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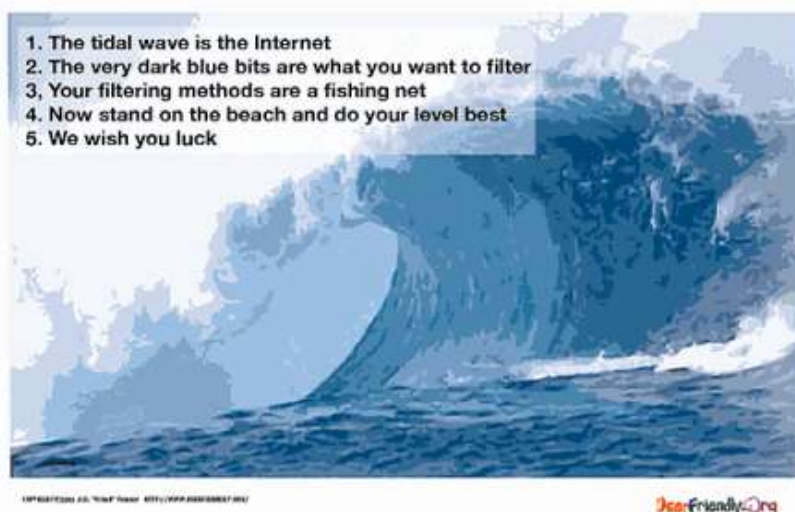
## CLA mounts anti-censorship campaign to overcome mandatory filtering

CLA has launched a new website as the prime tool to help fight the government's proposed mandatory internet filtering scheme.

The scheme would censor the internet, and permit the government to decide what Australians could see and read, hear and view on the world wide web.

It would amount to the most massive imposition of censorship ever in Australia's history. Because of the volume of the internet, censoring it would be like World War Two censor restrictions on steroids.

### A BRIEF LESSON ON THE PRACTICALITIES OF INTERNET FILTERING/CENSORING FOR THE CURRENT AUSTRALIAN GOVERNMENT:



CLA's campaign is called CensorFree. The website is <http://www.censorfree.com.au/>

The government - represented by Communications Minister Stephen Conroy – has a legitimate aim: it wants to protect children from pornography and being groomed by pedophiles.

But its clear-cut promise before the November 2007 election to provide an opt-in scheme has morphed in government into a mandatory censorship proposal that would:

- censor at least 11,000 sites...and counting (Minister Conroy has acknowledged this number as a starting point); and
- slow the internet, possibly dramatically (government trials have given a figure of possibly as high as by 75%).

CLA supports keeping pornography away from children, and protecting them from pedophiles. The government could easily achieve its aim, for the same cost, by giving parents rights to free software (and installation if needed) that would combat the problem on their home computer...if they choose. This involves the parents' right to choose, and the responsibility to make a decision for, and to monitor the habits of, children.

Instead, the Rudd Government and Minister Conroy are planning to become Big Brother to all Australians. They and faceless bureaucrats would decide what all Australians, children and adults, are NOT allowed to see.

Pornography? Yes, but whose definition of 'pornography' will be used? Are girly magazines that truckies enjoy included, the type that smutty schoolboys peddle behind toilet blocks? Probably, because remember this censorship is for children, but being imposed on adults.

What about bulimia \*(binge eating/purging, which affects about 10% of teenage girls), euthanasia, and suicide...will information on these be banned under Censor Conroy? Almost certainly, because the censorship is supposedly for children, but being imposed on adults.

About 80% of elderly Australians actively want more information on euthanasia...but under the mandatory internet filtering proposal, they won't be able to get it. The government doesn't like or support euthanasia, so you won't be allowed to read information on it.

CLA says the proposal is wrong in principle and won't work in practice. It aims at children, but will take away the average, normal, everyday rights of adults to choose what information they access.

Strangely, it may also have a counter-intuitive effect on the number and prevalence of pedophiles: over the past 10 years, there have been many high-profile arrests, coordinated around the world, of pedophile rings. How were they identified? By their activity on the internet. If they can't use the internet, what will they do? Use other methods/techniques...and be harder to identify and catch!

See the [CensorFree](#) website for more details. Send a protest email and/or letter to Censor Conroy and other members of the Government Cabinet of Secrets.

## Two EU States impose internet censorship: Germany and Italy

In a paper for the NSW Parliamentary Library's Research Service, Tom Edwards and Gareth Griffith outline the current debate over the Australian Government's filtering scheme for internet content and the practice in other countries.

It concludes:

"With the limited exceptions of Germany and Italy, mandatory ISP level filtering is not a feature of any of the countries reviewed. In place, rather, are voluntary ISP filtering schemes designed to prevent accidental access to a defined list of illegal sites containing child pornography."

Go to Australian Policy Online to download the full paper:

[http://www.apo.org.au/linkboard/results.shtml?filename\\_num=239644](http://www.apo.org.au/linkboard/results.shtml?filename_num=239644)

## Net censorship grows worldwide

Censorship of internet content is growing across the world. A survey by the Open Net Initiative (ONI) across 41 countries found that 25 applied content filtering to block access to particular websites. Web applications such as Google Maps and Skype as well as "subversive" websites featured on content blocking lists.

Five years ago only a "couple" of states were exercising similar controls, according to John Palfrey of Harvard Law School, one of the researchers who took part in the study. "There has also been an increase in the scale, scope, and sophistication of internet filtering," he told the BBC.

"Few states are open about informing their citizens about internet controls. There's no place you can get an answer as a citizen from your state about how they are filtering and what is being filtered," Palfrey said, adding that filtering almost invariably happens "in the shadows".

The extent of filtering varies between countries, with those in the Middle East among the most restrictive regimes. Burma, Iran, Pakistan, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, and Yemen were among the states applying the heaviest use of the censor's "blue pencil". China, India, Singapore, South Korea and Thailand all apply controls, albeit to a lesser extent.

Academics from the Universities of Toronto, Harvard Law School, Oxford and Cambridge, who make up the ONI, reckon there are three main rationales for internet censorship:

- politics and power,
- state security, and
- enforcement of social norms (such as a prohibition of pornography in Muslim states).

Censorship nearly always falls across multiple categories. Controls, once applied, are often expanded to cover a broad range of content and used to increase government control of cyberspace.

Use of internet filtering leaves citizens with a restricted view of events unfolding around them, as well as restricting their knowledge of the outside world. The ONI study noted the growing use of techniques and tools used to circumvent filtering. <http://opennet.net/>

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## **LAST WORD: Guess which students are the biggest cheats?**

Almost one in two Cambridge University students in a poll of 1,000 admitted to cheating in their studies. And guess which faculty had the most cheats? See last item in this newsletter.

## **Will Labor continue to squib the need for terror law reform?**

The preparatory work for reviewing all terrorism laws passed in anxiety and haste after 11 September 2001 has been done for the Rudd Labor Government by the Liberal Opposition, and particularly by Petro Georgiou (MHR, Kooyong Vic).

But Labor has so far refused to institute exactly the type of review it called for when it was in opposition.

Labor promised to consider the matter after Justice Clarke handed down his Haneef review (now done, after being twice delayed).

But Labor has also promised to remove sedition from Australian law. It has been in power more than 12 months, and has not moved a muscle to throw out the repulsive sedition provisions.

Last month in the Senate, Labor refused to join the Coalition, the Greens and the independent MP Nick Xenophon to support a private member's bill to set up an authority to monitor terrorism laws and whether or not there was an ongoing need for them.

The Bill, which passed the Senate, called for setting up a three-person panel to periodically review the terrorism laws.

Liberal MP Petro Georgiou sponsored it in the House of Representatives, but it lapsed when the previous parliamentary term ended in October 2007. The Bill shifts Coalition policy away from then-Prime Minister John Howard's pig-headed refusal to even consider reviewing the laws which everyone now agrees were passed in panic and are excessive.

The Bill which passed the Senate – a mirror of the Georgiou Bill – was sponsored by Senator Judy Troeth (Lib, Victoria) and Senator Gary Humphries (Lib, ACT). It now goes to the House of Representatives, but at press time it was unclear how the Rudd Government has decided to proceed. Will it allow the HoR to act with propriety, and pass the Bill? Reports indicate it would again oppose the Bill in the lower house.

However, the government should support the Bill, if only to get civil libertarians off the government's back about the excessive terror laws passed in fear and haste after the 11 Sept 01 aircraft attacks in the USA. Even Shadow Attorney-General George Brandis admits the Howard Liberal Government got it wrong (he, with Georgiou and a very few others, argued against some of the excesses in the party room at the time).

Mr Brandis supports a review: the laws were introduced during heated times, gave extraordinary powers and it was important they be reconsidered, he is quoted as saying. "You cannot allow extraordinary measures to become ordinary measures by the effluxion of time," he said. "It's appropriate to review them."

Well said. And the same principle applies to the need for urgent review of excessive police and ASIO numbers, and the empire building of their chiefs, and to the powers grabbed by transport authorities and others in relation to surveillance cameras, to airport security systems, etc...the list goes on and on.

It is time the pendulum started its swing back. It is a long way out from equilibrium point.

## **Clarke hands in his late Haneef report, at last**

John Clarke's twice-delayed report into the Dr Mohamed Haneef fiasco finally reached the Attorney-General, Robert McClelland, last month...and he is sitting on it because of a trial in Britain.

Speaking on ABC Radio late last month, he said: "In fairness to Mr Clarke, I think he framed his report with those trials in mind, and we've sent a copy of the report to British authorities. But they want to, and understandably, take time in looking through it and to reaching their own conclusions. A tremendous amount of resources have been put into the trial. The jury has been sworn in for



some time and they simply do not want anything to occur that could prejudice that. So that is, effectively, the only impediment to public release of the document, of the report at this stage.”

The AG commissioned Clarke to investigate:

- circumstances around the Haneef arrest, detention and visa fiasco;
- how and why the AFP, ASIO, DPP and others made such a mess of things;
- whether federal-state cooperation, or lack of it, contributed to the nonsense; and
- what needs to be done to fix the problems that led the fiasco.

NOTE: A cardboard effigy of AFP Commissioner Mick Keelty will be burned at the Eureka Memorial at dawn on Thursday 3 December, the 154th anniversary of the Eureka rebellion. "The burning will signal the start of a new and intensified campaign to demand an end to the Bush/Howard Terror War, the sacking of Keelty, and the repeal of the Howard Terror War legislation which stripped away so many hard won rights and liberties," said effigy maker and burner, Graeme Dunstan of Peacebus.com *(CLA does not support effigy burning, nor calls for the replacement of Commissioner Keelty without proposing a better choice to take his place).*

## **AG promises to end discrimination...while continuing to discriminate**

Attorney-General Robert McClelland has promised, before the year is out, to end a major cause of discrimination against older Australians (but not to end discrimination against Aborigines).

Speaking at a Labor forum in South Hurstville in Sydney, last month, he said the proposed amendments to the Disability Discrimination Act would pick up proposals in 2004 from the Productivity Commission which were not actioned by the Howard Government.

“A major change will be removing the ‘dominant reason’ test from the Age Discrimination Act. This test states that where an act is done for a number of reasons, it would not be unlawful unless age discrimination is the dominant reason. Its practical application has meant that older Australians have a weaker legal protection because of their age.”

Indicating an announcement of the human rights consultation was imminent, he said:

“We believe that the protection of human rights and responsibilities is a question of national importance for all Australians...of such importance that it’s appropriate that we first seek the views of the Australian people. Our consultation will have no outcome pre-supposed.”

The AG said he had “noted with interest” comments by the Federal Opposition outlining their objection to a charter of rights.

Australia’s first law officer then praised his side’s approach to Indigenous issues...even as he, Prime Minister Rudd and Indigenous Affairs Minister Jenny Macklin continue to discriminate on racial grounds against Northern Territory Aborigines.

“The Government’s action on human rights is not just limited to my portfolio,” Mr McClelland said. “Regrettably, the plight of Indigenous Australians continues to be one of the most serious and persistent human rights challenges facing Australia. Our reforms are focused on closing the gap between indigenous and non-indigenous Australians, including in life expectancy, infant mortality, education, housing and employment.”

He failed to mention that he and the Rudd Government are continuing to ignore the national Racial Discrimination Act – only in the NT – to deliver its program. You have to question a government’s bona fides on the principle of discrimination when it abandons the Aboriginal race for the convenience of program delivery. Why wouldn’t it do something similar against older Australians, if it suited the government, and it had the power?

And the AG and the Rudd Government have still not delivered on a pre-election promise, now more than 12 months old, to remove sedition from Australia’s laws.

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## **Secrecy provision to be abolished**

The Rudd Government introduced legislation into Senate late last month to abolish conclusive ministerial certificates that give ministers sweeping powers to keep documents secret.

The legislation will amend the Freedom of Information Act 1982 and the Archives Act 1983.

"This marks the first step in the Government's plan to undertake the most significant overhaul of the FOI Act since its inception in 1982," Special Minister for State, Senator John Faulkner, said. Early in 2009, the government will release exposure draft legislation for public comment addressing broader reform measures aimed at promoting a pro-disclosure culture, he said.

## **Women get to complain to UN as last resort**

Australia has decided to become a party to the Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),

Australia has been a party to the foundation CEDAW agreement since 1983, but the Howard Government refused to sign the Optional Protocol when it was adopted in 2000. The UK, Canada, NZ and a number of Asia-Pacific countries signed it.

Under the Optional Protocol, Australian women may complain to the UN Committee on the Elimination of Discrimination Against Women about alleged violation of Australia's obligations under CEDAW....but only after domestic legal options have been exhausted. The protocol also permits a UN investigation process.

Australia's instrument of accession to the Optional Protocol will be lodged shortly in New York, meaning it will enter into force before International Women's Day on 8 March 2009.

## **Imams let women down, report says**

Some Muslim religious leaders in Victoria are condoning rape within marriage, domestic violence, polygamy, welfare fraud and exploitation of women, according to a report on the training of imams released last month in Victoria.

Women seeking divorces have also been told by imams that they must leave "with only the clothes on their back" and not seek support or a share of property because they can get welfare payments, *The Age* reported.

The report says some imams knowingly perform polygamous marriages, also knowing that the second wife, a de facto under Australian law, can claim Centrelink payments.

The report is based on a study commissioned and funded by the Howard government and conducted by the Islamic Women's Welfare Council of Victoria. It was presented at a National Centre for Excellence in Islamic Studies conference at Melbourne University.

The secretary of the Board of Imams, Sheikh Fehmi Naji El-Imam, said he could not understand how the council could write such a report and denied the complaints "absolutely". "They must have heard stories here and there and are writing about them as though they are fact," he said.

Sheikh Fehmi, who is also Mufti of Australia, said no authorised imam would conduct a polygamous marriage, and it was absolutely wrong that women's rights were ignored in marriage or divorce, or that imams ignored domestic violence.

## **IGIS finds ASIO 'bananas' not guilty enough to be prosecuted**

The Inspector-General of Intelligence and Security, Ian Carnell, has found that two ASIO officers – B15 and B16, as they were called in court – should not face prosecution for their role in the failed terrorism case against a Sydney medical student.

The charges against Izhar Ul-Haque were withdrawn last year, after a Supreme Court judge ruled that the two ASIO 'bananas' had been "grossly improper", and possibly criminal, in how they conducted their interviews with the student.

But IGIS Carnell has disagreed, finding that the actions of the officers should not be referred to prosecutors. However, he must have come within a whisker of finding otherwise: "I do not consider that there is substantial evidence (of the two ASIO agents' wrongdoings)..." he says, which means of course that he did find evidence of wrongdoing.

Mr Carnell noted that Mr Ul-Haque could still make a complaint to NSW authorities for further investigation or compensation.

The result of this investigation? Yet another cock-up by Australian security services with no-one being held accountable. The court also severely criticised the Australian Federal Police's handling of the case. Full report: <http://www.igis.gov.au/statements.cfm>

## **CLA's model litigant campaign gets under way**

A two-page feature last month on pages 4 and 5 of the public servant's bible, the *Public Sector Informant* newspaper, kicked off a CLA campaign to get governments to revert to abiding by model litigant behaviour.

CLA is linking with the Australian Institute of Public Administration, the Law Council of Australia and the Australian Lawyers' Alliance to run a campaign through 2009 and 2010. Speakers and sessions will highlight the topic at seminars, conferences and roundtables.

The aim is to revert the rhetoric surrounding the statement: 'The government is a model litigant' back into the reality it used to be. The 'model litigant rule' is that the government should behave impeccably, to the highest possible standards, in all its legal dealings. The Commonwealth is not supposed to win at all costs.

"There's no doubt that standards of government behaviour in legal and para-legal situations have declined," the president of Civil Liberties Australia, Dr Kristine Klugman, said. "Increasing numbers of 'little people' came to us complaining about how they were mistreated by the government in court cases, tribunals and general dealings where someone's pension or entitlement depended on interpreting the law."

"We have written to the Attorney-General, Robert McClelland, asking for him to formally allocate funds for a Public Service campaign in 2009-10," Dr Klugman said. "We're asking for government and contracted government panel lawyers to be required to undertake formal model litigant studies as part of their annual continuing professional education."

"It is totally inequitable when a 200kg gorilla like the government acts irresponsibly towards little people in society, who are absolutely powerless by comparison. Bad government behaviour should never be overlooked, even if it is legal."

The CLA proposal is an overhaul of model litigant rules to:

- reinvigorate previous standards;
- ensure widespread education throughout government, in law firms, and in law schools;
- widely disseminate information publicly about the higher expectations on the government in litigation and para-legal situations; and
- introduce greater transparency in reporting on non-compliance, and in enforcing sanctions against secretaries and agency CEOs.

Ernst Willheim, Sarah Moulds, Bill Rowlings and the President are the the main CLA people involved on the project so far.

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## **Changes to DNA laws need careful watching**

A husband who suspects he is not the father of his child could go to jail for two years if he steals hair or saliva for DNA testing.

Proposed laws would make it illegal to genetically test a sample obtained without consent and to disclose the results.

Home Affairs Minister Bob Debus said the proposed new offences would not interfere with DNA testing by the police or courts or lawful access to private paternity testing by parents and guardians. The proposed laws will also not stop overseas online genetic testing services.

Mr Debus released a discussion paper on DNA theft containing the proposals last month. The paper is based on recommendations in the Australian Law Reform Commission's 2003 report, *Essentially Yours: The Protection of Human Genetic Information in Australia*.

ALRC chief Prof David Weisbrot said that people had been most concerned about misuse of personal genetic information by insurers, employers, angry spouses and journalists tracking down the DNA of famous people.

"There were stories about US president Bill Clinton who had his bodyguards collect a glass after he had drunk from it in a British pub," he was quoted as saying by Leigh Dayton, writing in *The Australian* on 11 Nov 08. <http://www.theaustralian.news.com.au/story/0,,24633241-2702,00.html>

In 2004, the UK amended the British Human Tissue Act to make DNA theft a criminal offence. The UN's Educational, Scientific and Cultural Organisation in 2003 adopted the International Declaration on Human Genetic Data.

CLA says this is potentially one of the most important changes to Australian law in recent years, because the potential uses – good and bad – of DNA information are not able to be predicted. CLA made submissions to the ALRC, and commissioned a report by Law student Karlie Brown on the specifics of insurance, superannuation and employment. Ssee [DNA: US legislates, why not Australia?](http://www.cla.asn.au/page/students.php) at <http://www.cla.asn.au/page/students.php>

Parliament should take extra time to consider the proposed changes, including further public consultation. Much has moved on in the area of DNA since the ALRC's inquiry more than five years ago.

### **Euthanasia woman sentenced to weekend detention**

A woman convicted of the manslaughter of her partner, an Alzheimer's sufferer, after helping him take a lethal dose of a drug has been sentenced to 22 months in weekend detention.

Shirley Justins, 60, was last month found guilty in the NSW Supreme Court of the manslaughter of Graeme Wylie, 75, her partner of 18 years, who died after taking a lethal dose of the veterinary drug Nembutal at his home in Sydney in March 2006.

Her friend, Caren Jennings, an advocate of euthanasia, was convicted of being an accessory before the fact of manslaughter. Jennings, 75, who had terminal breast cancer, killed herself using the same drug in September 2008. The two women said they were helping Mr Wylie fulfil his wish to die. <http://www.smh.com.au/news/national/weekends-in-jail-for-euthanasia-partner/2008/11/12/1226318695740.html>

### **AFP says sorry for Nepal blunder**

The Australian Federal Police has apologised to families of Australians killed in a plane crash in Nepal last month after sensitive documents relating to the crash were found by guests on a hotel computer in the country's capital, Kathmandu.

Diplomatic cables and police documents were left in open files on a computer available for public use. At least 20 photographs of the victims' charred remains could be seen by guests for up to three weeks.

"The officer allegedly involved in the security breach will be returned to Australia to assist the investigation," the police said. "The AFP has spoken to the families of the Australian victims and unreservedly apologised for any additional distress it may have caused."

The security breach included information about an AFP agent meeting a CIA operative in Kathmandu last month.

In a personal email that was left on a computer at Kathmandu's Radisson Hotel, an Australian agent expressed surprise at meeting the CIA operative who "looks like a bit of a footy jock but covered with some huge tattoos (stacks of them) and dressed like a total backpacker".

The security breach included a seven-page document detailing priorities and strategies for the AFP's office in Bangladesh, including information about sharing intelligence with foreign agencies.

One document marked "protected" detailed a meeting an AFP agent had with a secret foreign military organisation where sensitive security intelligence was discussed, including recent terrorist attacks in India.

The document revealed information about two fundamentalist Islamic groups that were still operating in south Asia despite public reports that they were not. – Fairfax reports, 8 & 9 Nov 08



## **Police hire private spies to snoop online**

The internet communications and websites of anti-war campaigners, environmentalists, animal rights activists and other groups like Civil Liberties Australia are being secretly monitored by state and federal agencies.

A Melbourne private intelligence firm specialising in "open-source intelligence" has been engaged by Victoria Police, the Australian Federal Police and the federal Attorney-General's Department to monitor and report on the protest movements' use of the internet.

The monitoring, which has been secretly conducted for at least five years, includes exploring websites, online chat rooms, social networking sites, email lists and bulletin boards to gather information on planned demonstrations and other activities.

Many of those monitored have not broken any laws, but it is believed information about their participation in online activities is conveyed to government agencies that also deal with terrorism.

A covert Victoria Police operation targeting community and activist groups was revealed by *The Age* last month.

The federal Attorney-General's Department confirmed it had contracted the company to provide information to its Protective Security Co-ordination Centre, the body charged with managing Australia's response to terrorist activity. A spokesman for the department said the company had been engaged since December 2002 to "monitor issues relating to criminal acts or threats concerning radical activism or unlawful behaviour, and to provide protest/security alerts on upcoming events".

<http://www.smh.com.au/news/technology/security/police-hire-private-spies-to-snoop-online/2008/11/26/1227491580370.html>

## **Qld cops are in a pickle over leftover files**

Queensland's Police Commissioner, Bob Atkinson, said last month there was "no excuse" for leaving sensitive crime files and names of sexual assault victims in police filing cabinets sent for public auction.

Interview tapes, court briefs and notebooks about a decade old were found at a Gold Coast public auction house in cabinets from the renovated Surfers Paradise police station.

Police say privacy rules have been broken as the names of sexual assault victims were among the files. They are investigating who has read the documents.

"We got this badly wrong, it should never have happened," Mr Atkinson said. He said it appeared filing cabinets set for auction were not sorted through before being sent away. "There's no excuse on this one," Mr Atkinson said. "We got it wrong."

Similar discoveries in 2002 prompted a tightening of legislation in Victoria. – 13 Nov, Fairfax Digital.

<http://news.theage.com.au/national/police-files-found-in-furniture-for-sale-20081113-65yg.html>

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## **LRC remains hope for sanity in NSW**

It's retrospective, and oppressive...a new law giving police powers to take and/or throw away alcohol seized in alcohol-free zones, according to the NSW Parliament's Legislation Review Committee commenting on Liquor Legislation Amendment Bill 2008.

The LRC – a cross-bench committee of the parliament – is the last hope for non-repressive legislation in a State leaning further and further to the right and to 'law and order' as its infrastructure and financial problems become more apparent.

"The Committee resolves to write to the Minister to seek information on the reasons why warning is not to be provided in the proposed section 642 for the proposed powers to confiscate or dispose of

alcohol in alcohol-free zones particularly, given that it will no longer be an offence attracting a penalty notice," the LRC says in its stilted method of delivery.

"The Committee further seeks information from the Minister to clarify on whether a police officer may exercise the powers of arrest in circumstances related to or escalating from the person's non-compliance with the amended section 642 rather than the option of a penalty notice that could have been otherwise available under the current legislation and which would have imposed less adverse impact on the affected person.

"This is particularly if members of marginalised groups could be more adversely and disproportionately affected in alcohol-free zones such as those who may tend to use public space or be more highly visible such as young people, Indigenous people, people who are homeless, and those with mental health, drug and/or alcohol related problems.

The Committee has written to the Minister with a 'please explain' request.

However the Cat and Dog Bill, otherwise known as the Animals (Regulation of Sale Bill) 2008, received a clean bill of health from the committee. It appears this Bill is relatively more concerned about animal rights than is the previous Bill about human rights.

### **Police zap 16-year-old helping her sick girlfriend**

Queensland police face disciplinary action after holding down and stunning a 16-year-old girl defying an order to move on because she was waiting for an ambulance to treat her sick friend.

The Crime and Misconduct Commission and police ethical standards unit are investigating the April incident – during a year-long trial of Taser stun guns – which has drawn a strong rebuke from a magistrate in the Brisbane Children's Court.

The girl, who cannot be named, had a charge of obstructing police dismissed after the Children's Court ruled last month that one of the two officers involved did not give adequate directions, under police move-on powers, before he and two private security guards held the slightly-built teenager down, shot her in the thigh with the stun gun and then arrested her, initially on a charge of assaulting police.

Magistrate Pam Dowse also criticised the police officers for over-reacting to the teenager's refusal to leave her unconscious friend, a girl, before the ambulance arrived. The teenagers were alleged to have been involved in an earlier altercation with another group of tourists, according to Michael McKenna, writing in *The Weekend Australian*.

Of equal concern to the stun gun abuse, McKenna says that he was initially refused access to the court proceedings, following an objection by police prosecutors. Access was later granted after undertakings were given not to identify the defendant, any of the police involved or the location of the incident.

Queensland's Bligh Government has been widely criticised for this year arming more than 5000 police with the 50,000-volt stun guns. They have already been used inappropriately in a number of documented cases in Queensland.

According to police guidelines, a stun gun should not be used on juveniles "except in circumstances where there is no other reasonable option to avoid the imminent risk of injury" (to the police). <http://www.theaustralian.news.com.au/story/0,25197,24654141-5013945,00.html>

### **Police were silent over death of man shot with stun gun**

A man died of a heart attack about two weeks after being repeatedly shot with a stun gun, but NSW Police omitted it from official records, including on the man's death certificate.

Gary Pearce, a violent, mentally-ill 56-year-old, was shot with a stun gun when he threatened police with a frying pan in May 2002. The link between his death and his being shot by a stun gun could have been used as evidence of the risks of the controversial weapon, but was only made public by the NSW Ombudsman last month.

The Police Commissioner, Andrew Scipione, admitted he only learned of the stun gun link last month when he was given a copy of a scathing report by the Ombudsman, Bruce Barbour, into the use of stun guns.

The NSW Ombudsman's report studied the use of the weapon by two specialist police units between 2002 and last year. It found there were potential risks in giving the weapon to general duties police, which happened last month.

The report was also critical of police procedures and called for a two-year moratorium on any further roll-out of the weapons pending an independent review of their safety.

In North America, two recent reports claim 18 deaths in Canada and 150 in the US in recent years involving stun guns. CLA research indicates that, in the USA, 1 in 300 people who are stunned die.

Australian police forces are rolling the stun guns out for general duty use: almost certainly, there will be deaths in Australia after a person has been stunned by the guns. The first confirmed deaths linked to stun gun use in Australia are likely this month and next in the Christmas/New Year period.

<http://www.canberratimes.com.au/news/national/national/general/police-silence-on-mans-death-after-they-shot-him-with-a-taser/1365271.aspx>

## **Report proposes major change to family law system**

A new report – Future Governance Options for Federal Family Law Courts in Australia – calls for changes to family law, and invites submissions by 6 Feb 2009.

It finds that current arrangements are financially unsustainable and confuse litigants, create conflict over resources and produce inefficiencies in administration.

Among recommendations are creating a single federal family law court by combining the Family Court and the Federal Magistrates Court, and using savings from streamlining administration to enhance services. <http://www.ag.gov.au/>

## **Powers of attorney to operate Australia-wide**

There will soon be mutual recognition of powers of attorney between jurisdictions throughout Australia.

The move, for which CLA has campaigned for a number of years, may even include one nationally-consistent form.

“With so many Australians travelling, and with children and older parents often in different states, it was totally impractical that different rules operated in different states for powers of attorney,” CLA President Dr Kristine Klugman said.

States and Territories also propose to create a National Anti-Discrimination Information Gateway. This single website will provide one location for accessing discrimination information. The website will be launched early in 2009, hosted by the Commonwealth.

The Standing Committee of Attorneys-General (SCAG) has also agreed to having uniform statutory declarations. The one form and system will replace eight different forms in use and eight different legislative regimes regulating who can witness a statutory declaration.

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## **National suppression order register is likely next step**

SCAG (see above) has agreed to create a national electronic register of suppression orders, along with one set of laws to govern them.

Suppression orders are usually imposed by courts to prevent the names of young people, or others with relationships to the accused or victim, being identified.

There will be an annual conference among governments, media organisations and the like until the current discordant mess is sorted out.

## **Still no move on adult video games rating**

South Australian Attorney-General Michael Atkinson appears still to be only stumbling block to developing a national R-rating for video games, as a majority of States and Territories appear to seek.

No word has come down from SCAG on forward progress with the proposal.

Mr Atkinson (pictured) is the State A-G known for his 'daft' and 'delusional' comments. His lawyers recently claimed in the SA Supreme Court that he was entitled to refer to the state's second-most senior magistrate as daft and delusional.



They said Mr Atkinson's criticism of deputy chief magistrate Andrew Cannon was reasonable in the circumstances, because it involved discussion of a government and political issue. Dr Cannon sued Mr Atkinson for alleged defamation over two public attacks he launched on the magistrate in June, after Dr Cannon argued for prison overcrowding to be factored into sentencing decisions.

Dr Cannon's lawyers said A-G Atkinson's assertion that the magistrate's views were daft and delusional exposed Dr Cannon to public ridicule, odium and contempt.

Mr Atkinson's lawyers said his criticism of Dr Cannon was justified because it was substantially true and honest.

### **Journalists may get slightly improved protection**

Journalists may receive some minor protection from prosecution under proposed new laws.

Changes to Evidence Acts could mean courts could no longer force journalists to reveal their sources to courts even if a person had broken the law in providing information, Leo Shanahan reported in *The Age*.

The changes would also introduce a ground of 'public interest in news' for judges to consider before deciding whether to protect whistleblowers from having their identity exposed in court.

Journalists writing on national security would only be legally obliged to provide information on their source if the court decided it was necessary. Currently, the journalist must disclose the source or face prosecution for contempt of court.

Attorney-General Robert McClelland proposed changes to the 'model' Evidence Act used nationwide to a meeting with state/territory colleagues last month. Now only Commonwealth and NSW have legal privilege, which is feint, for journalists.

All jurisdictions would have to formally enact whatever is agreed at the Standing Committee of Attorneys-General...that could take years.

<http://www.theage.com.au/national/new-law-to-protect-identity-of-sources-20081102-5gb4.html>

### **NSW to privatise more jails: prison officers protest**

The NSW Government has confirmed it will privatise Sydney's Parklea jail and the Hunter region's Cessnock prison.

About 1000 prison officers gathered outside NSW Parliament recently to protest against the plans, which they say will compromise the safety of staff and inmates.

The NSW Government's decision forms part of '*The Way Forward*' workplace reform strategies originally announced in August after overtime payments hit \$43 million a year, more than double the budgeted \$20 million.

The contracts for Parklea and Cessnock will be filed within the next seven to nine months, NSW Commissioner of Corrective Services Ron Woodham said. – supplied by James Fairbairn, WA

<http://www.theaustralian.news.com.au/story/0,25197,24637367-12377,00.html>

### **ACT beefs up human right provisions in New Year**

New provisions come into effect in the ACT on 1 January 2009 to give more teeth to the first Human Rights Act in Australia, bringing it more in line with Victoria's Charter of Rights and Responsibilities 2006 and the UK Human Rights Act 1998.

The ACT Act, which began on 1 July 2004, will shortly:

- allow people to go directly to the Supreme Court to allege breaches by public authorities; and
- impose a direct obligation on public authorities to act consistently with human rights.

## Vic bar goes toe-to-toe over DPP's media outburst

A very important public debate raged in *The Age* last month about whether it is proper for Victoria's Director of Public Prosecutions Jeremy Rapke, QC, to complain directly to judges about their conduct, as barrister Peter Faris wrote.

Here is a succinct summary, in the words of the main protagonists:

Robert Richter, QC, is a former chairman of the Criminal Bar Association, and a former president of Liberty Victoria. He said:

The High Court (in Barton's case and many others) has long recognised the essential nature of committals with the benefit enuring to both prosecution and defence. Why is Rapke against that? On what empirical evidence does he base his populist appeal? We don't know. We deserve better from our chief prosecutor. If this is the best he can do he should resign.

'A cheapening of justice', <http://www.theage.com.au/opinion/a-cheapening-of-justice-20081118-6ad8.html?page=-1> 19 Nov 08

Peter Faris, QC, a criminal barrister, said:

Richter, who is probably the leading criminal lawyer in Australia, must be heeded. But I disagree with him. Rapke needs to be defended from this sort of attack. I have known Rapke for a long time: I have worked with him and against him. He is a strong and honest man and a first-class lawyer. He is an excellent DPP and it would be a great tragedy for Victoria if he could be forced out of office by Richter.

'Rapke is doing job protecting public interest', <http://www.theage.com.au/opinion/rapke-is-doing-job-protecting-public-interest-20081119-6bl9.html?page=-1>

The jury is still out.

## People support e-health...as long as it is opt-in and voluntary

People want an e-health records system, but only if the data is kept safe...and the scheme must be of the voluntary, opt-in variety.

This is the clear finding of a consumer poll for the National E-Health Transition Authority (NEHTA).

Ninety per cent of 2700 people want the Commonwealth to manage an e-health record system...and 90% want there also to be new privacy laws to better protect personal medical information. Other findings included:

- 80 per cent of people want any online scheme to be voluntary;
- 97 per cent of respondents want to know who has accessed their records;
- 79 per cent want sensitive or personal information be quarantined from general view;
- 77 per cent want their records, and their children's records, on a shared system;
- 82 per cent want doctors to have access to their information from anywhere; and
- 37 per cent said e-health records would save lives, and be convenient, time-saving and potentially provide better healthcare.

Just under a fifth of people, 18 per cent, did not support individual e-health records because of privacy and security concerns, mainly because "it is impossible to stop hackers getting into the system". Other issues involved the potential for insurance companies and employers to use personal health against individuals. – from a Karen Dearne report, *The Australian* IT section, 7 Nov 08

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## Court allows public servant to claim legal bill

The High Court has ruled that legal bills racked up while fighting corruption allegations can be a legitimate tax deduction for a Public Servant.



A Customs officer charged with misconduct offences won his legal battle with the Australian Taxation Office last month. The ATO had rejected his deduction of a \$37,000 legal bill he incurred fighting allegations of improper conduct.

Sydney Customs official Shane Day had been charged under the Public Service Act for using official Customs identification to get information from a court official about a search warrant, breaching the standards of conduct for Customs officers.

The former compliance officer finally had the charges set aside after a battle that made it all the way to the Federal Court of Appeal. But as he did not win costs, he included \$37,077 in outstanding legal fees in his financial year 2001-02 tax return.

When the deduction was refused and the Tax Commissioner disallowed his objection to his income tax assessment, Mr Day appealed to the Federal Court.

The High Court held that an employee incurring expenses to defend a charge that could result in their sacking did not necessarily prove connection to the employment but, in Day's case, the connection was present.

– *Canberra Times*, 13 Nov 08

<http://www.canberratimes.com.au/news/local/news/general/court-allows-public-servant-to-claim-legal-bill/1359293.aspx>

## Data privacy breaches mushroom

Data privacy breaches are shaping as the new pandemic, according to a report last month.

The *SMH* said lapses were reported in Sydney in October at a rate of one a week:

- hundreds of credit card receipts from a Bondi Junction chemist strewn across Mascot Oval;
- names and dates of birth for 3500 customers of a Sydney restaurant inadvertently attached to a mass email;
- detailed financial records for Aussie Home Loans customers dumped in an unsecured bin; and,
- a Tax Office CD of documents about 3122 taxpayers vanished after reaching a courier.

And those losses of personal information, all from October, were the ones made public, Conrad Walters reported.

A recent survey by the computer security company Symantec found 79 per cent of Australian businesses know they have lost sensitive information about themselves or their customers.

The survey of nearly 200 businesses with more than 100 employees shows data loss is anything but rare. Forty per cent of companies that lost information acknowledged six to 20 losses in the previous year. Eight per cent admitted 100 or more instances. Data losses cost one industrial company \$8 million.

The biggest causes of problems are lost laptop computers and mobile phones, and human error. Lower on the list, but still statistically alarming, are corporate espionage, hacking and insider sabotage. <http://www.smh.com.au/text/articles/2008/11/14/1226318927528.html>

## WA report of Muslim research aims to boost social cohesion

A new research report, 'Understanding Muslim Identities: From Perceived Relative Exclusion to Inclusion', was released last month by the WA Minister for Multicultural Interests, John Castrilli.

It was jointly funded through the Department of Immigration and Citizenship (DIAC) and the WA Office of Multicultural Interests (OMI) and was designed to enhance social cohesion.

Associate Professor Dr Samina Yasmeen, director of the Centre for Muslim States and Societies at the University of WA, led a team which interviewed 221 Muslims and 108 non-Muslims.

Key findings included:

- There is great diversity of views and practices among Australian Muslims. Muslims feel that they can be both Muslim and Australian but perceive the wider community to be less accepting of this compatibility and most Muslims predominantly blame the media for its negative and sensational coverage of issues dealing with Islam and Muslims, while lack of understanding of Islam by non-Muslims was also seen as contributing to their experience of exclusion.

Recommendations for consideration in WA included:

- Ideas to counter the prevalence of stereotypes, such as dress codes, that are used to typify Muslims; engagement strategies that do not emphasise a particular group, but promote interaction between people from culturally diverse backgrounds; and support for joint projects between Muslim and non-Muslim communities, including between Muslim schools and other schools.

The report is available on the OMI website: <http://www.omi.wa.gov.au> or <http://www.immi.gov.au>  
<http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemID=130916>

### **AG praises Queensland's handling of family law**

A-G Robert McClelland praised Queensland's leadership in the area when he officially opened the Legal Aid Queensland Family Dispute Resolution Centre last month.

"In 2007-08, legal aid commissions provided more than 16,000 grants of aid for family dispute resolution and arranged more than 7,000 dispute resolution conferences. 5,000 of these grants were provided by Legal Aid Queensland which held some 2,391 conferences," he said.

"This centre will provide the best possible accommodation for Legal Aid Queensland's well-established family dispute resolution services – consisting of lawyer-assisted mediation and conciliation and, where necessary, the input from counsellors and psychologists."

**Sex ex gets chex:** Radical reforms to the Family Law Act are under way which will change the relativities of partners and protagonists. De facto partners together for two years, including same-sex couples, will be given the same rights as married couples to seek "spousal maintenance" in the Family Court. Maintenance, as distinct from child support, may have to be paid by an ex-partner when the other party is "unable to support herself or himself adequately". The Bill opens the definition of a de facto couple much more widely than is now the case.

<http://www.news.com.au/dailytelegraph/story/0,22049,24638505-5005941,00.html>



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**Branson to speak on dignity and justice:** Australian Human Rights Commission president Catherine Branson will deliver her first human rights oration at the 2008 human rights awards ceremony in Sydney on 10 December. "This year's awards ceremony is also celebrating the 60th anniversary of the Universal Declaration of Human Rights in 1948," she said. Her speech title will be the theme for 2008 UN Human Rights Day, *Dignity and justice for all of us*. NB: CLA missed out on an award.

**Calma calls for charter, status for 'First Nation':** "Unlike all other western democracies, we have no Charter or Bill of Rights in Australia – not for Aboriginal people, not for anyone," said Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma, delivering the 2008 Dr Charles Perkins Memorial Oration at U. Sydney. He called for embedding the 'First Nations' status of Indigenous Australians in the Constitution, and revamping the 'races power' (s51 (26)) to stop the Australian Parliament enacting laws that racially discriminate against Indigenous peoples, which is currently allowed. Mr Calma called for a Charter of Rights consistent with Australia's international obligations and strengthening of human rights protections in our legal system.

Speech:

[http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/20081023\\_still\\_riding.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20081023_still_riding.html)

**Public servants are 'marketing' the government:** Marketing government extends well beyond public relations units and advertising and invades core policy development and everyday work of public servants, according to a study released by the ANU-based Democratic Audit of Australia. Case studies, produced by former senior public servant Dr Kathy MacDermott, show public servants have become part of the 'permanent campaign' replacing older grass-roots styles of campaigning by political parties. <http://democratic.audit.anu.edu.au>

**Database growth increases risk of loss:** Proliferating, ever-larger, centralised databases are increasing the risk of people's personal data being lost or abused, the UK's official privacy watchdog, Richard Thomas, says as data losses there soar. The number in the past year – including lost laptops and memory sticks containing sensitive personal records – reported has risen to 277, including 80 in the private sector, 75 within the National Health Service and other health bodies, 28 reported by central government, 26 by local authorities and 47 by the rest of the public sector. <http://www.guardian.co.uk/technology/2008/oct/29/data-security-breach-civil-liberty>

**Centrelink takes the odds to fraud:** Centrelink is using casino records to check whether people on aged or disability support pensions have received undeclared money from gambling. The casino collects the information under anti-money laundering legislation, passed as part of the 50 new anti-terror acts since 2001. Now the information collected is being used in ways not anticipated when the parliament passed the legislation.

<http://www.smh.com.au/news/national/centrelink-uses-gambling-records/2008/11/03/1225560738026.html>

**Australia reviews its arbitration act:** Australia is to review of the International Arbitration Act 1974. There is a new discussion paper outlining key areas for review to ensure that the Act best supports Australian businesses involved in cross border trade. Submissions in response close on 16 January 2009. Paper and details: [www.ag.gov.au/internationalarbitration](http://www.ag.gov.au/internationalarbitration).

## INTERNATIONAL

### **Europe shelves airport full body scans**

The European Commission has abandoned plans for full body scanners at airports.

The EC will take more time to analyse security use of the machines, which have raised major privacy concerns.

The European Parliament welcomed the move. It has asked for a detailed impact assessment on the security, health and privacy aspects of use of the scanners. "Airline passengers risk being subjected to invasive measures with insufficient attention to privacy and the possible health impact that this new technology brings," said Graham Watson, leader of the assembly's liberal bloc.

Greens deputy Kathalijne Buitenweg said the use of the machines, already on trial on a voluntary basis in the Netherlands and Britain, raises a number of sensitive questions. "Will the images be destroyed after? Where would they be saved for a certain period? Will people's names be mentioned on the images? How can we ensure that the photos will not be made public?" she said.

<http://www.theage.com.au/travel/europe-shelves-airport-full-body-scans-20081121-6d70.html>

### **Gbay detainee sent for trial a second time**

US military prosecutors plan to file new war-crimes charges against a Guantánamo detainee who has been called the 20th hijacker in the 11 September 2001 terror plot.

Earlier charges against Mohammed al-Qahtani were dismissed without explanation by a military official in May: it was thought that the Pentagon had accepted the argument that coercive techniques – torture – used in questioning him would undermine any trial.

The decision to go to trial puts extra pressure on the incoming Obama administration.

The US Government has already dropped the case against al-Qahtani once previously, which makes it exceedingly strange that it has been resurrected just before a new president, opposed to Gbay and its sham trials, takes over.

[http://www.nytimes.com/2008/11/19/us/19gitmo.html?\\_r=4&hp=&pagewanted=print&oref=slogin&oref=slogin](http://www.nytimes.com/2008/11/19/us/19gitmo.html?_r=4&hp=&pagewanted=print&oref=slogin&oref=slogin)

## **Judge frees five; asks government to not appeal**

US District Judge Richard Leon, in the first ruling in a full trial testing the Supreme Court's June decision on detainees' rights, has ordered the federal government to release five Guantanamo Bay detainees "forthwith".

The judge found that the government had justified the continued imprisonment of a sixth detainee, Belkacem Bensayah.

In an unusual added comment, Judge Leon suggested to senior government leaders that they forgo an appeal of his ruling. While conceding that the government had a right to appeal, Judge Leon commented that he, too, had "a right to appeal" to leaders of the Justice Department, CIA and other intelligence agencies, and his plea was that they look at the evidence regarding the five he was ordering released.

"Seven years of waiting for our legal system to give them an answer to their legal question is enough," he commented.

## **Same-sex marriage takes ballot battering**

Three US states voted down same-sex marriage in the recent US State polls held in conjunction with the presidential election.

In California, where same-sex marriage had been performed since June, about 52% of voters cast their ballot negatively. Opponents of same-sex marriage won by even bigger margins in Arizona and Florida. Just two years ago, Arizona rejected a similar ban.

The across-the-board sweep, coupled with passage of a measure in Arkansas intended to bar gay men and lesbians from adopting children, was a stunning victory for religious conservatives.

Voters rejected other ballot measures, like efforts to restrict abortion, in South Dakota, California and Colorado.

<http://www.nytimes.com/2008/11/06/us/politics/06marriage.html?>

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## **Marriages hang in balance in California**

When the California Supreme Court begins weighing arguments over same-sex marriage – again – this month, some 18,000 such marriages could hang in the balance.

Opponents also have high stakes, having spent countless hours, and nearly \$62 million, to pass Proposition 8 on 4 November, which banned same-sex marriage and which is under review by the court. (The Mormon Church is being investigated for non-declaration of election spending).

The central issue is whether California voters – who have repeatedly used ballot measures to rewrite state law – overstepped their bounds by passing Proposition 8, which added 14 words to the Californian Constitution stating that only male-female marriage would be "valid or recognized."

Opponents of the measure say it amounts to a major revision of the Constitution, not an amendment, and so requires legislative approval. The same court that legalized same-sex marriage in May said late last month it would decide the fate of Proposition 8, with a ruling to be issued in 2009.

## **Men stone to death a 13-year-old raped girl**

A 13-year-old girl who had been raped was stoned to death in a stadium in Somalia recently, watched by 1000 observers, after being accused of adultery by Islamic militants, according to reports.

Dozens of men stoned Aisha Ibrahim Duhulow to death in the southern port city of Kismayo, Amnesty International and Somali media reported, citing witnesses.

The Islamic militia in charge of Kismayo had accused her of adultery after she reported that three men had raped her, the rights group said. Initial local media reports said Duhulow was 23, but her father told Amnesty International she was 13. <http://au.news.yahoo.com/a/-/newshome/5117013>

## **Child, 13, wins legal right to die**

A terminally ill teenager in the UK has won a legal battle against a hospital's attempt to force her to have a life-saving heart transplant against her will.

Hannah Jones, 13, decided against the surgery, saying she wanted to die with dignity surrounded by family and friends. But Hereford Hospital instigated high court proceedings to remove her, temporarily, from her parents custody to allow the transplant.

The teenager, who was diagnosed with a rare form of leukaemia at five, was forced to plead her case to a child protection officer from her hospital bed. Her plea was conveyed to barristers at the High Court in London who decided she was mature enough to make the decision for herself and the order was thrown out.

After being diagnosed with leukaemia, Hannah was given three doses of a high-strength drug designed to kill off an infection, but it also caused a hole to develop in her heart. She was told her only long-term solution for survival was a heart transplant but she decided against that.

<http://www.guardian.co.uk/society/2008/nov/11/health-childprotection>

## **Zimbabwe group wins prestigious international award**

Zimbabwe Lawyers for Human Rights has won the Canadian Rights & Democracy's 2008 John Humphrey Freedom Award – for courageous pursuit of justice for victims of human rights abuses inside Zimbabwe.

ZLHR has promoted and protected human rights across Zimbabwe since its founding in 1996. Guided by a professional commitment to the rule of law and Zimbabwe's international human rights obligations, ZLHR provides essential services ranging from legal support for victims of state-endorsed persecution to public education and human rights training for activists and civil society organizations working at the community level.

In 2003, ZLHR established a project to provide legal support for human rights defenders facing prosecution. Up to 1500 Zimbabweans now benefit from the service each year, and its lawyers have yet to lose a single case in the project's five-year history.



## **Court starts to grow teeth**

Six years after it opened, the International Criminal Court (ICC) is investigating crimes committed in four situations: the Democratic Republic of Congo (DRC); Uganda; Darfur in Sudan; and the Central African Republic (CAR).

The ICC has issued 12 public arrest warrants. Four people have been arrested.

In 2008, Trial Chamber I has decided to stay proceedings in the first trial so Thomas Lubanga's right to a fair trial can be ensured. In the cases of Mathieu Ngudjolo Chui and Germain Katanga, charges were confirmed and the accused have been committed for trial. For the first time, crimes of sexual violence will be prosecuted before the ICC.

Jean-Pierre Bemba, former vice-president of the DRC, and leader of the Mouvement de Libération du Congo, was arrested in Belgium on 24 May 2008 and surrendered to the ICC on 3 July 2008. His trial is under preparation.

In July 2008, the prosecutor requested the first ICC arrest warrant against a sitting head of state, Sudan's President Omar al-Bashir. This significant step, which constitutes a major landmark in the implementation of the Rome Statute enabling the court, is a promise for justice to the victims of the devastating conflict in Darfur, the Federation of International Defenders of Human Rights (FIDH) said. <http://www.fidh.org/spip.php?article5989>

## **British AG to investigate alleged 'criminal wrongdoing' by CIA and MI5**



Jacqui Smith, the British Home Secretary, has asked the Attorney General to investigate possible "criminal wrongdoing" by MI5 and CIA over its treatment of a British resident held in Guantánamo Bay.

The dramatic development over allegations of collusion in torture and inhuman treatment follows a High Court finding that an MI5 officer participated in the unlawful interrogation of Binyam Mohamed. The MI5 officer interrogated Mohamed while he was being held in Pakistan in 2002.

Lawyers acting for Smith have sent the AG, Baroness Scotland, evidence about MI5 and CIA involvement in the case, heard behind closed doors. They have asked Scotland - as an independent law officer - to investigate "possible criminal wrongdoing". The move could lead to a criminal prosecution.

The evidence was suppressed following gagging orders demanded by David Miliband, the British Foreign Secretary, and US authorities. The action by Smith, the minister responsible for MI5 activities, is believed to be unprecedented.

A Home Office spokesman confirmed tonight that the letter and closed evidence had been sent to the attorney. It had no further comment.

<http://www.guardian.co.uk/uk/2008/oct/30/uksecurity-terrorism>

## **Finance crisis shows how anti-terror laws could be used in future**

In October's global financial crisis, Britain took the extraordinary step of using its 2001 anti-terrorism laws to freeze the British assets of a failing Icelandic bank, effectively branding Iceland a terrorist state.

"I must admit that I was absolutely appalled," the Icelandic foreign minister, Ingibjorg Solrun Gisladdottir, said in an interview, describing her horror at opening the British treasury department's home page at the time and finding Iceland on a list of terrorist entities with Al Qaeda, Sudan and North Korea, among others.

The Icelandic prime minister, Geir H. Haarde, accused Britain of "bullying a small neighbor" and said the action was "very out of proportion." And an online petition signed so far by more than 20 percent of Iceland's population said the British prime minister, Gordon Brown, had sacrificed Iceland "for his own short-term political gain," thereby turning "a grave situation into a national disaster." <http://www.nytimes.com/2008/11/02/world/europe/02iceland.html?>

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## **MPs seek to censor the media**

Britain's security agencies and police would get unprecedented and legally binding powers to ban the media from reporting matters of national security, under new proposals.

The Intelligence and Security Committee is the parliamentary watchdog of the intelligence and security agencies, and has a cross-party membership from both Houses. It wants to press ministers to introduce legislation that would prevent news outlets from reporting stories deemed by the government to be against the interests of national security.

The committee also wants to censor reporting of police operations that are deemed to have implications for national security. The ISC is to recommend in its next report, out at the end of the year, that a commission be set up to look into its plans, according to senior Whitehall sources.

Civil liberties groups said the restrictions would be "very dangerous" and "damaging for public accountability", Kim Sengupta reported. They also said that censoring journalists when the leaks come from officials is unjustified.

– supplied by James Fairbairn, WA

<http://www.independent.co.uk/news/uk/politics/mps-seek-to-censor-the-media-1006607.html>

## **Burmese activists sentenced to extraordinary jail terms**

Pro-democracy activists have received savage jail terms for standing up for liberties and rights.

Among them were Min Ko Naing and Su Su Nway, who are both previous winners of a major Canadian freedom award. Min Ko Naing was sentenced to 65 years for his role in peaceful protests last year against the junta's arbitrary increase of fuel and commodity prices.



Su Su Nway, who is 36, (pictured) received 12 years for supporting Burma's democracy movement.

A further 21 members of the pro-democracy "88 Generation Students" also received long-term sentences for their participation in last year's mass pro-democracy demonstrations. No defence lawyers were present at the secret trials, according to reports.

The sentences are the first among hundreds of political activists currently facing trial in closed courts; reports suggest hundreds more will face similar proceedings. Estimated political prisoners in Burma doubled in the last year to more than 2100.

## **Obama holds out hope of winding back Bush's excesses**

Civil libertarians in the USA are gearing up for what they say is one of the biggest challenges facing the next president: bringing the US Government back under the rule of law.

Senator Russ Feingold, chairman of the Senate Judiciary Committee's subcommittee on the Constitution, argues that a priority should be rolling back Bush administration policies that eroded constitutional rights. With Barack Obama – a former constitutional law professor – winning the election, there is reason for optimism.

Mr Feingold has been compiling a list of areas to focus on, including amending the Patriot Act, giving detainees greater legal protections and banning torture, cruelty and degrading treatment. He wants to amend the Foreign Intelligence Surveillance Act to restore limits on domestic spying, and he wants to roll back the Bush administration's dedication to classifying government documents.

Many reforms could be implemented directly. Mr Obama could renounce Mr. Bush's extreme views of executive power, including the notion that in many areas the president can act as he wants without restraint by Congress or the judiciary. Mr Obama also could declare his intention not to use presidential signing statements as Mr Bush did in record numbers to reject parts of bills signed into law. – Adam Cohen, NY Times, 14 Nov 08

<http://www.nytimes.com/2008/11/14/opinion/14fri4.html?th&emc=th>

## **Government assumes 'stop and search' powers covering most of USA**

The US Government has assumed extraordinary powers to stop and search individuals within 100 miles (160km) of the country's borders.

This is not just about the border: the 'constitution-free zone' includes most of the USA's largest metropolitan areas.

Using data provided by the US Census Bureau, the American Civil Liberties Union has determined that nearly two-thirds of the entire US population (197.4m) live within 160km of the US land and coastal borders. <http://www.aclu.org/privacy/gen/37306prs20081022.html>

## **Judge allows CIA to keep its secrets hidden**

The CIA can hide statements from imprisoned, suspected terrorists that the agency tortured them in its secret prisons, a US federal judge has ruled – he refuses to scrutinise the material in the privacy of his own chambers.

Chief Judge Royce Lamberth of the Washington DC Circuit Court declined to review the government's assertions that the allegations of torture from men held in the CIA's black site prisons, whether truthful or not, would put the nation at risk of grave danger if allowed to be made public. "The Court, giving deference to the agency's detailed, good-faith declaration, is disinclined to second-guess the agency in its area of expertise through in-camera review," Judge Lamberth wrote.

The judge has adopted the Orwellian expression "second-guessing" coined by the Bush Administration to knock accountability and legitimate judicial review of its crimes on the head.

The judge's main mistake is to consider the CIA, based on its track record, capable of good-faith declarations, according to Fitch, our Man in Washington.

Original article: <http://blog.wired.com/27bstroke6/2008/10/cia-can-hide-to.html>

NOTE: "Second-guessing" (as well as "national security") makes one think of that old quote about "culture": Whenever I hear the word culture, I release the safety-catch on my Browning (pistol): Hanns Johst, German dramatist (1890-1978)...not, as is popularly believed, Hermann Goering. In the original German: Wenn ich Kultur höre, entsichere ich meinen Browning!" 'Schlageter' (1933) act 1, scene 1.

## **Firearms officers who shot De Menezes were out of control, inquest told**

Anna Dunwoodie, who was sitting near Jean Charles de Menezes when he was shot dead on a London tube train, last month told the inquest into his death that the police who killed him were "out of control".

She said she was "very, very clear" in her mind that the officers did not shout "armed police" before opening fire as they have previously claimed.

Ms Dunwoodie also said she thought firearms officers were a gang, as she described a "sense of panic" from officers as Mr de Menezes was shot seven times in the head. "Our first impulse was to call the police because we needed to tell the police something illegal had happened," she told Southwark Coroner's Court which is sitting in special session at The Oval cricket ground.

Mr de Menezes, 27, a Brazilian electrician, was mistaken by police for a suicide bomber and shot dead on an Underground train at Stockwell, south London, on 22 July 2005. The previous day four terrorists had tried to detonate suicide bombs on tube trains and a London bus.

She was adamant that she never heard police shout any warning at Mr de Menezes who was acting quite calmly. "I would like to say that on whether I heard anything from police officers, I am very, very clear," said Ms Dunwoodie. "I had absolutely no idea who they were and had they shouted I would have latched on to that."

"I think it was the man, who I now know to be a surveillance officer, [who] really seemed to be frightened or hyped up and when he was calling the other men they seemed... you know, when people are full of adrenalin and they move quickly and their movements are a bit jerky. I felt they were a bit out of control, that's what it felt like."

<http://www.timesonline.co.uk/tol/news/uk/crime/article5073113.ece?&EMC-Blt=PPRDS9>

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## **From an editorial, New York Times, 4 Nov 08, election day USA:**

**CIVIL LIBERTIES** We don't know all of the ways that the (Bush) administration has violated Americans' rights in the name of fighting terrorism. Last month (October), Attorney General Michael Mukasey rushed out new guidelines for the FBI that permit agents to use chillingly intrusive techniques to collect information on Americans even where there is no evidence of wrongdoing.

Agents will be allowed to use informants to infiltrate lawful groups, engage in prolonged physical surveillance and lie about their identity while questioning a subject's neighbors, relatives, co-workers and friends. The changes also give the FBI – which has a long history of spying on civil rights groups and others – expanded latitude to use these techniques on people identified by racial, ethnic and religious background.

The administration showed further disdain for Americans' privacy rights and for Congress's power by making clear that it will ignore a provision in the legislation that established the Department of Homeland Security. The law requires the department's privacy officer to account annually for any activity that could affect Americans' privacy – and clearly stipulates that the report cannot be edited by any other officials at the department or the White House.

The Justice Department's Office of Legal Counsel has now released a memo asserting that the law "does not prohibit" officials from homeland security or the White House from reviewing the report. The memo then argues that since the law allows the officials to review the report, it would be unconstitutional to stop them from changing it. George Orwell couldn't have done better.

**FBI agents call for release of convicted men:** FBI agents rarely comment on criminal convictions...and it's even more uncommon for them to argue that someone has been wrongly

convicted. But, last month, 30 former FBI agents took up the cause of four sailors, known as the Norfolk Four, who were convicted in a 1997 rape and murder. Arguing that DNA and forensic evidence points to a prison inmate who has confessed as the sole perpetrator of the crimes, they called on Virginia Governor Tim Kaine to pardon the sailors. But so far, the four remain locked away. <http://www.nytimes.com/2008/11/11/us/11norfolk.html?>

**Health identifier would compromise privacy, advocates say:** Privacy advocates in the US have decried a RAND Corporation study calling for unique patient identifiers, calling the survey unscientific, incomplete and random. They unanimously rejected the contention that a unique patient identification (UPI) number for every person in the USA would be secure and could protect patient privacy. UPIs could help reduce medical errors, increase overall efficiency and help pave the way for wider adoption of electronic health records...but the large, centralised database would be leak- and hack-prone and would be a magnet to corporates with a vested interest in 'mining' the information for nefarious purposes, the privacy advocates said.

<http://www.ihealthbeat.org/Features/2008/Privacy-Advocates-Reject-Unique-Patient-Identifier-Study.aspx>

**Pacific Forum's open-door policy to stay:** The new secretary general of the Pacific Islands Forum, Tuiloma Neroni Slade, has said he will maintain an open-door policy to civil society engagement, Radio New Zealand International has reported. At a media conference, Mr Slade was asked if he would continue his predecessor's twice yearly meetings. Mr Slade said there would be no drastic changes to his approach. "I will seek to build on work that has been dealt with and in place and obviously to build on the gains of that sort of work."

<http://www.rnzi.com/pages/news.php?op=read&id=42592>

**Data loss sparks government shutdown:** A British government computer system was shut down after a memory stick containing confidential pass codes was found in a pub car park. The codes from the Gateway system allow the public and businesses to access hundreds of services from 50 government departments, including self-assessment tax returns, pension entitlements and child benefits. The data could enable hackers to access personal details of the 12 million people who have registered on the system. <http://www.theage.com.au/news/technology/security/memory-stick-loss-sparks-government-system-shutdown/2008/11/03/1225560695249.html>

**Press Freedom Barometer 2008:** Source : Reporter Without Borders - Jan to November 2008, worldwide:

- 34 journalist killed
- 1 media assistant killed
- 127 journalists imprisoned
- 9 media assistants imprisoned
- 70 cyberdissidents imprisoned

**91 trade unionists killed in 12 months:** The annual survey of trade union rights violations reveals an appalling record of union-busting, anti-union laws, intimidation and violence against workers' representatives in 2007: 91 trade unionists were murdered for defending workers' rights, with Colombia, where 39 lost their lives, by far the worst offender. Second-worst was Guinea, where 30 unionists died during brutal repression of union-organised public demonstrations against corruption and violations of fundamental rights. The survey, which covers worker rights violations in 138 countries, reveals a number of disturbing trends. <http://survey08.ituc-csi.org/survey.php?IDContinent=0&Lang=EN>

**DATES:**

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

**10 DECEMBER, AUSTRALIA: Expected launch of Rudd Government's** national public consultation about recognition and protection of human rights in Australia, **by Attorney-General Robert McClelland**, \$2.8m allocated in 2008-9 Budget, **venue uncertain** (possibly at event below)

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

**10 Dec, Canberra:** Community Forum on Human Rights, ACT Legislative Assembly, 12.30-2.30pm, free, booking essential: Email: [human.rights@act.gov.au](mailto:human.rights@act.gov.au) or phone 02 6205 2222.

**12 Dec, Melbourne:** *What's Wrong with Human Rights?* Prof Steven Greer, HR Prof, Bristol U. School of Law, UK. 12.30-2pm, Free, but registration essential: <mailto:admin@pilch.org.au>

**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:**

**7-14 Jan, Aspen, USA:** Australian Accountants & Lawyers conference, [www.aalc.com.au](http://www.aalc.com.au)

**19 Jan, Adelaide:** international workshop on e-forensics law, [www.e-forensics.eu](http://www.e-forensics.eu) or E: [nigel.wilson@barchambers.com.au](mailto:nigel.wilson@barchambers.com.au)

**7-8 Feb, Canberra:** Judicial Reasoning: Art or Science? conference at ANU, [http://law.anu.edu.au/nissl/JudReas\\_09.htm](http://law.anu.edu.au/nissl/JudReas_09.htm) Email: [judicialreasoning@njca.anu.edu.au](mailto:judicialreasoning@njca.anu.edu.au)

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

**20 Feb, Sydney:** Constitutional Law Conference and dinner, [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au) or E: [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au)

**5-6 March, Dili, Timor-Leste:** Women for Peace conference, including Interactions between formal and traditional justice. Details: Peace conference co-ordinator [mena.peace@alolafoundation.org](mailto:mena.peace@alolafoundation.org) or [filpau@yahoo.com](mailto:filpau@yahoo.com)

**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.humanrightskonference.com.au/>

**5-9 April, Hong Kong:** 16th Commonwealth Law Conference, [www.commonwealthlaw2009.org](http://www.commonwealthlaw2009.org)

**1-4 June, Washington DC, USA:** Computers Freedom and Privacy conference, EO re papers close 19 Dec 08. [http://www.cfp2009.org/wiki/index.php/Main\\_Page](http://www.cfp2009.org/wiki/index.php/Main_Page)

**5-9 June, Fiji:** 11th Australian Family Lawyers' Conference, [www.aflc.com.au](http://www.aflc.com.au)

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

**20 June, world:** World Refugee Day (World Refugee Week June 14-20)

**5 July, Australia:** NAIDOC Week (National Aborigines & Islanders Day of Celebration)

**1-4 Sept, Sydney:** XIX World Congress, International Society for Labour and Social Security Law, <http://www.labourlawssydney.com/>

**17-20 Sept, Perth:** 36th Australian Legal Convention, <http://www.law09.com.au/>

**21 Sept, world:** International Day of Peace

**10 Dec, world:** Universal human rights day

## **2010:**

**4-7 May, Melbourne:** Non-adversarial Justice: Implications for the Legal System and Society conference, E: [aija@law.monash.edu.au](mailto:aija@law.monash.edu.au) (Call for papers closes 1 Feb 2010)

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

**LAST WORD: Guess who are the biggest cheats?**



Almost one in two Cambridge University students in a poll of 1,000 admitted to cheating in their studies.

Student newspaper, *Varsity*, found 49% of undergraduates who anonymously took part in their poll confessed to passing off other people's work as their own.

Law students were the most likely to plagiarise, with 62% saying they had broken university rules.

<http://www.guardian.co.uk/education/2008/oct/31/facebook-cheating-plagiarism-cambridge-varsity-wikipedia>

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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

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## Report to CLA members: key activities – November

### Media:

Feature article by Bill Rowlings in CT Public Service Informant on government as model litigant

Interview with WA Herald on CCTVs - Bill Rowlings

Community Radio, comment on UN Declaration Human rights 60th anniversary

Planning for two programs: internet censorship, charter of rights

Media spokespeople: Dean Prail and newly-appointed David Mathews, who is leading on the mandatory internet filtering campaign

**Networking Meetings:** MPs re charter of rights/inquiry into civil liberties, model litigant campaign, sedition, protesting at Parliament House, 'Bali 9' guidelines of AFP, monitoring what happens to extradited people, etc

Sen Simon Birmingham (Lib, WA)

Sen Trish Crossin (Lab, NT)

Sen George Brandis (Lib, Qld)

Sen Marise Payne (Lib, NSW)

Advisors to Sen Bob Brown (Greens, Tas: Emma Bull, Prue Cameron and Clare Ozich)

2XX community Radio AGM

NSW CCL Berenice Buckley

Several human rights seminars/conferences

### Membership Activities:

CLA social BBQ, Spring 08

Analysis of annual reports AFP, ACT Policing, AGs etc

### Cases – selected examples:

Individual web inquiries now managed by member Phylli Ives (pictured), using a nation-wide roster of members to handle inquiries

Social Security case of invasion of privacy: followed up

Defence employee suicide: awaiting report

### Meetings with members/students:

David Mathews re censorship web site, campaign

Shane Svoboda, law internship ANU on Pacific nations human rights and constitution



Barrister Bernadette Boss re supervision internship  
Anne Cahill-Lambert, Director  
James Staples, Director

### **Fundraising**

Major submission US foundation for funds for innovations  
Submission to Bob Debus MP, Minister for Home Affairs on funds from proceeds of crime (for all civil liberty/human rights bodies in Australia)

### **Meetings/conferences attended:**

CLA board meeting: main issues censorship campaign, model litigant project, plan for AGM;  
Forum organised by Joint Standing Committee Foreign Affairs on UN Declaration Human Rights, speakers Prof Ivan Shearer and Prof Hilary Charlesworth

### **Submissions:**

Abstracts for Melbourne conference, on government as model litigant and on changing environment of civil liberties organisations

### **Current projects:**

CensorFREE campaign, against mandatory internet filtering (new web site, created by Webmaster Director Lance Williamson, launched) [www.censorfree.com.au](http://www.censorfree.com.au)  
ACT representatives in Federal Parliament to support legislative amendment to prevent Executive/Governor-General overturning of ACT legislation (Senators Humphries, Lib and Lundy Lab)  
Right to protest in parliamentary precinct unapproached by police  
Government as model litigant  
Regional community radio program

### **In planning:**

Australia Day letters: CLA's three new letters to be released on 26 Jan 09 (suggested topics welcome)  
Expansion of board  
Assistance to Treasurer, Secretary; manager of uni student business (volunteers welcome)  
Development of two interstate branches  
Planning for Attorney-General initiatives for 2009  
Creation of CLA community legal entity

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