
National charter of rights debate to launch on 10 December

The national consultation over the need for a charter of rights and responsibilities in Australia is scheduled for launch on 10 December, international Human Rights Day. It is hoped that Prime Minister Kevin Rudd will launch the \$3m consultation, joined by Attorney-General Robert McLelland and Home Affairs Minister Bob Debus, both strong supporters of a charter. Without the PM's endorsement, the charter debate is likely to founder, CLA believes.

"For the consultation to succeed, there needs to be clear, consistent and long-term leadership by the PM," CLA President, Dr Kristine Klugman said. "This is a legacy he and the two Law Ministers should be proud to leave the nation."

A consultation period of only six months is envisaged. There is likely to be an expert panel leading the debate and holding meetings around Australia, with the Victorian model of people drawn from academia, both sides of politics, sport and the NGO sector one likely to be followed.

Four Australian States/Territories have already supported a charter of rights. The ACT enacted one in July 2004, and Victoria followed suit in 2006; both Tasmania and Western Australia have recently held statewide consultations, and come down on the side of introducing a state charter. In each case, they postponed a decision to await a federal lead.

A sum of nearly \$3m was set aside in the Budget in May 2008, and Attorney-General's Department staff have been working on discussion papers and organisation details for at least six months.

Justice forum points to new Indigenous and jury initiatives

A criminal justice forum, held in Canberra late last month at the initiative of Home Affairs Minister, Mr Debus, produced clear directions for new initiatives in Indigenous law and improving the quality of jury deliberations.

CLA had three members among the 80-odd who attended the Federal Criminal Justice Forum at Old Parliament House on 29 September, including a professor, a former chief justice and a university student.

The student, Rosheehan O'Meagher, said the purpose of the initiative was to enable many more voices to be heard in shaping the future of federal criminal law and procedure. "It worked really well, with a very broad range of issues considered and discussed," she said.

Strongest themes to emerge were the need for a new Indigenous legal framework that was more practical and culturally sensitive. It is likely to be a major initiative of Minister Debus in 2009 (see also next story).

The need to provide better education/training for jurors, particularly in criminal trials, also emerged as a major issue. The Attorney-General's Department is likely to concentrate on producing a better system for helping jurors cope with the increasing technological complexity of forensic/scientific evidence.

Other matters to feature prominently included the need for more consideration, consultation and compensation for victims of crime, and how to find a way to ensure that Australians don't face the death penalty overseas because of Australian Federal Police intelligence sharing.

http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_2008FederalCriminalJusticeReformForum_2008FederalCriminalJusticeReformForum

LAST WORD: Melbourne Cup day handicap race is vital

As Australia runs the 2008 Melbourne Cup, people will be waking up to a vital 'handicap' event in America, where some runners are competing with the added weight of being corruption and/or pork-barreling allegations. *Read the full story – last item in this bulletin.*

Advisory body readied for policy advice

A new national Indigenous law and justice advisory body is being established to provide high level Indigenous law and justice policy advice to the Australian Government.

The advisory body will include people from non-government bodies such as Indigenous legal services and family violence support services, and key justice sectors, such as police, corrections and the courts, as well as specialists in areas such as law reform, human rights and juvenile justice.

The body will be appointed from nominations received after a national consultation, which has already begun. Meetings this month will be in Alice Springs (1 Oct), Perth (6 Oct), Broome (7 Oct), Darwin (8 Oct), Brisbane (13 Oct) and Cairns (14 Oct). <http://www.ag.gov.au/indigenousadvisorybody>

Catholics rule, OK? Australia gets a say

The British Government may end the ban on Catholics sitting on England's throne, and allow women to figure in birth order in the succession, rather than giving up their place to younger male brothers, according to newspaper reports.

At present, neither Catholics, nor those who marry them, nor those born to them out of wedlock, may be in the line of succession. Any change in legislation would require the consent of Australia as a member nation of the Commonwealth.

The 1688 Bill of Rights, the Act of Settlement in 1701 and Act of Union in 1707 – reinforced by the provisions of the Coronation Oath Act 1688 – effectively excluded Catholics and provided for the Protestant succession, according to an article in *The Guardian* last month.

The London-based Australian constitutional lawyer Geoffrey Robertson QC said: "I welcome this as two small steps towards a more rational constitution. This arcane

and archaic legislation enshrined religious intolerance in the bedrock of the British constitution. In order to hold the office of head of state you must be white Anglo-German Protestant – a descendant of Princess Sophia of Hanover – down the male line on the feudal principle of primogeniture. This is in blatant contravention of the Sex Discrimination Act and the Human Rights Act."

<http://www.guardian.co.uk/world/2008/sep/25/anglicanism.catholicism1>

We need 'dobbers' in the service of the public: Minister

Special Minister of State John Faulkner wants Australia to abandon its traditional attitude to 'dobbers' as part of introducing new whistleblower laws.

He said last month that only about 75% of government employees were protected if they made public disclosures, and suggested whistleblower protections should be extended to ministerial staff.

Disclosures to parties outside government, such as the media, should also be considered, he said.

"We are trained from the schoolyard to deplore a dobber," Senator Faulkner said. "For a child, loyalty to a playmate in the face of authority is a simple virtue. But when we leave the schoolyard and enter into the adult world, our responsibilities also become adult."

"Loyalty to our colleagues or employers is an admirable virtue. But blind loyalty is a weakness," Samantha Maiden reported him as saying in her article online for *The Australian*.



The senator (pictured) spoke during the launch of *'Whistleblowing in the Australian Public Sector'*, the result of a three-year Australian Research Council grant. Lead author, Dr AJ Brown, calls for new public interest disclosure laws to benefit the community.

Public servants would be protected if they spoke up about misconduct including crime, corruption, abuse of

power, breach of trust, conflict of interest, negligence, incompetence, financial waste and actions or inactions that put public health, safety or the environment at risk.

Even if their claims were wrong, whistleblowers would be protected if they had acted in good faith.

Senator Faulkner said he planned to introduce new whistleblowing laws in 2009, after a parliamentary inquiry into the issue reported in February. (See item below).

CLA says the new laws should be called 'Public Benefit Disclosure', to more accurately reflect what they are meant to encourage.

Brown A. J. (2008) *'Whistleblowing in the Australian Public Sector'*, ANU ePress, September 2008

ISBN 9781921536182 \$29.95 or ISBN 9781921536199 (Online)

http://epress.anu.edu.au/whistleblowing_citation.html

<http://www.theaustralian.news.com.au/story/0,24318342-2702,00.html>

Swamped with information...

'The ultimate safeguard against the misuse of power by a government is the ability of its opponents and rivals to find out about, and draw attention to, its mistakes and misdeeds. Accountability is not a refined process which operates on an elevated plane, above sordid politics. Accountability operates down in the swamp of politics, amongst the crocodiles and mosquitoes. The political wetlands sustain our cultural life and biodiversity; without them the desert of despotism assumes the landscape.' – *Clerk of the Senate, Harry Evans, address to the National Press Club, 11 April 2006*

Witnesses would lose right to silence

Changes to Queensland's criminal code, under debate in parliament, include an overhaul of the Crime and Misconduct Commission's (CMC) 'star chamber' powers.

The amendment states that a person brought before a CMC misconduct hearing is not entitled to remain silent or refuse to answer a question on a ground of privilege, other than legal professional privilege, public interest immunity or parliamentary privilege. Journalists and government whistleblowers are not entitled to any of the privileges.

Opposition Leader Lawrence Springborg said he would not support the laws if they hindered journalists or whistleblowers in doing their public duty. <http://www.brisbanetimes.com.au/news/queensland/journalists-face-jail-under-law-changes/2008/09/09/1220857516058.html>

Australia pays international drug barons

A possible \$12 billion in illicit drug money flows out of Australia each year, according to Australian Crime Commission estimates, *The Age* reported last month.

ACC chief executive Alastair Milroy said that between \$4 and \$12 billion in drug money went offshore each year.

The estimates come from an international operation, which led to seizing drugs worth more than \$1.5 billion and the launch of a sophisticated anti-money laundering strategy. More than 70 suspects have been arrested over drugs and money laundering offences since 2005, but traditional policing methods are failing to detect most drug importations, observers believe.

CLA says the 'drugs' problem will not start to be solved unless governments treat it as a normal commodity and a health issue, rather than a crime issue. The current drug policy has not worked for at least four decades: it is time for an entirely new approach to the 'drugs issue'.

<http://www.theage.com.au/national/12bn-in-illicit-loot-flowing-offshore-20080926-4ove.html?page=-1>

Help sow seed of freedom in religious debate

Australia's Race Discrimination Commissioner, Tom Calma, called last month for as many people as possible to join a discussion about the state of freedom of religion and belief in Australia.

Mr Calma was launching the Australian Human Rights Commission's *Freedom of religion and belief in the 21st century* discussion paper in Canberra.

"The fundamental human right of freedom of religion and belief is protected by international treaties and declarations," he said. "It encompasses freedom of thought on all matters and the freedom to demonstrate and express our religion and belief individually, with others, in private or in public."

The AHRC inquiry will examine and report upon whether/how these rights are enjoyed in Australia today by drawing from everyday experiences and observations.

CLA encourages members to make submissions, even if only one page long, supporting civil liberties principles, as church groups are likely to be highly active in promoting a particular point of view which may or may not accord with fundamental liberties and rights.

CLA member Elizabeth Murray put the issues differently, but accurately: "Freedom of religion is a basic liberty that is undermined by the exclusivity of many fundamentalist religions in Australia these days. As such, traditional Aboriginal spirituality and other matriarchal and earth-based religions are systemically discriminated against, which then promulgates a culture of intolerance, through widespread public ignorance and the destruction of sacred sites."

In calling for submissions from the public, the Commissioner pointed out that the intersection of religion and belief with human rights is illustrated daily in our news headlines.

"The involvement of religious institutions in school curriculums and practices, religious and ethical concerns about scientific research, the status of Muslim communities in society since the events of 11 September 2001, the involvement of religion in debates about homosexuality or abortion, and our politicians declaring their faith on the campaign trail – these are just some of the stories that involve us every day at the intersection of religion and belief with human rights," Commissioner Calma said.

Submissions close on 31 January 2009. See www.humanrights.gov.au/frb or email frb@humanrights.gov.au Info: 1800 620 241.

The *Freedom of religion and belief in the 21st century* project is being run in partnership with the Australian Multicultural Foundation, RMIT University and Monash University. *AHRC is the new name for what was HREOC.*

Queensland must bring in shield laws, media union says

The Queensland Government should urgently introduce shield laws to allow journalists to protect their confidential sources, the media union says.

The State Parliament amended the relevant Act last month so that anyone called before the Crime and Misconduct Commission may not to refuse to answer questions. The amendment particularly affects journalists wanting to protect their sources.

Journalists who refuse to reveal confidential sources, which is a long-standing part of the journalists' code of ethics, would be liable for criminal prosecution, a \$6375

fine or a year in jail.

"Time and again, in Queensland and elsewhere, crime and misconduct has come to light only through the work of journalists and the courage of their confidential sources," Judy Cannon wrote in UNity, the UN Association of Australia newsletter, on 19 Sept 08.

Greg Baxter, News Limited's director of corporate affairs, wrote to Ms Bligh on behalf of Australia's *Right to Know* coalition of print and electronic media, saying the CMC might not even exist if not for members of the media. Strangling their ability to do their job effectively would help nobody but wrongdoers, he wrote.

The government has said the amendment is needed to close a loophole that has hampered CMC investigations. However, the government has not explained why the legislation operates retrospectively.

The media union, MEAA, claims the Government has a moral duty to enact shield laws so Queensland people are kept better informed about the workings of government. Attorney-General, Kerry Shine, has agreed to examine the introduction of shield laws for witnesses before the CMC and in the wider context of the protection of confidential sources by referring the issue to the Queensland Law Reform Commission.

Website: www.alliance.org.au

Meanwhile, the Opposition Liberals National leader, Mr Lawrence Springborg, wants Parliament to be able to jail anyone who tells it a fib. He is proposing a new law that says:

False evidence before Parliament - A person who, during an examination before the Legislative Assembly or a committee of the Legislative Assembly, knowingly gives a false answer to a lawful and relevant question put to the person during the examination commits a crime.

Maximum penalty—7 years imprisonment.

It's called the Criminal Code (Truth in Parliament) Amendment Bill 2008. While CLA is all for truth in all parliaments at all times, seven years does seem like a harsh penalty. The proposed law also begs the question: have people been telling the Queensland Parliament porkies for generations and getting away with it?

Shield laws put on backburner in WA

New WA Attorney-General, Christian Porter (*pictured*), will not introduce shield laws to protect WA journalists in the short term, waiting until at least 2009, the West Australian reported late last month.



He said he is committed to the concept but the Barnett Government had other legislative priorities. These include scrapping truth-in-sentencing laws, where sentences might be discounted by a third, and introducing mandatory sentences for serious assaults against police. The Liberal Party promised to act on both issues before the recent election.

CLA, through Murdoch journalism lecturer Dr Johan Lidberg, helped the media union's WA branch craft draft media laws earlier this year. The initiative followed a parliamentary inquiry into a police raid on the *Sunday Times* over an alleged leak of Cabinet information.

Mr Porter in July called for then Attorney-General Jim McGinty to introduce shield laws before the State election. "I think our recent experiences in this jurisdiction, particularly with the events at the Sunday Times, have shown that there's a need for enhanced protection," he said. "I think the raid on the Sunday Times was a matter of significant concern," the West Australian reported him as saying. <http://www.thewest.com.au/default.aspx?MenuID=77&ContentID=100131>

Clarke runs late, reinforcing Haneef inquiry's poor impression

The Clarke Inquiry into the case of Dr Mohamed Haneef will run extensively over time, delayed until 14 November 2008, at least.

John Clarke is blaming "earlier delays caused by...access to information...in the UK", according to Attorney-General Robert McClelland.

Mr Clarke was due to report by 30 September, six months after the March inquiry announcement. The seven-week delay continues to reflect poorly on the entire inquiry process.

Mr Clarke cannot compel witnesses to appear, and is not taking evidence under oath, which caused CLA to comment earlier that the inquiry was "a farce on its way to becoming a fiasco". The delay only reinforces the impression the inquiry is wholly inadequate.

Don't turn car cameras into secret surveillance system, says APF

The Australian Privacy Foundation is calling on all Australian authorities to not turn their use of Automatic Number Plate Recognition (ANPR) technology into a secret database keeping watch on the movements of individual Australians.

The technology should report on 'target' vehicles (such as stolen cars or trucks), by exception rather than by compiling an image database daily of when each vehicle passes ANPR photo surveillance point throughout Australia, APF said.

APF media release: <http://www.privacy.org.au/Media/MR-080921-ANPR.pdf>

The call follows a report by Karen Dearne in *The Australian* that CRIMTRAC's planned automatic number plate recognition (ANPR) system could become a mass surveillance system, taking as many as 70 million photos of cars and drivers every day across a vast network of roadside cameras throughout Australia.

State and federal police forces want full-frontal images of vehicles, including the driver and front passenger, that are clear enough for identification purposes and usable as evidence in court.

"All vehicles passing through a fixed or mobile ANPR camera will have the data recorded and available for interrogation," CrimTrac told the Queensland TravelSafe inquiry into the use of ANPR for road safety.

David Vaile, executive director of the University of NSW's Cyberspace Law and Policy Centre, warned that the ANPR "could become the next Access Card". "As a public surveillance system that could be linked to facial recognition, this has enough technology behind it to

impinge on everybody's daily life," Mr Vaile said.

"CrimTrac has told us there will be 5000 cameras around the country, overwhelmingly in populated areas, taking some 70 million photos every day. He said it was false to represent the proposal as number plate recognition: "It's a photograph-all-drivers system."

CrimTrac is due to hand a \$2.2 million scoping study for an integrated ANPR to the Minister for Home Affairs, Bob Debus, and the Ministerial Council for Police and Emergency Management in November. <http://www.australianit.news.com.au/story/0.24897.24387179-15306.00.html>

(See later story: *50m licences a day to be captured in UK*)

Big Brother goes 3D via local council

Councils throughout Australia are being sold '3D' aerial mapping technology for their monitoring and planning needs.

The City of Sydney Council staff will be able to zoom in on photographs to see the sides of buildings, building on the council's aerial mapping program, E-view.

"It's a really sexy, complete model," said the marketer flogging the system, "...a 20-storey building at 50 Pitt Street, you can see how that's going to look, how the shadows will fall and so on."

Jon Fairall, editor of the aerial mapping industry magazine *Position*, said statutory authorities would increasingly use "3D models in which you can look at artefacts on the ground from any angle, from any distance, much the same as the technology in video games".

"The privacy implications are huge. I think the answer is that people need to know what other people know about them," he said.

"What people are frightened of is the idea that Big Brother sits up there and God alone knows what he knows."

Mr Fairall said climate change would also encourage Government authorities to use increasingly sophisticated geographic monitoring technology. The flipside was that this would mean more and more realistic data about people's backyards feeding into council and government computers.

E-View is used in NSW by the councils of Baulkham Hills, Byron Shire, Canterbury, Hornsby, Liverpool, Randwick, Sutherland Shire and several others. Wollongong City Council makes its online mapping system publicly available and the Department of Lands has its aerial mapping program on its website.

In Perth, the issue featured in the West Australian newspaper in late-September, with Joondalup, Swan and Stirling confirming their use of the system, and CLA was quoted by reporter Beatrice Thomas on the need for citizen auditing of how the technology was being used.

– various sources

It doesn't have to be that way...

Organisations in Australia can build privacy considerations into what they do – here's news of an international privacy award won by a Victorian government department:

"In the Large Organization category (more than 5,000 employees), the Victorian Department of Justice (Victoria, Australia) won for its national privacy education program designed to instill privacy impact assessment processes in project management, policy development and formal training efforts for all public sector employees across Victoria.

"In 2008, for the third year running, the Department worked with the Victorian Privacy Commissioner to create and deliver "Privacy Awareness Week," an education program directed at the 63 statutory entities and 6,000 full-time metropolitan and regional staff across Victoria. ... The Department's pragmatic program was distinguished because, as one judge remarked, "Clearly, privacy is built into this organization. It is in the very DNA of what the Department does."

The Department ranked as the highest-scoring entry of any winner in the entire 2008 Privacy Innovation Award contest."

– item supplied by Anna Johnston

<http://www.earthtimes.org/articles/show/international-privacy-initiatives-sweep-industry-privacy-competition-552544.shtml>

Dreyfus champions charter of rights

The chair of the House of Representatives' Legal and Constitutional Affairs Committee, Mark Dreyfus, made an impassioned call for people to get behind a national charter of rights and responsibilities.

Mr Dreyfus, a QC elected in 2007 from Isaacs in Victoria, was speaking on an adjournment motion in the House in early September.

"In this year's budget, the Rudd government provided for a national consultation on the recognition and protection of human rights and responsibilities," he said.

"...It is particularly appropriate that this provision be made this year, which in December will mark the 60th anniversary of the Universal Declaration of Human Rights. That declaration is part of Labor's human rights' legacy because of the large part played in its drafting by HV Evatt, later Labor leader and then President of the UN General Assembly.

"The national consultation will ensure that all Australians have the opportunity to speak and be heard on the rights we value, the rights we cherish and the rights we want to protect.

"There is nothing constitutionally impossible, and certainly no loss of parliamentary sovereignty, with a legislated charter of rights. The Victorian model does not give power to courts to override laws made by parliament.

"If courts find an inconsistency between those laws and fundamental human rights, the inconsistency is communicated to parliament, which has the final say. That is the model used in the UK and it has been found to be a workable model which has certainly not led to the suggestion that parliament has in some way surrendered its sovereignty.

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

CLA calls for fallback position if charter cause is lost

CLA, while supporting the national push for a charter of rights and responsibilities, has been drawing parliamentarians' attention to what happens if the charter debate is lost.

"Everyone is focused on having a debate about a charter," CLA President Dr Kristine Klugman (*pictured*) said. "But the real problem is that we need a benchmark in Australia against which to measure whether or not laws, like the anti-terror provisions and other regulations, are compatible with basic human rights.



"A charter would do that job. But what happens if the Labor Party gets scared, and won't champion a charter bill through parliament?

"CLA believes that defeat for the proposed charter is entirely possible. There is no indication that Prime Minister Kevin Rudd is solidly behind the move for a charter of rights. The reality in Australian politics is that you have much less hope of getting a borderline proposition through if the PM is not actively backing it," Dr Klugman said.

For that reason, CLA has for 12 months been actively promoting the concept of holding a Legal and Constitutional Committee inquiry into what are Australians' civil liberties and human rights.

"Such an inquiry would take evidence throughout Australia, hear what the people say and want, and produce a benchmark statement about what Australians' civil liberties and human rights should be in the early 21st century," Dr Klugman said.

"CLA believes that an inquiry along these lines will be almost mandatory if the push for a charter of rights and responsibilities fails.

"The need to scope and define our national liberties and rights is obvious. Our founding fathers didn't address the issue in detail, so it is unfinished business as far as the nation's constitutional development is concerned."

Get paid for whistling?

The Australian Parliament is investigating a US reward scheme that encourages public servants to report improper practices of government agencies.

The ANU's Associate Professor Thomas Faunce and research associate Tim Vines, a CLA member, have promoted to the Whistleblowing Committee (see report, *CLArion* September 08) the idea of 'Qui Tam' legislation which financially rewards whistleblowers who expose major government or corporate fraud with a proportion of the public funds recovered.

Committee chair Mark Dreyfus said the committee was interested in exploring a range of options to encourage and better support public servants who speak out about wrongdoing in the workplace. Evidence before the committee indicated that the current protections available for whistleblowers were inadequate. More info: www.aph.gov.au/laca; Committee Secretariat on 02 6277 2358.

Note: 'Qui Tam' refers to an old writ that allowed individuals to share in monies received when the Crown was part of a lawsuit. It is now best known for its use in the US context where a whistleblower shares in the financial benefit of exposing hidden malpractice.

A-G plumps for solving disputes alternatively

Alternative dispute resolution (ADR) is receiving a major kick-along by the Attorney-General, Robert McClelland.

In a speech in Perth last month, he disclosed he had asked the National Alternative Dispute Resolution Advisory Council to look at what types of incentives would encourage greater use of ADR, and what barriers need to be removed. NADRAC is an independent advisory council, drawn from dispute resolution practitioners, academics, lawyers, the judiciary and others throughout Australia.

"I have asked NADRAC to look at what types of incentives would encourage greater use of ADR, and what barriers need to be removed," Mr McClelland said. They will analyse:

- whether ADR processes should be mandatory in some cases;
- how best to overcome practical or cultural barriers to the use of ADR;
- whether greater use of private and community-based ADR services would be beneficial; and
- how to guarantee that these services are of the highest quality.

NADRAC will issue a discussion paper and seek feedback.

In the same speech, the A-G signalled strongly to the Public Service that its attitude must change.

"The Government cannot lecture others about the value of ADR processes without regard to its own position. I am encouraging Commonwealth departments and agencies to seek to resolve matters as early as possible," he said.

"I have amended the Commonwealth's Legal Services Directions so that litigation can only be started by the Commonwealth or its agencies after considering other potential methods of dispute resolution.

"And if litigation can't be avoided, they must continue to consider, and where appropriate, use other methods to resolve disputes during litigation.

"The Australian Government believes it is incumbent upon us all to nurture a 'resolution culture'. As a substantial litigator the Commonwealth can play a significant part in developing that culture," Mr McClelland said.

Crime Commission needs to change practices

A joint parliamentary committee has called for stringent new administrative and governance practices to make sure the Australian Crime Commission (ACC) doesn't exceed its already excessive powers.

The committee chair Senator Steven Hutchins (Lab, NSW) was so moved by the ACC's chicanery that he quoted Machiavelli in retaliation against the ACC's misfeasances.

The Parliamentary Joint Committee (PJC) on the Australian Crime Commission, in its report on the Inquiry into the Australian Crime Commission Amendment Act 2007, wants the ACC to implement "without delay" written, recorded reasons for deciding to summons someone...before the summons is issued. The Ombudsman is to audit the internal recording practices, and report annually to the Parliament.

As well, the committee wants a thorough, independent review of the ACC Act every five years, with the first by 1 January 2011. This is virtually a standing inquiry, indicating how concerned the committee is with the operations of the ACC.

"...the PJC is concerned that the legislation has clearly attempted to safe-guard individual rights while allowing the ACC coercive powers to effectively fulfil its function. And it appears that the statutory safe-guards have been consistently read down and diminished," the report said.

"The committee acknowledges the circumstances in which the Amending Act passed into law, and its effectiveness in immediately addressing ACC operational difficulties. But the PJC by no means wishes to condone such a dangerous precedent, finding that such legislation has no proper place among the laws of the Commonwealth.

"In the words of Niccolo Machiavelli, *One should never allow an evil to run on out of respect for the law, especially when the law itself might easily be destroyed by the evil.*"

CLA has consistently criticised how the over-broad powers of crime commissions are being abused throughout Australia.

Crime commissions operate above and beyond the normal law, and are extremely dangerous creations. Each of them in each Australian jurisdiction needs a thorough external review at least every five years and, preferably, a significant turnover of staff at the same time.

New Act makes Victorian prisons even more...Victorian

Victoria last month introduced a Corrections Amendment Act 2008, which denied justice to prisoners abused or wrongfully treated and did nothing to benefit the victims of crime that it claimed to assist, according to Melanie Schleiger of the Human Rights Law Resource Centre in Melbourne.

Under the Act, she says, any compensation paid to prisoners by the State or private prison operators is quarantined for at least 12 months, as well as being publicised in newspapers and on the internet, to inform people who might have claims against the prisoner.

"This perversely links a victim's chances of obtaining compensation to wrongful treatment of their offender. The victim must rely, first, on their abuser being abused in turn and, second, on the prisoner making a claim for compensation that they are unlikely to ever receive," she said.

"The Act will also result in various human rights breaches, including invasion of privacy, increased litigation costs, and the indignity of having the perpetrator of a wrong confiscate what they have been ordered to pay as recompense. This will deter prisoners from pursuing

damages, irrespective of how badly they have been treated.

"Women prisoners sexually assaulted by prison guards, prisoners denied medical care, prisoners bashed and abused in circumstances that could have been prevented and others are unlikely to pursue a claim knowing that any compensation will compulsorily be taken from them and advertised in a newspaper.

"This compounds the multiple and inter-related forms of serious disadvantage already faced by approximately half of Victorian prisoners in custody, including major mental illness, trauma from childhood sexual abuse, homelessness and unemployment, as well as illiteracy and a lack of education.

"Worse still, by deterring compensation claims, the Act makes prisons and prison officers even less accountable," Ms Schleiger said.

The Victorian Ombudsman had indicated that complaints about Victoria's private prisons had increased up to 400 per cent in the past two years, and some prisons were 'not fit for human habitation'.

In February this year, Professor Richard Harding described the current system of monitoring abuse and corruption in Victoria's jails as 'well short of what a democratic society is entitled to,' according to Ms Schleiger

– Melanie Schleiger, on secondment to the HRLRC, was writing in the October Bulletin

NT lawyer blames 'The Intervention' for rise in murders

The principal lawyer for the Northern Territory's peak Aboriginal legal aid service said last month that his organisation was dealing with an unprecedented number of murder cases, which he linked to failures of the federal intervention.

The Australian newspaper reported Glen Dooley saying the North Australian Aboriginal Justice Agency had eight clients facing murder charges after a run of killings starting in April. "We can say that in the 15 months of the intervention that we've now got unprecedented levels of killing. This shocks me. We'd normally pick up six killings a year. At this rate, we'll pick up 20," Mr Dooley said.

"The intervention could arguably be causing more violence through the levels of dislocation it's caused. There's nearly 17,000 Aboriginal people on income management. People are being treated like children."

<http://www.theaustralian.news.com.au/story/0,24295330-5006790.00.html>

Public Service chief plays merry-go-round with Parliament

Online news magazine *Crikey* has reported that Australian Public Service Commissioner Lynelle Briggs has declined to investigate allegations that the Department of Health and Ageing lied to a Senate Committee.

The case dates back to 2000, and the committee's investigation of circumstances surrounding a review of Positron Emissions Tomography (PET) scanners in 2000, Bernard Keane wrote in *Crikey*.

Recently, Commissioner Briggs wrote to Tasmanian doctor Rob Ware, the man who has for several years been pushing for an investigation into the review, and into changes allegedly made by the Department after the review was completed without committee members being informed.

Special Minister of State John Faulkner asked Commissioner Briggs to investigate the Department's provision of false information to the Senate Community Affairs Committee's inquiry into the PET review.

Former Senator Lyn Allison (now but not then a CLA member) and Senator Christine Milne called the Department's behaviour under Secretary Jane Halton "wrong, disingenuous and unhelpful, at best".

Commissioner Briggs has used Parliamentary privilege as an excuse not to investigate the issue, blaming advice from Senate Clerk Harry Evans:

"On the basis of this advice I have concluded that I am limited to any inquiry into the matters you have raised. Under Parliamentary process allegations that false or misleading evidence has been provided to a Senate Committee are matters for the Senate to inquire into... Mr Evans has confirmed that any alleged interference or obstruction of committee process is a matter for the Committee of Privileges... At this stage I do not see that I have any further role in these matters."

According to *Crikey*, Commissioner Briggs's failure to investigate serious allegations of politically-motivated obstruction of a Senate committee by senior public servants — "which is a flagrant breach of the Australian Public Service Code of Conduct" — creates the absurd situation that Senators who sought an investigation by the specialist agency with responsibility for such breaches have in effect been told to do it themselves.

"It is buck-passing of the most blatant kind and a significant shift in accountability for public servants," Keane wrote.

– from *Crikey*, 29 Aug 08, supplied by Mary Lander

<http://www.crikey.com.au/Politics/20080829-Briggs-declines-to-look-into-lying-allegations.html>

New boss for nation's electronic health: Peter Fleming has been named as NEHTA's new Chief Executive taking over leadership of the organisation from acting Chief Executive Andrew Howard at the end of September. Melbourne-based, Peter Fleming leaves his role as General Manager Technology, Business Integration, for National Australia Bank to take up the new role. He was formerly the Chief Information Officer for Mayne Group Limited and before that Colonial Group. <<http://slattery.slatteryit.com.au/rp//118/process.cisp?t=2DF7E977344D47804D1011595C927E5AB>>– supplied by Jan Whitaker

Discrimination on the way to being outed: The second stage of legislation removing same-sex discrimination from a range of Commonwealth laws is in train, introduced to parliament by the government last month. The amendments remove discrimination across social security, taxation, Medicare, veterans' affairs, workers' compensation and educational assistance. All changes are expected to be implemented by mid-2009, according to a government media release (A-G, 4 Sept 08). Earlier this year, the Rudd Government introduced legislation to

end same-sex discrimination in Acts governing Commonwealth superannuation schemes.

A \$400m Christmas present: The Parliamentary Standing Committee on Public Works has tabled its report into the planning and construction of the Christmas Island Immigration Detention Centre in 2003 at an estimated cost of \$276 million. It was not until February 2008 that the committee was informed that costs had increased to \$396 million. The committee found that the 43% increase in costs was a result of poor original cost plans followed by a badly managed project, including the failure to adequately assess the risks associated with building in such a remote location. Report: <http://www.aph.gov.au/pwc> or secretariat on (02) 6277 4636.

Euthanasia woman takes own life: Euthanasia advocate Caren Jenning 75, last month administered to herself a lethal dose of the barbiturate Nembutal, a powerful sedative banned for human consumption in Australia, which she had bought when in Mexico two years ago. Jenning was one of two women charged over 'assisting' the earlier death, in similar fashion, of a man in NSW – from UNAA, <http://www.unityunaa.info/>

Beware of police bearing lists: Read how skewed was the NSW Police list of 'dangerous' people banned from going anywhere near the APEC meeting in Sydney last year. "Our intelligence tells us there is an intent to act violently," said NSW Police Commissioner Andrew Scipione about those on the list. Former police officer and now academic at the Uni of Western Sydney, Dr Michael Kennedy says: "You can't make an international terrorist out of a Sydney Uni dickhead. In terms of public threat I'd say you don't even have the equivalent of a decent shoplifter in there (on the list). The document isn't useless, but it's getting there." SMH, 28 Sept 08. <http://www.smh.com.au/text/articles/2008/09/05/1220121526743.html>

WHISTLEBLOWING – Bureaucrats fight back against open government: Employees in the Attorney-General's Department are reportedly trying to water down proposed laws to protect whistleblowers in the Public Service. Departmental advice includes limiting protections to "disclosures" within approved channels. "Whistleblowing, by definition, means blowing the whistle so people can hear it, not so it can be dealt with and covered up internally," Chris Warren of the Media, Entertainment and Arts Alliance said, according to a report by Chris Merritt, legal affairs editor in *The Australian*. <http://www.theaustralian.news.com.au/story/0.25197.24279374-2702.00.html>

Life under a death sentence: In an article, 'The Penalty is Death', Luke Davies talks with Andrew Chan and Myuran Sukumaran, two members of the Bali Nine on death row. Mr Davies went to Kerobokan Prison with Monthly editor Sally Warhaft for the interviews. Andrew Chan, Myuran Sukumaran and their families speak for the first time about life under a death sentence. The article appears in the September issue of The Monthly magazine. <http://www.themonthly.com.au/tm/>



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

HREOC plays name game: The Human Rights and Equal Opportunity Commission (HREOC) has changed its name to the Australian Human Rights Commission (AHRC). The new corporate image is claimed to be the first step towards ensuring everyone knows that Australia has an independent national institution responsible for protecting and promoting human rights in Australia. Its legal name will remain the Human Rights and Equal Opportunity Commission. http://www.humanrights.gov.au/about/media/media_releases/2008/89_08.html

Self-censorship is self-defeating free speech: Twenty years on from *The Satanic Verses* it is time we took a stand against this trend (of self-censorship), writes Kenan Malik, a London author, lecturer and broadcaster, in *The Australian* on 26 Sept 08. He quotes Milton: "Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties," wrote 17th-century poet John Milton. "He who destroys a good book kills reason itself." Malik says freedom of expression is not just an important liberty; it is the very foundation of liberty, for without such freedom we cannot define what those liberties are." *How the West was lost for free speech*, <http://www.theaustralian.news.com.au/story/0.25197.24402637-7583.00.html>

Ex-policeman appointed jail visitor: Craig Sams has been appointed Official Visitor for ACT correctional facilities including the ACT's new prison, the Alexander Maconochie Centre, which opened officially on 11 September, though the first inmates are not due before November. "Mr Sams has extensive experience in community service and is uniquely qualified for this new role," According to ACT Attorney-General, Simon Corbell. "He served the AFP as a detective and federal agent for 13 years and has worked in education and Indigenous service provision."

Australian detained under sedition-like laws: Australian writer Harry Nicolaidis, from Melbourne, was detained in Thailand last month on charges of 'insulting the king'. He is being held in Bangkok awaiting trial, according to news reports. The International Federation of Journalists (IFJ) said he was accused under Thailand's *lese majeste* laws of offending the country's monarchy in a novel released three years ago. The Thai constitution dictates reverence for the king must not be violated, while the criminal code allows for a penalty of three to 15 years' jail for "defaming, insulting or threatening" the king, queen, heir-apparent or regent. Info: <http://asiapacific.ifj.org/en>

Report on key CLA activities – September:

Media

Community radio 2XX-fm, President Kristine Klugman on three occasions, to discuss current issues;
Media spokesperson comments on radio and in TV, and in print in Far North Queensland, Brisbane, Sydney, Perth, Canberra and nationally.

Networking meetings

Ms Denise Caldwell, Respecting Patients' Choices Program, Canberra Hospital;
Ms Sarah McCosker, Attorney-General's Department;
Dr AJ Brown author of report *Whistle While They Work*, released in September;
Mr Paul Chadwick, ABC Director Editorial Policies;
Mr Mark Scott, ABC Managing Director on digital public affairs channel;
Mr John Bennett, Whistleblowers Australia;
Ms Sue Harris Rimmer, Australian Lawyers for Human Rights;
Mr Gary Humphries MP re safeguarding ACT legislation.

Cases

Follow up with Minister Snowdon of case of suicide in Defence civilian staff.

Meetings/conferences

Dr Roger Clark, Chair, Australian Privacy Foundation and Ms Jan Hamilton, Board Member;
Dr June Verrier attended DFAT/NGO consultation forum;
Ms Sarah Moulds, Law Council of Australia re Government as Model Litigant project;
Mr Ken Archer and Mr Shane Gill, Barristers, Burley Griffin Chambers;
Mr John McMillan, Ombudsman;
Peter Ford ANU re law students internships;
Mr Bill Bush, President, Families and Friends for Drug Law Reform (ACT) Inc;
Mr Bob Debus MP Minister for Home Affairs;
Mr Mark Dreyfus MP;
Mr Iqbal Patel, President, Australian Federation of Islamic Councils;
Mr Peter Arnaudo, Assistant Secretary, Human Rights Branch, Attorney-General's Department;
Three CLA members attended the National Forum on Criminal Justice;
ACTCOSS Forum on strip searching in prisons.

Legislative hearings

Attended two House of Representatives Legal and Constitutional Committee meetings, chaired by Mark Dreyfus, on Whistleblowing in the Public Service: a Roundtable of interested prominent people on legislative changes, and a submission hearing involving Ms Lynelle Briggs, Public Service Commissioner, Ms Lynne Tacy (deputy) and Ms Annwyn Godwin, Merit Protection Commissioner.

Submissions

To Senate Legal and Constitutional Committee on review of terror laws (Troth/Humphries Bill).
To Australian and New Zealand Policing Advisory Agency on *Directions in Australia New Zealand Policing 2008-2011*

Current projects

Radio program through community radio networks on civil liberties and human rights;
Initiating alliance Australian Institute of Public Administration and Australian Lawyers Alliance on Government as 'Model Litigant';
Submissions to Parliamentary Committee inquiries;
Right to Protest in Parliamentary Precincts - follow up with Presiding Officers;
Lobbying Government and Opposition on Charter of Rights, Committee Inquiry into State of Civil Liberties in Australia
Networking across Australia in rural and regional areas

INTERNATIONAL:

Malaysian blogger jailed for two years under security law

The International Federation of Journalists (IFJ) has condemned the decision by Malaysia's Home Minister to detain blogger Raja Petra Kamarudin for two years under the country's draconian Internal Security Act (ISA).

The order, signed on 22 September by Home Minister Syed Hamid Albar, extends the detention for two years on the grounds that his writing poses a threat to "national security". He has not been subject to a trial, and the order was issued despite ongoing habeas corpus proceedings by his lawyers.

Raja Petra is a blogger and editor of the political website *Malaysia Today*. He has run the popular alternative political website for two years, and has broken a string of controversial stories on the site including a series of accusations against senior government members.

Journalist Tan Hoon Cheng, a reporter with the Chinese language daily *Sin Chew Daily*, and opposition politician Teresa Kok were both detained last week under the ISA and subsequently released.

<http://asiapacific.ifj.org/en/articles/ifj-condemns-detention-of-malaysian-blogger>

Chevron faces trail of its adherence to human rights

EarthRights International, a Washington-based NGO, on 27 October brings the landmark human rights case, *Bowoto v Chevron*, to trial before a jury in a US Federal Court in San Francisco.

Complainants will present evidence that Chevron was complicit in gross human rights abuses committed against Nigerian villagers peacefully protesting environmental abuses and other harm caused by Chevron's oil production activities.

The protest took place at a Chevron drilling platform. It is alleged that Chevron paid and ferried members of the notorious Nigerian military and 'kill and go' mobile police to the platform in Chevron-leased helicopters, and Chevron personnel supervised the operation. Two protesters were shot and killed in the brutal attack, and others were injured.

ERI are using the Alien Tort Statute (ATS) to try to hold Chevron accountable for alleged serious human rights violations. The ATS permits lawsuits in US federal courts for violations of international law. Details:

www.earthrights.org

– from Jacqui Zalberg of ERI, via Melbourne's Human Rights Law Resource Centre.

Myanmar writer freed after 19 years

Writer and editor U Win Tin was freed last month after 19 years' detention in a jail in Myanmar (Burma).

U Win Tin, a retired journalist, was the longest serving political prisoner in Myanmar. He was arrested on 4 July 1989, and sentenced to 20 years' jail accused of "anti-government propaganda".

Now in his 70s, U Win Tin (*pictured*) was released on 23 September after Burma's junta granted an amnesty to about 9000 prisoners for "good behaviour", according to state media.

U Win Tin was formerly the editor of the Hanthawaddy newspaper and vice-chairman of the Burma Writers' Union. He was a founder of the NLD, led by Aung San Suu Kyi, which won elections in 1989 but which was prevented from taking power.



Five other political prisoners were also reportedly freed, including another well-known writer, U Aung Soe Myint, and four members of the opposition National League for Democracy (NLD), according to the *Irrawaddy News*.

– UNAA newsletter, UNity

Labour minister says 14 year olds should get ID cards

A government minister has spoken glowingly of the prospect of kids as young as six handing over their biometrics as she boasted that the Tories and Liberal Democrats would find it impossible to unpick the UK Government's ID card scheme.

Meg Hillier, an Under Secretary at the Home Office, told a fringe meeting of tobacconists and convenience store owners at the UK Labour Party annual conference that cards could be given to 14-year-olds, according to BBC reports.

– Joe Fay, in online journal *The Register*: http://www.theregister.co.uk/2008/09/23/id_cards_offies/

Zimbabwe NGOs lay down minimums for transition

The Zimbabwe Human Rights NGO Forum at a workshop last month laid down their minimum demands for achieving 'transitional justice' in the country:

- No amnesty for:
 - a. crimes against humanity, torture and other international crimes;
 - b. rape and other sexual based crimes;
 - c. corruption and other crimes of greed.
- No extinguishing of civil claims against State perpetrators.

- No guarantee of job security for those responsible for gross human rights violations/corruption.
- Comprehensive reparations for victims of human rights violations.
- A credible and independent truth seeking inquiry into past conflicts which holds perpetrators to account and lets victims tell their stories to promote national healing.
- Independent monitoring and reform of the operations and structure of the police, army, paramilitary, security coordination, administration of justice, food distribution and other organs of state involved in implementing the transition.
- Developing interim or transitional rules to guarantee the rule of law and upholding of all basic rights during transition, including the right to engage in political activities. These rules must be enforceable, and encapsulated in amendments to the Constitution or an interim constitution. Such rules must remain in place until free and fair elections are held and until a final Constitution, endorsed by the people, is in place.
- Achieve gender equity in official bodies and for transitional justice initiatives to pay particular attention to marginalized communities.

<http://www.sokwanele.com/thisiszimbabwe/archives/1884>

Schoolboy's ball bearings gave game away

A British schoolboy, Hammaad Munshi, 18, has been jailed for two years after being found guilty of compiling information likely to be useful in terrorism.

He was 15 when recruited into an international group plotting to kill non-believers. Arrested on his way home from school, he was carrying ball-bearings, often used as shrapnel in suicide bombs, in his pockets.

Munshi, the grandson of a leading Islamic scholar, Sheik Yakub Munshi, had downloaded files about making napalm, detonators and grenades. The young man had an online profile "fidadee", meaning a "person ready to sacrifice himself".

Judge Timothy Pontius sentenced him at the Old Bailey to two years in a youth institution.

<http://www.guardian.co.uk/uk/2008/sep/19/uksecurity.ukcrime>

Man was held by police before being shot seven times on London Tube

The jury in the inquest into the death of Jean Charles de Menezes retraced his last steps one day last month, and visited the headquarters of the police officers who shot him dead.

The six women and five men hearing the case visited the underground station where he was killed on 22 July 2005, after police mistook him for a suicide bomber. They were taken by coach to Stockwell Tube station where the 27-year-old innocent Brazilian met his death.

Court staff and the coroner, Sir Michael Wright, accompanied the jury as they went down the same escalator De Menezes used to get to the platform.

He was shot seven times by two police officers while another held him in the seat of an underground train, after firearms officers came to the mistaken belief that he was a terrorist who had tried to bomb London's transport system the previous day. – from a report by Vikram Dodd, The Guardian, 24 Sept 08

<http://www.guardian.co.uk/uk/2008/sep/24/menezes>

Police stun sick man to his death

New York police fired a stun gun at a naked Brooklyn man armed with only a fluorescent light tube and sent him falling to his death from a second-floor ledge after he went on a 40-minute rant.

Iman Morales' mother begged cops not to hurt her son, explaining he was sick - then watched in horror as he plunged to his death, the *New York Post* reported.

An Emergency Services officer, acting on the orders of his boss, fired at the 35-year-old man in mid afternoon as he waved a 2m fluorescent light tube.

"His body froze up and he fell face-first," said Sean Johnson, who witnessed the drama in the Bedford-Stuyvesant district.

Morales, who crashed 10 feet to the pavement, died a few hours later at Kings County Hospital.

Asked if police followed the proper protocol for using a Taser, police spokesman Paul Browne said, "That's being reviewed." Immediately following the death, a New York Police Department lieutenant was stripped of his gun and badge, and the officer who fired the stun gun was placed on administrative duty, officials said.

http://www.nypost.com/seven/09252008/news/regionalnews/cops_in_nude_taser_slay_130670.htm

UK police to capture 50m car licence images a day

Police in the UK are to expand a car surveillance operation that will allow them to record and store details of millions of daily journeys for up to five years, according to the *Guardian*.

A national network of roadside cameras will be able to 'read' 50m licence plates a day, enabling officers to reconstruct the journeys of motorists (see *earlier story on Australian developments*).

Police have been encouraged to "fully and strategically exploit" the database, which is already recording the whereabouts of 10 million drivers a day, during investigations ranging from counter-terrorism to low-level crime. But it has raised concerns from civil rights campaigners, who question whether the details should be kept for so long, and want clearer guidance on who might have access to the material.

The project relies on automatic number plate recognition (ANPR) cameras to pinpoint the precise time and location of all vehicles on the road. Senior officers had promised the data would be stored for two years. But responding to inquiries under the Freedom of Information Act, the Home Office has admitted the data is now being kept for five years.

Police helicopters have been equipped with infrared cameras that can read licence plates from 610 metres (2,000ft). By January 2009, when a nationwide network of

cameras is fully operational, the National ANPR Data Centre in Hendon, north London, will record up to 50m licence plates a day.

<http://www.guardian.co.uk/uk/2008/sep/15/civilliberties.police>

Roma take centre stage; Rome takes their fingerprints

More than 400 leaders from across Europe gathered in Brussels for the first-ever EU Roma Summit in mid-September

Convened by the French Presidency of the EU and the European Commission, the summit ended with a call by EU President José Manuel Barroso to put the plight of the more than 10 million Roma on the EU's agenda.

George Soros, chairman of the Open Society Institute, gave a keynote address entitled: *An Unacceptable Reality: The Situation of Roma in the European Union*, in which he strongly criticised the current Italian approach (see *CLArion* of August 2008).

"I should tell you that I am deeply troubled by the precedent set by Roma profiling in Italy and worry that this could become a de facto European standard. I believe the targeted fingerprinting of Roma is a case of ethnic profiling and it should be illegal. I hope the European Court of Justice will establish this fact."

He revealed that he and his foundations had been working on the problem for 20 years, with "some positive results to show. There is now a growing number of well-educated young Roma, who are proud of being Roma, and are willing and able to argue their case. I consider this a major breakthrough because it breaks the prevailing stereotype about the Roma."

http://www.soros.org/initiatives/roma/articles_publications/articles/roma_20080916?clickthrough_roma=20080925

Women's radio station threatened by Afghan governor

The chief editor of a radio station in the northern Afghan province of Faryab has been threatened with closure of her station by the provincial governor, according to reports last month.

Rona Shirzai, the owner and chief editor of *Radio Quyash*, based in the provincial capital of Maymana, said she was threatened by Faryab's governor, Abdul Haq Shafaq, and warned to obey his orders if she did not want the station closed and possibly risk her life, according to the Afghan Independent Journalists' Association (AIJA).

Shafaq reportedly demanded that Shirzai reinstate two employees who were dismissed for professional misconduct and the promotion of political agendas inconsistent with independent and ethical journalism.

The governor reportedly claimed a right to check that all programs were consistent with his political requirements. The AIJA reports that Shafaq has assigned a team comprising two members of the provincial council, a representative from his office and another provincial administrative official to monitor programs broadcast on *Radio Quyash* and report anything that may be contrary to his diktat.

"The IFJ reminds the provincial authorities in Faryab and Afghanistan's national authorities that the threats against Rona Shirzai and Radio Quyash are thoroughly at variance with the free speech guarantees of Afghanistan's Constitution," IFJ Asia-Pacific said.

Radio Quyash is an independent broadcaster run by women which airs programs that deal with issues of poverty, illiteracy and human rights, as well as issues of specific interest to women such as forced marriages.

NZ judge bans names on the web – only

New Zealand's Judge David Harvey banned publishing on websites the names of two men charged with murder, distinguishing web media from newspapers, radio or TV.

His concern is the viral effect of digital publication and about people being able to Google names and access information in that manner. Two web publishers are reported to be seeking legal opinions...and the ban was ignored by web publications in America.

Judge David Harvey ruled in Manukau District Court that online media could not use the names, or publish images of the accused, to prevent the public searching for the information when the case comes to trial. http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10528866

Pursuit of Habeas - What Bush learned from the Sheriff of Nottingham: Jack Hitt, writing in *Mother Jones* online journal out of the USA, explains in simple terms what habeas corpus is, where it came from, and why Guantanamo Bay is the same as an island off England.

http://www.motherjones.com/cgi-bin/print_article.pl?url=http://www.motherjones.com/news/feature/2008/09/exit-strategy-pursuit-of-habeas.html

Generals throttle back a bit: Myanmar's military junta will allow the pro-democracy leader Aung San Suu Kyi to receive letters from her two sons as well as some foreign magazines, slightly easing her stringent house arrest, the *New York Times* reported last month. Agence France-Presse quoted her lawyer saying that she was malnourished after refusing for a month to accept food supplies regularly left at her gate. Aung San Suu Kyi, 63, whose party won an election in 1990 but was never allowed to take office, has been under house arrest for 13 of the past 19 years.

Monks may take up arms - report: Some Myanmar monks, in particular younger monks, are growing frustrated with nonviolent methods of protest against the junta which are aimed at restoring freedom through the patient teaching of human rights theory. The quick defeat of the monks, dozens of whom were killed during the so-called Saffron Revolution, has led some to call for weapons and escalation. Monks have at no point resorted to a strategy of violence in their struggle against the military junta. <http://au.mg1.mail.yahoo.com/dc/The%20Christian%20Science%20Monitor> *The Christian Science Monitor* 19 Sept 08. – from UNAA's UNity.

Scots have abundance of rights bodies: The new Scottish Human Rights Commission, created by the Scottish Parliament to deal with devolved rights issues,

aims to make everyone in Scotland aware of their rights and to explain the duties of public bodies so that people receive the treatment they are entitled to. It is expected to become operational in November, with a draft four-year strategic plan being published in December. Another body in the same field, the British Equality and Human Rights Commission which opened on 1 October 2007, brings together the work of three previous bodies – equal opportunities, racial equality and disability rights – and also takes on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, as well as human rights. <http://conferences.holyrood.com/content/view/597/142/>

US is making laws to thwart laws of other countries:

The New York State Legislature passed a bill (earlier this year) which blocks enforcement of libel judgments from countries that provide less free-speech protection than the United States. A similar, bipartisan bill has been introduced in Congress. The federal bill would extend protection to the entire country. It would also allow American authors and publishers to countersue, and if a jury found that the foreign suit was an attempt to suppress protected speech, it could award treble damages. <http://www.nytimes.com/2008/09/15/opinion/15mon4.html?th&emc=th>

Spy says he didn't order Munir murder: A former Indonesian spy has pleaded not guilty to ordering the poisoning murder of celebrated human rights activist Munir Thalib (*pictured*), who had exposed military abuses,



Radio Australia reported early last month. Muchdi Purwo-pran-jono, former deputy chief of Indonesian intelligence is on trial for plotting the murder, achieved by arsenic poisoning. Prosecutors said the killing was revenge for Munir uncovering the kidnappings of 13 activists allegedly by special forces under Muchdi's command in the late 90s. The trial is ongoing. Report: www.radioaustralia.net.au (- from UNity, UN Assn of Australia newsletter). Photo: Monika Schlicher 2000 (received from Watch Indonesia!)

Release Tissainayagam: Senior Tamil journalist J.S. Tissainayagam has been formally charged under two draconian anti-terrorism laws in Sri Lanka for work published two years ago in *North Eastern Monthly* magazine, after being held by terrorism investigators for five months without charge. The International Federation of Journalists is demanding his immediate release and the unconditional withdrawal of all charges. View their video and join the Release Tissainayagam Facebook group here: <http://asiapacific.ifj.org/en/articles/free-tissainayagam>

Nobody wins 'war on terror': Most people believe the US-led 'war on terror' has failed to weaken Al-Qaida; many think the group has grown stronger, a BBC World Service poll revealed last month. On average, 30% of people polled in 23 countries believed it had actually made Al-Qaida stronger, 22% thought US action had

weakened Osama bin Laden's network, while 29% thought it had no effect. Among Americans, 33% said they thought the campaign had made the group stronger, 34% believed Al-Qaida had been weakened, and 26% thought the 'war on terror' had no effect. The survey of 24,000 people, carried out between July 8 and September 12, revealed that the predominant view in 15 nations polled is that neither the US nor Al-Qaida is winning – 47% held this view.

Suit aims to stop Cheney burning: As the most powerful and – some say, devious – Vice President in US history prepares to leave office, a lawsuit has been filed to stop Dick Cheney from burning his papers. Proponents of the legal action say VP Cheney has consistently claimed his records are above the law, and do not have to be filed for subsequent public access. They claim there will be no full understanding of major decisions during the George W. Bush president years with access to V- Cheney's papers. Details are at: <http://www.commondreams.org/print/32162> and http://www.washingtonpost.com/wp-dyn/content/article/2008/09/07/AR2008090702260_pf.html – from *Justinian* blog

UK loses data on 5,000 justice staff*: The UK Justice Secretary Jack Straw has ordered an inquiry into the loss of a computer hard drive containing the details of up to 5,000 employees of the justice system...prison warders and the like, some of who may have to relocate if their private addresses become known. Mr Straw is also trying to establish why he was not told of the blunder, which happened in July 2007. The details, of employees of the National Offender Management Service in England and Wales, including prison staff, were lost by private firm EDS in July 2007. * **NOTE:** This is a new story, not a repeat of one of the other dozen or so data losses by the UK Government and its contractors over the past two years. http://news.bbc.co.uk/2/hi/uk_news/7602402.stm

No to Edvige! Aux armes, citoyens! French protest over privacy: ... over 700 organizations and 90,000 people ... have formally objected to a proposed new French police database system, Edvige, that could track, among other things, sexual orientation and health data "in exceptional circumstances" for as many as several million French citizens. *Le Monde Editorial:* <http://www.truthout.org/article/no-edvige> Translation: *Truthout*, French language editor Leslie Thatcher.

Gbay general ruled out of court: General Army Col. Patrick Parrish has become the third judge to rule that Air Force Brig. Gen. Thomas Hartmann appears to have lost neutrality as the Pentagon's legal advisor to Guantanamo Bay military commissions. Judge Parrish has banned Gen Hartmann from the trial of Canadian Omar Khadr, now 22 but only 15 when captured in Afghanistan for allegedly throwing a grenade which killed a US commando during a 2002 firefight. Gen. Hartmann has 'legal advisor' status in 14 other cases, but defence lawyers are seeking his disqualification from many of them. – from *Miami Herald:* <http://www.mcclatchydc.com/256/v-print/story/51760.html>

Problems are universal: "The select committee of the House of Representatives, appointed to discuss issues of national importance, is inviting members of civil society to public hearings ... grouped according to issues, which are: strengthening of Parliament, the updating of the Constitution, and the strengthening of transparency and accountability through the Commission against Corruption and the Office of the Ombudsman, conflicts of interest of MPs and ministers, and state funding of political parties." Sound familiar? It's actually the Parliament of Malta, not Australia. Details, email: selectcommittee@gov.mt

UN urges Iran to halt judicial killing of juveniles: The Office of the UN High Commissioner for Human Rights (OHCHR) has urged Iran not to impose the death penalty on juvenile offenders, following reports that two minors were recently put to death, in violation of the country's obligations under international law. Reza Hedjazi is believed to have been executed on 19 August and Behnam Zaare on 26 August.. They are reported to have been 15 and 16, respectively, when they committed their crimes. Two other juvenile offenders, Mohammad Fadaee and Amir Amrollahi, also face imminent execution. <http://www.un.org/apps/news/story.asp?NewsID=27894&Cr=iran&Cr1=> (from UNity, UN Assn of Australia newsletter)

DATES:

2 Oct, Sydney: Symposium: Meeting privacy challenges – the ALRC & NSWLRC Privacy Reviews, 9.30am-4.30pm, Faculty of Law, UNSW. <http://www.cyberlawcentre.org/ipp/events/symposium08/program.html>

3 October, Melbourne: 2008 Protecting Human Rights Conference, Melbourne Law School, 185 Pelham Street, Carlton, \$150 / \$75 concession, issues at state, territory and national levels in Australia, draft Bills being considered in Tasmania and Western Australia, and discussion of similar Acts in other countries. Details: (03) 8344 1011 or law-cccs@unimelb.edu.au Web: <http://cccs.law.unimelb.edu.au>

19-22 October, Manila, Philippines: Global Congress of Women in Politics and Governance, Web: www.capwip.org Congress information - registration form: <http://www.capwip.org/3rdglobalcongress.htm>

25 Oct 08, Sydney: *Australian Justice System in 2020*, The Mint Building, Sydney, run by the National Judicial College of Australia, details: www.njca.com.au Cost: \$220.

30-31 October, Florence, Italy: 9th international conference 'Law via the Internet' organized by the Institute of Legal Information Theory and Techniques of the Italian National Research Council (ITTIG-CNR), acting as a member of the Legal Information Institutes network (LIIs). <http://www.ittig.cnr.it/LawViaTheInternet/>

30 Oct - 2 Nov, Athens, Greece: 13th International Anti-Corruption Conference, info@13iacc.org

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/>

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

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.humanrightsconference.com.au/>

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

How to estimate whether what you're doing is proper...

"Over many years reference has been made to the 'estimates test': if a person responsible for some government activity would not feel comfortable in defending that activity in the (Senate) estimates hearings, then there is probably something wrong with the activity."

– Harry Evans Clerk of the Senate, 11 April 2006, National Press Club address.

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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>

ENDS ENDS ENDS

LAST WORD:

Melbourne Cup day – USA runs handicap event

The US Congress – all of the House of Representatives and one-third of the Senate – is facing election on Melbourne Cup Day.

Some candidates, like Republican Senator Ted Stevens of Alaska, are running while under federal corruption indictment, which possibly ought to be a significant 'handicap'.

The organization Citizens for Responsibility and Ethics in Washington has announced its list for this year of the 20 most corrupt members of Congress...with a fair sprinkling of Democrats among the Republicans.

Senator Stevens is No. 19.

<http://www.commondreams.org/newswire/2008/0910-6>

– with thanks to the *Justinian* blog of Roger Fitsch Esq, *our Man in Washington*