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Governments to 'harmonise' 22 areas of law

Attorney-General Robert McClelland last month committed the Australian Government to act on 22 of 27 long-standing law reform recommendations, including harmonising guardianship and succession law, evidence law, and consumer protection, privacy and debt collection provisions.

He was tabling the government response to the House of Representatives Legal and Constitutional Affairs Committee report into the harmonisation of legal systems within Australia and between Australia and New Zealand. www.ag.gov.au/harmonisation

The previous Government had not responded to the report, which was tabled in November 2006.

Among the highlights are Recommendation 11, for mutual recognition of power of attorney throughout Australia, a cause CLA has long championed. NSW, Victoria, Queensland, Tasmania and the ACT have brought in laws to that effect, but South Australia, Western Australia and the NT are dragging the chain.

Another recommendation, 18, calls for establishing a single, national regulator for non-profits, with their own legal structure and reporting/disclosure arrangements. CLA has a vested interest in this proposal, which is urgently needed to help doing non-profit business across Australia simpler, easier and cheaper.

New consent law covers medical treatments

The ACT has passed laws allowing domestic partners, carers, relatives and close friends to give consent to medical treatment for adult patients who are temporarily or permanently incapacitated and unable to give their own consent.

People authorised to give consent on behalf of a patient will be known as health attorneys. A health professional must believe that the person selected to give consent is best able to represent the views of the patient.

The ACT Attorney-General, Simon Corbell, said: "If a family member or friend is unsuitable to give consent, the health professional will try to find another eligible person, or seek the assistance of the Public Advocate. This new option will operate alongside other currently available options for obtaining consent for medical treatment for a patient who is unable to give consent."

CLA has been campaigning for consent laws and recognition of medical directives also to be 'harmonised' throughout Australia.

The directives can be registered formally in anticipation of someone becoming disabled, indicating how they would want medical treatment to proceed...or not. Currently, there is no workable system for how they can operate effectively throughout Australia.

LAST WORD: Do unto others – not me – says police chief

The New Zealand Police Commissioner last week refused to take a zap from a stun gun, which his officers are now using on citizens of the Shaky Isles. "What's good for the goose isn't good for the gander", seems to be the un-PC* PC's broad approach. *Read full story at end of this bulletin.*

**Politically Correct*

PIMs on tap in Queensland

Queensland police and anti-corruption operatives can now extend their telephone tapping, after the Queensland Government did a deal with the Commonwealth.

Prime Minister Kevin Rudd has agreed to amend the Commonwealth's legislation to allow Queensland's Public Interest Monitor (PIM) to oversee telephone tapping. Oversight of the process had held up the intelligence-sharing arrangement in the Queensland jurisdiction, with the Australian Government not wanting a precedent that secret tapping could be second-guessed by an independent observer.

Now that Queensland has an external monitoring process to ensure telephone tapping is only used in appropriate circumstances, CLA believes each State and Territory should have the same external checks-and-balances mechanism, or there should be a federal one.

"(The PIM) ensures that an appropriate balance between law enforcement and privacy is maintained in the application process," Queensland Premier, Ms Anna Bligh, said. CLA agrees with her. <http://www.news.com.au/couriermail/story/0,23739,24254213-3102,00.html>

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Victorians move to decriminalise abortion

The Victorian Government has introduced a Bill to State Parliament to decriminalise abortion.

The Bill allows unrestricted abortions in the first 24 weeks of pregnancy, but termination would have to be approved by two doctors after 24 weeks.

Currently, abortions are illegal unless a woman can show she is at risk of harm by continuing with a pregnancy.

The Health Minister, Daniel Andrews, says the Bill would legalise what already happens in practice.

"Nothing in the bill changes the status quo as it exists now, other than it simply regulates practice within our State," she said.

CCC charges former detective with computer stalking

A recently stood-down detective-sergeant last month faced 22 charges in Perth of using a police computer to access the car registration details of women.

He contacted two of them, WA's Corruption and Crime Commission claimed.

The CCC charged him with corruption, two counts of playing a police video interview to an unauthorised person and taking photos of himself having sex with a woman and emailing them to other people without her consent.

He was due to appear in the Perth Magistrates Court on 22 August.

<http://www.watoday.com.au/wa-news/ccc-charge-former-cop-with-unlawful-computer-use-20080811-3tjc.html>

Kirby honoured for championing privacy

Judge Michael Kirby has received Australia's first Privacy Medal, 30 years after he championed an individual's right to privacy and sparked new laws enshrining privacy protections that were emulated across the developed world.

Justice Kirby, who was honoured at a dinner marking the 20th birthday of Australia's Privacy Act in Sydney last month, accepted the medal "with encouragement for those working in the field to continue the very important work we do for the defence of privacy and individual dignity in our community". He will step down from the High Court on 17 March 2009.

– from a report by Karen Dearne, IT section, The Australian

<http://www.australianit.news.com.au/story/0,24897,24254159-15306,00.html>

Whistleblowing inquiry holds first hearing

The House of Representatives Legal and Constitutional Affairs Committee last month held its first public hearing into whistle-blowing protections within the federal government public sector.

Committee Chairman Mark Dreyfus said: "More effective and comprehensive protection for whistleblowers is needed in the federal government public sector. The inquiry's public hearing program will play an important role in collecting evidence to aid the committee in assessing effective legislation for this area".

Representatives from the Australian Institute of Professional Investigators, Post Office Agents Association Limited, Australian Services Union -Taxation Officers' Branch, Transparency International - Australia, Uniting Church in Australia - Synod of Victoria and Tasmania, lawyer Peter Bartlett and Professor Ronald Francis met with inquiry members in Melbourne to discuss issues, challenges and best practices surrounding whistle-blowing protections in the federal public sector.

Details: www.aph.gov.au/laca or secretariat on 02 6277 2358 or 0413 483 133.

Three inquiries bring extra pressure for new whistling laws

Attorney-General Robert McClelland has announced a third inquiry into government secrecy and the protection of public sector whistleblowers, Chris Merritt reported in *The Australian* last month. The Australian Law Reform Commission (ALRC) will run the new inquiry, Mary Lander reports.

The ALRC will focus on:

- balancing the need to protect Commonwealth information and the public interest in an open and accountable system of government;
- sharing information within and between governments, and with the private sector; and
- achieving more comprehensive, consistent and workable laws and practices in protecting Commonwealth information.

The ALRC's first task is to map all of the secrecy and confidentiality provisions, and prepare one or more discussion documents for consultation, before providing its final report and recommendations to the A-G by 31 October 2009. Details: <http://www.alrc.gov.au/inquiries/current/secrecy/terms.html>

Meanwhile, the House of Representatives committee (see above item) is holding hearings on whistleblower protection between 21 August and 25 September, with their report expected to outline the framework for the Government's promised new law protecting whistleblowers in the federal public service, Merritt reported.

The third inquiry, a three-year project led by A.J. Brown of Griffith University, this month releases its report on how to reform the nation's inconsistent whistleblower laws.

Brown's work is backed by the Australian Research Council, several government ombudsmen and five universities. Special Minister of State John Faulkner will formally release the *Whistle While You Work* report.

Mr Dreyfus said he hoped there would be new legislation next year, perhaps called the Whistleblower Protection Act or the Public Interest Disclosure Act, resulting from the work of the three inquiries.

<http://www.theaustralian.news.com.au/story/0,25197,24139086-7582,00.html>

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Privacy report weighs in at 2700 pages

The Australian Law Reform Commission's released its landmark privacy report, *For Your Information: Australian Privacy Law and Practice (ALRC 108)*, last month.

The three-volume report culminates a massive research and consultation exercise over two years; the ALRC recommends 295 changes to privacy laws and practices.

ALRC President, Professor David Weisbrot, said: "The federal Privacy Act was introduced before supercomputers, the internet, mobile phones, digital cameras, e-commerce, sophisticated surveillance devices and social networking websites – all of which challenge our capacity to safeguard our sensitive personal information."

The report includes references to the two submissions from Civil Liberties Australia.

Access the report (caution, it is 2700 pages across 3 volumes): www.alrc.gov.au or direct at: <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/>

The recommendations are available separately, at:

<http://www.austlii.edu.au/au/other/alrc/publications/reports/108/3.html>

A-G McClelland commits...but not to repealing sedition laws

"I am committed to ensuring that reforms to the legal system remove hindrances to business and personal activity by minimising red tape, reducing costs and simplifying and modernising our laws," Attorney-General Robert McClelland said last month.

"And I am committed to undertaking reform in a range of areas across my portfolio including in areas such as personal property securities, human rights and courts and tribunals.

"All, I note, are areas where the (Australian Law Reform) Commission has reported to Government," he said.

CLA reminds the A-G that there is another major area of the law - sedition - where the ALRC has reported to government. The Labor Party's platform promise before the 2004 federal election was to get rid of the sedition laws.

It would be a simple, quick, easy, positive move for the A-G to abolish the sedition laws before the end of 2008, CLA believes. We have been doing the rounds of federal MPs, Labor and Liberal, and asking for them to bring pressure on the government to act quickly on the clear promise over removing sedition laws.

Australia rejoins international 'good citizens'

The Australian Government is re-engaging with the international community and international 'good citizens', such as Canada, the UK, New Zealand and others, in recognising international human rights, compere Tony Eastley told his ABC Radio *AM* program audience last month.

He was introducing an interview with Mr McClelland, who unequivocally condemned the US practice of waterboarding, or torturing people by simulated drowning.

Asked by Alexandra Kirk whether he considered waterboarding to be torture, Mr McClelland replied: "Unquestionably it's torture."

"We're consulting with the states about signing up to the optional protocol to the Convention Against Torture, which would provide specific mechanisms for inspection over prisons and detention facilities. But we're also consulting (on) whether we introduce a specific federal law, which would apply across Australia, outlawing torture as a specific offence. And, indeed, ... applying to Australians in respect to conduct undertaken overseas."

"It's quite hypocritical for a modern advanced nation to call upon neighbouring countries, for instance, to lift their standards in a number of human rights areas if we aren't prepared to set our own example."

Video evidence: wanted or not?

A Sydney art student arrested and pressured to delete camera footage showing a violent clash between about 20 late-night revellers and dozens of police has had a police charge dismissed.

Oliver Hopes was charged in April with hindering police after videoing them on his phone using capsicum spray to subdue violent revellers. Downing Centre Local Court dismissed the charge after his barrister presented separate footage taken by a security camera.

"They saw me filming and told me to move back, which I did. They then said 'Turn that off' and I kept filming. He said 'Give me the phone' and I turned it off and put it in my pocket. He said 'Give it to me' and I said 'It's off. It's cancelled'. And he then said 'That's it, you're under arrest'."

Later, while being held overnight, police entered his cell, handed him the phone and told him to delete the footage, according to a report in *The Australian* last month.

"They told me it was against the law to film people and there were special provisions covering the media," he said. He explained that the footage had never been saved but he was still charged with hindering police.

(NOTE: It is not against the law to film or photograph anyone, including police, in most public areas of Australia).

The action over Mr Hopes' camera-phone contrasts sharply with the NSW Police launch a month earlier of a scheme inviting the public to send video footage of crime directly to a police website. *Project View -- Video Image Evidence on the Web* was developed by assistant commissioner Bob Waites.

In November 2007, NSW police arrested journalist Matt Khoury after he watched a raid on a nightclub and told police he would be filing a story. He was charged under "move along" legislation, but police withdrew the charge just before the case went to court, *The Australian* reported.

<http://www.theaustralian.news.com.au/story/0,25197,24252513-7582,00.html>

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Former anti-drugs supremo calls for legalising the trade

A former top UK public servant responsible for coordinating anti-drugs policy now believes that legalising drugs would be less harmful than the current strategy.

Julian Critchley, the former director of the Cabinet Office's anti-drugs unit, claimed that his views were shared by the "overwhelming majority" of professionals in the field, including police officers, health workers and members of the UK Government.

He also claimed that policy on drugs was based on what was thought would play well with newspaper readers, regardless of evidence of what worked.

As CLA director James Staples points out, the obviousness of the proposed approach has failed to move politicians throughout the world for decades: "I first made this argument at public meetings and a special meeting of MPs from both sides at NSW Parliament House in 1963," he said. Mr Staples, then a barrister, recalls being visited that year by the entire newly-formed NSW Drug Squad...when both of the officers came to his chambers.

(It is difficult to find figures for the number of police in the 'drug squad' in NSW in 2007-8, but an expenditure annually of about \$500m on NSW 'drug squad' activities currently may be a reasonable estimate)

– adapted from *The Guardian*, 13 Aug 08

<http://www.guardian.co.uk/politics/2008/aug/13/drugs.legislation>

Ticketek blunders over privacy

Ticketek has exposed the email addresses of thousands of customers by mistake.

In the body of an email sent to cu

stomers, Ticketek accidentally included a dump of at least part of its massive email database. Printed, the list runs to more than 100 pages.

Australian Privacy Commissioner Karen Curtis said her office had launched an investigation.

A Ticketek spokesman said the privacy breach resulted from "human error" and only "0.01 per cent" of its database was exposed. Ticketek was contacting customers to apologise.

Roger Clarke, chair of the Australian Privacy Foundation, said: "This kind of thing is ludicrous - that such errors could be permitted to occur and not have controls in place to prevent them occurring."

– from a report by Asher Moses in *The Age*, 11 Aug 08

<http://www.theage.com.au/news/technology/email-blunder-spam-alert/2008/08/11/1218306741320.html>

Branson to lead HREOC

Justice Catherine Branson will take over from John von Doussa as President of the Human Rights and Equal Opportunity Commission in October.

She has been a judge of the Federal Court since 1994, convening the human rights panel that hears and determines complaints of unlawful discrimination under Commonwealth anti-discrimination laws since 2000. She was previously a barrister in Adelaide, being appointed a Queen's Counsel in 1992.

She is a former Crown Solicitor for South Australia and CEO of the SA Attorney-General's Department, and has Arts and Law degrees from the University of Adelaide.

Women's rights to be specially acknowledged

The Rudd Government last month tabled a National Interest Analysis, which proposes that Australia accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

The Optional Protocol allows Australians to make complaints to the UN about the protection of women's rights and gender equality when all domestic review avenues have been exhausted.

The proposal to accede to the Optional Protocol will be considered by Parliament's Joint Standing Committee on Treaties, which is due to report by 10 November 2008.

Australian to head world migration report

An Australian has been appointed to head the 50-strong Human Development Report Office, part of the UN Development Program, in New York. In the role, she will be responsible for compiling and editing the major 2009 UN report on worldwide migration, due out late next year.

Dr Jeni Klugman has had a diverse career at the World Bank since 1992 as an economist, focusing in particular on Africa, Europe and Asia. Her most recent position was as Lead Economist for Ethiopia and Sudan, where she led the Sudan Joint Assessment Mission. She has also completed a number of consultancies, including with UNICEF, the ADB in Manila, the World Institute Development Economic Research at UNU (WIDER), and with the Human Development Report Office in UNDP in New York.

Dr Klugman holds a PhD in Economics from the Australian National University. She also has an MSc in Development Economics, a graduate law degree from Oxford University, and an Economics/Law degree from Sydney University.

She is the daughter of CLA President, Dr Kristine Klugman.

<http://hdr.undp.org/en/mediacentre/news/title,10711,en.html>

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Civil unions exceed expectations

Civil partnerships in the ACT are way up on expectations, with more than 20 couples registering in less than three months.

There were 23 registrations and two commitment ceremonies in the first quarter since the laws began on 19 May. It was expected there would be only 15 registrations a year.

With spring and the ACT's flower festival, Floriade, from mid-September to mid-October, there are likely to be many more commitments and partnerships registered before the end of this year.

The Civil Partnerships Act 2008 allows gay and lesbian couples in the ACT to register their partnership and legally affirm their commitment to each other for the first time.

Couples can also choose to participate in a non-legal ceremony conducted by the Registrar General or her delegates, providing them with the opportunity to publicly reaffirm their written declaration of commitment.

ACT Government moves sharply on law and order pre-election

The ACT Legislative Assembly, as it wound down for its four-yearly election on 18 October, passed sweeping new law-and-order legislation.

It approved undercover police operations in the Crimes (Controlled Operations) Act 2008. CLA says this new law, which allows to police to pose as criminals and to condone illegal behaviour by criminals in trying to trap suspects, will inevitably produce police corruption.

The ACT also passed the Domestic Violence and Protection Orders Bill 2008, which extends domestic violence laws to boyfriend/girlfriend and same-sex relationships, even where couples do not live together, and ensures compatibility with the Human Rights Act.

Another piece of legislation, the Crimes Legislation Amendment Bill 2008 is aimed at using court time more effectively and streamlining procedures. The Bill, dealing mainly with the Magistrates Court, means:

- Committal hearings will operate on written evidence, unless the Court is satisfied cross-examination is needed;
- sentencing jurisdiction of the Magistrates Court is up from two years to five years;
- fines that can be imposed by Magistrates rise from \$5000 to \$15,000; and

- matters carrying no more than two years imprisonment must be heard in the Magistrates Court, removing the ability to opt for Supreme Court trial in the first instance (the ACT does not have a District Court).

A fourth Bill, the Sexual and Violent Offences Legislation Amendment Bill 2008, was significantly improved by CLA action led by Director Lance Williamson, with help from barrister and CLA member Jennifer Saunders, CLA President Kristine Klugman and barrister Ken Archer. Improvements agreed by the government at the last moment included ensuring that video evidence images are as close to 'live' court appearances as possible, and the opening of the courts to media coverage (which was barred in the original Bill).

CLA remains concerned that the provisions in the legislation contravene the federal Evidence Act, and therefore will cause extra distress to victims over the next year as appeals proceed through superior courts.

Muslim President calls for equal rights in China

The President of the Australian Federation of Islamic Councils, Mr Ikebal Patel, last month called on China to deal fairly with all its people.

"China has moved a long way forward since the Mao era, when all forms of religious identification was destroyed; however, persecution and injustice is, unfortunately, still prevalent," he said.

Mr Patel, who is a member of CLA, said that estimates of the number of Muslims in China vary, and range between 20m and 130m, most of whom live in western China. There are an estimated 30,000 mosques.

China's treatment of the Tibetan uprising outraged the West, but the plight of the Uighurs is also an issue with the Chinese Government. "The suffering of the Uighurs receives little attention," he said.

"Beijing defends the suppression of the Muslim minority as fighting terrorism. I urge the Chinese Government to uphold basic human rights of all its citizens, so that a Chinese citizen is valued as a human being regardless of their creed, colour or affiliation," he said.

Cards come up trumps for retail giants

The nation's retail giants will amass mountains of data with the launch of sophisticated credit cards which can follow spending trails and allow companies to suggest new purchases based on shopping patterns.

Woolworths' Everyday Money Credit Card will combine a credit card with a loyalty program capable of capturing and then sending a shopper's purchasing details back to a central database linked to a fuel voucher card.

David Jones has reportedly teamed up with American Express to launch a similar card by Christmas. Coles and other retails are expected to follow suit.

The Woolworths card will not only collect data on grocery purchases; it will also record information about purchases through Woolworths-owned outlets, from clothing to homewares, petrol, alcohol and electronics. The company said cardholders could protect their privacy by "opting out" from detailed data collection.

– from SMH, 27 Aug 08

<http://www.smh.com.au/text/articles/2008/08/26/1219516472311.html>



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SuperCAT spreads its claws

The ACT has a new consolidated tribunal, the ACT Civil and Administrative Tribunal (ACAT), likely to become known as SuperCAT, and due to start in February 2009.

It will incorporate four divisions, including Civil Disputes, Administrative Review, Occupational Discipline and the General Division. It consolidates 16 jurisdictions and tribunals, including the Administrative Appeals Tribunal, Discrimination Tribunal, Guardianship and Management of Property Tribunal, Mental Health Tribunal, Residential Tenancies Tribunal and the small claims jurisdiction of the Magistrates Court.

Also incorporated are occupational disciplinary bodies, such as the Health Professionals Tribunal and the Legal Profession Disciplinary Tribunal, and various consumer and regulatory bodies, such as the Commissioner for Fair Trading (when hearing cases involving motor vehicle dealers, tobacco and finance brokers) and the Liquor Licensing Board of the ACT.

Former ACT Attorney-General and recently Opposition Leader, Bill Stefaniak, will be appeals president of the new body. Mr Stefaniak is a CLA member.

The person responsible for overall administration will be Linda Crebbin, at present the Disability and Community Services Commissioner and Children and Young People Commissioner, named as general president.

High Court affirms rights on the edge: The High Court's recognition of the Yolngu people's exclusive possession rights over the intertidal zone along 80 per cent of the Northern Territory coastline has been welcomed by Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma. "This decision means that the traditional owners, the Yolngu people, can have certainty about their common law rights and it gives them a stake in the development of a sustainable commercial fishing industry." <http://www.hcourt.gov.au/>

Queensland responds on FOI/privacy: The Queensland Government has responded to the FOI recommendations of the Dr David Solomon committee:
http://www.thepremier.qld.gov.au/library/pdf/right_to_info/Right_to_Information.pdf A Privacy Bill for consultation is planned for December 2008, to operate from mid-2009. There's also a proposal for an Information Commissioner, with two deputies, one designated as 'FOI Commissioner', the other as 'Privacy Commissioner'.

Native Title Registrar appointed: Associate Professor Stephanie Fryer-Smith has been appointed Registrar of the National Native Title Tribunal. She takes up on 20 October 2008 for five years.

Do Not Call Register: A new discussion paper seeks community views on potential changes to what numbers should be eligible to be listed on the Do Not Call Register. Currently the scope is "fixed line and mobile telephone numbers used primarily for private or domestic purposes". The inquiry is considering the position re: numbers used exclusively to send or receive faxes; businesses; and other entities (incorporated associations, etc.) Closing date for submissions is 12 September 2008.

Details:

http://www.dbcde.gov.au/communications_and_technology/consultation_and_submissions/do_not_call_register_-_eligibility_requirements_for_registration_on_the_do_not_call_register

Some key CLA activities for August:

Media

ABC TV interview on police extra-legal powers

ABC radio on CCTV at Aurukun on *The World Today*, and *The Wire* national radio

Canberra Times interview on Sexual and Violent Crimes legislation

CLArion newsletter entered for Walkley Award

2XX fm training session

Member Steven Z. from Sydney produced original theme music for upcoming radio programs.

Networking meetings

Andrew Podger, President, Australian Institute for Public Administration

Senator George Brandis, Shadow Attorney-General

Teleconference Senator Kate Lundy

Steven Ciobo MHR, Shadow Minister Small Business, the Service Economy and Tourism

Bill Brodie, JACS CCTV regulation mechanisms

Meetings/conferences

Pending: Nic Xenophon, Peter Arnaudo (HR branch, AGs), Dr Alan Eggleston
SA contacts: Natasha Stott Despoja, Linda Kirk, Brian Deegan, Sue Vardon, Allan Perry
WA contact: Brenda Martin

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Board meeting

Consideration and approval of electronic voting, Government as Model Litigant project, paper on changing focus of CL activities, CLA as community law firm, paper on approach to IT developments, first TV ad approved for trial

Legislative initiatives

Amendments to ACT Legislative Assembly Sexual and Violent Crimes legislation
CLA sponsored initiative for Federal MPs re upholding ACT laws

Other

Contact letters sent to retired senators Nettle, Bartlett, Allison
Inter-organisation liaison and cooperation: Australian Human Rights Group, Australian Privacy Foundation
SA Police powers protest: letter to Attorney-General
Letter to Susan J. Crawford, Convening Authority, US Office of Military Commissions

INTERNATIONAL

Concern grows for Baha'i in Yemen

There is great concern over the ongoing arbitrary detention of four Baha'i practitioners in Yemen, three Iranian nationals and one Iraqi.

The fear is deportation from Yemen to their country of origin: in Iran, for example, there is systematic repression and a high risk of torture and inhuman treatment for Baha'i believers.

Deporting them would violate article 3 of the International Convention against Torture, to which Yemen is a party, which states that: "No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

The four Baha'is were arrested in June 2008, in private homes, in Sanaa, the capital of Yemen, by armed national security officials. All are well-established residents with family in Yemen for a very long time. On 2 August, they were transferred to the General Prosecutor's Office; two Yemeni nationals arrested on the same evening were released.

The Baha'i practitioners could be charged with proselytizing or of attempting to convert Yemeni nationals, which is criminalized and punishable by death in Yemen, against International Human Rights Law and in particular Article 18 guaranteeing freedom of religion, of the International Covenant on Civil and Political Rights (ICCPR), to which Yemen is a party.

– from Intl Fedn for Human Rights (FIDH) and Sister Arab Forum for HR (SAF) in Yemen

<http://www.fidh.org/spip.php?article5825>

Five Pakistani women buried alive for marriage refusal: claim

Five Pakistani women, including two minors, were buried alive in July this year for having decided to marry men of their choice, it is claimed.

There has been no police investigation, and no-one has been charged, according to the International Federation for Human Rights (FIDH).

The five women from the village of Baba Kot, in the Department of Jafferabad in the province of Baluchistan (south-west Pakistan), were members of the Umrani tribe.

The three young women had decided to get married before a civil court in the town of Usta Mohammad, going against decision by members of their tribe. The two other women, who were older, were members of their families.

According to information collected by the Human Rights Commission of Pakistan (HRCP), the plan was discovered, and on 13 July 2008, the five women were reportedly captured and transported in a car with provincial government plates to the desert by several men, including Mr. Abdul Sattar Umrani, who is the younger brother of Sadiq Ali Umrani, the Minister for Housing in the Baluchistan provincial government and a member of the ruling party.

Having struck three of the young women, the men opened fire, seriously wounding them. They then covered their bodies with earth and stones, while they were still alive. The two older women were also buried alive when they tried to rescue the victims.

A month after the event, no investigation had been opened by the justice branch of Pakistan and no prosecution had been initiated against the alleged perpetrators.

<http://www.fidh.org/spip.php?article5802>

UK continues to lose personal records on massive scale

Confidential records and sensitive intelligence on more than 100,000 UK criminals – held unencrypted on a memory stick – have been lost in a major breach of data security.

The data from the Police National Computer was entrusted by the UK Home Office to a private firm. Encrypted for security reasons, it was decoded by staff at PA Consulting Group and placed on a computer memory stick that was subsequently lost.

The device contains personal details and intelligence on 33,000 serious offenders, dossiers on 10,000 “priority criminals” and the names and dates of birth of all 84,000 prisoners in England and Wales. There is also information on people enlisted on drug intervention programs.

Jacqui Smith, the Home Secretary, was said to have been furious as the latest loss follows a series of data-handling fiascos over the past two year. This loss is a major setback for her efforts to reform a department described by her predecessor John Reid as “not fit for purpose”.

Detectives from the Serious Economic Crime Command at Scotland Yard have begun searches, viewing CCTV material and interviewing potential witnesses.

Ministers had promised to tighten security controls. The latest loss is particularly embarrassing because the data originated at the Home Office’s headquarters, where Ms Smith, her ministers and their senior officials work.

<http://www.timesonline.co.uk/tol/news/uk/crime/article4583747.ece?&EMC-BItn=MIVBG9>



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UK customers' bank details sold on eBay

A British data processing firm has launched an urgent review after a staff member sold a computer on eBay containing personal details of a million bank customers, a spokeswoman said.

The computer was bought on the online auction site for \$A75 by Andrew Chapman, an IT manager, who found the information on the computer's hard drive. It included bank account numbers, phone numbers, mothers' maiden names and signatures of 1,000,000 customers of American Express, NatWest and the Royal Bank of Scotland (RBS), the *Independent* newspaper reported.

It had belonged to data processing company Mail Source which is part of Graphic Data, a company that holds financial information for banks and other organisations.

<http://news.theage.com.au/world/customers-bank-details-sold-on-ebay-20080826-432r.html>

US to build database on the world

The US Government is using its border checkpoints to build a database on the world by scanning mandatory, machine-readable, identification documents.

By June 2009, all people crossing US borders must present a machine-readable ID. Under the system, officials record name, birth date, gender, date and time of crossing, and a photo, where available. Data on US citizens will be held for 15 years and on foreigners for 75 years.

An ever-increasing number of government systems, in the USA and elsewhere, including in Australia, contain personal information that can be shared for a broad range of law enforcement and intelligence purposes.

The data could be used beyond determining whether a person may enter the USA. For instance, information may be shared with foreign agencies when relevant to their hiring or contracting decisions, and it may also be used in criminal and intelligence investigations.

The US Government contends that the system was authorized by post-11 Sept 2001 laws.

– from a report by Eileen Makashima, Washington Post, 20 Aug 08

http://www.washingtonpost.com/wp-dyn/content/article/2008/08/19/AR2008081902811_2.html?sub=AR

E-deluge overwhelming US civil justice

Dawn Beye's teenage daughter suffers from anorexia nervosa and had to be treated in hospital at a cost of about \$1300 a day.

Horizon Blue Cross Blue Shield of New Jersey, the Beyes' insurance company, covered one month of the bills but then balked, demanding evidence that the affliction was "biologically based" rather than psychological. So Ms Beye got together with parents of other anorexic and bulimic teenagers and sued.

Horizon immediately asked to see practically everything the teenagers had said on their Facebook and MySpace profiles, in instant-messaging threads, text messages, e-mails, blog posts and whatever else the girls might have done online.

The Beyes' lawyer, David Mazie, objected on the grounds that Horizon's demands violated the girls' privacy. He lost. So hard disks and web pages are being scoured in order for the case to proceed.

The case highlights a new American boom industry – specialised e-discovery service providers charging \$125-600 an hour. George Socha, a consultant, estimates that his firm's annual revenues have grown from \$40m in 1999 to about \$2 billion in 2006 and may hit \$4 billion next year.

The entire process of pre-trial discovery is causing a major re-think of whether America should move to a more inquisitorial basis for civil cases.

– adapted from *The Economist*, 28 Aug 08

Full story: http://www.economist.com/displaystory.cfm?story_id=12010377

Lords to vote on secret inquests

Inquests deemed a risk to national security by the British Government would be held in secret in future under proposed powers to come before the House of Lords soon.

The provisions, under a clause in the Counter-Terrorism Bill, allow the Home Secretary to stop a jury being summoned, replace the coroner with a government appointee and bar the public from inquests if it is deemed to be in the public interest.

It could be applied to inquests similar to those into the deaths of the weapons inspector David Kelly, "friendly-fire" military casualties or Diana, Princess of Wales.

Lawyers, opposition MPs and pressure groups have told *The Times* that the move represents a fundamental breach of the right to a public inquiry into a death – a centuries-old mainstay of British justice. They said that a full-scale campaign is being prepared to block the provision, which granted the Home Secretary unprecedented powers to intervene in the workings of the judiciary.

It would enable specially vetted coroners to sit in private without a jury when there is evidence involving national intelligence to be heard, or any matter that the Home Secretary deems not in the public interest.

<http://business.timesonline.co.uk/tol/business/law/article4510259.ece?&EMC-BItn=MN92E9>

Man receives \$1.5m because of ‘egregious’ police entrapment

A man cleared of murdering a model 16 years ago in London has received \$1.5m compensation for wrongful arrest and prosecution because of ‘entrapment’ techniques which are now being semi-legalised in jurisdictions throughout Australia.

Rachel Nickell, a 23-year-old model, had been stabbed 49 times and sexually assaulted in 1992 as she walked with her two-year-old son Alex, in one of Britain's most notorious murders.

Colin Stagg, who lived nearby, was charged with her murder a year later, despite no hard evidence. He was cleared because the testimony of an undercover female police officer who had tried to entice a confession out of him was deemed inadmissible in court.

The trial judge at the time, Justice Ognall, told the Old Bailey court that police tactics had been "deceptive conduct of the grossest kind". Similar conduct is now either legal, or is being made legal, in Australian States and Territories.

A former warehouseman, Robert Napper, 41, from south-east London, has recently been charged with Ms Nickell's murder and is due to stand trial in November.

For years after acquittal, Mr Stagg was regularly vilified in newspapers as the man who had "got away" with the murder, and his life suffered as he became the nation's number one pariah.

The independent government assessor, who awarded Mr Stagg 706,000 pounds, described the police tactics as "highly unusual and legally bizarre". Lord Brennan added: "I am quite satisfied that this amounts to misconduct in the investigation and prosecution of this case and I categorise it egregious."

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Terrorists don't come flagged: nor are they ‘mad and bad’

Britain's MI5 has concluded that there is no easy way to identify those who become involved in terrorism.

A sophisticated and classified internal research analysis, based on hundreds of case studies by the security service, says there is no single pathway to violent extremism. It concludes there is no typical profile of the "British terrorist" as most are "demographically unremarkable" and simply reflect the communities in which they live.

The "restricted" MI5 report takes apart many of the common stereotypes about those involved in British terrorism. They are mostly British nationals, not illegal immigrants and, far from being Islamist fundamentalists, most are religious novices. Nor, the analysis says, are they "mad and bad". Those over 30 are just as likely to have a wife and children as to be loners with no ties, the research shows.

The security service also plays down the importance of radical extremist clerics, saying their influence in radicalising British terrorists has moved into the background in recent years.

<http://www.guardian.co.uk/uk/2008/aug/20/uksecurity.terrorism1>

UK takes snooping on its citizens to new low

Councils and health authorities are to be given the right to access email and internet records under surveillance powers to be introduced next year, the Home Office said yesterday.

Although first proposed to tackle terrorism and serious crime, powers have been extended to cover other criminal activity, public health, threats to public safety and even prevention of self-harm.

The Home Office said that the move would involve internet service providers storing one billion incidents of data each day and storing them for a minimum of 12 months. Under the plans the taxpayer would pay \$98 million to internet service providers for holding information, even though some already keep similar records for marketing purposes.

Opposition MPs criticised the plans as a “snoopers’ charter”.

Records of every e-mail, internet session and telephone call made over the internet will be stored for a minimum of 12 months with police, local councils and other organisations able to access the details.

The information will include the date and times of the log-in and log-off from the internet – the “who, when, and where” of communication – but not the contents of calls, messages or lists of websites which had been accessed.

New laws chill freedom of expression

A highly critical UN report has accused the British Government of creating laws that chill freedom of expression in the UK.

The government's use of the Official Secrets Act to prevent issues of public interest being published is also condemned in an intervention from the UN which warns that public servants are being gagged even where national security is not at risk.

The criticisms are made as part of analysis of a report which the UK is required to submit to the UN every three years, appraising human rights in its jurisdiction.

Among the problems identified, the UN says:

- Terrorism Act 2006 provisions covering encouragement of terrorism are too broad and vague, and should be amended so that their application does not lead to "a disproportionate interference with freedom of expression".
- Libel laws should be reformed to end so-called "libel tourism", whereby wealthy foreigners have gone to the high court to sue over articles that would not warrant action in their own country.
- Powers under the Official Secrets Act have been "exercised to frustrate former employees of the crown from bringing into the public domain issues of genuine public interest, and can be exercised to prevent the media from publishing such matters".

The analysis committee also warns that, in the age of the internet, Britain's unduly restrictive libel laws create the danger of affecting freedom of expression worldwide, contrary to a UN covenant on civil and political rights which guarantees the right to freedom of speech and to exchange ideas and information "regardless of borders".

<http://www.guardian.co.uk/politics/2008/aug/15/labour.idcards>

Irish bus pass may be 'identity card by stealth'

Scottish pensioner John Welford has returned his bus card and asked for it to be destroyed.

He fears the apparently benign identity card, which contains a name, photograph and unique number, is a Trojan horse, the first step by the Scottish government to usher in a national ID by the back door.

Now there is to be an Irish public services card, a seemingly-innocuous travel pass to be distributed to the country's 640,000 free travel recipients next year. He sees a parallel between the introduction of the card in Ireland with the rollout of the travel pass in Scotland.

There are echoes of his suspicion in the comments of privacy campaigners last month in Ireland. They claim that although the public service card will be introduced as a free travel pass, it may gradually form the basis of a national identity card.

Here in Australia, some privacy campaigners hold similar fears for the new e-health card planned for Australia within the next five years.

– from an article by Colin Coyle in the Sunday Times 10 Aug 08, spotted by Roger Clarke

<http://www.timesonline.co.uk/tol/news/world/ireland/article4493788.ece>



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Iran halts stoning executions: Iran has suspended stoning people to death as a judicial sentence. Stoning has been, until now, the official penalty for adultery: it usually sees the condemned person buried up their neck and then stoned – big enough to cause serious pain but not large enough to lead to a quick death – thrown at them by a group of people.

Report: <http://www.abc.net.au/news/stories/2008/08/06/2325285.htm>

Covering the conventions: About 15 000 journalists have been involved in covering the US Democratic and Republican conventions, *Forbes.com* estimates. "What a waste." writes Jeff Jarvis. "The outcome of the conventions is known. There will be no news. Why are these news organisations sending so many staffers there?". Justin Peters at the *Columbian Journalism Review* agrees: "Only a small number of reporters actually have a reason to be here." Read more here: http://www.cjr.org/campaign_desk/the_15000.php?page=all and here: <http://www.buzzmachine.com/2008/08/14/covering-conventions-is-an-waste/> Imagine what 14,500 journalists could do if they concentrated for one week on civil liberties and human rights issues, CLA says.

Editorial, NY Times: *The United States v. the Driver*: Last (month) was hardly the first time that we have found ourselves scratching our heads in anguished confusion about what, exactly, President Bush is trying to achieve by trashing the (US) Constitution at Guantánamo Bay. But the sentencing of Osama bin Laden's driver, Salim Ahmed Hamdan, to five and a half years in prison is a good moment to stop and reflect. ...it is a hollow victory in the war on terror, a blow to America's standards of justice and image in the world. Read the NYT's stinging editorial: <http://www.nytimes.com/2008/08/10/opinion/10sun2.html?th&emc=th>

Copyright treaty being done in secret? America's plans for a copyright treaty, dubbed "Hollywood's Christmas list" by privacy advocates, may be disrupted as protests over "secret negotiations" emerge in participating nations, including Australia, Canada and New Zealand. US Trade authorities had been hoping to conclude the Anti-Counterfeiting Trade Agreement by the end of the year. Electronic Frontiers Australia chair Dale Clapperton said the proposed multinational treaty had been "developed behind closed doors" in consultation with big music and film industry copyright owners. Little information had been made available, but "there appears to be significant involvement by the Recording Industry Association of America and other copyright lobby groups", he said. <http://www.australianit.news.com.au/story/0,24897,24202770-15306,00.html>

Anthrax case further poisons US justice: The FBI director, Robert S. Mueller III, after presenting inconclusive evidence against Dr Ivins, the laboratory scientist who committed suicide, said that he (Mueller) was proud of the FBI's anthrax inquiry. This is the botched investigation that defamed the wrong man (Steven Hatfill, \$5m compensation paid by the US Administration) as prime suspect for seven years, and then resulted in Ivins, driven to possibly greater dementia by the FBI's media leaks, committing suicide without being charged and with no evidence led before a court. The anthrax case killed a little of the US body of justice: for many innocent people, the cost was high: lost jobs, canceled visas, broken marriages. "I do not apologize for any aspect of the investigation," he told reporters. It is erroneous, he added, "to say there were mistakes." A quick check of the database confirms that it is indeed imperfect. Some records are incomplete, and there is often no way to distinguish between people with the same names if you don't know their birthdays (and even that date is often missing).
<http://www.nytimes.com/2008/08/03/technology/03essay.html?th=&emc=th&pagewanted=print>

MI5 misled MPs over Briton's secret rendition, court told

MI5 misled British MPs about what it knew of the whereabouts of Binyam Mohamed, a British resident who says he was tortured before being secretly rendered to Guantánamo Bay, the British High Court was told last month.

Lawyers for Mohamed were demanding release of information held by the government's which, they say, shows he was subject to extraordinary rendition, held incommunicado, and tortured. The government argued that disclosing the information would jeopardise Britain's diplomatic and intelligence relationship with the US.

The High Court found that MI5 participated in the unlawful interrogation of Mr Mohamed. The judgment raises serious questions about the conduct of Britain's security and intelligence agencies,

and contains implications for Australia: Mamdouh Habib made similar allegations that Australians were present when he was tortured.

The full evidence surrounding the British case, and the judges' findings, remain secret.

However, Mr Mohamed's lawyers said one MI5 officer interrogated him while he was being held in Pakistan in 2002. Mr Mohamed, 30, an Ethiopian national, was later secretly rendered to Morocco, where he says was tortured by having his penis cut with a razor blade. The US subsequently flew him to Afghanistan and he was transferred to Guantánamo Bay in September 2004 where he remains, now fighting to establish his innocence of terrorism charges.

In a passage which appears to contradict previous assurances by MI5, Lord Justice Thomas and Mr Justice Lloyd Jones concluded: "The conduct of the security service facilitated interviews by or on behalf of the United States when [Mohamed] was being detained by the United States incommunicado and without access to a lawyer." They added: "Under the law of Pakistan, that detention was unlawful."

<http://www.guardian.co.uk/uk/2008/aug/22/uksecurity.quantanamo>



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UK Government loses Guantanamo ruling

The UK Government must disclose information relating to a Briton held at Guantanamo Bay which, he says, supports his case that evidence against him was obtained through torture.

Two High Court judges concluded that the Foreign Secretary was under a duty to "disclose in confidence" to Binyam Mohamed's legal advisers in Guantanamo Bay certain information relating specifically to him and "which is not only necessary but essential for his defence".

Mohamed, 30, is facing US military trial and possibly the death penalty if found guilty. His lawyers went to court seeking disclosure of material he says will help defend the charges he faces, which he alleges are based on confessions extracted by torture and ill-treatment.

<http://www.independent.co.uk/news/world/americas/government-loses-guantanamo-ruling-904530.html>

Texas hangs Mexican – ignores world court: The US state of Texas has executed a Mexican convicted of murder, ignoring a last minute appeal from UN chief Ban Ki-moon and a world court order asking for a reprieve. Jose Ernesto Medellin, 33, was killed last month after the US Supreme Court rejected his last-ditch appeal. His execution took place even though Mr Ban urged US authorities to comply with the International Court of Justice (ICJ) order, which demanded a stay of execution and a review of his case and that of other Mexican death row inmates.

<http://news.smh.com.au/world/texas-executes-mexican-man-in-defiance-of-world-court-20080806-3qwl.html>

Pillay is new UN Human Rights Chief: South African lawyer and ICC judge Navanethem Pillay has been named to replace Louise Arbour as the UN High Commissioner for Human Rights. Feature story: <http://www.smh.com.au/articles/2008/07/25/1216492734171.html>

DATES:

3-5 September, Paris, France: 61st Annual DPI/NGO Conference commemorating 60th anniversary of the Universal Declaration of Human Rights

7 Sept, Sydney: NHMRC and ALRC public meeting on online DNA tests, 6-8pm, State Library of NSW. Info: http://www.alrc.gov.au/ALRC_Invite.pdf

10-13 Sept, New Delhi, India: Human Development and Capability Association conference on relationships between equality, inclusion and human development. Details: <http://www.capabilityapproach.com/>

11 Sept, Melbourne: *The Winter of Civil Liberties : The Erosion of Civil Liberties in the 21st Century*, address by Jim Kennan SC, former Attorney-General of Victoria, at TressCox Lawyers, 469 La Trobe Street Melbourne VIC 3000, Price \$15 full/\$10 concession. RSVP: ssowerwine@yahoo.com (places limited). A fundraiser for 3CR community radio 855am.

12-13 Sept, Melbourne: National Indigenous Legal Conference (and Ball), RACV Club. Info: Aislinn Martin (03) 9607 9474/; 0413 009 072; f 03 9607 9438; E: amartin@liv.asn.au

19-20 Sept 2008, Dublin, Ireland: Celebrating 60 years of the UDHR - conference explores how the Universal Declaration of Human Rights (UDHR) can contribute to education provision. Hosted by the Centre for Human Rights and Citizenship Education, Amnesty International Irish Section, and the Irish National Teachers Organisation. More info: Brian.Ruane@spd.dcu.ie

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>

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>

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

2009: 20 Feb, 2009: worldwide: World Day of Social Justice

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

LAST WORD: Do unto others – not me – says police chief

The New Zealand Police Commissioner last week refused to take a zap from a stun gun, which his officers are now using on citizens of the Shaky Isles.

Commissioner Howard Broad approved the rollout of Taser stun guns, but refused to put his body on the line, according to a Press Association of NZ report.

A TV news crew went to police headquarters in Wellington to ask if he would be prepared to get zapped, as police chiefs in other countries had done. "I'm getting on a bit. While I've seen people Tasered, I'm probably reluctant to do it myself," Mr Broad said.

Green Party MP and Taser opponent Keith Locke said he was disappointed at Mr Broad's attitude. "I think it's a bit hypocritical when the police have been saying for months that the Taser is safe and only has short-term effects that the police commissioner himself is scared of being Tasered," he said, according to a News Limited report quoting NZPA.

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Backgrounder on coroners:

The office of coroner in England dates from 1194, evolving over eight centuries from medieval tax gatherer to independent judicial officer. The system was created in its present form in the UK in 1887.

More than 120 coroners in England and Wales investigate more than 200,000 deaths a year and hold inquests into some 25,000.

They are judicial officers who must have legal or medical qualifications – some have both. The proportion of all registered deaths reported to coroners was 45.7 per cent in 2006

In 2006 the most common verdicts returned were deaths by accident or misadventure (34 per cent), natural causes (25 per cent) and suicide (12 per cent)

In 2006, male deaths accounted for about 68 per cent of verdicts; but included 93 per cent of verdicts of death from industrial disease, 77 per cent of suicide, and 84 per cent of death from dependence on, or non-dependent abuse of, drugs. For females, the most common was death by accident or misadventure (40 per cent of all verdicts for females) and death from natural causes (28 per cent).

Human Rights Watch fellowships

Application Deadline: 3 October 2008

These fellowships are for recent graduates of law schools or graduate programs in journalism, international relations, area studies, or other relevant disciplines from universities worldwide. Human Rights Watch is known for its impartial and reliable human rights reporting on over 70 countries worldwide, it's innovative and high-profile advocacy campaigns, and its success in affecting the policy of the US and other influential governments toward human rights abusers. <http://www.hrw.org/about/info/fellows.html>

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

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