

## Wowser government censors your internet

The Australian Government is about to censor your access to the internet: they will decide what you will be allowed to see and read, hear and view.

The censorship will ban websites 'they' don't want you to know about, maybe euthanasia, anorexia, drugs, guns, alternative religions and...democracy, obviously.

CLA is forming 'Action Email Cells' – groups prepared to take the fight to the government on this issue.

Please email [secretary@cla.asn.au](mailto:secretary@cla.asn.au) with your city/town included, if you would like to join a group.

Digital Minister Stephen Conroy told a Senates Estimates Committee last month that the government's \$44.2 million internet censorship plan would include two tiers:

- one level of mandatory filtering for all Australians, and
- an optional level that will provide a 'clean feed', censoring 'adult' material.

"Australia's level of net censorship will put it in the same league as countries including China, Cuba, Iran and North Korea, and the government will not let users opt out of the proposed national internet filter when it is introduced," News Limited technology correspondent Jennifer Dudley-Nicholson reported last month.

The Minister's mandatory censorship breaks a promise, CLA President Dr Kristine Klugman said.

"The Labor Party promised an opt-in system where parents could choose to censor childrens' access. What is now to be introduced is broad-brush, nationwide, mandatory censoring of every Australians' access to information.

"It's like the government deciding which bookshop you're allowed to go into, and which book you're permitted to pick up.

"This wowser government appears intent on creating a dumbed-down society. The move will lead to the antithesis of the Clever Country. Quite apart from taking away freedoms, it will slow the internet down dramatically and actively promote lack of inquiry."

Giving government exclusive control over an information flow chokepoint is a recipe for societal disaster and damage to Australia's democracy, she said.

A telling comment was posted on a blog: "In round numbers I believe there are something like 30-40 billion web pages out there. Around 40 million new ones get created every single day. Google doesn't even try to index all of them, let alone categorize and censor them.

"People who think this is practical or realistic just have no idea what they are talking about. It reeks of a political stunt designed to appease uninformed lobby groups. I wish they would spend the time and money on a strategy that actually helps me protect and educate my kids." (Posted by: Luke Cuthbertson of Melbourne, <http://passtie.org/302912>)

A spokesman for Communications Minister Stephen Conroy said the filters will be mandatory for all Australians. "Labor's plan for cyber-safety will require ISPs to offer a clean feed internet service to all homes, schools and public Internet points accessible by children.

"The upcoming field pilot of ISP filtering technology will look at various aspects of filtering, including effectiveness, ease of circumvention, the impact on internet access speeds and cost."

Internet Service Providers (ISPs) say blanket content filtering will cripple Internet speeds because the technology is not up to scratch. There is a further danger that the blacklists will be expanded to censor a wide range of material.

## LAST WORD: US Justice perfects circular argument, with pike

The US Justice Department is providing a heads up (and tails up) legal argument over the Uighurs, innocent victims imprisoned without reason for seven years in Guantanamo Bay. If another country will take them, they are peace-loving shepherds. But when the US courts order them freed in the USA, they are dangerous prisoners made angry by imprisonment. Which imprisonment? The one the courts have ordered them to be released from at Gbay!

See last item in this newsletter.

## ATO loses data disk with trustee details

The Australian Taxation Office has lost a computer disk holding tax information on thousands of people – the name, address and super fund tax file numbers for 3122 trustees.

The CD, which was on its way to ATO by courier but failed to arrive, was not encrypted.

It went missing on 3 October, but the ATO only notified by victims from 24 October.

ATO Commissioner Michael D'Ascenzo said the information could be misused if it fell into the wrong hands.

– from a report in The Australian's IT section:

<http://www.australianit.news.com.au/story/0,24897,24575839-15306,00.html>

## Labor chair wants end to restrictions

The Labor chair of a parliamentary group on population wants the Rudd Government to lift its ban on foreign aid being used for abortion advice and services.

Senator Claire Moore (pictured) said the issue needed clarifying before an international conference on maternal and child welfare early in 2009, according to a report by Michelle Grattan in *The Age*. "This seems to be an appropriate pressure point on the government," she said.

Senator Moore said only Australia and the United States banned aid being used in this way in countries where abortion was legal. Foreign Affairs Minister Stephen Smith has been examining the ban for months, including having talks with the caucus about whether it should be scrapped, but has not said when a decision will be made.

<http://www.theage.com.au/national/call-to-ease-block-on-abortion-advice-20081020-54tn.html>



## High Court comes down hard on 'controlled' operation

Controlled operations that involved the selling of large quantities of cocaine to users was conduct likely to seriously endanger the health or safety of those people and should not have been authorised by the NSW Crime Commission, the High Court of Australia held recently.

Conducting the controlled operations meant that between 70,000 and 100,000 dosage units of cocaine would reach the streets.

The Court held that a reasonable person in the position of the Commissioner would have foreseen that this would involve a risk of seriously endangering the health of at least some of the

purchasers of the cocaine...and if there was such a risk, then the operations were illegal.

[http://www.hcourt.gov.au/media/Gedeon\\_v\\_NSW\\_Crime\\_Commission.pdf](http://www.hcourt.gov.au/media/Gedeon_v_NSW_Crime_Commission.pdf)

## A-G signals changed emphasis

Attorney-General Robert McClelland signalled a clear intention to fold Australia's excessive anti-terrorism legislation back into laws against criminal behaviour.

Speaking late last month in Melbourne at a counter-terrorism conference, he commented on a recent meeting in London with the UK's independent reviewer of terrorism laws since 2001, Lord Alex Carlile.

"My visit to the UK brought home the importance of continuing to deliver the message that terrorism is nothing more than a base and despicable criminal act – where innocent civilians are the target of choice," AG McClelland said.

"It also reinforced my belief that successful prosecutions necessarily support broader community counter-radicalisation efforts by sending a clear warning to those who are tempted by extremism. Conviction and imprisonment can help open their eyes to what terrorism really is – cowardly criminal behaviour," he said.

Most civil liberties and legal groups expressed precisely the same opinions as the Howard Government enacted 50-plus pieces of legislation that glorified terrorists by treating them as 'special cases'. From the outset, CLA has said that terrorists are criminals, and should be dealt with by Australia's criminal laws.

## Terrorist conviction rate just 31%

Since new counter-terrorism offences became operative in Australia in 2002, 29 individuals have been charged with terrorism offences, A-G McClelland told the counter-terrorism conference.

"Nine have been convicted\* and a number of cases remain before the courts. Most recently, a jury in Melbourne returned guilty verdicts against seven defendants," he said.

He omitted to mention that four defendants in the same case were totally exonerated and freed, after spending three years in 'super max' jail lockdown for what was proven in court to be no reason whatsoever, CLA's CEO Bill Rowlings commented. "Nine convictions from 29 charged is a success rate of 31%, which suggests that security services and police are either not very accurate in their targeting or astute in gathering evidence," Mr Rowlings said.

Mr McClelland said that, since January 2008 there had been at least 185 significant terrorist attacks in 29 countries, resulting in the deaths of more than 1,600 and injury to nearly 3,000 others. The basis of Mr McClelland's calculations are unknown, nor is it known whether the figures included deaths and casualties following US attacks by special forces, drone aircraft and air force bombers on civilians in countries like Syria and Pakistan, as well as in Iraq and Afghanistan.

\* The A-G spoke the day before Jack Thomas was cleared in Melbourne late last month.

## Rudd Govt asked to set up independent panel to review terrorism laws

There should be a three-person panel to independently review terrorism legislation, a parliamentary committee reported last month.

The cross-party Legal and Constitutional Affairs Committee of the Senate also recommended that the Tri-Terror Panel should report on each inquiry to Parliament, but also table an annual

report. In other recommendations the committee called for better definition of the rules and procedures around such a committee.

It is now up to the Rudd Government to implement the recommendation. By mid-2009, there could be the first overall review for eight years of legislation passed in panic and haste by the Howard Government, starting immediately after the 11 September 2001 aircraft attacks on the Twin Towers in New York and the Pentagon in Washington, USA.

Senator Trish Crossin (ALP, NT) chaired the committee, which included as participating members Senators Judith Troeth (Lib, Vic) and Senator Gary Humphries (Lib, ACT), the pair who had put forward a joint private members Bill. Their Bill mirrored one originally proposed by Petro Georgiou (Lib, Kooyong, Vic) in the House of Representatives which was not taken up by that house.

**FOR A FREE** (if downloaded, \$29.95 if ordered as a book) analysis of the 'war on terror', go to:

*Fresh Perspectives on the 'War on Terror'*, Miriam Gani and Penelope Mathew (editors)

[http://epress.anu.edu.au/war\\_terror\\_citation.html](http://epress.anu.edu.au/war_terror_citation.html)

## Sydney 6 trial follows Melbourne 12

The trial of six Sydney men accused of terrorism is due to start early this month, and is expected to run through most of 2009.

The men are: Bradley Umar Sariff Baladjam, 31, Khaled Cheikho, 35, Moustafa Cheikho, 31, Mohamed Ali Elomar, 43, Abdul Rakib Hasan, 39, and Mohammed Omar Jamal, 24.

Trial judge Anthony Whealy has heard eight months of legal argument on preliminary issues, and he has delivered 65 written judgments.

The Melbourne 12 trial closed with four people totally acquitted after being held in a 'supermax' jail for three years. Seven were found guilty; a re-trial was ordered for the other person.

## Disaster-prone Jack gains his 'freedom'

Jack Thomas – the man dubbed 'Jihad Jack' by an irresponsible media – is a 'free' man, despite being sentenced late in October to nine months' jail for falsifying his passport to try return to Australia from Pakistan.

He was arrested by Pakistani authorities at Karachi Airport in 2003, then interrogated, tortured, convicted, acquitted and retried, Sarah-Jane Collins wrote in *The Age*. In 2006 a Supreme Court jury found him guilty of falsifying his passport and receiving funds from al-Qaeda. The Court of Appeal subsequently quashed the conviction and ordered a retrial.

Last month, Justice Elizabeth Curtain sentenced Thomas to nine months' jail but ordered that he be freed on a recognisance release order after serving 265 days, the same amount of time he had already served in custody.

Thomas altered his passport to remove a Taliban visa, fearing he would be arrested if he tried to leave Pakistan with the visa on display. Justice Curtain said Thomas had first travelled on the visa when the Taliban were the recognised government of Afghanistan, but that he had fled the country and stayed with Taliban supporters in Pakistan after the fall of Kabul.

"You tried to leave Pakistan but your departure was thwarted on three occasions by 9/11, the Bali bombings and then an earthquake. By December 2002 you were desperate," she said.

Of course, he is still susceptible to ASIO and Australian Federal Police surveillance.

<http://www.theage.com.au/national/jack-thomas-spared-further-jail-time-20081029-5ba0.html?page=-1>

## Do-Not-Export Data register proposed to safeguard Australian information

Privacy advocates have fallen in line with a CLA proposal for a 'Do Not Export Data' scheme to stop organisations sending data about Australians out of this country without approval.

CLA proposed to the Australian Law Reform Commission (ALRC) that no Australian data should leave Australia unless an individual had given formal permission.

The scheme now proposed is like a Do Not Call phone register. The Do Not Export Data register would ensure that your personal details and data, no matter who held it, stayed in Australia rather than being exported to prime or back-up sites anywhere in the world.

The problem with offshore export of Australian data is that it becomes subject to the laws where the data is held. Your personal details – phone calls and internet logs, buying habits, health information, friends and contacts – could be tapped for FBI and CIA analysis under provisions of the US Patriot Act, for example.

More details: <http://www.australianit.news.com.au/story/0,24897,24559487-24170,00.html>

## Senior ACC executive shows appalling judgement

The Australian Crime Commission (ACC) has disciplined the staffer – reportedly managing director Chris Enright – who compiled a dossier on Home Affairs Minister Bob Debus after a cosy dinner in Darwin.

ACC chief Alistair Milroy says the officer breached the public service code for creating and inappropriately storing the document. Sanctions have been imposed, but no-one is saying what they are. The officer has apologised. Mr Milroy regretted that the Minister's reputation had been impugned. <http://www.abc.net.au/news/stories/2008/10/24/2400607.htm>

## ACC under fire, review...and new boss?

The nation's most powerful crime fighting body is under fire for its undercover role against children in the NT intervention, and for pursuing celebrity tax cheat Glenn Wheatley.

The chairman of the joint parliamentary committee that oversees the Australian Crime Commission, Senator Steve Hutchins, last month questioned use of resources and the most sweeping powers in the nation to demand the medical records of young Aboriginal women. The ACC should focus on combating serious organised crime, he said, suggesting that Wheatley may not be as much a 'danger to Australian society' as other potential targets.

The Howard Government last year told the ACC to gather intelligence on child sex abuse as part of the controversial NT intervention, Nick McKenzie reported in *The Age* (25 Oct 08). The Federal Court ruled last month that a NT health clinic did not have to comply with an ACC demand to hand over the health records of under-age women.

Senator Hutchins said the five-year-old ACC strayed too far from its core task of investigating organised crime because of the demands of government. Two former chairmen of the National Crime Authority, John Broome and Peter Faris, backed Senator Hutchins' call for the ACC to refocus on emerging organised crime problems, according to McKenzie's report.

The journalist said deputy Australian Federal Police Commissioner John Lawler would soon replace Alistair Milroy as the commission's chief executive after Home Affairs Minister Bob Debus flagged an internal review of the agency's operations.  
– supplied by Mary Lander

<http://www.theage.com.au/national/crime-body-under-fire-20081024-58af.html?page=-1>

## ASIO goes into entrepreneurial private practice as staff continues to rise

ASIO staff mushroomed a further 10% last year, from 1356 to 1492...even as counter-terrorism assessments declined 34% to 82,290.

But ASIO's work for the private sector soared by 55%. There were 140 security reports for 400 'private-sector subscribers' to ASIO's Business Liaison Unit (BLU) website\*.

In 2007/08, Australia's domestic spooks published 3,224 intelligence and threat assessments (up 17% from last year), 72,688 visa security assessments and 21,386 personnel security assessments. No estimate of percentage accuracy is given.

They also managed to certify '57 new Top Secret sites'...we're not sure whether that number is a soupcon of the total 'Top Secret' sites in Australia, or a big increase in number.

The 'Key Highlights' section of the annual report said that ASIO was involved in more than 60 civil and criminal proceedings last year. In one of them, the UI Haque case in Sydney, the judge pilloried the ASIO and Australian Federal Police efforts to such an extent that there were formal inquiries into how incompetent both ASIO and the AFP were, and how the inter-operability mess could be fixed. There's now a 'Top Level Liaison Committee', among other measures, to try to minimise cock-ups in future.

More than 500 people applied for access to ASIO records – the organisation 'examined 63,932 pages'...but it didn't reveal how many pages it released.

ASIO Report to Parliament 2007–08: <http://www.asio.gov.au/Publications/Content/CurrentAnnualReport/Content/Cover.aspx>

\* *Unit slogan: If you want to make a BLU, go to ASIO.*

## Police yo-yo orders to control children are like 'walking the dog'

The NSW Government is about to duplicate a scheme to control youths aged from 14 until they turn 19 that has comprehensively failed in the UK.

Called ASBOs (anti-social behaviour orders) in the UK, they will morph into Youth Control Orders (YCOs, or Yo-Yos) in NSW, the Penal State.

The euphemistic claim is that the new orders will "place limits on the behaviour of a young person who has been engaging in anti-social behaviour and who has been charged with an anti-social offence." Note: "Charged"...not convicted!

These Yo-Yos will in practice be peremptory restrictions imposed by police on kids. The 'pilot' schemes are to be in three areas "namely Campbelltown, Mount Druitt and New England Local Area (police) Commands".

The yo-yos are an extension of the Anti-Social Behaviour Pilot Project established by the NSW Government in September 2006.

The Children's (Criminal Proceedings) Amendment (Youth Conduct Orders) Bill 2008 was introduced 23 October into the Legislative Council by Attorney-General John Hatzistergos.

Yo-Yos will dramatically limit a young person's freedom. For example, they will say who he or she is not allowed to communicate with (receive/send messages to/from) by phone, email, SMS or letters or faxes, as well as where they can live and travel, and who they can associate with.

"Remember, these are young NSW people, many old enough to vote, or to die for Australia as soldiers...yet the NSW Government wants to deny them their most basic rights of free

speech, freedom of movement and freedom of assembly," Bill Rowlings, CEO of Civil Liberties Australia, said last month. "This is a desperate act of a police state, not good government."

The proposed legislation was even lambasted by the NSW Parliament's own cross-party Legislation Review Committee in a report handed down last month.

For more details, go to: <http://www.cla.asn.au/index.php>

## AFP receives 1000-plus complaints about staff

There were than 1000 complaints made about the integrity of Australian Federal Police officers in the past year, with almost half made by fellow officers, the annual report of the AFP shows.

Of the total, 19 were so serious they have been referred to the national anti-corruption watchdog, the Australian Commission for Law Enforcement Integrity. Details of the cases have not been released, Natalie O'Brien reported in *The Australian*.

There were findings against AFP officers for seven complaints of police firing weapons, four of intimidation, two of drug misconduct, 13 serious breaches of the code of conduct, five of giving false statements and four of criminal conduct.

The report said that of the 1016 complaints, the AFP exercised its discretion not to investigate 183 of those matters. Of the remaining referrals, 598 were dealt with as minor management matters, 369 were referred for investigation by the internal Professional Standards section and 19 were referred to the ACLEI.

There were 24 complaints made in the most serious category, which includes bribery, corruption, blackmail, criminal conduct and perjury. However, those matters remained unresolved at the end of the financial year.

<http://www.theaustralian.news.com.au/story/0,25197,24503678-5013404,00.html>

## Spy, police and law agencies now talking to each other

ASIO, the AFP and the Commonwealth Director of Public Prosecutions claim to have settled their differences, and to be now working together amicably and efficiently.

The agencies told the Government that they have fully implemented two recommendations of the Street Review (which followed the ul Haque and Haneef debacles) by:

- instituting new Counter-Terrorism Prosecution Guidelines to improve consultation and communication in investigating and prosecuting terrorist offences (*translation: they are now talking to each other*); and
- agreeing on a new Joint Operations Protocol between ASIO and the AFP, involving regular and accountable exchange of national security information and ongoing high-level consultation on operations (*translation: they are now talking to each other*).

They have established a Chief Executive Interoperability Forum for agency heads to review and resolve strategic priorities and interoperability issues in national security operations (*translation: they are now talking to each other*).

The Street Review made 10 recommendations covering four broad areas – operational decision making; joint taskforce arrangements; information sharing; and training and education.

Meanwhile the late-reporting Clarke Inquiry, reviewing handling of the case of Dr Mohamed Haneef, is due to finally hand in its findings by mid-November. Mr Clarke had promised to complete his work by 30 September, but failed to meet the deadline.

The inquiry has had no powers to compel witnesses, or to take evidence under oath, making its worth questionable.

## 'WA in danger of becoming a police state,' media union says

WA is in danger of becoming a police state where the public right to know is treated as a crime, according to the Media, Entertainment and Arts Alliance WA branch secretary, Michael Sinclair-Jones.

A coroner in WA has proposed police should get new powers to silence investigative reporting.

"That suggestion is an affront to free speech and the public right to know," the media union said. "Police are already in serious trouble over the wrongful jailing of Andrew Mallard for 12 years, now authorities want greater secrecy – it's absurd."

Two WA Police assistant commissioners have been stood down – on full pay – over their involvement in the Mallard affair.

The Corruption and Crime Commission (CCC) last month recommended disciplinary action against Assistant Commissioners Mal Shervill and David Caporn and WA's Deputy Director of Public Prosecutions Ken Bates.

The recommendations followed hearings last year resulting from wrongful conviction of Mr Mallard for the murder of Mosman Park jeweller Pamela Lawrence in 1994. The conviction was quashed in 2006. (The new Liberal Government is trying to calculate what compensation he should receive).

WA Police Commissioner Karl O'Callaghan said his two right-hand-men had been issued with a notice to provide information on why they should retain their jobs.

The coroner's quaint recommendation is out of keeping with rising community demands for transparency and openness in government, and more transparency from police and other authorities. The recommendation appears to line up with a fightback against the media by elements within the police force and other traditional power hubs in Perth society.

There are tensions between police, the DPP, the CCC, the legal system and other powerful groups brought on by a range of crimes and nefarious deeds stemming back more than 25 years to the Perth Mint scandal. It may take yet another Royal Commission – the last one into Police in WA ended only four years ago – to lift the lid and allow the pressure to escape.

<http://thedailymagnet.blogspot.com/>

<http://www.ccc.wa.gov.au/pdfs/Mallard%20Report%20complete.pdf>

## Porter's plans make Aboriginal legal group fearful

WA's new Attorney-General Christian Porter has plans that have the Aboriginal Legal Service in a state of fear, Debbie Guest and Victoria Laurie wrote in *The Australian* last month.

WA already has the nation's highest incarceration rate for Aborigines. ALSWA executive director Dennis Eggington believes it will go even higher under Mr Porter's plans.

More than half of the state's male prisoners are Aboriginal men, even though Aborigines make up a mere 3.5 per cent of the state's population. Male and female Aboriginal prisoners collectively make up 42 per cent of the prison population.

"Western Australia is going against world trends and hard factual data shows what we're doing is not working," Mr Eggington said.

Aspects of Mr Porter's policies that worry Mr Eggington include:

- Greater use of mandatory sentencing;
- Introducing orders against anti-social behaviour; and
- Capping the discounting of sentences for early guilty pleas.

He was either uncommitted or hostile to two of the key recommendations on Aboriginal justice made in a 2006 report by the Law Reform Commission of WA. Mr Porter dismissed the

commission's call to recognise tribal law and would not commit to the continuation of WA's only Aboriginal court in Kalgoorlie.

Mr Porter is planning to introduce mandatory sentencing for people convicted of serious assaults on police officers. "I'm a lawyer and I'm very cautious about mandatory sentencing, very cautious, but we identified that here was a problem where a strong statement had to be made that police officers' physical safety is of paramount importance to the government," he said. "We took the view that ultimately an assault on a police officer is an assault on every member of society who obeys the law."

He is a former state prosecutor, and plans to make it possible for police prosecutors and the Department of Public Prosecutions to apply for 16- and 17-year-olds charged with serious or violent crimes to face an adult court. This would also allow these teenagers to be publicly named.

Mr Porter, who is also Minister for Corrective Services, said the problem of overcrowding in prisons would require "innovative approaches". Two new prisons will be built, one for young offenders and the other for 350 more maximum security prisoners. Mr Porter also plans to increase the use of home detention and work camps, where prisoners work and stay at accommodation outside jails.

Mr Porter is also opposed to a human rights charter for WA. A statewide consultation process under previous Labor A-G, Mr McGinty, came down in favour of introducing a state charter, but it was put on to hold, awaiting the national initiative.

## Tasmania's A-G (and Premier) support charter of rights

"I welcome the renewed debate about the need for a Charter of Rights in Tasmania and it is an issue I will take a keen interest in as Attorney-General," Ms Lara Giddings said last month.



Ms Giddings (*pictured*), a lawyer, is Tasmania's Minister for Justice and Health Minister.

"I have already raised the issue with the Law Reform Institute, whose discussion paper raises some interesting and challenging issues. It would be preferable for a charter of rights to be pursued at a national level to ensure consistency across the country, but in the absence of a national approach I believe it is appropriate that the community actively debates

the need for action at a state level in Tasmania.

"The Commonwealth has committed more than \$2 million to conduct national consultation on rights protection. Given the work already undertaken in Tasmania we are ideally positioned to contribute. While sympathetic to the arguments for a charter of rights, I believe this is a matter which requires detailed consideration.

"The human rights record of the government is one we can all be proud of but there is always more work to be done and assessing whether this can be best achieved through a charter is something that I am committed to doing," Ms Giddings said.

**LATE NEWS:** On 30 Oct, the Tasmanian Premier, David Bartlett, indicated he would back the introduction of a charter of rights and responsibilities for Tasmania,

"I think an important part of connecting communities through social inclusion is making sure that people have a clear understanding of their rights and responsibilities as members of the Tasmanian community," he said.

"That is why I can flag today that I am interested in looking further at a Bill of Rights for Tasmania.

"I have asked Deputy Premier and Attorney General, Lara Giddings, to bring forward recommendations to Cabinet about the need for a Bill of Rights, and its potential content.

"Setting down rights on paper is about empowering people. It gives us the chance as a community to set out some of the

political freedoms and social rights that all Tasmanians should have. And social empowerment in turn builds a sense of community," Premier Bartlett said.

## Police find freedom is just too hard to contemplate

Deputy Police Commissioner Simon Overland has admitted police asked the Victorian Government to amend Freedom Of Information laws as part of the 2006 Terrorism (Community Protection) bill because it was easier to deny requests than process them.

"(The security intelligence group) is a sensitive area and obviously we hold very sensitive information," Mr Overland said. "Most FOI requests were refused because of that. But there is still a whole process that you've got to go through to deal with the FOI requests so we asked for the amendment because it is a lot easier to say, 'You are not going to get it, so don't bother asking.'"

Mr Overland's comments added to reports that police had been infiltrating Melbourne activist and community groups. Former Premier John Cain said the reports exposed "the mad desire of the police to get all sorts of information regardless of whether it is inaccurate, insensitive or inappropriate. This is part of an alarming trend right across the country to give wide-ranging powers to law enforcement agencies claiming that anything is justified in fighting organised crime and terrorism," he said.

Mr Cain introduced FOI laws and disbanded Victoria Police's notorious special branch when he came to power in 1983. He supported calls by Liberty Victoria and the Law Institute of Victoria for greater external oversight of covert police operations.

CLA has concerns throughout Australia that so-called "controlled" operations laws are licences for police to run drugs, organise 'retaliation' against crime figures and generally act like criminals.

<http://www.theage.com.au/national/terror-law-excuse-for-foi-veto-20081017-53ar.html>

## CLA alerts Defence Minister to UK prisoner transfer doubts

CLA last month alerted Defence Minister Joel Fitzgibbon to a legal opinion from the UK which, in summary, says coalition troops do not absolve themselves of responsibility for captives when they hand them over to American soldiers for detention.

This is an issue that has not surfaced in Australia: what has happened to the prisoners that Australian troops have captured in Iraq and Afghanistan? And, what responsibility does Australia bear for their subsequent treatment?

"This is an alert, just in case no-one else has drawn your attention to this article, and the underlying legal opinion, in relation to UK troops handing captured personnel over to the Americans. The opinion and article would seem to have implications for Australia," CLA emailed to the Defence Minister, with the following links:

<http://www.guardian.co.uk/uk/2008/sep/29/military.law/print>

[http://www.extraordinaryrendition.org/index.php?option=com\\_docman&task=cat\\_view&gid=30&](http://www.extraordinaryrendition.org/index.php?option=com_docman&task=cat_view&gid=30&)

## Bureaucrats engage in bunfight over whistleblowing

There's a new bureaucratic bunfight – which started out with a polite 'no-hit' agreement, but is now getting rough – about who will get the funds and staff to run a beefed-up whistleblowing regime in Australia.

Commonwealth Ombudsman John McMillan came out swinging recently, saying that whistleblower laws should provide an opportunity for public servants to go to the media in exceptional circumstances. He said people might prefer the laws be administered by an agency at arm's length from government.

"I think there are many people who would probably feel comfortable taking an allegation to the Ombudsman's office because it is detached from government and it's independent and it has a reputation and credibility for protecting people in disputes with government," he said.

But earlier, the Public Service Commissioner Lynelle Briggs, had told the House of Reps Legal and Constitutional Affairs Committee, which is holding an inquiry into public interest disclosures, that the media was a wholly inappropriate place for public servants to air their dirty linen. The PSC was the place for dirty linen, she implied.

Her deputy, Lynne Tacy, was explicit: people who leak information to the media should not be given protection.

As the committee appears to be of a mind to free-up the whistleblowing system, in the hope that more disclosures will lead to better governance, Ms Briggs and Ms Tacy seemed to have picked the wrong washing machine.

CLA believes the two laundry ladies would better occupy their time if they instituted an 'own motion' inquiry into the number of departments and agencies who have sent 'whistleblowers' for psychiatric treatment, as a prelude to banning the practice except on the joint agreement of two GPs. Whistleblowing management under their tenure has shown no evidence of proactive effort, or support for people trying to right wrongs.

## Privacy challenge is not facing down the internet: Faulkner

The Special Minister of State, John Faulkner, last month warned that personal information posted on social networking websites can linger forever "like an ill-considered tattoo".

But the challenge, he said, was for legislators not to protect people from the information they volunteer about themselves but the data collected by others. He called for privacy values to be at the forefront rather than an afterthought when new technology was introduced.

"A Facebook posting or a YouTube video, like an ill-considered tattoo, can linger forever," he told a privacy symposium in Sydney, Phillip Hudson reported in the *SMH*. "But while a reckless embrace of the internet's potential for performativity may lead to lingering embarrassment, poor judgment and over-enthusiastic exhibitionism is not the biggest challenge new technology poses to privacy policy.

"Privacy is not about what we voluntarily – however unwisely, as others might see it – disclose of ourselves. Privacy is our right to make that decision for ourselves."

<http://www.smh.com.au/news/technology/privacy-lags-in-technology-rush/2008/10/07/1223145356191.html>

## 'Corrupt' police cells infect force: report

The Victorian Office of Police Integrity's annual report says ordinary officers are protecting corrupt police because of misguided loyalty, leading to lies and cover-ups.

OPI's Director, Michael Strong, reported that small corrupt cells within the police force were poisoning the entire police barrel.

"They often promote the image that they are high achievers when in fact they achieve very little productive police work. They regularly flout organisational rules and regulations and avoid accountability because of their cultural influence... They are often protected by an outmoded police culture that turns a 'blind eye' to inappropriate activity, or demands loyalty to a code of silence."

Mr Strong said he was concerned that police were prepared to lie as part of a misguided sense of obligation. "Too many police witnesses required to answer questions under oath at OPI hearings seem willing to sacrifice their credibility rather than break the 'code'."

– from a report by John Silvester in *The Age*, 9 Oct 08, supplied by Mary Lander

<http://www.theage.com.au/national/corrupt-police-cells-infect-force-report-20081009-4x3y.html>

## Tassie jail under human rights investigation

Tasmania's Ombudsman Simon Allston is investigating Risdon Prison for breaches of international human rights standards.

The prison's Tamar unit opened two years ago to house the most difficult inmates. Mr Allston said two people had been held in solitary confinement for five years and three years respectively, after having three years and one year in the old prison's infamous Division 7.

"One inmate has been accommodated in the Tamar unit for the past two years." He said there was no such thing as "solitary confinement" per se in Tasmanian prison facilities, according to an AAP report in the Sydney Morning Herald.

The same prison has launched a program so inmates can still read to their children. Prisons director Graeme Barber says the program, pioneered in the UK, involves prisoners recording children's stories onto CDs, which are then sent home for the kids.

<http://news.smh.com.au/national/tassie-prison-launches-storybook-program-20081001-4rqy.html>

## Senator Sarah demands 'un-labelling' of refugee claimants

Senator Sarah Hanson-Young (Greens, SA) has demanded a re-think of the way Australia considers asylum seekers, with a reminder that fleeing persecution and seeking refuge is a human right enshrined in international law.

"The myth that asylum seekers are illegal immigrants must no longer be perpetuated," she said. "A term like 'illegals' is not only offensive, but also inaccurate. It is not illegal to arrive in this country without a visa."

Senator Hanson-Young said that Australia had a responsibility to assist asylum seekers.

"As a signatory to the 1951 United Nations Geneva Convention on Refugees, and a country that considers itself compassionate and a champion of the 'fair go', Australia must step up to its international obligations and reputation and swiftly consider asylum seekers for refugee status."

<http://sarah-hanson-young.greensmps.org.au/content/media-release/seeking-asylum-a-human-right-not-illegal>

## Majority verdicts push based on a furphy, QCCL says

The Queensland Council for Civil Liberties has condemned the State Government's decision to introduce majority verdicts.

The case for majority verdicts is essentially one of convenience and cost saving...but even then it is based on a complete furphy, the QCCL said in its July-September newsletter.

"In 2005 the NSW Law Reform Commission published a comprehensive review of this issue and found there was no case for abolishing unanimous verdicts. The NSWLRC found that in that state only .4% of criminal cases are tried by a jury, and of those, approximately 8% were unable to reach a verdict.

"The case against unanimous verdicts is usually made on the presumption that hung juries occur predominantly where one or two jurors stubbornly hang out against the majority view. Hence, the reform proposal is that a majority verdict will be accepted where there is only one dissenting member.

"But the evidence before the NSWLRC was that this happens in less than half of hung jury cases. In fact, in more than half the cases the juries were relatively evenly split.

"Essentially then the Government proposes to achieve a very minor cost saving at the expense of a fundamental principle of our legal system which is that people should not be convicted unless their guilt is proved beyond reasonable doubt. A requirement for unanimous jury verdicts reinforces that principle, and for this reason we oppose the current government's proposal."

## USS Peleliu visits...to renew 'friendship' with David Hicks?

The amphibious American assault ship USS Peleliu (LHA 5) and the guided missile destroyer USS Halsey (DDG 97) visited Sydney last month.

Peleliu Commanding Officer, Capt. Marcus A. Hitchcock, said: "Sydney is always a favorite place ... we are looking forward to experiencing, firsthand, the culture of a great nation and the friendliness of its people."

Of course, the sailors and marines of the Peleliu had a head start experiencing the friendliness of Australians. The USS Peleliu has been frequently identified as a prison hulk coasting around Diego Garcia, the very ship where John Walker Lindh was taken to be tortured in 2001, and, it is strongly suspected, the same ship the Australian, David Hicks, was first taken for like purposes.

Peleliu – flagship of the Peleliu Expeditionary Strike Group and the 15th Marine Expeditionary Unit – is currently conducting operations in the US 7th Fleet area of responsibility. The US 7th Fleet is the largest of the forward-deployed US fleets, with about 60-70 ships, 200-300 aircraft and 40,000 sailors and marines assigned at any given time.

Sources: Guardian: <http://www.guardian.co.uk/world/2008/jun/02/usa.humanrights> and Human Rights First: [http://www.humanrightsfirst.com/us\\_law/etn/misc/factsheet.htm](http://www.humanrightsfirst.com/us_law/etn/misc/factsheet.htm) have both mentioned the Peleliu. According to The Age, the Peleliu was one of the ships he was taken to. <http://www.theage.com.au/news/in-depth/nowhere-man/2007/03/31/1174761817976.html>

## Liberties president cleared of sexual harassment charges

Sexual harassment charges against the president of the Council of Civil Liberties of WA, Peter Weygers, by the WA Education Department have been thrown out.

The WA Industrial Relations Commission recently found Mr Weygers had been denied natural justice and procedural fairness over the four-year-old charges.

Mr Weygers, a former Mayor of Claremont, has called on the State Government for an unreserved apology and \$3m in damages in relation to both the Glendale Primary School charges and the allegation by WA Police that he was a 'person of interest' in the Claremont serial murder investigation into the deaths of two young women and the disappearance of a third in the mid-1990s.

WA Police have a penchant for declaring people 'persons of interest', often with little or no evidence. The police declaration in Mr Weygers' case killed his political ambitions and neutered the civil liberties movement in WA for a decade.

## SHORTS:

**McCallum stands for UN committee:** Australia, which in July was one of the first western nations to ratify the UN Convention on the Rights of Persons with Disabilities, has been invited to nominate for the UN Committee monitoring implementation. The Australian Government has nominated Prof Ron McCallum of U. Sydney as our candidate for election. Elections are in early November.

**Human Rights Medal to be awarded:** The 2008 Human Rights Medals and Awards Ceremony will be held in Sydney on 10 December. The new President of the Australian Human Rights Commission, Catherine Branson will deliver her first human rights oration at the luncheon ceremony. Details and bookings: 02 9284 9618 or [www.humanrights.gov.au/hr\\_awards/tickets.html](http://www.humanrights.gov.au/hr_awards/tickets.html)

**Alliance protests Queensland police probe:** The Media Entertainment and Arts Alliance has again urged the government to introduce adequate shield laws to protect journalists following reports that Queensland police investigators were secretly accessing journalists' private information. The Queensland Police Commissioner has denied this claim and insisted only one reporter was being investigated. Read the Alliance release here: <http://tinyurl.com/3n97d2> and *The Australian* story: <http://www.theaustralian.news.com.au/story/0,24897,24423050-7582,00.html>

**Law firm helps to fight for rights:** Law firm Trilby Misso has contributed \$15,000 for the Queensland Council for Civil Liberties to employ a project officer (with duties split between Erin Thomas and Joern Herrmann) to undertake research and report writing towards a charter of rights for Queensland. On another issue, the organisation has criticised the State Government for bringing in majority verdicts in criminal trials. – from QCCL newsletter for September 2008

**Federal Court gets more say over native title claims:** The Federal Court will assume a central role in managing all native title claims in future, to encourage negotiated settlements. Under the new system, the court will determine which claims to refer for mediation, when mediation should occur and which body, whether the Court or the National Native Title Tribunal, should mediate. Legislation will be introduced to Parliament in 2009 to implement the changes, Attorney-General Rob McClelland announced last month.

**Senate grants de facto couples court access:** The Senate last month passed legislation enabling de facto couples to access the federal family law courts on property and maintenance matters. The legislation does not discriminate between opposite-sex and same-sex de facto couples...but marriage laws remain unaltered.

**UN expanding, in Parliament and the Pacific:** The Australia-United Nations Parliamentary Group has held its first meeting, when Melissa Parke (Femantle, ALP) was elected chairperson, Senator Russell Trood (Qld, Lib, *pictured right*) was elected vice-chairperson and Senator David Feeney (Vic, ALP) secretary. The Department of Foreign Affairs and Trade has allocated \$45,000 to the association to establish three UN associations in Pacific countries during 2008-09.



**Chance to link with China:** Law firms wanting ties with China might like to link into the 2009 Australia-China Legal Profession Development Program. Chinese lawyers and government officials arrive in Australia on 6-7 February, and undertake a 12-14 week placement from 9 March. Contact the International Legal Services Advisory Council, Sandra Purser 02 6250 6749 or e: [sandra.purser@ag.gov.au](mailto:sandra.purser@ag.gov.au)

**SA A-G gets his Wii mixed up with his X-Box:** CEO Bill Rowlings did an interview last month with Perth freelance journalist James McGrath re the need for a 'mature age' video games classification, which CLA supports (if there has to be any censorship at all). South Australian Attorney-General Michael Atkinson appears to be a national stumbling block, holding out against introduction of an 'adult' classification for video games. An R18 classification was discussed at the Standing Committee of Attorneys-General (SCAG) in March, but vetoed by Mr Atkinson. Australia's current ratings system for video games only goes to MA15+, making it out-of-kilter with movies and books. Mr Atkinson's reason for resistance is that children could not be trusted to not access video games...an interesting commentary perhaps on his own household, which contains teenage children. The issue highlights that SCAG needs to introduce procedural reform: one wowsler should not a national policy make.

**Vietnam decides not to execute Australians:** Two Australians facing the death penalty in Vietnam will receive clemency, Vietnamese Prime Minister Nguyen Tan Dung announced in Canberra last month. Jasmine Luong and Tony Manh, both of NSW, would not be executed by firing squad, he said. Both were convicted of heroin trafficking.

## INTERNATIONAL

### Britain's DPP warns of 'paranoia'

Outgoing Director of Public Prosecutions Sir Ken Macdonald warned that the expansion of technology by the state into everyday life could create a world future generations "can't bear".

In his wide-ranging speech, Sir Ken appeared to condemn a series of key Government policies, attacking terrorism proposals – including 42 day detention – identity card plans and the "paraphernalia of paranoia".

Instead, he said, the Government should insist that "our rights are priceless" and that: "The best way to face down those threats is to strengthen our institutions rather than to degrade them."

Sir Ken, who has held the post for the past five years, said: "We need to take very great care not to fall into a way of life in which freedom's back is broken by the relentless pressure of a security State. Technology gives the State enormous powers of access to knowledge and information about each of us, and the ability to collect and store it at will."

At the last estimate, there were 4,285,000 CCTV cameras in Britain.

Sir Ken warned that increased powers of the state in law could be "with us forever". He said: "It is in the nature of State power that decisions taken in the next few months and years about how the State may use these powers, and to what extent, are likely to be irreversible. They will be with us forever. And they in turn will be built upon. So we should take very great care to imagine the world we are creating before we build it. We might end up living with something we can't bear."

Sir Ken warned Parliament to resist "special courts, vetted judges and all the other paraphernalia of paranoia" in the fight against terrorism. That risked copying "the Guantanamo model.... which says that we cannot afford to give people their

rights, that rights are too expensive because of the nature of the threats we are facing".

"It is difficult to see who will maintain a cool head if governments do not. Or who will protect our Constitution if governments unwittingly disarm it."

Britain was right to tackle terrorism and other "medieval delusions" through the courts, he said. This was "in accordance with our constitution".

<http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/3230452/Centuries-of-British-freedoms-being-broken-by-security-state-says-Sir-Ken-Macdonald.html>

### MI5 supremo says 2001 terror response 'huge overreaction'

A former head of MI5 has described the response to the 11 September 2001 attacks on the US as a "huge overreaction": she said the invasion of Iraq influenced young men in Britain who turned to terrorism.

In a *Guardian* interview, Stella Rimington called al-Qaida's attack on the US "another terrorist incident" but not qualitatively different from any others. "That's not how it struck me. I suppose I'd lived with terrorist events for a good part of my working life and this was, as far as I was concerned, another one," she says.

In common with Dame Eliza Manningham-Buller, who retired as MI5's director general last year, Rimington, who left 12 years ago, has already made it clear she abhorred "war on terror" rhetoric and the British Government's plans (recently abandoned) to hold terrorism suspects for 42 days without charge.

<http://www.guardian.co.uk/politics/2008/oct/18/stella-rimington-9-11-mi5>

### DNA backlog continues to rise

Despite concentrated efforts by the US government, including nearly \$800m in grants since 2004 to help crime laboratories, there is a huge nationwide backlog of cases awaiting DNA analysis.

In Los Angeles, where the Police Department has the largest known backlog, there are about 7,000 cases stacked up, including many with rape kits from sexual assaults. The backlog comprises a mix of open cases and solved cases awaiting analysis and entry of DNA into state and national databases.

An audit released last month by the LA city comptroller found that 217 backlogged cases involved sexual assaults so old the 10-year statute of limitations had lapsed.

<http://www.nytimes.com/2008/10/25/us/25dna.html>

### Bars clang closed on democratic rights

The American Civil Liberties Union has released a report on the special difficulties ex-convicts face in getting the right to vote in America, the October blog of *Fitch, our Man in Washington*, reported.

"The Republicans reckon most prisoners are Democrats, so they actively discourage restoration of voting rights to ex-convicts. Maybe the Bush administration should back the ACLU on this. In future, many of the felons completing their debt to society could be Republicans." Ouch!

[http://legaltimes.typepad.com/blt/files/votingwithacriminalrecord\\_report.pdf](http://legaltimes.typepad.com/blt/files/votingwithacriminalrecord_report.pdf)

### 14 countries in Asia still execute under death penalty

More than two thirds of the world's countries have abolished the death penalty in law or practice.

- 91 countries have abolished the death penalty for all crimes;
- 11 have abolished for all except extraordinary crimes such as those in times of war;
- 35 countries are de facto abolitionists: the death penalty is still provided for in legislation but no executions have been carried out for at least 10 years.

Therefore, 137 countries have abolished the death penalty de jure or de facto. However, 60 countries and territories still kill people judicially: 24 countries carried out executions in 2007.

Asia executed more than 664 people in 2007, even though 27 countries have abolished the death penalty in law or in practice while only 14 continue to execute.

<http://www.worldcoalition.org/modules/news/article.php?storyid=153>

## Saudis executing three each week

The Saudi Arabian government is executing an average of more than two people a week, almost half foreign nationals from poor and developing countries, according to an Amnesty report.

In 2007, there was a sharp increase in executions, with a total of at least 158 people (three a week) put to death compared with 39 executions in 2006. So far in 2008, there have been a further 71 executions to the end of August. A new surge of executions was expected after the end of the holy month of Ramadan in early October.

## Photo montage records UK's surveillance state



Two organisations, ORG and No2ID, put on a "Big Picture" event in Parliament Square in London last month. They constructed a massive 4m x 5m collage of photos uploaded by their members of UK surveillance state ephemera over the preceding two weeks.

The result was a huge, Big-Brotheresque photo of British Prime Minister Gordon Brown looking over Parliament Square against a background of barbed wire, handcuffs and double helices: an image of the society of total surveillance the UK is rapidly becoming, organisers said.

"Our message was clear: although as individuals we only see incremental invasions of our privacy, put together, these creeping changes constitute a wholesale shift towards a society predicated not on freedom, but on fear."

*Photo above, by Stephen J. Johnson, shows Big Ben under surveillance for acting suspiciously as it prepares to chime out, obviously for freedom.*

<http://www.openrightsgroup.org/2008/10/11/freedom-not-fear-the-big-picture-unveiled-on-parliament-square/>

## Government to spy on all British communications

The British Government plans to monitor and store the email, telephone and internet browsing records of everyone in the nation...and, therefore of course, anyone communicating with the UK.

The \$30 billion eavesdropping program would create a huge central database storing billions of individual communications. – from a Nick Allen report out of London, supplied by Jan Whitaker

<http://www.theage.com.au/world/britons-face-spying-on-all-emails-and-calls-20081006-4v0k.html>

## US tapped intimate calls, two eavesdroppers say

Intelligence analysts eavesdropped on personal calls between Americans and their families at home and monitored the communications of workers with the Red Cross and other humanitarian organizations, according to two military linguists involved in US surveillance programs.

The government monitors transcribed and passed around embarrassing information for their own enjoyment.

What the reports don't emphasise is that the USA is doing the same for any calls emanating out of the Middle East, including those of Australians and other coalition allies. The US ignores entirely the international illegality of spying on non-Americans.

The linguists said that recordings of intimate conversations between citizens and their loved ones were sometimes passed around, out of prurient interest, among analysts at an electronic surveillance facility at Fort Gordon in Georgia, one of three such facilities in the USA (the others are Texas and Hawaii)

– from a Greg Miller report, in the *Los Angeles Times* 10 Oct 08, supplied by Robt Briggs. [http://www.latimes.com/news/printedition/front/la-na-intel10-2008oct10\\_0\\_1778799\\_story](http://www.latimes.com/news/printedition/front/la-na-intel10-2008oct10_0_1778799_story)

## Make cannabis a regulated product, report to UN says

A report on cannabis for the 2009 UN drug policy review proposes that a "regulated market" would cause less harm than the current international prohibition.

Controls such as taxation, minimum age requirements and labelling could be explored, it suggests.

The Global Cannabis Commission report, launched last month in London, "challenge(s) the received wisdom concerning cannabis". It was carried out for the Beckley foundation, a UN-accredited NGO, for next year's UN strategic drug policy review.

The report says there are 160 million cannabis users throughout the world. "Although cannabis can have a negative impact on health, including mental health, in terms of relative harms it is considerably less harmful than alcohol or tobacco," the report says. "Historically, there have only been two deaths worldwide attributed to cannabis, whereas alcohol and tobacco together are responsible for an estimated 150,000 deaths per annum in the UK alone."

The report, compiled by a group of scientists, academics and drug policy experts, suggests that much of the harm associated with cannabis use is "the result of prohibition itself, particularly the social harms arising from arrest and imprisonment." Policies that control cannabis, whether draconian or liberal, appear to have little impact on the prevalence of consumption, it concluded.

– from a Duncan Campbell report in *The Guardian*, 2 Oct 08  
<http://www.guardian.co.uk/society/2008/oct/02/drugsandalcohol.drugspolicy>

## Mandatory sentencing drives up costs

The mass imprisonment philosophy has hit hard in California, which has the largest prison population, the highest recidivism rate and a prison budget raging out of control.

According to university study, the state's corrections costs have grown about 50% in less than a decade and now account for about 10% of state spending — nearly as much as higher education. The solution for California is to shrink its vastly overcrowded prison system, according to an editorial in the *New York Times* (25 Oct 08). "To do so, it would need to move away from mandatory sentencing laws that have proved to be disastrous across the country — locking up more people than protecting public safety requires."

More people are sent to prison in California by parole officers than by the courts, and about 66 % of California's parolees land back in prison after three years, compared with about 40% nationally. Four in 10 are sent back for technical violations like missed appointments or failed drug tests.

<http://www.nytimes.com/2008/10/25/opinion/25sat1.html>

## MS woman loses suicide court case

The High Court of England and Wales refused last month to clarify a law against helping terminally ill people to die.

Two judges expressed "great sympathy" for Debbie Purdy, but ruled that clarifying the law on assisted suicide could only be done by the British Parliament.

Purdy, 45, was diagnosed with MS in 1995. She asked for the High Court to order the director of public prosecutions to make the position on assisted suicide clear so she could know whether her husband, Omar Puente, faced prosecution if he helped her travel abroad to die.

Lord Justice Scott Baker and Mr Justice Aikens ruled that the DPP did not need to issue a clarification. "We cannot leave this case without expressing great sympathy for Ms Purdy, her husband and others in a similar position who wish to know in advance whether they will face prosecution for doing what many would regard as something that the law should permit, namely to help a loved one go abroad to end their suffering when they are unable to do it on their own," Baker said.

"This would involve a change in the law. The offence of assisted suicide is very widely drawn to cover all manner of different circumstances ... only parliament can change it."

The judges granted Purdy permission to appeal because the case was in the public interest. Assisted suicide carries a penalty of up to 14 years jail in England and Wales.

## Young England RU rep commits suicide after scrum collapse

A 23-year-old former England U16 rugby player has committed suicide in a Swiss euthanasia clinic after being paralysed from the chest down when a scrum collapsed at training 18 months ago.

Police are investigating, because in the UK — as in Australia — the legal status of people who assist such a suicide is at best unclear or at worst opens them up to charges of murder or manslaughter.

Daniel James, formerly a hooker with Nuneaton rugby club, felt his body had become a "prison" and lived in "fear and loathing" of his daily life, his parents said.. He had tried to kill himself several times after the collapsed scrum dislocated his neck vertebrae, trapping his spinal cord and rendering him instantly tetraplegic.

<http://www.guardian.co.uk/uk/2008/oct/17/law-switzerland>

## Gays can now marry legally in Connecticut

The Supreme Court in Connecticut struck down the state's civil union law on last month and ruled that same-sex couples have a constitutional right to marry.

Civil Liberties Australia A04043

Connecticut has joined Massachusetts and California as the only US states to have legalized gay marriages. This month, however, voters in California will have the final say on whether that state constitution should permit same-sex marriage.

The Connecticut ruling, which cannot be appealed, took effect on 28 October. The court held 4-3 that a state law limiting marriage to heterosexual couples, and a civil union law intended to provide all the rights and privileges of marriage to same-sex couples, violated the constitutional guarantees of equal protection under the law.

<http://www.nytimes.com/2008/10/11/nyregion/11marriage.html?pagewanted=2&em>

## INTERNATIONAL SHORTS

### Same-sex marriage peeks out from behind the 8-ball:

California voters will be asked this month — in Proposition 8 — to amend the State's Constitution to stop people of the same sex from marrying. The measure would overturn a State Supreme Court decision that said everyone has a basic right "to establish a legally recognized family with the person of one's choice". The ruling made California the second US gay marriage state, following Massachusetts in 2004. If passed, Proposition 8 would add language to the State Constitution stating that "only marriage between a man and a woman is valid or recognized in California". Similar marriage amendments are on the ballot next month in Arizona and Florida.

### Police surveil peaceful protestors:

Police in the US State of Maryland are in hot water for targeting what they termed "fringe people...those who wish to disrupt the government". The 53 citizens, who merely joined gatherings opposed to the Iraq war and capital punishment, were subjected to 300 hours of surveillance devoted to data-smearing them. A report described the police action as "an instructive example of the abuses that can result when the mere invocation of 'terrorism' is understood to override constitutional protections".

<http://www.nytimes.com/2008/10/10/opinion/10fri3.html?th&emc=th>

### Police to take instant fingerprints on the street:

Police throughout the UK are to be equipped with mobile, handheld fingerprint scanners for identity checks on people in the street. The technology, which ultimately may be able to receive pictures of suspects, will involve tens of thousands of sets as compact as BlackBerry smartphones. To address fears about mass surveillance and random searches, police insist fingerprints taken by the scanners will not be stored or added to databases. <http://www.guardian.co.uk/politics/2008/oct/27/project-midas-fingerprint-scanner-liberty>

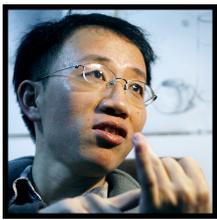
### Afghani journalist jailed:

After waiting 10 months for his appeal hearing, young Afghani journalist Parwiz Kambakhsh last month had his death sentence overturned. However, he will serve 20 years in jail, sentenced for allegedly downloading and distributing material about the rights of women under Islam. Australian troops are fighting to cement in place this travesty of the 'rule of law'. More: <http://tinyurl.com/5womrv>

**Judges go wigless:** 1 October was the day that judges in UK civil courts sat bareheaded, abandoning 300 years of tradition. Lord Chief Justice, Lord Phillips, felt that wigs made judges seem fusty and out of touch. Judges in criminal trials will keep their wigs for the time being, because their horse hair headgear confers some anonymity should they ever meet the accused in the street. The civil court judges will now wear

simpler robes, and no longer need to don wing collars and bands. <http://www.guardian.co.uk/uk/2008/oct/01/9>

**Editorial - Bringing an End to 'Libel Tourism',** NY Times, 29 Sept 08: The House of Representatives has passed a good bill that would prevent American courts from enforcing libel judgments obtained in foreign countries if those countries provide less free speech protection than the United States does. The Senate should pass a companion bill before it recesses, and the president should sign it. The bill on "libel tourism" strikes an important blow for free expression. American law imposes a high bar on libel lawsuits — far higher than many other countries. To get around these free-speech protections, some plaintiffs have been bringing lawsuits in Britain where libel protections are notoriously weak... <http://www.nytimes.com/2008/09/30/opinion/30tue3.html?th&emc=th>



**Jailed Chinese wins human rights prize:** Europe's Sakharov Prize for Freedom of Thought has gone to Chinese human rights defender, Hu Jia (pictured left), for 2008. The prize is for individuals or organisations committed to advancing human rights or democracy. Hu Jia is currently serving a three and a half year sentence for subversion in a prison near Beijing. He was imprisoned shortly after

presenting evidence of human rights violations in China at a hearing of the European Parliament. [http://www.europarl.europa.eu/news/public/story\\_page/015-39965-294-10-43-902-20081020STO39964-2008-20-10-2008/default\\_en.htm](http://www.europarl.europa.eu/news/public/story_page/015-39965-294-10-43-902-20081020STO39964-2008-20-10-2008/default_en.htm)

**French database pared after civil society mobilises:** Following strong public opposition, the French Government have abandoned the proposed EDVIGE database, only to replace it with a modified EDVIRSP. The new database will exclude people's health or sexual orientation, but retain personal data such as ethnical origin, as well as political, philosophical, religious opinions or union affiliation. Police may no longer collect data in the same file on people belonging to political parties, unions or religious groups only because of their activities – criteria for data gathering will be related to perceived security threats. Police may still store data on minors from age 13 if they are considered a threat to public safety. <http://www.edri.org/edriagram/about>

**UK gives up its dead to stop fraud:** The UK will release death records publicly for the first time to try to stop fraudsters stealing identities of dead people. Registered and approved organisations, including credit reference agencies, will receive encrypted files with details of everyone who has died in the UK that week, about 12,000 on average. Identity crime is reportedly costing the UK about \$4bn a year (the Australian Bureau of Statistics estimates the Australian figure is \$1bn, with 500,000 victims in the past 12 months). <http://www.guardian.co.uk/money/2008/oct/06/identityfraud.debt>

**UK loses yet another sensitive Defence hard drive:** The British Defence Department has admitted that a computer hard drive with the names and personal details of half the people serving in the country's armed forces – about 100,000 – has disappeared; it also contained data on 600,000 potential recruits. The hard drive belonged to a contractor and was used by the firm to test computer equipment. <http://www.abc.net.au/news/stories/2008/10/10/2388166.htm?section=justin> and <http://www.timesonline.co.uk/tol/news/uk/article4923066.ece>

**Nobody is beneath the law's protection:** "There is no place for torture and abuse in a police station. No person is above the law, and nobody – even a suspected murderer – is beneath its protection," said Patrick J. Fitzgerald, US attorney for Illinois, commenting on the arrest and charging of former Chicago police commander, John Burge, 60, for brutalising criminal suspects in the 1980s. If found guilty, he faces up to 20 years in prison for each obstruction of justice charge, five years for perjury and a \$250,000 fine on each count. the Chicago Police Department, which fired Mr. Burge in 1993. <http://www.nytimes.com/2008/10/22/us/22chicago.html>

**Germany says 'no' to see-through scanner:** Germany will not participate in EU proposals for airports to use full-body scanner security checks, which have raised privacy issues, its interior ministry said last month. "I can tell you in all clarity that we will not take part in this nonsense," a spokeswoman for the interior ministry told a news conference. Trials of the 'nonsense' are continuing in Australia. <http://www.theage.com.au/articles/2008/10/27/1224955916415.html>

## Report to CLA members: key activities for October

### Media:

Interviews: Andrew Fraser *Canberra Times*, marking Government's performance; CLA achievements re Bali 9, reporting on extradition; Peter Fray, editor; John McNamara, editor *Public Sector Informant*.

WA: Community publications re Perth issues

SA: request for suppression orders

NSW: Clubs and fingerprint/scanning devices

Ch 9: interview on wider police use of Tasers, Australia-wide

Community Radio 2XXfm: interviews on current activities

SBS Radio: re ASIO annual report

4AB/QUT: internet censorship

### Networking Meetings

David Pope, cartoonist, *Canberra Times*

Law Council of Australia re Model Litigants, with Ernst Willheim

Farewell for Dr Deb Foskey (Greens), ACT Leg. Assembly

David Tennant, College of Law ANU

Farewell for Wayne Berry, Speaker, ACT Legislative Assembly

Senator Russell Trood, Parliament House

Chris Hayes, MHR Parliament House

Prof Kim Rubenstein, Centre International Public Law, (CIPL)

College of Law, ANU

Interviewed CLA member Keith McEwan for National Library of Australia oral history series

Simon Rice ANU, new chair, Law Reform Advisory Council ACT

Harry Evans, Clerk of the Senate

### Membership extension:

Letters to 82 candidates for ACT elections

### Cases:

Individual cases dealt with, new method of management being introduced – Phyllis Ives to take over as Inquiries/Cases Hub manager:

Issues handled this month include: sniffer dogs/public humiliation, bicycle helmets, CCTV and privacy violation, Customs, online gambling, police threat to individual, whistleblowing

### Meetings with students:

New internship, Teddy Neave, topic: *NGOs and the Law* (Note: mentor lawyer sought)

New group of law students interested in human rights, plus Law Society students ANU re alternative careers.

#### Meetings/conferences attended:

Conference on Bi-Cameralism, Parliament House  
Election debate, ACT Legislative Assembly; Election Night, Tally Room, ACT  
AGM of Voluntary Euthanasia Society  
Forum to mark 60 years UN Declaration of Human Rights  
Intergenerational Forum, Prof Sol Enzel of UNSW  
CIPL International Conference, Nat Museum of Australia on Public Law and Public Leaders

#### Legislative hearings:

Whistleblowing

#### Submissions - under preparation:

Coronial inquests  
Fingerprinting/scanning at nightclubs  
Internet censorship

#### Current major projects:

Progress on CLA radio program  
Model Litigants project  
TV advertisements  
Fundraising

**NOTICE OF BOARD MEETING:** Next meeting of the CLA Board will be on 9 Nov: please email any input to [secretary@cla.asn.au](mailto:secretary@cla.asn.au) by Wednesday 5 Nov 08

#### DATES:

**6 Nov, Sydney:** Colloquium on Climate Change and Sustainable Development: Challenges for the Pacific, 3–7pm, Faculty of Law Building, UNSW, Kensington Campus RSVP ASAP: <http://www.law.unsw.edu.au>

**7-8 November 2008, Germany:** Social Web – civil society towards networked protest politics, University of Siegen. Drawing on concepts of associative, deliberative or participatory democracy, the conference will explore new internet opportunities through widening the scope for active public debates. <http://www.e-politik.de/blog/18032008/Social-Web-Towards-Networked-Protest-Politics.html>

**12 Nov, Melbourne:** [Id]entity 08, conference on privacy, ID management, IT and data security, run by the Office of the Victorian Privacy Commissioner. Info and rego: <http://www.privacy.vic.gov.au/> Cost: \$198.

**14-15 Nov, Sydney:** 2nd National Access to Justice and Pro Bono Conference, Sydney Masonic Centre. Details: <http://www.a2j08.com.au/>

**9 Dec, Melbourne:** *Dignity, Fairness and Good Government: The Role of a Human Rights Act*, Lord Thomas Bingham, former senior law lord of the UK, 6–7.45pm, Mallesons Stephen Jaques, 600 Bourke Street, cost: \$25/\$15 concession, booking essential, <http://www.hrlrc.org.au>

**10 Dec, Australia:** Government to announce six-month national consultation of whether Australian should have a Charter of Rights and Responsibilities: \$2.8m funding announced in May 2008 Budget

**10 Dec, Sydney:** Human Rights Medals & Awards Ceremony, Australian Human Rights Commission. [www.humanrights.gov.au/hr\\_awards](http://www.humanrights.gov.au/hr_awards)

**12-15 Dec 2008, India:** 9th International Conference of Chief Justices of the World Global Symposium: 'Awakening Planetary Consciousness', Lucknow. Details: <http://wmgd.net/symposium/>

#### 2009:

**20 Feb, worldwide:** World Day of Social Justice

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

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

**2010: 10/10/10, World:** Target date to start the CLA-promoted death penalty moratorium – 10/10 for Life.

#### **LAST WORD: US Justice Department perfects circular argument, with pike**

Talk about chutzpah!

The US Justice Department has told the District of Columbia courts that "we can't release from Gbay into the USA now the (innocent) Uighurs because "we treated them so bad, we made them mean!" This is like the defendant charged with killing his parents asking for pity because he's an orphan.

The circular reasoning defies all logic: The US Government has been telling foreign countries these Uighurs were entirely innocent of any wrongdoing and thus it was perfectly safe for other countries to take them. Then, in the habeas cases in Washington, the US Government has been taking exactly the opposite position, which has killed off all the State Department's negotiations.

Now the US Government has added a third Alice in Wonderland layer by claiming that if the detainees are released into the USA, the foreign countries will be less likely to take detainees. Heads I win, tails you lose (coin on its edge, you lose double).

<http://www.scotusblog.com/wp/us-long-detention-makes-prisoner-more-dangerous/print/>

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*CLArion* is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: <mailto:secretary@cla.asn.au>

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