

Censored! How government officially bans debate on secret data store

The government has censored about 90% of a secret document outlining its controversial plans to snoop on Australians' web surfing, fearing release could cause "premature unnecessary debate". This startling revelation came from Ben Grubb, writing in the *SMH* after an FOI request produced a telling document related to consultation by the government with the internet industry.

The government plans to mandate that ISPs store internet activities of every Australian so law-enforcement agencies can access what they choose, whenever they like.

All parties to the consultations have been sworn to secrecy...but exact details of the web browsing data the government wants ISPs to collect are contained in the document released to the *SMH*. With 90% of the released document blacked out, who can know how extensively the government plans to spy on all of its citizens, for no reason.

The document was handed out to the industry during a secret briefing it held with ISPs in March. The Attorney-General's Department legal officer, FOI and Privacy Section, Claudia Hernandez, wrote in her decision in releasing the highly-censored document that disclosure of the document uncensored "could be misleading to the public and cause confusion and premature and unnecessary debate".

CLA believes that staff of the AGD should be reminded they work for the people of Australia: it is not the other way around. <http://tiny.cc/Ombhbn>

Want to fly? No sweat!

Sweaty armpits set off alarms at Sydney Airport last month when the first trial of full-body scanners balked at perspiring passengers.

The second person to use the new machine, part of a \$6 million trial, triggered the alarm three times, the *Daily Telegraph's* Tim Vollmer reported. Security staff blamed the passenger's armpits for upsetting the machine, he said.

Travellers can volunteer to go through the scanner, which uses low-energy radio waves to detect items concealed under clothing. There'll be another trial in Melbourne this month.



Transport Minister Anthony Albanese said the scanners were the "most advanced passenger screening technology available in the world".

But the scanner, which uses software to detect miniscule differences in radio wave radiation reflected from the body, is criticised in Europe for being slow, inaccurate and ineffective. German police recently rejected the device as too sensitive: in more than two-thirds of cases, the alarm went off in error, with the scanner confused by multiple layers of clothing, zippers, and even a passenger's posture. <http://tiny.cc/gq15f>

CLA says the scanners are being used in Australia solely because the US Department of Homeland Security has demanded they be put in place here for flights to America. An earlier national trial of similar scanners concluded they were not needed here.

Govt gets 'thinking space': public gets zilch?

Formal new advice from the head government department is thinly-veiled approval to put as many obstacles in the path of FOI applicants as possible.

The Department of Prime Minister and Cabinet (PM&C) has issued 'guidance notes' for anyone in the government handling requests for documents under FOI laws.

They say the notes were developed in consultation with the Australian Information Commissioner, the FOI Commissioner and the Australian Government Solicitor.

PM&C lists documents that could be exempt as those relating to:

- Cabinet,
- national security,
- law enforcement,
- secrecy provisions,
- material obtained in confidence,
- trade secrets,
- Commonwealth-State relations,
- deliberative processes,
- Commonwealth financial/property interests, and
- certain operations of agencies.

It says there will always be even more documents, the disclosure of which would not be in the public interest, and which should properly be exempt under the FOI Act.

What's left for the Australian people to access, CLA asks?

"Given the importance of Cabinet confidentiality, FOI decision makers should make use of the Cabinet exemption whenever it is properly available," the notes say. While the FOI Act promotes access to government information, it still allows for decision makers to recognise the importance of the Government having 'thinking space'."

The PM&C advice is a travesty of the Gillard Government's supposed commitment to freedom of information.

CLA wonders what the architect of that commitment, now-backbencher Senator John Faulkner, makes of the formal advice.

He will make a major speech later this year (ironically, at an Information Commissioner event), in which we may find out exactly what he thinks.

http://www.psnews.com.au/Page_psn2771.html which also links to the 'Guidance Notes'.

Committee wants safeguards to rein in sweeping cyber law

Parliament's Joint Select Committee on Cyber-Safety is trying to rein in government legislative excess over the proposed *Cybercrime Legislation Amendment Bill 2011*.

The committee last month asked for several boosted safeguards in the legislation, including a clause that would ensure any country Australia swapped personal electronic records with had similar privacy provisions to those operating here.

Under recommendation 6 the committee wants Australia to swap information where the death penalty may result only "in exceptional circumstances and with the consent of the Attorney-General and the Minister for Home Affairs and Justice"; and "each Minister must ensure that such consent is recorded in a register for that purpose".

The committee also wants the government to change the proposed law so people must be told formally, as soon as possible, that their communications have been subject to an intercept, stored communications warrant, or telecommunications data disclosure under the *Telecommunications (Interception and Access) Act 1979*.

Greens say cyber law may be weapon to crack down on dissidents

The Greens have flagged concerns about the Federal Government's proposed changes to cyber security laws, saying they could be used by foreign governments to "crack down" on political dissidents in Australia.

The *Cybercrime Legislation Amendment Bill* would allow Australian police and intelligence agencies to give foreign countries investigating cyber crime access to phone and email records.

The new laws would let government agencies compel phone companies and internet carriers to preserve data needed for investigations.

The Government says the authorities need the new powers to operate effectively in the online world. But Senator Scott Ludlam (Greens, WA) says he fears the information could be used by foreign governments to crack down on political opposition.

"We're very concerned for example that more oppressive governments might use this instrument as a way of cracking down on political dissidents or political activity here in Australia for things that aren't even crimes in Australia," he said.

The Australian Privacy Foundation says the proposed laws will give excessive powers to intelligence agencies. The APF points to 16 parts of the bill which it says should not be made law: there is also a general lack of protection for human rights.

APF board member Nigel Waters has told a parliamentary inquiry the bill is unacceptable.

"[It contains] grossly unbalanced and excessive legislation powers," he said. "The Privacy Foundation submits that the committee must find that in its present form the bill is completely unacceptable, incapable of sensible amendment into an acceptable form and should be sent back to the department for further work." Hear, hear, says CLA.

'Born on 1st of July' girl to help plant National Liberty Tree



A girl named Charli will co-plant the first National Liberty Tree with former ACT Chief Minister Jon Stanhope at the National Arboretum, Canberra, on 10 December, international human rights day.

The National Liberty Tree, a kurrajong (*left*), is a project conceived and promoted by Civil Liberties Australia.

Young Charli has been chosen because she was born on the 1st of July 2004, the day that Australia got its first human rights act, in the ACT, under the stewardship of Mr Stanhope.

The joint planting is to honour the courage that it took to get the first such law on to the Australian register, and to signify what it will mean to young people born since the day the law took effect.

The planting ceremony will not be open to the public, but CLA members who wish to attend will be welcome. We will advise details in the October *CLArion*, and by individual email.

ACT Chief Minister Katy Gallagher will speak for the territory government. – Graeme Hansen photo

Judge calls for change in WA sentencing: weekend detention

We should change how people are sentenced to stop the flow of offenders into WA courts – weekend detention should be a sentencing option, retiring judge Mary Ann Yeats said last month. She also highlighted the need to shame offenders and to make sure victims were part of the sentencing process.

Mrs Yeats said WA had an enormously high rate of imprisonment but did not seem to have a safer society than other jurisdictions.

She said there were cases where sending an offender inside was unavoidable. But, particularly in cases of young people, imprisonment should be used only when there was no other option.

Mrs Yeats said weekend detention should be a sentencing option between a suspended jail term and imprisonment. Offenders would check into a dedicated facility on Friday afternoon and be

released on a Sunday evening, but could also face other restrictions – like no booze – during the week. <http://tiny.cc/9d4gc>

Sexting punishment unjust: magistrate

A Victorian magistrate has condemned as "so unjust" the mandatory laws that meant some young men become registered sex offenders.

The magistrate, who works in country Victoria, said the lack of judicial discretion in such cases meant severe consequences for young people who posed no threat to society and were often guilty of little more than naivety.

He presided over the case of a youth, then 18, who was sent four uninvited text message pictures of girls, aged between 15 and 17 years, topless or in their underwear. Police found the pictures on his mobile phone and laptop and charged him with child pornography offences.

On legal advice the youth pleaded guilty and was sentenced to a one-year good behaviour bond without conviction. The magistrate refused the prosecutor's application for the young man to be placed on the sex offender register but police later realised his guilty plea resulted in mandatory registration for eight years. Magistrates have discretion for those under 18, but none for adults.

"These people shouldn't be regarded as sex offenders. It's going beyond the pale in relation to the imposition of long-term penalties which are not judicial penalties, they're not fines or community-based orders or even sex offender treatment programs. This is a limitation on what a person can and can't do for the next eight years of their life, for God's sake," the magistrate said. <http://tiny.cc/40qgt>



The Minister for Crime Prevention, Andrew McIntosh, spoke confusingly to *ABC Radio* on the issue, saying apparently that there would be either a referral to the Victorian Law Reform Committee or to a Joint Committee of the Victorian Parliament. <http://tiny.cc/ur25h>

Asked by CLA to clarify which, and what the government intended, Mr McIntosh was unable to say: instead, his chief of staff, Phoebe Dunn, buck-passed CLA's clarification request to Attorney-General Robert Clark.

NSW lifts veil for more than just police

The NSW law allowing police to demand the removal of face coverings for identification gives the same powers to prison and court officials as well.

Under the Law Enforcement Act, which CLA supports, officials can require removal of covering, including helmets, masks and religious veils, to make a clear identification.

Refusal can cost a \$220 fine to 12 months in jail. <http://tiny.cc/r52cw>

Now, if only there was a law that made barristers and judges remove their head coverings!

Firies fight rearguard action over drug testing

NSW firefighters – in a workplace rearguard action – are threatening to strike over a State Government plan to introduce mandatory random drug and alcohol testing.

Testing has been in place for NSW police for some time, and other public workers such as bus and train drivers are regularly screened. But the Fire Brigade Employees Union says the compulsory tests would be an invasion of privacy. Union secretary Jim Casey says there is no history of drug problems among NSW's 6,000 fire fighters. <http://tiny.cc/ud7sx>

CLA agrees it is an invasion of privacy, but the practice has become so widespread in, firstly, non-unionised industries and then in the unionised workforce, that the firies stand is a bit like Custer's.

Smile, you're on candid warrant!

New privacy laws in the ACT from last month mean you can't sneak surveillance of employees in bathrooms, change rooms and prayer rooms.

Under the Greens bill, employers will have to tell employees how and where they are being watched. Greens MLA Amanda Bresnan says bosses who want to secretly monitor workers will have to apply through the courts.

"After a 6 month transition, covert surveillance of workers will only be able to take place after an application to the Magistrates Court that can show reasonable suspicion that unlawful activity has taken place," she said. "The surveillance will then be conducted by an independent surveillance supervisor to protect the privacy of workers." <http://tiny.cc/byw55>

Defendants retain costs right

Successful defendants in SA can still be awarded their court costs, after defeat of an amendment that would have overturned the long-standing principle.

The *Statutes Amendment (Budget 2011) Bill* was an attempt by the state government to amend the *Summary Procedures Act*.

It would have applied if an accused exercised their right to remain silent, or there was "unnecessary delay", after they had already gone through their whole case once. It would have applied to Summary Offences Act offences, for which most people could not get legal aid and where liability is strict or absolute, making it already tough to fight against the word of police.

"This is a great day for justice. People acquitted in summary courts should be entitled to costs as has been their right for decades," Australian Lawyers Alliance president for SA, Anthony Kerin, said. "This amendment was initially hidden in the government's budgetary process – a most unusual step for the government to take. A price should never be placed on justice." – from ALA media release, 27 July 2011.

Sniffing solutions, unlike the problem, stop at borders

An NT group against petrol sniffing is lobbying the WA Government to introduce compulsory rehabilitation laws for sniffers.

The NT already has legislation mandating treatment.

Last year, a young man from WA moved to the NT for chronic petrol sniffing treatment. He later returned to WA, where there are no laws that force sniffers to get help, and died before he could get treatment.

Blair McFarland from the Central Australian Youth Link Up Service says WA needs to have the same compulsory treatment laws as the Territory.

CLA believes there needs to be a national approach to the problem of petrol sniffing in general, but by Aboriginal young people in particular. <http://tiny.cc/y578y>

Aboriginal men guilty of not hearing

A study commissioned by the NT Government has shown 9 out of 10 jailed Aboriginal men have a hearing loss and chronic ear disease.

Almost 93% of NT's Indigenous male inmates overall are hearing impaired and have ear disease. At Alice Springs Correctional Centre, the figure is 95%, slightly higher than Darwin's 92%.

NT Correctional Services Acting Executive Director Phil Brown said Indigenous prisoners comprise 82% of NT's 1,250 inmates, which added to the gravity of the research findings. "Hearing impairment is a significant disability in a custodial environment," Mr Brown said, and "poor hearing affects a person's ability to carry out instructions or to understand their rights and responsibilities."

Due to the prevalence of hearing loss, NT Correctional Services is trialling the use of hand-held amplification devices in Darwin Correctional Centre, particularly in areas of sentence management, in the living skills and education unit, and for prison misconduct hearings. The devices are robust, inexpensive and can be used with a variety of inmates, in targeted situations, where communication can be difficult, he said.



Psychologist Dr Damien Howard (*pictured*), co-author of the report, said he and audiologist Troy Vanderpoll, were excited about the potential to improve rehabilitation outcomes and inmate management. Mr Vanderpoll and Dr Howard said the response from centre staff had been very enthusiastic, particularly in learning how to communicate more easily with inmates, with the findings offering a means of intervention in what is a chronic health problem in the NT.

Dr Howard said: "The evidence is mounting about widespread but often invisible Indigenous hearing loss as being an important component of Indigenous disadvantage. For most NT Indigenous inmates, the pathway to prison is muffled and hushed...although often filled with alcohol and conflict, more apparent to observers, than is the role of hearing loss," the report states.

– special report for CLArion, courtesy of Elizabeth Murray and the *Koori Mail* newspaper

Don't aim stun guns at chest, MP says

NSW Greens MP David Shoebridge is asking for revised NSW Police guidelines on stun gun use to instruct police to not aim at the chest.

Nothing in current guidelines tells officers to avoid the chest area, he said.

Mr Shoebridge said police were firing stun guns an average of five times a week, delivering 50,000 volts each time, Anna Patty reported in the *SMH*.

A jury in North Carolina awarded about \$9m in damages for the death of Darryl Turner, shot in the chest by a stun gun in March 2008. The manufacturer was ruled negligent for failing to warn that firing into the chest could cause a heart attack. <http://tiny.cc/asu3c>

Stun gun rollout continues without extra safeguards

ACT Policing, "a business arm of the Australian Federal Police", is giving stun guns to police on the beat, whereas the weapons had been restricted previously to specialist tactical response officers.

Greens spokesperson, and ACT Parliament Speaker, Shane Rattenbury, says the move is contrary to a government promise to debate the issue before the rollout. He quotes WA figures showing police use of firearms doubled in the two years after stun guns were issued generally in WA, and injuries to police rose 22%. Police also used the guns to ensure compliance with their orders, which is against operational protocols.

ABC Radio reported CLA was opposed to widening their use...without extra safeguards. "The devices, which fire an electrical current to disrupt the voluntary control of muscles in people, have been linked to serious injury and death," ABC Radio said.



CLA's National Media Director Tim Vines (*pictured*) said we welcomed assurances that officers would receive rigorous training but warned stun guns could be deadly.

"These are not harmless weapons, they can cause real injury. If the training doesn't teach safe stun gun use, then all the 'rigorous training' in the world isn't going to be enough to protect members of the public," he said.

Mr Vines says CLA wanted to be involved in drafting safety protocols. "We'd be very keen to make sure that the training protocol says that a stun gun is only to be used as the next-to-last option, that when a stun gun is fired, police officers are encouraged not to aim for the chest and upper torso which has been implicated in a number of deaths." <http://tiny.cc/uogms>

Meanwhile the Australian importer of the weapons was last month hawking a new version, with double the fire power.

Millions in traffic fines may be in doubt

Speeding fines imposed by NT police since 2003 are open to challenge following a major victory by a bikie last month.

Steve Braddy, 57, a Ducati rider, was prepared to fight three charges after being told by an expert that police radar equipment was not calibrated properly. But police withdrew the complaints without explanation.

Barrister Jon Tippett said all speeding fines since new radars were introduced in 2003 were suspect. "Millions of dollars of traffic fines have been imposed wrongly," he said. "Many people have lost their licences – and often their occupations – because of outrageously bad practices."

Fellow barrister Peter Maley said fixed cameras made in the USA:

- were sometimes patched up with parts bought from Dick Smiths;
- showed dangerously high levels of radiation;
- featured holes and cracks that let in water; and
- were not properly sealed.

Mr Maley said police were not even using the correct manual to operate and maintain the cameras, according to a report by Nigel Adlam in the *NT News*.

Electronics engineer Joe Mulligan, who has worked with speed guns for 30 years, said there was "inherent unreliability" in the NT police speed testing and results. He said NT equipment had not been tested and certified as accurate under national standards. Mr Mulligan said the police results were too good – they showed 100% accuracy, which even the manufacturer said was impossible.

<http://tiny.cc/dw93q>

Macho Minister thinks he is cop on the beat

WA Police Minister Rob Johnson is defending a proposed additional mandatory imprisonment law (in cases where children are injured in a drug laboratory), saying it is crucial that children are protected.

"Defence lawyers have always been opposed to the tougher laws that we've brought in," Mr Johnson said. "They spend their life getting people off and keeping them out of jail.

"I spend my life trying to catch criminals and indeed putting them in jail, and I know which one serves the community better."

The Law Society of WA has described the proposed new laws as "unnecessary" and "inappropriate" in a restrained statement by president, Hylton Quail.

CLA, less restrained, thinks Mr Johnson should decide whether he wants to act and speak like a Minister, or to leave parliament and become a real policeman full time.

It was separately reported last month that some of his party colleagues would prefer Premier Colin Barnett moved him from the police portfolio. <http://tiny.cc/t2dip>

Australian briefs

Half the people police arrest should be in health facility: Nearly half the 500 people a month taken into police custody in Victoria have had previous contact with mental health services. Professor James Olgoff, the director of the Centre for Behavioural Science at Monash University, says too often the justice system rather than the health system has to deal with mental health problems. He is calling for a new system of emergency protective custody, to help mentally ill people in Victoria in a safe environment before being released. He says the model is being used in a number of US states and a version is also operating in NSW. <http://tiny.cc/zd9vg>

Jail no place for mentally ill: The WA Government has promised to take action so that mentally-impaired people accused of crimes, but not convicted, are no longer held in prisons. Five men have spent a total of 30 years in prison despite never having been convicted of a crime because they were deemed unfit to plead. Opposition spokeswoman Ljiljana Ravlich said the situation was

unacceptable: the Minister for Disability Services, Helen Morton, agreed mentally-impaired accused people should not be kept in a jail. <http://tiny.cc/lqplz>

Rights boss criticises Malaysia ‘solution’: The Australian Human Rights Commission has urged that the government not send vulnerable individuals such as unaccompanied minors, families with children, and torture and trauma survivors to Malaysia. Commission President Catherine Branson said she was concerned that Malaysia was not a signatory to the Refugee Convention, which increases the risk that people transferred to Malaysia could be returned to their country of origin where they could face grave danger.

Ryan speaks for the ages: Susan Ryan (*pictured*) has been appointed Australia’s first Age Discrimination Commissioner. She has recently been independent chair of the IAG & NRMA Superannuation Plan and is former president of the Australian Institute of Superannuation Trustees. Ms Ryan was Senator for the ACT from 1975 to 1988, and served as Minister for Education and Youth Affairs, Minister Assisting the Prime Minister on the Status of Women and Special Minister of State. She played a large part in the successful passage of the Sex Discrimination Act 1984.



Szoke speaks for the race-targeted: Dr Helen Szoke is the new federal Race Discrimination Commissioner, after being Commissioner for the Victorian Equal Opportunity and Human Rights Commission. She has worked in management, community development, organisational development and regulation in the education and health sectors, such as with community groups including Women’s Health Victoria, Victorian Council of Social Service (VCOSS) and Consumers Health Forum. She was a Preston City Councillor from 1982–84.

DPP appeals over sentence for policemen’s manslaughter: The NT DPP has lodged an appeal against the leniency of the sentence handed down to Michael Martyn, convicted for the manslaughter of police sergeant Brett Meredith. In July, Justice Peter Barr sentenced Martyn to 3 years and 8 months imprisonment with a non-parole period of 1 year and 10 months. Meredith, a father of three, was bashed at a Katherine nightclub, Club 23, on New Year’s Eve 2010 while off duty. <http://tiny.cc/eifls>

Conformity comes to the wild north: Smoking will be banned in all Territory prisons from 1 July 2013, Corrections Minister Gerry McCarthy has announced. From today (1 Sept 2011), you can’t get a lightweight plastic bag in a supermarket in the NT. The “last wild frontier” is becoming increasingly suburban, like “down south”, as it pushes for sedate statehood in 2012 or 2013.

NSW agrees to R18+ for computer games: NSW’s Cabinet has agreed to join all jurisdictions in agreeing to create a national adult category for computer games. An Australia-wide telephone survey last year showed that 80% of 2226 people contacted said they supported the introduction of an adult-only category for games. The Commonwealth is preparing legislation to give effect to the national agreement to introduce the new classification.

Journos shielded, but police hidden completely: The *Evidence Amendment Bill 2011*, tabled in the ACT, provides shield laws for journalists with extension to doctors, other health professionals, journalists, social workers and other jobs where confidentiality matters. The “shield laws” bill is the last act in the ACT’s adopting the national uniform evidence laws, which introduced journalist privilege in 2007. Unfortunately, the ACT is also allowing secret, undercover police to give evidence in ACT courts under false names and identities. ACT Policing and the Australian Crime Commission can certify that a witness is a law enforcement official engaged in a “controlled operation” – whereupon their true identity is hushed up.

FOI opens a little wider: The ACT Government has agreed to 11 out of a Legislative Assembly committee's 19 recommendations around rewriting FOI law to make it clearer, release public sector information routinely and create a single public interest test for release of documents. But they will still keep cabinet documents secret if they "reveal government decision-making processes". Each FOI request costs \$12,000 in employee time and other resources, the government says. <http://tiny.cc/en5ga>

CLA's main activities for August:

Stating CLA's position: We have introduced a new system where we put up on the website, under the 'CLA Media' tag, what our position is on topical issues. As well, we post 'shorthand' statements of that position, or a media statement, on our Twitter feed. Director and National Media Spokesperson Tim Vines is mostly responsible for the statements, with help from CEO Bill Rowlings.

CLA Board meeting 21 August – main issues:

- a strategy for dealing with requests for submissions: developed set of principles, incorporate into statement/media release;
- radio ads, being developed
- Freedom Of Information requests on Council Of Australian Governments (COAG) and Standing Committee of Attorneys-General (SCAG) – responses to be analysed;
- agreed to creation of group in Darwin;
- discussion of activities associated with planting of CLA-conceived National Liberty Tree, 10 December, National Arboretum, Canberra;
- priority areas: specific crime issues (sentencing, seizure, crime commissions), parole, terror laws, prison/juvenile detention issues, panel for human rights in sports.

Member contacts

- Keith McEwan, developing a Paul Robeson CD on freedom songs;
- emails to ACT members re Economic, Social and Cultural (ESC) rights inclusion in ACT Human Rights Act;
- Dr Helen Wiles re Charter of Health rights.

Networking meetings

- Michelle and James Finegan re sports panel;
- Dr Victoria Mason of ANU (*pictured, at right, with CLA President Dr Kristine Klugman, left*) re Palestine/Israel and Middle East issues;
- SA Council for Civil Liberties re current activities;
- discussion with members of CLA Darwin group;
- discussion with members of WA re media policies and CLA philosophy, plus assistance with photographer issues.



Lectures networking

Prof Mick Dodson, Senate Occasional Lecture, Indigenous recognition in the Constitution;
Euthanasia, speaker Neil Francis *Your Last Right*;
Lecture by Mary Durkin Health Charter of Rights.

Recent reports published:

NT Ombudsman Carolyn Richards, *A Long Life Shadow, Child Protection*, June 2011
ACT Human Rights Commission *The ACT Youth Justice System 2011: Bimberi Youth Justice Centre*
New Guide for Women - taking action on human rights violations (UN)

Submissions

- Human Rights Framework, submitted
- NSW on Recall elections
- Denial of Rights in Psychiatric Treatment, member comments invited
- Completed survey on ESC rights, administration of memorials in Canberra
- Completed survey on religion in schools
- Request for input to Broadcast Privacy Guidelines, Australian Communications and Media Authority.

Projects

Liberty tree project, progressing. Seven-year-old child identified, parents agreed to participation as co-planter with former ACT Chief Minister, Jon Stanhope. Organised Senate Lecture by Mr Stanhope for day before planting, 9 December, on 'Human Rights in Australia'.

Correspondence

Letter to Attorney-General Robert McClelland commending report by Victorian Law Reform Commission on *Surveillance in Public Places Final Report*, suggesting it be considered and adopted by SCAG as a national model.

Management of detainees in Afghanistan and Iraq, letter from Defence Minister Smith.

Response from Greens re Australian Government's deal with Malaysia: condemned in House and Senate.

Media

Main issues were use of stun guns, airport scanners, 2011 Census and yellow/red cards in sports; in WA, prison population and early deaths following release.

International

Riot charges elevated to higher court

Riot cases in the UK which usually would be dealt with by magistrates courts are being referred upwards to the crown court jurisdiction for tougher sentences

Magistrates are being advised by the courts service administration to disregard normal sentencing guidelines when dealing with those convicted of offences connected to the riots. The advice, given in open court by justices' clerks, will result in cases that would usually be disposed of in magistrates courts being referred to the crown court for more severe punishment.

In Manchester a mother of two, Ursula Nevin, was jailed for five months for receiving a pair of shorts given to her after they had been looted from a city centre store. In Brixton, a 23-year-old student was jailed for six months for stealing \$5.50 worth of water bottles from a supermarket.

The Crown Prosecution Service also issued guidance to prosecutors, effectively calling for juveniles found guilty of riot-related crimes to be named and shamed. Those dealt with in youth courts are normally not identified. <http://tiny.cc/3d4mj>

At Chester Crown Court, two men who posted Facebook messages inciting people to riot in Northwich and Warrington were each jailed for four years by Judge Elgan Edwards, even though in neither case did anyone respond to the call to riot. <http://tiny.cc/9bkao>

Rosie noses out the facts in rape trial

Rosie, the first judicially approved courtroom dog in New York, was in the witness box nuzzling a 15-year-old girl testifying that her father had raped and impregnated her. Rosie sat by the teenager's feet. At particularly bad moments, she leaned in.

When the trial ended recently with the father's conviction, the teenager "was most grateful to Rosie above all," said David Crenshaw, a psychologist who works with the teenager. "She just kept hugging Rosie," he said, according to a report by William Glaberson in the *NY Times*.

Now an appeal planned by defence lawyers is placing Rosie at the heart of a legal debate that will test whether there will be more Rosies in courtrooms in New York and, possibly, other US states.



Rosie, a golden retriever therapy dog, specializes in comforting people under stress. Prosecutors and defence lawyers describe her as adorable, though she has been known to slobber. (Pic: Dale Picard, ECAD)

She is also in the vanguard of a growing trial trend in the USA: in Arizona, Hawaii, Idaho, Indiana and some other states in the past few years, courts have allowed such trained dogs to offer children and other vulnerable witnesses nuzzling solace in front of juries.

The defence's appeal of Rosie's first courtroom outing, in the rape case, is likely to establish legal principles on the issues of dogs in the witness box. "It is an important case, and appeals courts will consider it an important case," James A. Cohen, a professor of criminal law at Fordham University School of Law, said. <http://tiny.cc/ukf8o>

Rumsfeld sued over torture for second time

The US District Court of District of Columbia has ruled that former US Defense Secretary Donald Rumsfeld can be sued by a former US military contractor who claims he was tortured while imprisoned in Iraq.

The not-named man was an intelligence officer in Iraq, where the US military accused him of passing information to the enemy, *Jurist* newsletter reported. They allegedly abducted and tortured him without formally charging him with a crime under orders from Mr Rumsfeld.

Released, and back in the USA, the former intelligence officer filed suit demanding compensation for property lost and rights violated. Mr Rumsfeld sought to have the case dismissed on grounds of vagueness and separation of powers and for protection of sensitive intelligence. However, Judge James S. Gwin held:

"... [there is] no convincing reason that US citizens in Iraq should or must lose previously-declared substantive due process protections during prolonged detention in a conflict zone abroad....In light of law declaring unconstitutional conduct or conditions of confinement that shock the conscience, as well as clearly established law recognizing constitutional protections against certain government action for US citizens abroad, the Court finds that Doe has set forth facts that if true could show the violation of a clearly established constitutional right."

This is the second time Mr Rumsfeld, who is being represented by the Justice Department, has been allowed to be sued personally in a torture case. The other suit, which Mr Rumsfeld is now appealing, was allowed last year. <http://tiny.cc/93oz6>

US A-G Holder uses 'state secrets' bluff in court

The US Attorney General Eric Holder – the man who says *"the ties between the Quintet (of Attorneys-General, in US, UK, NZ, Canada and Oz) transcend parties and governments in each of our nations"* – has invoked a state secrets privilege to block evidence in a lawsuit against the FBI over its investigation into Muslim mosques.

The US Department of Justice has also filed a motion to dismiss claims and for summary judgment in the US District Court, claiming that without the privileged information many of the claims against the FBI could not continue.

The American Civil Liberties Union and the Council on American-Islamic Relations of California brought a lawsuit on behalf of three Muslim individuals against the FBI alleging that, during its 'Operation Flex', FBI investigators infiltrated mosques and indiscriminately collected information on innocent Muslims simply because they were Muslim. The plaintiffs allege the investigation violated their civil rights including the First Amendment Free Exercise and Establishment Clauses, the Fourth Amendment, the Privacy Act and the Federal Intelligence Surveillance Act.

Instead of acknowledging FBI wrongdoing in proper court proceedings, the US AG is hiding behind a system supposed to protect genuinely secret information...maybe these are the "valuable

lessons" that the Australian and other AGs are learning at their regular Quintet meetings with Mr Holder, CLA says. [Jurist](#)

British scales of justice weigh pain v gain

A top-secret document reveals how Britain's MI6 and MI5 officers were allowed to extract information from prisoners being illegally tortured outside the UK.

The interrogation policy – details of which are believed to be too sensitive to be publicly released at the UK Government inquiry into the UK's role in torture and rendition – instructed senior intelligence officers to weigh the importance of the information being sought against the amount of pain they expected a prisoner to suffer. It was operated by the British government for almost a decade, the *Guardian* reported, after sighting the document.

Senior intelligence officers and ministers feared the British public could be at greater risk of a terrorist attack if Islamists became aware of its existence, the paper said.

One section states: "If the possibility exists that information will be or has been obtained through the mistreatment of detainees, the negative consequences may include any potential adverse effects on national security if the fact of the agency seeking or accepting information in those circumstances were to be publicly revealed. For instance, it is possible that in some circumstances such a revelation could result in further radicalisation, leading to an increase in the threat from terrorism."

The policy adds that such a disclosure "could result in damage to the reputation of the agencies", and that this could undermine their effectiveness. <http://tiny.cc/girba>

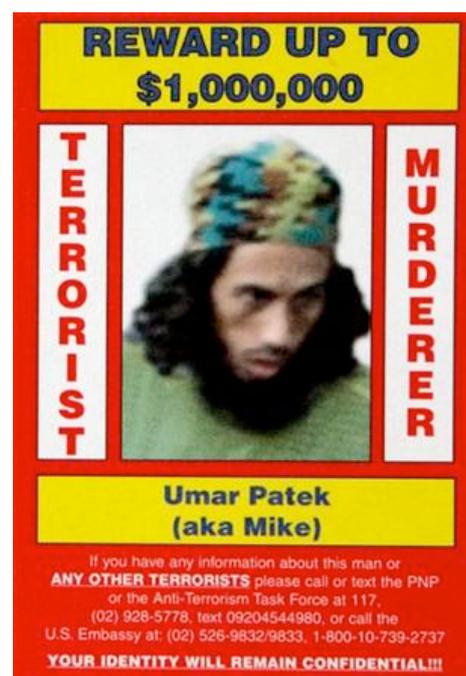
Bali bomb-maker held for trial in Indonesia

The Indonesian militant who allegedly made the explosives used in the 2002 Bali bombings is being held under tight security in Indonesia, more than six months after he was captured in north-west Pakistan, near where US special forces assassinated Osama Bin Laden.

Umar Patek, 41, had a \$1m bounty on his head when authorities caught up with him in January in Abbottabad. He was extradited last month to a police detention centre on Java, in the town of Kelapa Dua. No date has been announced for his trial.

Indonesian officials say Patek has confessed to playing a key role in the 2002 Bali bombings, which killed 202 people, including 88 Australians. He also admitted to making the bombs used in a string of Christmas Eve attacks on churches in 2000 that claimed 19 lives, they say.

Indonesian police said late last month that they would charge Umar Patek under the anti-terrorism law as well as with premeditated murder, either of which could result in his execution if convicted. <http://tiny.cc/bj8eh>



Italian govt to ban cover up

An Italian parliamentary commission has approved a draft law banning women from wearing veils that cover their faces in public.

The draft, which was passed by the constitutional affairs commission last month, would prohibit women from wearing a burqa, naqib or any other garment that covers the face. It would expand a decades-old law that for security reasons prohibits people from wearing face-covering items such as masks in public places.

Women who violate the ban would face fines, while third parties who force women to cover their faces in public would be fined and face up to 12 months in jail. <http://tiny.cc/e3eom>

Jail threat if you don't vaccinate your children

Nigerian parents who don't allow their children to be vaccinated against polio now risk jail time for defying a government order aimed at ensuring that the disease is eradicated from Nigeria.

Tajuddeen Gambo, permanent secretary of the health ministry of Kano state, said that Nigeria has a law that punishes parents who refuse their children access to health care. "Polio immunization is part of health care," Gambo said.

Kano state is in the heart of Nigeria's impoverished and Muslim-dominated north where polio vaccines have met with resistance, which may be enough to compromise the entire door-to-door campaign to eliminate the disease worldwide. <http://tiny.cc/0c6xf>

China to detain without telling family

Chinese police look likely to get new legal powers to detain suspects for up to six months without telling their families where or why they are held, according to a state newspaper's account of planned reforms.

Human rights activists and legal scholars warned that the change would legitimise an alarming pattern of detentions under the residential surveillance law, which was initially intended as a less punitive measure than formal detention.

Most who went missing in a crackdown on activists, dissidents and lawyers this year were taken to secret police locations. They were held for weeks or even months under residential surveillance.

The law does not specify that relatives must be informed, presumably because it was assumed suspects would be held at their homes. In comparison, police must inform relatives within 24 hours of detention and must seek prosecutors' approval for arrest within 30 days. The proposed changes are part of an overhaul of criminal procedure law being considered by the National People's Congress (NPC), China's legislature. <http://tiny.cc/v98fb>

China keeps an eye on its people

More than 10 million surveillance cameras were installed in China last year, experts say.

Beijing police have ordered supermarkets and shopping malls to install high-definition security cameras, as China continues its huge expansion in monitoring technology.

In May, Shanghai announced that a team of 4,000 monitors its surveillance feeds round-the-clock. The south-western municipality of Chongqing has announced plans to add 200,000 cameras by 2014 because "310,000 digital eyes are not enough".

Urumqi, which saw vicious ethnic violence in 2009, installed 17,000 high-definition, riot-proof cameras last year to ensure "seamless" surveillance. Fast-developing Inner Mongolia plans to have 400,000 units by 2012. In the city of Changsha, the Furong district alone reportedly has 40,000 – one for every 10 inhabitants. <http://tiny.cc/ztn44>

UK consults on its own Bill of Rights

The UK Bill of Rights Commission has launched a public consultation on whether the country needs a Bill of Rights.

People have until 11 November 2011 to respond to four questions:

- (1) do you think the UK needs a UK bill of rights? If so,
- (2) what do you think a UK bill of rights should contain?
- (3) how do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?
- (4) having regard to the terms of reference, any other views you would like to put forward?

<http://www.justice.gov.uk/about/cbr/index.htm>

Houston, we have a light problem...

Houston switched off its red-light traffic cameras last month, as Los Angeles did a month earlier, in a move apparently reflecting a gradual nationwide trend in the USA to abandon the devices.

But supporters of such programs claim they save lives, improve safety and have widespread support, noting that more than 500 municipalities – including New York, Washington and other large cities – still use them.

More than a dozen US cities ban the cameras, as do nine states. In many areas where the cameras have been turned off, opponents argued that the programs simply generated revenue without improving safety. Others said they were a money drain (Los Angeles' city council cancelled its program because it was losing money), while some argue the cameras were an unlawful invasion of privacy. – AP, carried in the Washington Post <http://tiny.cc/haylv>

BART gets 'public' wrong in safety debate

In response to outrage over last month's shutdown of cell phone service in four San Francisco stations on rumours of a planned (civil) protest, Bay Area Rapid Transport officials have repeatedly claimed their decision was necessary to maintain public safety.

BART spokesman Linton Johnson has invented a new Constitutional "right to safety" which trumps the First Amendment, according to an Electronic Frontiers Foundation statement.

"As it happens, EFA are in full agreement that BART has an obligation to the safety of its passengers. We believe that working cell phones throughout the BART system do not pose a danger to riders; rather, they help to promote public safety," the EFA said.

"Furthermore, BART riders agree with us, and if you go back to 2001, BART officials do too. BART made the decision to introduce cell phone service to trains and platforms shortly after 9/11, in response to popular demand from BART riders who saw that New Yorkers had found cell phones invaluable for communicating with authorities and loved ones in the midst of city-wide confusion."

<http://tiny.cc/l6s8y>

Corporate homicide may prove costly in the UK

Police forces, prisons and youth detention centres in the UK face prosecution for corporate homicide from today (1 Sept 2011) if an individual dies in their custody.

In the 10 years to 2009, 333 people died in or following police custody, according to the UK's Independent Police Complaints Commission. Ministry of Justice figures show that last year there were 58 self-inflicted deaths among prisoners in England and Wales.

Until now, the prison service, police forces and immigration units have not been subject to the new *Corporate Manslaughter and Homicide Act*, and there have been no successful prosecutions of police or prison officers, individually or at a senior management level, for institutional failures that have contributed to a death in custody.

But from 1 September a clause in the *Corporate Homicide Act 2007* will come into place extending the law to cover all deaths in police custody suites, prison cells, mental health detention facilities, young offenders institutions and immigration suites. It will also cover Ministry of Defence institutions.

Prosecutions will take place if it can be proved that the way the facilities are managed or organised caused a death and amounted to a breach of the duty of care. The penalty for organisations convicted is a fine with no maximum limit. Crown Prosecution Service guidance says that the fines are likely to be in the many millions of pounds. <http://tiny.cc/l36ow>

International briefs

Police benefit from riot failure: Britain's Prime Minister, David Cameron, told an emergency session of parliament he would give police extra powers following riots last month. But he admitted that police had used the wrong tactics to try to stop the riots. Once again, when police prove incompetent and inefficient, they get extra powers – which seems to be an entirely inappropriate response from politicians, CLA says. Firstly, they should address and fix the reasons the police got it wrong...and only after that should new laws be considered. <http://tiny.cc/72hw5>

Gaming the numbers: Bolivian police have issued more than 400,000 duplicate personal identification numbers, according to the new Personal Identification Service (SEGIP), which took over the task recently. The 400,000 duplicate numbers account for 8% of the national electoral rolls. Police files were entered manually and not linked to other cities. The government created SEGIP after repeated allegations of police corruption in relation to the numbers, the primary form of ID in Bolivia – *SMH* report, 1 Aug 11

US bars war criminals: President Obama issued a directive last month, effective immediately, which bars war criminals and human rights violators from entering the USA. Under the proclamation, Secretary of State Hillary Clinton (*pictured, with Kevin Rudd*) determines which criminals or violators will be allowed into the US. President Obama also commissioned a new Atrocities Prevention Board, a panel assisting in deterring genocidal violence, which will begin work within six months.



Kingly law suits very common: The new Thai government has vowed to crack down on websites deemed insulting to the royal family, alarming campaigners who had hoped it might curb a recent surge in the use of lèse-majesté laws. Thailand blocked or suspended almost 75,000 sites between 2007 and 2010, mostly under the Computer Crimes Act in relation to lèse-majesté. David Streckfuss, the leading expert on the issue and author of *Truth on Trial in Thailand*, said 30 lèse-majesté charges were sent to the lower courts in 2006, 164 in 2009 and 478 in 2010. <http://tiny.cc/z5kgn> and Guardian report.

DATES

7 Sept, Canberra: 25th Annual Lionel Murphy lecture: *Vigilance Against Injustice in the Justice System*, Attorney-General Robert McClelland, Law Theatre, ANU, 6-7pm, free, open, rsvp@law.anu.edu.au (By COB Mon 5 Sept). Info: http://law.anu.edu.au/COAST/Events/2011/25th_Lionel_Murphy_Lecture_Flyer.pdf

7-9 Sept, Sydney: Criminal Justice in Australia and NZ - Issues and Challenges for Judicial Administration, E: aija@monash.edu

9-10 Sept, Canberra: 10 years on from 9/11: the impact on public law conference, Centre for International 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'Estrange, Director of National Security College, ANU.

12-13 Sept, Paris: New ICC Rules of Arbitration. Info: events@iccwbo.org or www.iccevents.org

13 Sept, Brisbane: Assoc Prof Katharine Gelber: Speech Matters; Free Speech in Australia, Level 1 Duhig Bldg, 3-4pm. Info: Rebecca Ralph 07 3346 7407 <http://www.cccs.uq.edu.au/index.html?page=152146>

15-18 Sept, Canberra: Lao Alliance for Democracy – international meeting re advancing free elections, a multi-party system and human rights in Laos. Details: Kay Danes <http://www.kaydanes.com/contact.html>

16 Sept, Canberra: Lunchtime lecture 1-2pm: Glen Patmore, Senior Lecturer in Law, The University of Melbourne Constitutional Change and Australian Republicanism. Venue: Staff Library, ANU College of Law

20 Sept, Darwin: 'Does NT need a Charter of Human Rights?' Lecture by Prof George Williams, 5.30pm, Mal Nairn Auditorium, Charles Darwin U. Info and RSVP: jeswynn.yogaratnam@cdu.edu.au

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

26-28 Sept, Brisbane: Crime, Justice and Social Democracy Conference, Queensland University of Technology (QUT) at Gardens Point (City Campus), Brisbane: Prof Pat Carlen, U. Kent, Prof Elliott Currie, U. California; Prof John Pratt, Victoria University of Wellington. Details: <http://www.crimejusticeconference.com/index.html>

26-28 Sept, Geelong: ANZ Society of Criminology conference, Sheraton Four Seasons Hotel. Details: <http://www.anzsoc.org/cms-conferences/conferences.phps>

6-8 Oct, Brisbane: Change the World: Amnesty International Human Rights Conference, Royal on The Park Hotel, Brisbane. Details: <http://hrc.amnesty.org.au/>

27 Oct, Hobart: Continuing Legal Education Association Australasia (CLEAA) Annual Conference. Contact: www.cleaa.asn.au or cleaa@leocussen.vic.edu.au

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

10-11 Nov, Sydney: International conference 'Climate Change and Migration in the Asia- Pacific: Legal and Policy Perspectives'. NSW Parl House. Register online: <http://tiny.cc/wxv49>

15-17 Nov, Perth: 3rd Australian Public Sector Anti-Corruption Conference – conference organised by the corruption bodies of WA, Qld and NSW. Details: <http://www.iceaustralia.com/apsacc2011/index.html>

9 Dec, Canberra: Senate Occasional Lecture, organised by CLA: Former ACT Chief Minister, Jon Stanhope, on *Human Rights in Australia*. Details: http://www.aph.gov.au/senate/pubs/occa_lect/index.htm

10 Dec, World: Human Rights Day.

10 Dec, Canberra: Planting of Australia's Liberty Tree, conceived and sponsored by Civil Liberties Australia, by former ACT Chief Minister, Jon Stanhope, at Australia's National Arboretum: http://www.nationalarboretum.act.gov.au/tree_stories/kurrajongs

2012:

TBA: Planning is under way for a workshop on '*Critical and Historical Approaches to Rights*', to be held at UNSW in 2012 by the Gilbert and Tobin Centre of UNSW with the Philosophy Depts of UNSW and Sydney U. <http://www.gtcentre.unsw.edu.au/>

19-22 April, Sydney: Commonwealth Lawyers Association regional law conference. Info: www.commonwealthlaw2012.org

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

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