamental cacti are included on the draft “List of Controlled Plants” because they contain traces of naturally occurring drugs, according to the AG's Department.

Selling the plants would be illegal, with a penalty of up to life in jail. This is law gone mad.

The discussion paper is titled Implementation of Model Schedules for Commonwealth Serious Drug Offences.

Perhaps we should have a paper on “Commonsense Test for Stupid Public Servants” before AG's is permitted to release any further discussion papers.

An AG paying attention to the ‘fair go’ aspects of his portfolio would probably never have allowed this paper to see sunlight. But when concentration is on “anti-drugs”, all sorts of idiotic consequences follow. <http://snipurl.com/27o3ah>

Shield will deflect some flak from journos

The *Evidence Amendment (Journalist's Privilege) Bill 2010* – shield laws – became law last month.

The first private member's bill to pass since the Labor Government's re-election last year, it was proposed by Andrew Wilkie (Ind, Denison, Tas) and Senator Nick Xenophon (Ind, SA).

The new laws requires courts to consider whether:

- information was passed to journalists contrary to the law in determining whether evidence should be admitted, or whether a source should be revealed; and
- there will be potential harm to the source and/or the journalist if evidence is given.

The new laws follow NZ legislation which provides a rebuttable presumption in favour of journalists not disclosing information in court proceedings that would identify their source. Journalists' privilege will apply to all cases in any Australian court for an offence against Commonwealth law.

CLA welcomes the laws, but they are wishy-washy at best as to the protection they provide. The new laws are better than nothing, but they could have been far better.

See-through scanners a certainty for Australia

The government claims that full-body scanners, about to be introduced at airports in Australia and costing \$28.5 million for 26 machines, will show stick-figure images only.

But the scanners would still be capable of showing the revealing "nude" images transmitted by the scanners used in the USA. And in Australia the scanners are coming to a major airport near you only because the USA insists on their being used for scanning passengers on flights to America. The government is buckling to US demands.

A spokesman for Transport Minister Anthony Albanese confirmed Australia would be getting the "stick figure" version of the scanners. "At the moment we are working through a variety of technologies and are trying to address concerns about privacy and health," the spokesman said.

You bet they are! The department has still not conducted the mandatory Privacy Impact Assessment which must be done before such a major change. The Australian Privacy Foundation and the main civil liberties bodies, including CLA, have been trying to get the Transport Department to undertake proper consultation for more than a year...with no success whatsoever. The Transport spokesman said there were two types of scanners on the market and the government was consulting with the Australian Radiation Protection and Nuclear Safety Agency on which to buy. Does that comment reassure you? <http://snipurl.com/27p9iv>

CLA's recommendations bite for new Parliamentary Budget Office

The Joint Select Committee on the Parliamentary Budget Office (PBO) is recommending the appointment of Parliamentary Budget Officer as an independent officer of the Parliament...in keeping with CLA's strong recommendation in our submission to the committee.

CLA stressed the need for independence, high quality staff and an adequate budget.

We're pleased to see the PBO would receive funding of at least \$6 million a year to provide independent, non-partisan and policy neutral analysis on the full Budget cycle, fiscal policy and the financial implications of proposals for all Members of the Australian Parliament, including parliamentary committees.

PBO would also undertake costing of election policy promises from nominated parliamentary party representatives and independent members during caretaker periods.

Other recommendations made in the committee report, released last month, include:

- that wherever possible, the work of the PBO be made publicly available, while including provisions to maintain the confidentiality of sensitive information; and
- the Parliamentary Budget Officer be empowered to make public statements, especially where there may have been a misrepresentation of work undertaken.

Report, including CLA's submission, at: www.aph.gov.au/house/committee/jscpbo/report.htm

Forced parlay before you get your day in court

The new *Civil Dispute Resolution Bill 2010* makes litigants tell a court what steps they have taken to resolve their dispute or, if they haven't, why...before the litigant gets a chance at a day in court.

Parties involved decide for themselves what resolution steps are most appropriate for them. The required "genuine steps" could be:

- notifying the other party of the issues in dispute and offering to discuss them;
- providing relevant information and documents to the other party; and
- considering possible resolution through alternative dispute resolution processes, such as mediation or conciliation.

"This is an important part of the Government's agenda under its *Strategic Framework for Access to Justice* to encourage early dispute resolution," AG McClelland said.

CLA comments that this is yet another "framework" for an AG and a government who have proliferated "frameworks" everywhere...but not finished constructions.

Stasi-style secret files approved by Federal Court

The Federal Court has rejected a bid by two Iraqi refugees, who spent years in detention on Nauru, to quash ASIO's decision to brand them national security risks.

Mohammed Sagar and Muhammad Faisal were also denied access to their adverse security assessments, a decision that refugee advocates said condemned refugees to indefinite incarceration.

Justice Richard Tracey ruled that ASIO was entitled on national security grounds to keep secret its reasons for refusing entry to Australia, *The Age* reported. <http://snipurl.com/26du6p>

Police to get new gong for doing their (paid) work

"The National Police Service Medal recognises the special contribution that sworn police officers make in protecting our community and the importance of ethical decision-making and diligent work in this special job," Justice Minister Brendan O'Connor said last month, announcing a new medal.

Sworn police officers in any Australian jurisdiction "with at least 15 years of ethical and diligent police service" will be eligible for the award. Police forces will decide who gets a gong, so the system will soon default to "everyone gets one after 15 years".

Officers whose service was cut short by death, injury or disability caused through their work will get a medal, which is probably more appropriate. It seems that serving in a police force as a non-sworn officer is not as meritorious as wearing a uniform. Diligent non-sworn police employees won't get a gong, even if they serve 30 years.

Do smoking bans target mentally ill disproportionately?

Mandatory smoking bans on mentally ill people who are locked up and cannot get outside for a cigarette are causing debate in two states.

Governments extended smoking bans from hospitals to secure facilities even though people locked behind bars have no choice to get outside. The reasoning was to balance the ill-effects on patients and staff from smoking: cigarettes often become a currency in secure units.

In Adelaide, debate has arisen over James Nash House, a secure facility where people found not guilty by reason of mental impairment are treated, as are prisoners who need inpatient treatment.

In Perth, mental health patients are so desperate to defy smoking bans they are poking electricity sockets with paper clips to get a spark and light up, a new report says.

WA's mental health watchdog, the Council of Official Visitors (COV), is calling for designated smoking areas for involuntary patients, which would seem to be a reasonable approach in any mental health facility in any state.

In its latest annual report, COV warned one patient was soaking nicotine patches in tea "to get more of a nicotine fix" and it was "cruel" to force mental health patients to give up their addiction on admission. COV also highlighted "reports of patients using straightened paper clips in electricity outlets to obtain a spark to light a cigarette", according to a report on the *Perth Now* blog of the *Sunday Times*. <http://snipurl.com/27pfqb>

Crime 'busters' try to silence journalists: stable cleaning needed

The NSW Crime Commission wants to seize the mobile phones of two *Sydney Morning Herald* journalists as part of its legal feud with the state's Police Integrity Commission.

The move appears to be an attempt to silence media coverage of the duelling spook agencies.

For the past 18 months, PIC has been investigating how the highly secretive and immensely powerful CC goes about its business, the *SMH* reported last month. When PIC announced it intended to hold a public inquiry, the CC took action in the Supreme Court to stop it. The matter is yet to go to a full hearing.

Last month, the CC served a subpoena on *SMH* publisher Fairfax Media for all documents, phone accounts or other communication relating to any employee contact with PIC officers, staff or intermediaries in the 12 months to February 2011.

SMH journalists Linton Besser and Dylan Welch have also been subpoenaed to hand over the mobile phones and SIM cards they have used over the past year, as well as any other material relating to the PIC "or any of its officers or staff".

The new NSW Government has some stable cleaning to do among these agencies and other state forces. <http://snipurl.com/27m5qu>

Leaglets suffer depression as the price of high status/money

Law students – little legal eagles – experience depression at triple the rate of the general population, with common personality traits like perfectionism and pessimism increasing susceptibility to the disease, a report last month claimed.

Top law firms have begun educating recruits on the illness and law schools are starting to teach work-life balance, the Australian Law Student Association's education vice president, Melissa Coade, was quoted as saying on the *WA Today* website.

In 2009 research published by the University of Sydney's brain and mind research institute, law students reported psychological distress at a higher rate than other Australians. About 35% of law students reported high or very high levels of distress, compared with 13 per cent of the general population. A separate study by Beaton Consulting found 15% of lawyers showed moderate to severe symptoms of depression, a greater rate than found among engineers, architects, accountants and IT professionals.

The Australian Law Students Association's handbook advises its 28,000 members on how to manage stress. "In general, lawyers share two personality traits that may predispose them to depression and other stress-related illnesses: perfectionism and pessimism," the publication, *Depression in Australian Law Schools*, says. <http://tiny.cc/zmko7>

Bike chase: police actions questioned

A coronial inquest in Perth has heard a police officer breached policy guidelines during a pursuit in which a 26-year-old motorcyclist was killed.

Luke David Arnold died in Seville Grove three days after Christmas 2008 after he hit a power pole and brick letterbox while allegedly trying to evade police. An automatic vehicle locator recorded a police car following him at 108kph, 38 over the police guidelines for a category two driver.

The deputy coroner Evelyn Vicker said it was very likely police contributed to Mr Arnold's death but she was still to determine whether the actions were justified.

Constable Christopher Whitney, who was in the unmarked pursuit car, told the inquest he was surprised that records showed he was travelling almost 60kph over the speed limit. He said he did not believe his driving was dangerous but admitted to not checking the speed during the chase which lasted less than a minute. <http://snipurl.com/27otf8>

Female prisoner numbers soar

Women prisoner numbers in Victoria soared by almost 68% in the past decade, statistics show.

Three months after Premier Ted Baillieu was elected on a promise to get "tough on crime", Corrections Victoria documents reveal an increasingly stretched female prison system.

Based on a submission to a parliamentary inquiry, the documents show that in the decade to June 2010, the average monthly female prison population jumped by 67.9%, from 187 to 314.

Corrections Commissioner Bob Hastings wrote that growth was underpinned by factors such as "new and emerging government policy directions aimed at being tough on crime", restrictions on suspended sentences and changing demographics, all of which would continue to influence prison numbers.

The Corrections Victoria submission formed part of an inquiry into women's prisons conducted by State Parliament's drug and crime prevention committee. It also revealed:

- Each prisoner costs about \$242 a day to accommodate; and
- Over the past decade, the number of women jailed for drug-related offences rose by 82%; the number for violent assaults by 47%; and homicide jail sentences by 49%.

In an interview with Farrah Tomazin of the *The Sunday Age*, Mr Hastings said the women's prisons had enough beds to cope with future demand. Victoria's two women's jails, the Dame Phyllis Frost Centre and Tarrengower prison, can hold about 370 prisoners. <http://snipurl.com/27pr5>

Australian briefs

Time to re-think detention policy: The Australian Human Rights Commission President Catherine Branson last month said: "The incidents (on Christmas Island) highlight the urgent need for the Government to reconsider the system of mandatory and indefinite detention. (We are) seriously troubled by the deteriorating situation in immigration detention facilities. There are thousands of people being held in immigration detention, many of whom have been held for six months or more," she said. "(H)undreds have already been recognised as refugees but are still being held in detention waiting for security clearances. People are held for long periods, without any certainty about when they might be released. We know from history in Australia, that this can have devastating impacts on people's mental health and general wellbeing."

Distrust is widespread: Distrust of Muslims and hostility towards homosexuals and pagans is widespread in Australia, a new Australian Human Rights Commission report released last month says. The report also points to rising political involvement by religious groups, tension between religious and secularist groups and great wariness about rights legislation, according to the SMH. The report, Freedom of Religion and Belief in 21st Century Australia, involved community consultations with 274 religious and secularist groups, and with governments, human rights groups, ethnic and city councils, plus more than 2000 public submissions. CLA made a submission to the inquiry, and is quoted in the report: <http://www.humanrights.gov.au/frb/report/index.html>

A-G Robert McClelland talks up terror in Oz: "Since 2000, there have been four disrupted terrorist plots in Australia, 38 people have been charged with terrorism related offences...37 of the 38 people charged are Australian citizens and 21 of the 38 were born in Australia...23 have been convicted under the Criminal Code. It is important, however, that we put this in context. The number of people attracted to terrorist ideology is in fact only very small. Nevertheless, their potential for harm is vastly disproportionate to their number." – speech to National Security College course dinner, Canberra, 10 March 2011,

Jailed 10 years, without conviction: WA's Equal Opportunity Commissioner Yvonne Henderson has urged swift action in the case of an intellectually disabled man jailed for 10 years without conviction. Marlon Noble was sent to jail in 2001 after being accused of sexually assaulting two children in Carnarvon. He denies the charges but has been held in custody under the Mentally Impaired Defendants Act. The state's Attorney-General, Christian Porter, is reviewing Mr Noble's case. Inflexible procedures of the Mentally Impaired Accused Review Board are being blamed for the obvious injustice.

Rights for transgender/intersex people to be reviewed: The Law Reform Advisory Council of the ACT will inquire into the legal recognition of transgender and intersex people. LRAC will provide detailed advice on whether any changes to the Territory's current law are needed to ensure the protection of human rights. Information about LRAC's inquiry, including the terms of reference, is due to be online at <http://www.justice.act.gov.au/>

Provocation downgraded as murder defence: Queensland Parliament amended the criminal code last month to limit the use of verbal provocation as a defence. "It would need to be in exceptional context for the use of words in order to justify a claim of provocation in a criminal case in Queensland," Associate Professor Douglas said. The provocation defence has already been abolished in some other jurisdictions around Australia, but Queensland retains a mandatory life sentence for murder, making the defence more important relatively.

Charlesworth to judge in whaling dispute: Professor Hilary Charlesworth will be a 'judge ad hoc' in the case by Australia in the International Court of Justice challenging Japan's whaling program in the Southern Ocean. A party to an ICJ proceeding may appoint a judge ad hoc if it does not have a judge of its nationality already on the court. Charlesworth is Professor of International Law and Human Rights at the ANU and an Australian Research Council Laureate

Fellow. She is a former President of the ANZ Society of International Law and a member of the executive council of the Asian Society of International Law.

CLA activities for March:

eAGM process:

Election completed. Board declared (see above).

Voting on approval of Annual Report, Treasurer's/Financial Statement under way, closes 4 April.

Meetings: members

Jim and Wendy Dunn: Australia's obligations under UN conventions, East Timor;
Bill Stefaniak, Rowan Ford re Administrative Appeals processes, Islamic dialogue;
Clare Carnell, Sarah Avery: young lawyers to take up pro bono cases;
Tim Vines re media strategies;
Dr Helen Wiles: electronic voting;
Michael Curtotti: liaison with Human Rights Council of Australia, and Abolish Foreignness
Keith McEwan: prison reform, Aboriginal issues;
Student Jenny Nutter re internship.

Meetings: networking

Sen Trish Crossin, Kelvin Thomson MHR, Sen Scott Ludlam
Dr Mal Washer MHR, Judi Moylan MHR
Ann Symonds, ex-MLC NSW
Student Elizabeth Reside re Asia-Pacific conference
Michelle and Owen Finegan re civil liberties in sport
Christian Smyth, Greens
Dalma Dixon, Secretary of the Federal Parliamentary Drug Law Reform group

Lectures, seminars etc

Centre for International and Public Law: lecture Dr James Popple, FOI Commissioner, re FOI reforms in the federal sphere;
Parliamentary Group for Drug Law Reform, Ken Crispin address at AGM, Parl House;
Public meeting against proposed additional war memorials.

Parliamentary hearings: CLA representatives spoke to submissions

Classifications (Arved von Brasch, Bill Rowlings);

– discussion Treaties Committee about AG's draft extradition law, and letters from Committee in line with CLA letter (chair Kelvin Thomson MHR, Melissa Parke MHR, Sen Scott Ludlam).

Projects under development:

Why Diggers Fought/Fight? Views from a range of people, in collaboration with Dr Peter Stanley and Humphrey McQueen;

Anzac 100th anniversary project, for 2011-2015.

Extension activities:

ANU Law Careers Day, informing law students re CLA, on individual basis;

Questionnaire to NSW political parties re stance on civil liberties and human rights issues;

Arranging trip to Darwin to encourage formation of civil liberties group there, May-June.

Submissions lodged:

- Human Rights "Framework/Action Plan": submission to AG's Dept. (Kristine Klugman);
- Extradition/Mutual Assistance (author: Bill Rowlings);
- Classifications/censorship (lead author Arved von Brasch);
- Sexual Assault Reform Program: legislative amendments (Kristine Klugman, Noor Blumer and others);
- Amendments to laws on jury access in ACT: (Lance Williamson and others);

- UN Human Rights Council Universal Periodic Review of Australia's performance: CLA comment on government's response (Rhys Michie).

Cases in progress: Waldon case: allegation of police harassment/abuse of power, Moama NSW: FOI lodged, case included in questionnaire to NSW political parties before 2011 State election. Letter to MP.

Media:

Radio interview with *Radio Atticus* on new police forensic techniques to identify drug use;

Interview with *WA Times* on roadside drug testing;

Meeting Nick Butterly, *The West Australian* federal political reporter;

Liaison re reproduction rights with:

- *Medical Journal of Australia*;
- *Crikey* (Bernard Keane).

INTERNATIONAL

Australia sells more legal services

Australia's trade in international legal services grew from \$675m in 2006/07 to \$709m in 2008/09.

The International Legal Services Advisory Council measured earnings of legal services to overseas clients and legal services to Australians on overseas projects and investments. In 2008/09:

- the USA and Canada remained Australia's largest market for legal and related services, at \$184 million, followed by China and Hong Kong at \$101m, Continental Europe at \$73m, and the UK at \$67m;
- of these major markets, legal services grew by 9% in Continental Europe, but decreased slightly in the others;
- legal exports to Japan grew by 60%, and to Singapore by 16%;
- Asia accounted for a significant share (32%) of the overseas market for Australian law firms, despite an overall decrease of 8% in activity.

Chinese allegedly crack down on dissidents...in anticipation

Prominent Chinese lawyer Jiang Tianyong was visiting his brother in a Beijing suburb when police grabbed him and threw him into a waiting van, pushing aside his elderly mother who had clung on to the vehicle, Gillian Wong reported for *Associated Press* last month.

Jiang is among dozens of well-known lawyers and activists across China who have vanished, been interrogated or criminally detained for subversion in recent weeks, a crackdown that human rights groups say is on a scale and intensity not seen in many years, it is claimed.

Activists say China's massive security apparatus is using the government's anxiety over possible Middle East-inspired protests as a pretext for the crackdown. "None of them will tell me anything about why he was taken away or where he has been taken to," Jiang's wife Jin Bianling said.

More than 100 people have been questioned or followed by police or placed under house arrest, the Hong Kong-based Chinese Human Rights Defenders said. It said Jiang and others who have disappeared for weeks were at risk of being tortured to extract confessions.

EU to rein in social media sites, ensure personal privacy

The European Union will enshrine a right to be forgotten online to ensure that, among other things, prospective employers cannot find old Facebook party photos of someone wearing nothing but a lampshade.

Speaking to the European parliament, EU justice commissioner Viviane Reding warned companies such as Facebook that: "A US-based social network company that has millions of active users in Europe needs to comply with EU rules."

The commissioner intends to force Facebook and other social networking sites to make high standards of data privacy the default setting and give control over data back to the user.

"I want to explicitly clarify that people shall have the right – and not only the possibility – to withdraw their consent to data processing," Reding said. "The burden of proof should be on data controllers – those who process your personal data. They must prove that they need to keep the data, rather than individuals having to prove that collecting their data is not necessary."

Under the proposals, national privacy watchdogs will be endowed with powers to investigate and launch legal proceedings against companies with services that target EU consumers.

<http://snipurl.com/27kc56>

Brits move to end libel tourism

The UK Government has unveiled sweeping proposed changes to libel laws aimed at protecting freedom of speech and ending libel tourism from outside Britain.

Ken Clarke, the Justice Secretary, published a draft bill that includes a new "public interest" defence in defamation cases, and requires claimants to demonstrate substantial harm before they can sue.

The new law would also eliminate juries from libel trials except in exceptional circumstances: it would also end libel tourism by making it tougher to bring overseas claims, with little connection to the UK, in English courts.

London is infamous for hosting some of the world's most notorious defamation trials, including a case where a leading medical skeptic was sued for highlighting the absence of any scientific evidence supporting so called 'medical' practices of modern day quacks.

The US Congress recently passed a law protecting the free speech rights of its citizens by ordering US Courts to refuse to accept English defamation damages where there was a legitimate risk to free speech.

The UK Government has also begun to consult on issues not covered by the draft bill, including responsibility for publication on the internet. CLA is likely to make a submission to this consultation process about the rights of convicted people to not be doubly harmed solely because of the uniqueness of their name. <http://snipurl.com/27f5uk>

Although Australia's defamation laws were recently overhauled, NSW still remains the defamation capital of Australia. The UK move will put pressure on Australia to reform its libel laws, to bring them in line.

UK court agrees to censor free reporting speech

A wealthy financier involved in a family dispute has made British legal history by winning anonymity in a libel case, leading to claims that free speech is being further eroded in Britain.

In a novel extension of controversial superinjunctions, Mr Justice Tugendhat forbade anyone in Britain from identifying 'Mr Z', who claims to have been defamed by his relatives in a row over a multimillion pound family trust.

The judge ordered that the relatives' identities also be kept secret, and that no-one be allowed to detail allegations aired in the secret hearings in the high court in London. His ruling was published under the coded title ZAM v CFW and TFW.

This extreme, court-ordered secrecy followed threats on behalf of Z's relations to publicise their accusations globally on the internet, where they could not be suppressed. Z told the judge the allegations were "entirely false", and he was being blackmailed. No defence was produced that the accusations were true. Shortly after Tugendhat issued the gagging order, a lengthy set of allegations appeared online. Supposedly posted by a blogger in Niger, they accused Z of misappropriating money from the trust fund and of a sex offence. <http://snipurl.com/27pmdk>

France a-twitter over covered face bookings

Any woman in France wearing a veil covering her face in public will soon be breaking the law.

From 11 April women will be banned from wearing the niqab – full-face Muslim veil – in any public place, including walking down the street, taking a bus, at a bank, library or shop, or in a cinema or theatre. It will be illegal for a woman in niqab to take in a museum, catch a train, visit a hospital or collect her child from school.

Face veils will be outlawed virtually anywhere outside women's own homes, except when they are worshipping in a religious place or travelling as a passenger in a private car (traffic police may stop them if they think they do not have a clear field of vision while driving).

Women wearing the niqab will be fined about \$200 and be given a citizenship class to remind them of the republican values of secular France and of gender equality. Any third party found to have coerced a woman into wearing the face covering, for example a husband or family member, risks a \$40,000 fine and a year in prison. <http://snipurl.com/26ak5z>

UK CCTVs reach 1.85 million

A network of 1.85 million CCTV cameras watch UK citizens, most run by private companies, according to the only large-scale audit of surveillance cameras ever conducted.

It took more than two years for the Cheshire Police Community Service Officers to interview the owners of every premises in the county. They counted 12,333 cameras, according to an account of the research published in the magazine *CCTV Image*. Most were inside premises, rather than facing the street, and only 504 were run by public authorities.

The Cheshire data was extrapolated to the UK, along with adding the number of publicly-owned CCTV and cameras on transport networks, bringing the total estimate to 1,853,681...or one camera for every 32 UK citizens.

Details of the research became public in the week that a government consultation document proposed a voluntary code of practice for public CCTV systems, but left private cameras largely unregulated.

Rogue church wins on protest in Supreme Court

The US Supreme Court has ruled an anti-gay fundamentalist church has the right to picket and protest at military funerals, despite any pain its members might cause.

The case saw free speech go head-to-head with privacy rights, and the ruling confirmed that protest messages and picketing at a private funeral were protected by the US Constitution's First Amendment.

The 8-1 ruling was a defeat for Albert Snyder, the father of a Marine killed in Iraq in 2006, who had appealed to the Supreme Court after the family's funeral service drew unwanted protests by members of the Westboro Baptist Church. The protesters carried signs that stated, "God Hates You", "You Are Going To Hell," and "Thank God for Dead Soldiers".

Reports said the church:

- has about 70 members, most relatives of the pastor, Fred Phelps, from his large extended family;
- is not recognized by other Baptist churches; and
- mainly attends funerals with protest placards because it generates publicity.

If nothing else, the Supreme Court ruling shows how core to American life is the protection of freedom of speech in the Constitution. <http://tiny.cc/gqp7m>



Students happy as court grants them right to be anti-gay

American high school students have won the right to wear a T-shirt with an anti-gay slogan after a court ruled they should be allowed to freely express their beliefs.

A Chicago court upheld the ruling after student, Heidi Zamecnik, wore a T-shirt that said "Be Happy, Not Gay" at a Day of Silence at her high school in Naperville, 50km west of Chicago, to promote tolerance for homosexuals in 2006, the *Chicago Tribune* reported.

"A school that permits advocacy of the rights of homosexual students cannot be allowed to stifle criticism of homosexuality," the US Court of Appeals for the 7th Circuit statement said. Read more: <http://snipurl.com/27ph5m>

Japan imposes death sentence for stabbing spree

Tomohiro Kato, who killed seven people in a stabbing spree in Tokyo's Akihabara electronics district almost three years ago, has been sentenced to death, *AFP* has reported.

Tokyo District Court handed down the verdict to the 28-year-old former temporary auto plant worker, who told the court he was "fully responsible" for the attacks in which 10 were wounded.

Kato rammed a rented two-tonne truck into a public holiday crowd of pedestrians before getting out and randomly stabbing people with a double-edged knife.

The attacks threw the spotlight on the online bullying that led up to the attacks in Akihabara, a centre for the manga comic and anime film subculture. In one of the court hearings, Kato said he went on the rampage on 8 June 2008 because he had been the target of online bullying.

After the 2008 rampage, Japan banned double-edged knives with blades longer than 5.5cm, punishable by up to three years in prison or a \$6000 fine. <http://snipurl.com/27ot5x>

State abolishes death penalty: The US state of Illinois has abolished the death penalty after thinking about it for two decades. The man who decided, Governor Pat Quinn, had long supported capital punishment. He said: "If the system can't be guaranteed 100% error-free, then we shouldn't have the system. It cannot stand." Fifteen men on death row have had the weight of a lifetime lifted from their shoulders. Average waiting time on death row in Illinois has been 13 years: since 1977, 20 people on death row in Illinois have been exonerated. <http://snipurl.com/26wxfz>

'Lucky' prisoners get to stay in the 'Bay: The lawless US military commissions are resuming, with President Obama issuing a new [Executive Order](#) for military detention of "terrorists", according to 'Fitch'. *The Guardian* newspaper has [more](#). This new policy means (Guantanamo Bay, Cuba) prisoners lucky enough to be charged with nothing at all get [a chance to seek their release every three years](#). The commissions will continue to try Guantánamo prisoners for acts which happened not only outside a war, but before a war. Melbourne law prof [Kevin Jon Heller notes](#) the legal impossibility of some of the cases – from *Roger Fitch, Esq, reporting on the USA on the Justinian legal blog*.

UN moves to hold Iran to account over human rights: The UN Human Rights Council has appointed a special investigator to monitor Iran's compliance with international human rights standards. The decision, by a vote of 22 to 7 with 14 abstentions, was supported by Australia. It reflects the a growing impatience with Iran over its increasing violations of human rights, commentators say. Reports allege persecution against Iranian Baha'is, and noted as well that members of the Arab, Armenian, Azeri, Baloch, Jewish, and Kurdish communities, and Christians, have also reportedly faced discrimination and persecution.

Insurance: no sex rules, OK? The European Court of Justice has stopped insurers using gender to determine underwriting premiums, so that car insurance, life insurance and pension annuities are set to change significantly throughout Europe. Women drivers under 25 will likely pay 25% more for car insurance; a man considering retirement will get a worse deal. Insurers have traditionally charged young male drivers significantly more because they are more likely to have serious accidents – a male driver under 21 is twice as likely to have an accident than a woman under 21. But in future men under 25 will see premiums decrease by an average of 10%, and in some cases 25%.

US Supreme Court allows innocent man to face execution: The US Supreme Court has cleared the way for the state of Georgia to execute an almost-certainly innocent man, Troy Anthony Davis of Savannah. The court rejected five different ways that Davis's lawyers had sought to press his claim that he did not commit a 1989 murder of an off-duty policeman. In three brief orders, none of which contained any explanation, the court brought to a sudden end a two-decades-long campaign to spare Davis's life, on the theories that most of those who testified against him have recanted and that another man did the killing, and has since admitted it. <http://snipurl.com/27pi5g>

India bans .xxx sites: India has banned the new .xxx domain suffixes entirely. All URLs* ending in .xxx will be blocked in that country...and many other countries are expected to follow suite. The fear of wholesale blocking was what motivated the Free Speech Coalition (described as "basically a trade union for porn stars") to mount a picket line outside the Westin St Francis Hotel in San Francisco last month. They believed opening up of the .xxx domain would only encourage censorship, and they've been proved right. When will Australia, through Senator Conroy, be imposing a ban? <http://snipurl.com/27poce>

DATES: (You may have to copy and paste URLs to reach these sites)

5 April, Melbourne: Will the Revolution be Tweeted? Panel debate. 12.30pm – 2.00pm, 472 Bourke St. RSVP castan.centre@monash.edu or (03) 9905 3327.

5 April, Canberra: Lesley Skillen on Qui Tam and the Getting the US False Claims Act into Australia. Staff Library, ANU College of Law, 5-7pm. Info/bookings: Ph Margaret Donnelly on 02 6125 8518

6 April, Melbourne: *Using the Universal Periodic Review Process to Improve Human Rights on the Ground: A. HR Commissioner Catherine Branson, Dr Annemarie Devereux of AG's Dept, and Ben Schokman of the Human Rights Law Resource Centre, 1-2.30pm Rm 102 Melb. Law School, Carlton. RSVP by 23 March to admin@hrlrc.org.au or (03) 8636 4450.*

18 April, Canberra: Retired High Court judge Michael Kirby in conversation with his biographer, Prof A.J. Brown, Theatre 1, Manning Clarke Centre, ANU. 6.30-8pm. Register online for event: www.anu.edu.au/kirby

19 April, Canberra: *The Most Dangerous Man in the World* (Julian Assange), talk by the new book's author, Andrew Fowler, ABC and SBS journalist and editor. Theatre 1, Manning Clark Centre, 6-7pm. Email events@anu.edu.au or phone 02 6125 4144.

5-7 May, Brisbane: AIJA Child Protection in Australia and NZ: Issues and Challenges for Judicial Administration. W: www.ammp.com.au/cp11

12 May, Brisbane: *The Business of Ethics*, Mr John Briton, Legal Services Commissioner, 12-2pm, Seminar Room East, UQ Business School Downtown, L19, Central Plaza One, 345 Queen St, Brisbane. Contact: k.hofmann@uq.edu.au

17-19 May, Gold Coast, Qld: National Indigenous Domestic Violence conference, Sea World Resort, Gold Coast. Info: <http://ica-dv.webs.com> or email: sosmedical@ymail.com Papers and proposals by 25 Dec 2010.

24 May, Brisbane: *Love for Sale & Labour for Hire* (human trafficking), 2-4pm Terrace Room, top floor, Sir Llew Edwards Bldg, St Lucia. Contact: a.schloenhardt@law.uq.edu.au or web: <http://www.law.uq.edu.au/humantrafficking>

3 June, Canberra: Justice Connections symposium, Uni of Canberra: <http://www.canberra.edu.au/faculties/law/anzsog-justice-symposium>

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

23 June, Canberra: Kirby Lecture on International Law – Louise Arbour (*pictured*), President and CEO, International Crisis Group, Brussels, Belgium, Finkel Theatre, ANU. Info: <http://law.anu.edu.au/cipl/Events.asp>

23-25 June, Canberra: 19th annual Aust and NZ Society of Intntl Law (ANZSIL) conference, *the Promise and Limits of International Law*, University House, ANU. Further info: <http://law.anu.edu.au/ANZSIL/conferences.html> - [UpcomingConferences](#)

4-8 July, Launceston: The History of Human Rights will be a key topic at the Australian Historical Society Regional Conference, *History at the Edge*. Convenor: Dr Tom Dunning - T.Dunning@utas.edu.au



14-17 July, Melbourne: *Law and Religion: Legal Regulation of Religious Groups, Organisations and Communities*, Melbourne Law School. Contact Claire Hausler at law-cccs@unimelb.edu.au

25-27 July, Canberra: *Security in Government* conference, organised by Attorney-General's Department. Info: SIG2011@ag.gov.au

11 Aug, Sydney: Annual Hal Wootten lecture: speaker Martha Nussbaum, 6.30-8pm, GO2 Law Bldg, UNSW. The American philosopher is the founder and Coordinator of the Center for Comparative Constitutionalism, and also currently [Ernst Freund](#) Distinguished Service Professor of Law and Ethics at the [University of Chicago](#).

9-10 Sept, Canberra: '10 years on from 9/11: impact on public law', conference, Centre for Intl and Public Law, ANU: contact Kim.Rubenstein@anu.edu.au 9 Sept: Annual Geoffrey Sawer lecture to be delivered by the CJ of the Canadian Supreme Court, Beverley McLachlin. Conference opening by [Professor Michael L'estrage](#), Director of the National Security College, ANU.

21 Sept, World: International Day of Peace

22 Sept, Melbourne; Democracy v Communism, Remembering the 1951 Referendum on the Banning of the Communist Party. Details: j.damousi@unimelb.edu.au

28-30 Oct, Perth: CHOGM (Commonwealth Heads of Government Meeting): Biennial summit involving 53 leaders from Commonwealth nations

8-9 Dec, Canberra: *Honour Killing Across Culture and Time* conference: Dr Carolyn Strange, School of History, ANU. Details: <http://history.cass.anu.edu.au/honourkillingconf/>

10 Dec, World: Human Rights Day

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: please send to: [mailto:secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

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