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– from ACT Chief Minister’s media release, 25 November 2005

ACT terror laws about to be tabled

The ACT’s Terror Bill legislation should be tabled by mid-December, Chief Minister and Attorney General Jon Stanhope announced last week.

Mr Stanhope said the Terror provisions would be referred to the ACT Parliament’s Standing Legal Affairs Committee (SLAC), chaired by Liberal MLA Bill Stefaniak, after being presented to the Assembly.

The SLAC committee normally holds public hearings, which would give CLA the chance to comment directly on the proposed ACT legislation, CLA president Dr Kristine Klugman said. The SLAC committee is due to report back in February 2006.

The ACT Terror Bill would be human-rights compliant, Mr Stanhope said.

It would deliver on the ACT’s promise to introduce Terror Bill laws to complement the national package agreed to at the 27 September Council of Australian Governments meeting.

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CLA member becomes top adviser to Europe on anti-terror laws

CLA member Christopher Michaelsen is leaving Australia this month to take up a top European anti-terrorism and human rights position.

In 2006 he will become Anti-terrorism Adviser in the Human Rights Department of the Organisation for Security and Co-operation in Europe (OSCE), in the Office for Democratic Institutions and Human Rights.

The OSCE is the world’s largest regional security organization whose 55 participating States span the geographical area from Vancouver to Vladivostok

Chris will be based in Warsaw, but spend a third of his time in Vienna.

One of his main tasks, occupying 50 per cent of his time, will be traveling through the Caucasus and Central Asia monitoring 'show trials' of so-called terrorists and helping to draft and implement terror laws to ensure that they are in accordance with European human rights standards.

Chris joined the Strategic and Defence Studies Centre at ANU in 2003, undertaking a PhD in an interdisciplinary and international study of terrorism in the framework of civil liberties, human rights and the rule of law.

Originally from Bavaria in Germany, he studied law and international relations at the University of Munich and graduated in law from the University of Hamburg. He also holds a Master of Laws (LLM) from the University of Queensland specialising in international human rights and security law.

“Throughout 2005 Chris Michaelsen was one of the mainstays of CLA’s efforts in the increasingly intensive terrorism debate and fight against excessive legislation,” CLA President Dr Kristine Klugman said last month.

“He helped CLA establish productive links to the Law faculty and associated institutions at the ANU.

“We thank him for his efforts, and we will miss his wise counsel and support in time, effort and advice, given even in the face of great study demands.”

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– from media releases, 22 Nov 05

Charlesworth honoured for having the rights stuff

Professor Hilary Charlesworth of ANU has received a prestigious American medal for her contribution to international human rights law.

She has been named joint winner of the American Society of International Law's 2006 Goler T Butcher Medal, sharing the 2006 award with Christine Chinkin, Professor of International Law at the London School of Economics.

ASIL's 4,000 members come from 100 countries.

Professor Charlesworth chaired the consultative committee which advised the ACT Government, leading to Australia's first bill of rights, the ACT Human Rights Act, introduced on 1 July 2004.

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– by Bill Rowlings, CLA Secretary

The Great Detainer: new Ruddock powers to lock people up questioned

Whisperings about the suitability of Philip Ruddock are emerging as he is about to inherit new powers which could see another raft of people removed from public view.

Questions are being asked about whether Mr Ruddock's personality and mental state is suited to his having discretion over detaining and controlling terrorism suspects.

Under his direction and discretion, the Immigration Department locked up hundreds of refugee claimants inappropriately for years.

In excessive zeal, the Department for which he set the standards also jailed at least one mentally ill Australian and deported another.

His automaton performances in media interviews seem to indicate that Australian citizens are ciphers to him – and therefore to the people in departments he leads.

Shadow Attorney-General Nicola Roxon and Opposition spokesman on Immigration Tony Burke have questioned whether Mr Ruddock can be trusted with having discretion over suspicion-based detention.

Commonwealth Ombudsman John McMillan has revealed he is investigating 222 cases of apparently wrongful Immigration detention when Mr Ruddock was Minister for Immigration.

Now, with the Anti-Terrorism Bill, the Government plans to trust Mr Ruddock with new powers to detain people, based on the same 'reasonable suspicion' test that has failed so badly in the Immigration department, the two Labor MPs say.

According to the Ombudsman, 23 people wrongfully detained were held for more than a year. At least two were detained for as long as five years.

The terror legislation contains heavy individual and media constraints on reporting possible cases of mistaken detention.

If errors are made again under Mr Ruddock, it may be a decade before they come to light and are corrected or compensated.

If Mr Ruddock was applying for a position to manage the lives of suspects/detainees, he would certainly be rated last on the selection list because of his track record.

However, Mr Howard is handing Mr Ruddock the chance to repeat offend.

CLA executive active in November on Terror Bill

Late October and November saw much lobbying and briefing of MPs by CLA as well as preparing a major submission to the Senate inquiry into the Terror Bill.

The lobbying effort concentrated on the Liberal backbench members who could influence the Howard Government.

CLA president Dr Kristine Klugman and secretary Bill Rowlings met with and briefed Petro Geogiou, and sent briefing papers to 50 key Liberal and other MPs.

They included ACT Liberal Senator Gary Humphries and MHR Malcolm Turnbull, both lawyers, and Senator Marise Payne, who ultimately chaired the Senate inquiry.

The CLA submission to the inquiry, prepared mostly by Secretary Bill Rowlings and Chris Michaelsen, was one of the first of more than 200 tendered.

The submission is on the inquiry website if you would like to read it: alternatively, send an email to the Secretary (address at top of this newsletter) for a copy to be sent to you.

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Police annual report subjected to itemised review

CLA secretary Bill Rowlings undertook a line-by-line review of ACT Policing's 2004-5 annual report during November.

The review was to prepare for consistent attention during 2006 to anomalies, oddities and plain silliness in how the policing system in the ACT operates, and how well or otherwise "the ACT's" police force reports to the community it is meant to serve.

ACT Policing's performance in 2004-5 was poor, perhaps even extremely poor, based on their own figures.

ACT people think that the ACT Policing are doing a bad job, based on surveys conducted for the police themselves.

The answering of emergency calls is poor, and response times are bad, and getting worse.

The amount of police service in return for taxpayers' money paid is shrinking.

However, the glossy, heavily-spun annual report on the surface suggests all is sweetness and light in how ACT Policing operates.

The Police Minister, Mr John Hargreaves, has repeatedly reinforced this untruth in arrogant utterances in Parliament, and in media releases.

All is not well with ACT Policing, as will be revealed through the first part of 2006 as CLA puts the proper spin on the annual report, to highlight:

- poor or no reporting;
- inconsistencies of approach;
- lack of explanation or comment where it is obviously required;
- figures 'doctored' (including the actual number of police serving the ACT) ; and
- absolute contempt for the people of the ACT in how a self-perceived 'elite', Federal, police force considers it is itself 'above' ACT law.

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Briefing helps to understand impact of ACT HR Act

CLA attended a briefing session by the ACT Human Rights Office in November to better understand the ACT Human Rights Act.

The session explained how it has been and will be used in the ACT legal system.

The half-day seminar, mainly for lawyers and associated interest groups like CLA, was an excellent initiative of the ACT HRO

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New and old members gather for 'welcome' barbecue

A CLA welcome barbecue in November helped introduce new members to each other and to friends and supporters from the ACT Muslim and general community.

About 25 people attended the barbecue, including three CLA friends from the Muslim community – president of the Canberra Islamic Centre, Mr Ahmed Youssef, ANU Law lecturer and PhD candidate, Mr Asmi Wood, and Mrs Diana Abdul-Rahman of the Australian Attorney-General's Department.

Also enjoying the camaraderie at the barbecue was Canberra Times cartoonist Ian Sharpe, who delivered another of his quality terrorism and sedition cartoons to be used as a prize at a future function.

ACT Greens MLA Deb Foskey was able to visit on the day of the barbecue for an extended discussion on policing matters in the ACT.

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– from ACT Chief Minister's media release, 30 Nov 05

CLA's friends named to new Muslim Advisory Council

Two of CLA's barbecue guests – Ahmed Youssef and Diana Abdul-Rahman – were named to the new Muslim Advisory Council of the ACT late last month.

The seven-member council "drew on the talents and networks of senior figures from a number of important Islamic peak bodies and community organizations," Chief Minister Jon Stanhope said in making the announcement.

Chair is Mr Ikebal Patel, an executive member of the Australian Federation of Islamic Councils and Chairman of the Islamic School of Canberra.

The other members are: Mr Ahmed Youssef, President of the Canberra Islamic Centre Inc; Ms Diana Rahman, Vice-President of the Canberra Islamic Centre Inc; Mr Mohammed Berjaoui, President of the Islamic Society of the ACT (which manages the Canberra Mosque); Mr Nazre Sobhan, President of the North Canberra Muslim Community Inc; Mr Sabrija Poskovic, Vice-President of the Islamic Society of the ACT Inc; and Mr Ejaz Qureshi, Vice-President of the North Canberra Muslim Community Inc.

Mr Stanhope said that at a time like the present, when many Muslim Australians felt they were at risk of being scapegoated or stereotyped as a consequence of the upsurge of terrorist activity in some parts of the world, it was crucial for there to be clear, open and mutually respectful communications between grassroots Muslim communities and the ACT Government.

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CLA plans for main activities in 2006 being finalised

CLA's plans for 2006 were canvassed during the barbecue and in emails sent out before and after the event.

Some of the main activities are likely to be:

- Continuing a very close watch on Australian terrorism and sedition laws, and how they are being implemented;
- Making a submission to the Standing Legal Affairs Committee (SLAC) of the ACT Parliament when it considers the draft ACT Counter-Terrorism Bill;
- Planning for and holding at least three open, public CLA meetings during 2006 (up from one in 2005);
- Managing an internship research program on civil liberties topics, involving 2-3 students over the year, in conjunction with the ANU Law School;

- Reviewing the annual reports of all major ACT and Australian Government departments and agencies (volunteers needed to each read through and report on one department);
- Continuing the drive to create a formal, national Council for Civil Liberties (probably to be known as Liberty Australia), made up of delegates from each of the State and Territory CL bodies, with clearly identified, forward-looking research projects and nominated spokespeople;
- Preparing for two possible projects, funded by ACT Government grants:
 - one to help promote human rights knowledge and understanding among young people (aged 15-20) and older people (aged over 55); and
 - one to hold civil liberties and human rights information and education meetings in the main ACT centres – Belconnen, Tuggeranong, Woden and Civic.

If these proposals spark any ideas or suggestions in your mind, please email them to us (see email address at top of newsletter).

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– from Unity, the UN Assn of Australia weekly e-newsletter, Nov 05

Nauru detainees give pointer to probable anti-terror regime

As 25 refugees arrived in Australia from Nauru last month, Democrats Immigration spokesperson, Senator Bartlett, warned of the dangers of locking people up without judicial oversight.

"The fact that many of these people have been recognised as refugees and granted visas after four years of detention on Nauru shows how easily gross injustice and harm can be inflicted on people when there are no legal safeguards," Senator Bartlett said.

"It is a stark reminder of dangers inherent in the proposed anti-terrorism laws, which seek to allow people to be locked up without proper recourse to judicial process.

"These people have been detained unnecessarily for four years. They have suffered enormously, and their mental and physical condition has deteriorated considerably after years of uncertainty and trauma."

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– from Chief Minister's media release and Staples' email 22 Nov 05

ACT sentencing updated; Staples calls for voting rights for all prisoners

ACT Courts would have greater capacity to customise sentences to the particular offence, the particular offender and the particular circumstances of the offence, with the passage of new sentencing laws for the Territory, Chief Minister and Attorney General Jon Stanhope said on 22 November.

The Crimes (Sentencing) Act 2005 and the Crimes (Sentence Administration) Act 2005 will give the courts one coherent Act governing sentencing decisions, and give the corrections system one coherent Act governing the administration of those sentences.

"The option of combination sentences will improve the ability of judges and magistrates to prevent and manage offending behaviour and rehabilitate offenders, giving the courts the capacity to impose any number of orders as part of a whole sentence," Mr Stanhope said.

"For instance, they will be able to combine full-time incarceration with a subsequent period of periodic detention or a suspended sentence."

The Crimes (Sentencing) Act 2005 also modernises periodic detention and good behaviour orders, and introduces non-association and place restriction orders.

As the Sentencing Bill passed the Assembly, CLA Director James Staples called on politicians throughout Australia to ensure that sentencing laws contained a provision that all convicted persons retain the vote, or be entitled to vote, in all parliamentary elections.

“The right should apply despite the nature of the offence or the nature of the penalty imposed in any case,” Mr Staples said.

“That will keep politicians interested in what goes on in jails, for reasons other than in pursuit of the redneck vote,” he said.

“As the jail population increases, as it has dramatically in NSW for example over the past decade, so should attention be given to the state of the jails and the practices inside them.”

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– from UNity, UN Assn of Australia newsletter, 25 Nov 05

Sedition measures require Bill of Rights

Proposed changes to sedition laws threaten freedom of speech and expression and should be removed from the Government’s anti-terrorism legislation, the Australian Democrats say.

“The new sedition provisions are drafted so broadly that people criticising the Government could be imprisoned for up to seven years,” Democrats’ Attorney-Generals spokesperson, Senator Natasha Stott Despoja, said.

“The defence of ‘good faith’ is so limited that those engaging in general discussion, journalistic, artistic or satirical expression may not be protected. Given these provisions are to be reviewed anyway, why is the Government insisting on ramming them through now?”

Senator Stott Despoja said: “Such laws infringe on fundamental democratic rights, and are particularly concerning given the absence of a Bill of Rights in this country.

“The Democrats’ *Parliamentary Charter of Rights and Freedoms Bill*, which I restored to the Senate Notice Paper last week, enshrines the right to “freedom of expression” (Article 7 of the Bill), among a number of other rights and freedoms.

“I urge the Government to enshrine such rights in law, instead of continuing to attempt to strip them away,” she said.

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– from ACLU email, 10 Nov 05

Prying spying increases one hundred-fold

The American Civil Liberties Union (ACLU) reports that its fight in the US courts against secret records demands via ‘National Security Letters’ (NSL) is making steady progress.

NSLs allow spook agencies to pry for information on individuals in data holdings such as bank records, credit card information and even public libraries, where a person’s book-borrowing record can be analysed.

One judge has struck down one NSL power in the Patriot Act (roughly equivalent to Australia’s combined terrorism laws) as unconstitutional.

“The newer case involves an organisation with library and Internet records whose identity we cannot disclose because of a government gag order,” ACLU says.

“A lower court has already ruled that the gag violates the First Amendment, and we are now arguing on appeal to help our client to be heard right now, during Congress’s critical Patriot Act debate.

“We now know that 30,000 NSLs are issued by the government per year, a hundred-fold annual increase since the passage of the Patriot Act.

“Powerful Senators from both parties responded with alarm to the magnitude of these secret searches and rule change (by then-US Attorney General John Ashcroft) enabling the FBI to keep all records they gather during these secret searches, regardless of their ultimate relevance to the investigation or the finding of any actual wrongdoing.”

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– from NSW CCL email, October 2005

Call for people to help work on death penalty

NSW Council for Civil Liberties is forming a sub-committee to campaign against the death penalty.

The sub-committee will work on several issues, including ensuring that the death penalty cannot be reintroduced in Australia, according to NSWCCCL executive secretary Susan Smith.

Legal loopholes exist that need to be closed before they are exploited, she says.

The group will also work on strategies for lobbying regional governments to abolish the death penalty, and on ensuring that Australian Federal Police do not hand evidence over to foreign countries when the death penalty might apply.

“We are looking for historians, economists, writers, artists, lawyers and anyone else with a passionate opposition to the death penalty,” she says.

If interested, contact her on email: office@nswccl.org.au

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– from Human Rights First, 3 November 2005

Zimbabwean activists beaten for hours

Pro-democracy activists Officen Nyaungwe, Claris Madhuku, Sozwaphi Masunungure, Isaiah Makatura and Wilson Shonhiwa were attacked while conducting field work for the Mass Public Opinion Institute on 25 October, Human Rights First has reported.

The activists were restrained, brought before an assembled crowd, accused of acting against national interests, and beaten for three hours, sustaining severe injuries, HRF said.

The victims identified their attackers, including a uniformed soldier in the Zimbabwean National Army, to the police. But after a local representative of the ruling party intervened, the police refused to make any further inquiries or arrests.

Such behaviour is common occurrence in Zimbabwe today, HRF says.

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– from Human Rights First email, 16 Nov 05

US Congress urges action on Munir investigation

Almost 70 Members of the US Congress have signed a letter to Indonesian President Yudhoyono asking him to release a report on the poisoning death on a Garuda flight to Amsterdam of Munir.

The trial of a man accused of killing the Indonesian human rights defender continues in Jakarta.

But prosecutors and police have still not extended the investigation to intelligence officials alleged to have been in regular contact with the defendant. Part of the

problem is the government's failure to release an official fact-finding team's report on the murder.

At a press conference in Jakarta, Munir's wife Suciwati said: "The letter from the US Congress is part of the international support pouring in, providing sympathy and urging the Indonesian government to solve the case of Munir's murder."

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– from Human Rights First email, 16 Nov 05

Activists and unionists come under attack in Zimbabwe

There has been no progress in the investigation of the attack against five pro-democracy activists in Zimbabwe – in fact, the situation for human rights defenders has deteriorated further, according to Human Rights First.

On 8 November, Ms Netsai Mushonga, coordinator of the Women's Coalition, was arrested and detained overnight for convening training on the use of non-violent means for dispute resolution.

She was released from custody but faces prosecution under the Protection of Security Act, a commonly-used tool to deny the internationally-protected right to assemble.

On the same day, more than 100 trade unionists were arrested during a protest in Harare, while dozens more were arrested throughout Zimbabwe

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-from New York Times 19 Nov 05

Condensed from an Editorial

There is nothing "patriotic" (if the US Congress continues to allow) the FBI to seize the records of ordinary Americans without a judge's approval.

National security letters (NSL) give the FBI sweeping power to riffle through ordinary Americans' private records.

NSLs do not need to be approved by a judge. The FBI can issue them on its own initiative to places that hold sensitive information about citizens, like libraries, doctors' offices, banks and Internet service providers, issuing reportedly more than 30,000 NSLs a year.

It is a crime for a recipient to tell anyone, other than their own lawyers, about the NSL request. Because of this secrecy, Americans have no way of knowing whether their doctors or Internet providers are handing over their confidential records.

There are many things Congress should be doing to protect the nation from terrorism. None of them involve dismantling the freedoms of ordinary Americans. There is still time to fix the many problems with the Patriot Act.

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Events and Opportunities:

02 December, Melbourne: *Human Rights 2005: The Year in Review* hosted by the Castan Centre at the CUB Malthouse, Melbourne. Program and registration available at: <http://www.law.monash.edu.au/castancentre/events/2005/conference2005.html> or info on Ph: 03 9905 3327 or www.law.monash.edu.au/castancentre

02 December, Sydney: One-day conference, *Human Rights, Mental Health and Anti-Terror Laws in Australia*, Friday 2 Dec, Sydney Mechanics School of Arts. <http://www.save.org.au>

05 Dec, Canberra: *New Matilda* national Human Rights Act campaign launch in ACT. Speakers include John Menadue, Ron Fraser, Jon Stanhope, Spencer Zifcak

and Frank Brennan, 5:30-7:30pm, Reception Room, ACT Legislative Assembly. RSVP to 6295 9433 or manningclark@ozemail.com.au by 1 December.

06 December, Canberra: *Getting Australia's aid program to work better*, 6.30-8.30pm, Tuesday 6 December, Labor Caucus Room, Parliament House. Shadow Minister for Overseas Aid and Pacific Island Affairs Bob Sercombe will host speakers: executive director Australian Council for International Development, Paul O'Callaghan, executive director of Oxfam, Andrew Hewett, and Satish Chand of the Asia Pacific School of Economics and Government. Acceptances to lvadams@bigpond.com.au by c.o.b. Monday 5 December, so security passes can be arranged.

09 Dec, Sydney: The 2005 Human Rights Medal and Awards presented at a luncheon at the Sheraton on the Park, Sydney, from midday to 3pm. Info: phone (02) 9284 9618 or email hrawards@humanrights.gov.au or go to www.humanrights.gov.au/hr_awards/

10 Dec, worldwide: Human Rights Day: www.ohchr.org

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SPECIAL ARTICLE: New 'pregnant women' provisions, by ANTHONY WILLIAMSON

New ACT provisions put women and children first

On 24 November the ACT Government tabled the *Crimes (Offences Against Pregnant Woman) Amendment Bill 2005*.

The Bill amends the *Crimes Act* to create a series of new aggravated offences: existing offences will become aggravated if committed against a pregnant women and serious harm is caused to the pregnant women or unborn child.

When an offence is aggravated, it will attract a penalty 30 per cent higher than if the same type of offence (say an assault) was committed against a non-pregnant women.

For example, the penalty would be 26 years for aggravated manslaughter (as opposed to the 20 years for 'ordinary' manslaughter) and 20 years for inflicting grievous bodily harm (as opposed to the 15 years for the 'ordinary' form of the offence).

Fair enough. Crimes against pregnant women are particularly heinous and it is appropriate that the ACT Parliament legislates to protect them. But in so doing, the Bill dispenses with a number of fundamental legal principles and basic legal standards.

Section 48A(2) of the Bill provides that it is an element of the new aggravated offence that the victim of the offence was a pregnant woman. Section 48A(4) goes on to provide that "It is not necessary to prove that the person who committed the offence had a fault element in relation to any factor of aggravation."

To the undiscerning reader this provision might not mean much; indeed it may not make any sense at all. But it should set alarm bells ringing amongst the legally-trained reader for it dispenses with the need for the prosecution to prove that the accused intended to assault a pregnant woman as distinct from an 'ordinary' person.

It has always been the case that every element of a serious offence has to be proven to have occurred, and that the accused intended or was aware that the element of the offence was to occur.

This is encapsulated in the Latin maxim *Actus Reus Non Facit Reum Nisi Sit Rea* – an act does not make a person guilty unless his/her mind be guilty.

The criminal law has traditionally held that people should not be punished for engaging in prohibited acts where they have no mental culpability in relation to their actions.

The Bill effectively removes the need for the prosecution to prove a “*mens rea*”, otherwise known as a fault element, which has been a feature of the criminal law for hundreds of years.

Simply put, this means that a person is guilty of committing an aggravated offence against a pregnant woman even though the person did not know, and could not reasonably be expected to have known, that the woman was pregnant.

In so doing section 48A also offends the principle of innocent until proven guilty because it effectively provides that it will be presumed that an assailant knew the woman was pregnant; this does not have to be proved by the prosecution, nor is the accused allowed to disprove it.

The explanatory memorandum accompanying the Bill acknowledged that this provision may offend basic legal principles.

It says that: “The effect of subclause 4 is that a person may be found guilty of an aggravated offence although the person does not know the victim was pregnant. This element may be considered to trespass unduly on personal rights and liberties and engage the right to be presumed innocent under section 21 of the *Human Rights Act 2004*”

Interestingly, Opposition Police Minister Steve Pratt MLA had tabled a similar Bill on this issue. Although it was fraught with many difficulties, it did address this issue appropriately as it required that an accused person “... knows or ought reasonably to know that the woman is or may be pregnant”.

Although acts of violence against women are heinous and deplorable, that is no reason to throw fundamental legal principles out; indeed, other offences such as murder are heinous, but they remain based on fundamental legal principles.

It needs also to be remembered that this Bill was accompanied by significant government propaganda including press releases, media and television interviews and the like.

It would appear that in this instance the Stanhope government is playing the “tough on crime” crowd, which to its credit is something of a rarity for this government.

Once we start abandoning these fundamental principles because a particular crime is considered heinous, we are on a very slippery slope.

– Anthony Williamson, CLA Director

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CLArion welcomes contributions. We particularly welcome news from our own members, and from interstate CL and other bodies. Please send any items by email. See top of document for email address. Include your name and membership details (eg, CLA, NSW CCL, or Qld CCL, or whatever) and details of where the story came from so we can credit the original source, if it is not you.