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SCAG plans major change to fundamentals of Australian law

The Standing Committee of Attorneys-General (SCAG) is becoming entrenched as the instigator of major legal change nationally...without ever needing to consult with the community.

SCAG is made up of the federal Attorney-General and State and Territory counterparts, as well as the Minister for Justice of New Zealand, and the Australian Minister for Home Affairs.

It is an authority without responsibility. You can't vote for it: it never publishes an agenda in advance, or discloses minutes of its meetings, and there is no formal way to make submissions or consult with it...unless it decides it wants to engage in limited consultation via its secretariat, which it does rarely.

The April SCAG meeting – on top of its planned national crackdown on bikies – decided to adopt an 'Organised Crime Strategic Framework'.

The 'Framework' policing process is in serious danger of becoming 'above the law'. For example, according to SCAG, it will allow the use of:

- "coercive questioning" (undefined),

- “controlled operations” (that is, entrapment or honey-pot investigating), and
- “assumed identities” (to be adopted)

by police and security agencies. Other excessive measures are also likely.

In general, the people of Australia have not been consulted on using powers such as these, but SCAG feels itself so far above the people that it can ignore consultation.

Something the Australian people would like to know, for example, is whether “coercive questioning” is the same as the “enhanced interrogation” used by the CIA in its secret detention program associated with Guantanamo Bay.

Or does it ‘merely’ abandon the long-standing right of any Australian, under common law dating back centuries, to not incriminate himself? Does it instead impose a compulsion to answer questions?

SCAG used to be a gentleman’s club that met for dinner and discussion, but in the past decade it has morphed into an executive body above the democratic process which creates national law (and international law, involving NZ) of its own, selective choosing.

For example, in April in another instant-response reaction to bushfires in Victoria, it decided to “implement robust bushfire and arson offences”, according to its communique. It is demanding a report on penalties currently imposed on arsonists to consider at its August 2009 meeting.

Thus SCAG has decided to change the arson laws, and penalties, without taking account of the report of the inquiry into the Victorian bushfires, further indicating how far it has become beyond democratic processes and above the law. The bushfire royal commission won’t finally report until 31 July 2010.

In concentrating on bikies, and arson, and the ‘Framework’, SCAG made a choice to downplay the urgently-needed investigations it was undertaking into DNA laws, and what rights people should have in relation to their own body samples. It also put on hold vital measures to reduce the number of Indigenous people appearing before the courts and ending up in the nation’s jails (42%-plus of prisoners in WA are Aboriginal).

It is well past time that SCAG itself was investigated: a commission of inquiry into SCAG could produce a more useful and far more democratic body. SCAG must become more open, transparent and democratic. That should be the No 1 item on its agenda for its next meeting.

LAST WORD: God it is who creates the magic

On 4 May, Clifton Ingram will appear in court to argue that magic mushrooms are a gift from god, and that god’s law is higher than man’s. He will present his argument to a jury of his peers in a bid to get off a charge of possession of illegal drugs which, otherwise, would pursue him for the rest of his days. *Read the full story at the bottom of this newsletter.*

Youngsters locked up 20 hours a day

Fifty young people were locked in their cells for 20 hours a day at the Emu Plains juvenile justice centre for most of last month, a regime considered unprecedented for juvenile offenders, according to the *Sydney Morning Herald*.

The inmates were trapped in shared cells without toilets or showers and had to call staff if they wanted to go to the bathroom. Lack of staff in the centre, which has been used by detained NSW juveniles since December 2008, was the reason for the lock-down.

<http://www.smh.com.au/national/juveniles-locked-in-cells-for-20-hours-at-a-stretch-20090422-affd.html>

ALRC seeks alternative to Royal Commissions

The Australian Law Reform Commission has released an issues paper – Review of the Royal Commissions Act (IP35) – and is seeking feedback on 49 questions as part of its review of the Royal Commissions Act.

The ALRC is analysing the veteran act — in force since 1902—and will propose less formal alternatives to a Royal Commission.

ALRC President Professor David Weisbrot said: “Royal Commissions usually prove to be very expensive...we estimate that, in today’s dollars, the Royal Commission into the Building and Construction Industry cost taxpayers over \$70m, the one into the collapse of insurer HIH (insurance company) cost over \$47m, and the Royal Commission into Aboriginal Deaths in Custody cost over \$50m.”

Closing date for written submissions is 19 May 2009. The ALRC’s recommendations are due with the Attorney-General, Robert McClelland, by 30 October 2009.

CLA plans to make a submission. If you would like to put forward ideas, please email them to the Secretary/CEO (see top of newsletter for address).

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Government to strip privacy from patient health records

The Australian Government is about to pry into the private health records of all Australians. New draft legislation will let the government access all information recorded by doctors on individual patients records.

“The legislation reverses current legal protections for patient privacy, ensuring no part of the patient record is protected,” the AMA says. The patient record will be completely exposed, extracts obtained, copied, retained and potentially submitted in court for all to see.

AMA President, Dr Rosanna Capolingua, described the legislation as “deeply disturbing – this is ‘Big Brother’ at its worst. Under this legislation patients don’t even have the right to know that their records are being accessed. There is no compulsion to even advise patients, let alone seek their permission.”

The proposed legislation would mean that doctors will be assumed to be guilty, and face a hefty fine, if they refuse to hand over information. “Government has no business accessing these records. This information is between the doctor and the patient, and must remain so,” Dr Capolingua said.

CLA’s submission to the Senate Community Affairs inquiry into the proposed legislation savages Medicare over its managerial, legal and medical approach.

CLA says that Medicare’s budget is wrong-headed, its approach to medical measurement is wrong, and its attempt to remove entirely the right patients have to privacy of their own, personal medical records is totally unacceptable.

See: <http://www.cla.asn.au/0805/index.php/subs/2009/should-bureacrats-have-access-to-your-he>

Betfair wants open access to medical, licence records

Gaming agency Betfair wants access to Medicare records, motor vehicle registries, births, deaths and marriages data and passport information to “verify the identity of customers”.

The request is made in Betfair’s submission to the Productivity Commission’s inquiry into gambling, due to report later this year, Andrew Clennell reports in the *Sydney Morning Herald*.

Betfair recommended that “wagering operators should be given restricted access to identity databases such as Medicare records, motor vehicle registries, passport information and births, deaths and marriages registries for the purposes of verifying the identity of customers in accordance with federal legislative requirements”.

The submission says the Betfair controls “provides significant advantages in controlling and detecting attempts to launder money or to engage in deceptive conduct and it allows for more effective programs for responsible gambling”.

There was controversy two years ago when the SMH revealed that the then premier, Morris Iemma, was lobbied by a part owner of Betfair, James Packer, and Mr Iemma’s former boss,

Graham Richardson, to allow Betfair to advertise in NSW. Betfair won a High Court battle against the West Australian Government last year that has since allowed it to advertise in NSW.

<http://www.smh.com.au/national/betfair-wants-access-to-medical-records-20090423-agu4.html?>

Offenders given green light to sue jailer for double imprisonment

Supreme Court judge Michael Adams ruled last month that two prisoners may sue the NSW Government over lack of contact with other prisoners.

Convicted killer and alleged 'SuperMax jihadist' ringleader, Bassam Hamzy, and fellow inmate, murderer Emad Sleiman, won the right to sue after claiming that being put into segregated custody represented false imprisonment.

The ruling could allow all segregated prisoners to take legal action against the NSW Government. Prisoners in segregated custody are allowed only one hour of contact each day with one prisoner chosen by the Commissioner of Corrective Services, Ron Woodham.

Sleiman also won the right to claim damages for being held for six years in segregated custody in the Goulburn SuperMax prison complex, Harriet Alexander reported in the *Sydney Morning Herald*.

The prisoners claim they were segregated without the commissioner first obtaining a 'segregated custody direction', which is mandatory under the Crimes (Sentencing Procedure) Act, and that they were effectively being held in a prison inside a prison.

Justice Adams said it was necessary in the interests of society to imprison some people who broke the law, even sometimes in isolation, but that the restriction of liberty should not go "one inch further than the law permits".

"It has nothing to do with the personal merits, or lack of them, of the prisoner," he said. "The law will be enforced, not because of what is owed to the prisoner, but because of what it owes itself and the community it serves."

Hamzy is serving a minimum of 21 years for a 1998 murder, and gained notoriety in 2007 for allegedly masterminding a mass breakout plot.

<http://www.smh.com.au/national/prisoners-given-a-new-avenue-to-sue-over-segregation-20090424-ai24.html?>

NSW to get its own version of 'Facebook'

Facial recognition technology is about to be introduced for driver's licences by the NSW Roads and Traffic Authority without consultation, and with no safeguards as to accuracy, or as to how people's images will be shared across departments, agencies, nationally and internationally.

Originally just for drivers' licences, the technology is likely to be adapted by the RTA into point-to-point recognition systems for drivers on highways and main metropolitan roads.

The RTA and other traffic authorities are planning to capture your image automatically by photo as the driver of a vehicle if your average speed exceeds the allowed elapsed time between two points where banks of surveillance cameras are set up.

But the RTA has not announced this part of their planning: they have simply said they would introduce the "crime-fighting system" by the middle of 2010. Queensland is also well advanced with its similar scheme, and has announced Unisys as the contractor.

NSW Roads Minister Michael Daley's only concession to revealing the hidden plans was that he said the technology "would eventually be used help other law-enforcement agencies".

Civil Liberties Australia CEO/secretary Bill Rowlings was quoted by Jonathan Dart in the *SMH* as saying he was concerned there had been little public discussion about the technology, which would lead to greater surveillance by government.

"The technology can be good but it [must not] be abused, and it is abused when the community hasn't debated it and agreed to it," he said.

"It's irresponsible to introduce this technology without having full consultation, asking for submissions and making sure that the public are aware of what's going to happen."

Facial recognition systems measure the face by triangulating the precise distance between the corners of the eyes and the middle point of the mouth.

Although it is not as precise as taking fingerprints, recent advances in the technology have led to near-perfect results in matching images in large photographic databases...according to the technology boosters.

Professor Maciej Henneberg, of Adelaide University, who helped develop the recognition techniques used by the NSW Police Force, said that the technology had been a boon for law-enforcement officials around the world.

Although it is being used in a variety of places, such as immigration agencies and courts, the technology was not infallible, he said.

"All those techniques are based on software measuring defined anatomical points and then comparing the measurements," Professor Henneberg said. "With all that recognition software for identifying the face, there is the possibility [of] making a mistake. "

<http://www.smh.com.au/news/home/technology/making-fraudsters-face-truth/2009/04/25/1240684317708.html>

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SCAG: basis for legislation can go no lower

The Standing Committee of Attorneys-General (SCAG) currently operates to the lowest common denominator level, reinforcing whatever has become status quo in one state.

For example, when the A-Gs from around Australia met, there was no way that the the A-Gs from Victoria and the ACT, who oppose the semi-fascist bikie laws of South Australia because they are unconscionable under the human rights legislation of those two jurisdictions, could get the law dropped.

A human rights-orientated approach could never win the day, because the 'rules' of SCAG state: *A Minister wishing to place a new item on the agenda should seek the concurrence of all other Ministers. New items may only be listed on the agenda where no objection has been raised by another Minister.*

So, if one jurisdiction introduces repressive legislation, as South Australia has done with bikie laws and DNA sample retention, it can never be undone through SCAG...and, by default, becomes the starting point for new SCAG-generated laws, starting a downward spiral.

This is a totally unsatisfactory situation, where one reactionary A-G in one state lowers the standards for the rest of Australia (as the eccentric South Australian A-G is doing).

This issue of *CLArion* concentrates in some detail on SCAG because it is gradually replacing State and Territory Parliaments as the place where new laws are introduced and decided.

SCAG produces the blueprint, which is then rubber-stamped by a parliamentary vote. And nowhere in media are the details given of the communique issued by SCAG (in lieu of publishing full minutes, as it should).

What else SCAG decided in April...

- agreed to establish an officers' group to work on legislative, interoperability and information-sharing measures with police and emergency service officers and report back ASAP.
- agreed to 'public consultation' on the National Indigenous Law and Justice Framework (this issue ran out of time because so much time was spent on bikie laws).
- agreed that the SCAG working group would develop voluntary guidelines to assist employers and workers on workplace privacy issues, such as workplace surveillance and email and internet monitoring, in consultation with key stakeholders including the Federal Privacy

Commissioner and equivalent State and Territory bodies, as well as peak employer groups, unions and other interested stakeholders.

SCAG to tackle lawyers, head on

SCAG's latest decision is to propose a national regulatory body for the legal profession.

At its meeting in Canberra in April, SCAG began lobbying the Coalition of Australian Governments (COAG) to introduce mirror legislation throughout the federal and state/territory jurisdictions to give birth to the new legal super-bureaucracy.

The SCAG communique issued after the April meeting said: "Ministers agreed that SCAG should remain actively involved in the reform process and that COAG be asked to consider the option of a national regulator for the legal profession".

"Ministers also agreed to examine options to constrain overcharging and exploitation of vulnerable users of legal services," the communique said.

Now SCAG is extending its reach into how the workplace works, in terms of price and professionalism.

SCAG wants new penalties for protests at 'critical energy' sites

Following a request from the Ministerial Council on Energy, Ministers agreed that the SCAG Secretariat, in consultation with the MCE Secretariat and the Model Criminal Law Officers Committee (MCLOC), will review the existing penalty regimes applying to unlawful protest-related disruption of critical energy infrastructure and report back to Ministers by November 2009.

Ministers also agreed to consider provisions enabling a court to order a person convicted of a bushfire arson offence to pay an amount of compensation for the damage caused by the offence.

CLA says:

This signals oppressive new powers for police and security agencies to impose 'penalties', extending beyond even counter-terrorism laws, to operate around any "critical energy infrastructure".

Agencies could interpret "critical energy infrastructure" to be anything from a light pole to a nuclear mining or medicine site, or wharves, railways or roads. Penalties could be anything from prison to dollar amounts or property forfeiture...particularly when taken with the next paragraph relating to penalties for compensation around arson.

The concept of 'compensation penalties' is being newly introduced to Australia's legal system, here in relation to protesters, while Medicare is trying to bring it in in relation to doctors who overcharge for services.

There has been no debate and no public discussion on changing the fundamental nature of how Australia's legal system operates: are we changing to a penalty/compensation-based system, particularly in relation to administrative law and rules?

Surely such a change is worth some public discussion and debate...but SCAG doesn't appear to think so.

SCAG's mission: note that 'consultation' is missing:

1. **Plan** for the future
2. **Address** justice related social problems and disadvantage
3. **Create** an accountable and responsive justice system
4. **Develop** court excellence
5. **Harmonise** legislation on key cross jurisdictional justice issues that are critical to business or communities

6. **Improve** Indigenous Justice outcomes

Police fire stun gun at driver while racing alongside stolen van

A major inquiry is under way in Western Australia into why a police officer in Geraldton fired a stun gun at a person who was driving a van on a major road, causing him to crash.

Video footage shows police in a chase car drawing alongside the van, and firing a stun gun to disable the driver. The van crashed...but fortunately no member of the public was injured.

A 17-year-old youth was charged with burglary with intent, stealing a motor vehicle and driving recklessly, not having a driver's licence, driving with a blood alcohol level in excess of 0.08 and failing to stop.

At press time, there was no indication whether the police officer would be charged for endangering the public.

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Report of main CLA activities in April:

Networking meetings:

Bill Redpath - Model Litigant project, stun guns, Parl House protest project, human rights bill consultation

Don Malcolmson - re lectures by CLA people to ADFA, contact with students

Beryl Rawson - human rights charter strategy

Chris Michaelsen, visiting academic lawyer expert on terrorism, with CLA members Blumers, Tony Lamb

Norm Abjorensen - media spokesperson, CLA radio program

Jan Whitaker, Privacy foundation, John Parsons, Lynne Bliss

Stuart Pilkington President ACT Bar Association, re Murder Bill, FOI, sexual assault reform, Model Litigant project, human rights consultation, CLA Community Law Practice proposal

Jeremy Hanson MLA re Murder Bill, anti-bikie laws, ACT police annual reports/performance

Bill Stefaniak re court appointment processes, parliamentary/community consultations, coronial/commissions, and A-G's meetings

University of Canberra Vice Chancellor Steve Parker re CLA student internships

CLA meeting to decide strategy (and report on eAGM) at National Europe Centre, ANU, Canberra. Disappointing attendance, excellent talk (*available in audio on the CLA website*) by Prof Simon Bronitt on the European experience with Charter and the Convention, very useful discussion led by Bill Rowlings on strategy for the most effective way to advance human rights charter taking into account political realities.

Conference on Parliaments and Bills of Rights - addressed by CLA members Prof Simon Bronitt and Prof George Williams, plus new member Prof Richard Mulgan. Included some counter views.

Meeting on covert surveillance and electronic scrutiny, National Europe Centre

Media: arranging to secure new spokesperson

Issues highlighted this month: bikie laws media release, SCAG, facial recognition

Radio interviews: local and national radio, bikies laws, facial recognition for licences, CCTV surveillance,

Print: DNA feature article, Canberra Times; interview Sydney Morning Herald on facial recognition; articles written for CLA website.

Complaints handling: re Ombudsman Office treatment of complaint against Comcare, re compensation for son being hit by police vehicle

Submissions:

Independent Commission Against Corruption: coercive questioning, etc

Senate Community Affairs Committee: Medicare amendments (access to medical records, checking on doctors)

Access to Justice: FOI request re submissions by Dept JACS

Fund raising proposal: investigating no-cost, high traffic venue locations where paintings, photos and prints unwanted by members can be displayed and sold.

Australian BRIEFS

Top cop to serve 15 years: SA Police Commissioner Mal Hyde's contract has been renewed for three years, until 20 July 2012, by which time he will have served 15 years in the top job. SA Premier Mike Rann has also unveiled a design for a new \$59 million Police Academy at Fort Largs, due for completion in November 2011.

Brave new world: Welcome to the brave new world where national security concerns have presented governments with the justification to introduce surveillance on people on an unprecedented scale and where human chip implants are on the rise. Ominous scenarios going beyond what was once predicted in novels such as George Orwell's 1984 are brought to life in a new book, Innovative Automatic Identification and Location-Based Services: From Bar Codes to Chip Implants, by University of Wollongong (UOW) academics Dr Katina Michael and, Dr M.G. Michael. <http://media.uow.edu.au/news/UOW058534.html>

A reminder re mandatory internet filtering:

CLA's other website, *CensorFree*, lets you keep up with the debate about Mandatory Internet Filtering under Communications Minister Stephen Conroy.

<http://www.censorfree.com.au/>

INTERNATIONAL

Police 'on trial': balaclavas and no identifying numbers

Nick Hardwick, chair of the UK's Independent Police Complaints Commission (IPCC), has called for a national debate over how police maintain public order and demanded much tougher political accountability, warning that police should remember they were "the servants not the masters" of the people.

Senior police officers face serious questions over the "unacceptable" trend of officers disguising their identity during clashes with protesters, he warned, as the IPCC began formally investigating a series of alleged assaults on protesters during G20 demonstrations in London last month.

He is also seeking the necessary resources for the watchdog to conduct more investigations independently from police - as it is doing over the death of Ian Tomlinson, the news vendor who

died after being caught up in the G20 protests - and expanding its remit in cases where there is evidence of wider systematic problems.

The IPCC is dealing with almost 90 complaints about the use of force and examining CCTV footage. Mr Hardwick made clear his concerns about incidences of officers disguising their identifying numbers, which should always be displayed on the shoulders of their uniforms, arguing that colleagues should have reported such wrongdoing.

<http://www.guardian.co.uk/politics/2009/apr/19/ipcc-police-g20-protests>

Brits release Pakistanis captured in high-profile raids

British police have released without charge all 12 men arrested early last month in made-for-TV raids of homes and university campuses.

Prime Minister Gordon Brown originally claimed the operation uncovered a "very big plot" against the UK. A few weeks later, police said that there was not enough evidence to lay charges.

In a press conference on the steps of the police headquarters, Greater Manchester Chief Constable Peter Fahy said: "These people are innocent and they walk away ... there are constant threats to this country but we totally respect the situation, we respect that they are innocent."

Nine of the men will be deported to Pakistan.

<http://www.guardian.co.uk/uk/2009/apr/22/11-men-released-anti-terror-raids>

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In adopting torture, no-one checked where program originated

The US torture program began with Central Intelligence Agency leaders gripped by an alluring idea: they could get tough in terrorist interrogations without risking legal trouble by adopting methods used on Americans during military training. How could that be torture?

In high-level meetings in 2002, without a single dissent from cabinet members or lawmakers, the USA for the first time officially embraced the brutal methods of interrogation it had always condemned.

This extraordinary consensus was possible, an examination by *The New York Times* shows, largely because no one involved – not the top two CIA officials who were pushing the program, not the senior aides to President George W. Bush, not the leaders of the Senate and House Intelligence Committees – investigated the gruesome origins of the techniques they were approving with little debate.

According to several former top officials involved in the discussions seven years ago, they did not know that the military training program, called SERE, for Survival, Evasion, Resistance and Escape, had been created decades earlier to give American pilots and soldiers a sample of the torture methods used by Communists in the Korean War, methods that had wrung false confessions from Americans.

– Report by Scott Shane and Mark Mazzetti, see:

http://www.nytimes.com/2009/04/22/us/politics/22detain.html?_r=1&th&emc=th

Fiji descends from Pacific paradise to 'Island of the Unfree'

UN Secretary-General Ban Ki-moon expressed dismay at the scrapping of Fiji's Constitution and the country's unelected executive prolonging its unconstitutional rule by postponing parliamentary elections for a further five years, to 2014.

Commodore Josaia Voreqe 'Frank' Bainimarama had originally promised elections for March 2009 after conducting his second coup against the Fiji Government, in December 2006.

The leadership declared a public emergency and fired the country's judges last month in a move following Fiji's Court of Appeal ruling that the 2006 ousting of the elected government was illegal and the appointment of the interim government unconstitutional.

Fiji has suffered prolonged internal tensions between its indigenous Fijian and Indo-Fijian communities, and has had four coups since 1987.

<http://www.un.org/apps/news/story.asp?NewsID=30450&Cr=Pacific&Cr1=>

Mr Bainimarama says freedom of speech causes trouble and is to blame for the country's political turmoil, the *ABC* reported (15/4/09). He has imposed tough restrictions on local and international media, including stationing military censors in newsrooms and deporting *ABC* journalist Sean Dorney back to Australia and NZ correspondents to that country. His government has also shut down *ABC Radio* Australia's transmitters in Fiji. – from UN Assn of Australia newsletter

There is no free speech, freedom of assembly, freedom to publish or broadcast without censorship, or freedom to vote in Fiji currently.

Described by the media as a 'Bainimarama Republic', it is a basket case in relation to liberties and rights. Half the population lives in constant fear of the military jackboot, while everybody fears for the country's future.

Police threat to MP over secrets leak turns absurd

The Conservative frontbencher Damian Green, at the centre of the UK Home Office leaks inquiry, said last month that, when first arrested, police said he and a public servant could face life imprisonment if convicted.

Green, the Shadow Immigration spokesman in the British Parliament, said that during nine hours detention last November, police had tried to dramatise the situation: "They said 'You do realise this offence could lead to life imprisonment?' ... I just thought this was absurd," Green told *BBC Newsnight*.

The case against Green and Christopher Galley, a Home Office civil servant, was thrown out by prosecutors last month, after a \$10m, five-month police investigation. The Crown Prosecution Service said there was insufficient evidence to prosecute either man because information leaked to Green on the government's immigration policy was not secret, did not affect national security or put lives at risk.

The collapse of the inquiry is a humiliation for Jacqui Smith, the Home Secretary, *The Guardian's* political editor, Patrick Wintour wrote. It raises concerns that police are using a charge of misconduct in public office to silence whistleblowers. Government Ministers are facing demands to change the law to protect public officials.

The government has been further embarrassed by publication of a police report into the methods used to raid Green's home and office. A second inquiry, by Her Majesty's Inspectorate of Constabulary, is looking into operational aspects of the police investigation which involved 15 senior officers.

<http://www.guardian.co.uk/politics/2009/apr/17/damian-green-jacqui-smith-leaks>

Brits opt to avoid one central super-store of data

The British Home Secretary, Jacqui Smith, has just ruled out building a single state "super-database" to track everybody's use of email, internet, text messages and social networking sites such as Facebook and Twitter.

Smith said creating a single database run by the state to hold such personal data would amount to an extreme solution representing an unwarranted intrusion of personal privacy.

Instead the Home Office is looking at a \$4bn solution that would involve requiring communications companies such as BT, Virgin Media, O2 and others to retain such personal data for up to 12 months (similar to the existing system in Australia).

The decision to abandon a state central database is a setback for police and security services who wanted rapid access to the data while conducting counter-terror and crime investigations. Instead they will have to apply for data case-by-case to each individual telecom and internet company.

<http://www.guardian.co.uk/uk/2009/apr/27/home-office-superdatabase-email-phones>

British secret society opens a little

Councils in the UK will have their powers to snoop on the public severely curtailed.

Home Secretary Smith proposes to reverse the expansion of the surveillance society. Councils have used laws intended to tackle terrorism and serious crime to deal with minor offences such as dog fouling and littering.

Even families anxious to secure places at successful state schools have come under scrutiny from zealous officials.

The powers have been used almost 50,000 times by public authorities such as local councils and the health service since 2002. The figure does not include surveillance by the police.

Under the new government proposals, thousands of council workers will lose the right to use the Regulation of Investigatory Powers Act 2000.

Only chief executives and senior officials will be able to sanction use of the Act to eavesdrop on conversations, track vehicles and secretly film people — and only then for more serious offences such as benefits fraud and illegal trading.

Legalising drugs could save \$29bn, says study

As well as major benefits for taxpayers, victims of crime, local communities and the criminal justice system, a legalised, regulated drugs market could save the UK around \$29bn, a report has said.

Drugs reform charity, Transform, has examined and analysed all aspects of prohibition, from the costs of policing and investigating drugs users and dealers to processing them through the courts and their eventual incarceration.

As well as the savings, there would also be a likely taxation windfall in a regulated market – which would be needed to pay for increased drug treatment, education and public information campaigns, and the costs of running a regulated system.

Titled a *Comparison of the Cost-effectiveness of the Prohibition and Regulation of Drugs*, the report uses government figures on the costs of crime to assess the potential benefits and disadvantages of change.

Taxing drugs would provide big revenue gains, says the survey. An Independent Drug Monitoring Unit estimate, quoted in the report, suggests up to \$2.8bn annually could be generated by a \$2 per gram tax on cannabis resin and \$4 per gram on skunk (a high potency variety of cannabis).

The report follows calls for legalisation or a full debate on reform. Last month, the Economist concluded: "Prohibition has failed; legalisation is the least bad solution."

<http://www.guardian.co.uk/society/2009/apr/07/drugs-policy-legalisation-report>

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Canada brings in corporate charter for mining companies

Canada's has announced a new corporate social responsibility (CSR) strategy – called *Building the Canadian Advantage* – which creates initiatives to encourage responsible business practice abroad by the mining and oil and gas industries.

The strategy implements recommendations made in a joint industry-civil society report submitted to the government in 2007.

The measures allow companies to decide when and how they will comply with human rights standards, and place the primary burden on the affected communities and host countries to monitor that compliance.

"Canada's CSR strategy could be further strengthened by requiring all new investment projects in the extractive sector to conduct thorough human rights impact assessments before government services are provided," said Remy Beauregard, head of Canada's Rights and Democracy qango.

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx>

Australians – other than soldiers – help fight for rights in Afghanistan

Liberties and rights groups are calling on the Afghanistan Government to ensure its review of the Shia Personal Status Law is transparent and includes effective protection for women and children. Last month Afghan human rights organizations, Members of Parliament and government representatives produced the Kabul Declaration.

"We believe that while it is important to respect the human rights of all minorities, as enshrined in the Afghanistan Constitution, laws should protect the human rights of all Afghan women and children according to the principles and values stated in the Constitution," reads the Declaration. The Kabul Declaration, which emerged from a conference on family law reforms and women's rights in Muslim countries, also calls on the international community to press the Government of Afghanistan on human rights issues and to maintain support for Afghan civil society's efforts "to develop a culture of human rights and promote democratic values".

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Women brave throng to demand basic rights

About 300 Afghan women, facing an angry throng three times their number, walked the streets of the capital, Kabul, one day last month to demand that Parliament repeal a new law that introduces a range of Taliban-like restrictions on women and permits marital rape.

With the Afghan police keeping the mob at bay, the women walked 3km to Parliament, where they delivered a petition calling for the law's repeal.

The law, approved by both houses of Parliament and signed by President Hamid Karzai, applies to the Shiite minority only.

Women in Afghanistan and governments and rights groups internationally have protested three parts of the law especially.

One provision makes it illegal for a woman to resist her husband's sexual advances. A second provision requires a husband's permission for a woman to work outside the home or go to school. And a third makes it illegal for a woman to refuse to "make herself up" or "dress up" if that is what her husband wants.

The passage of the law has amounted to something of a historical irony. Afghan Shiites, who make up close to 20% of the population, suffered horrendously under the Taliban, who regarded them as apostates.

Since 2001, the Shiites, particularly the Hazara minority, have been enjoying a renaissance.

<http://www.nytimes.com/2009/04/16/world/asia/16afghan.html?th&emc=th>

Evil of Bush White House demands holding fair trials

Writing his Op-Ed column in the New York Times on Anzac Day, Frank Rich has called for the political and legal leaders of the Bush years to be put on trial.

"Five years after the Abu Ghraib revelations, we must acknowledge that our government methodically authorized torture and lied about it," Rich wrote.

"But we also must contemplate the possibility that it did so not just out of a sincere, if criminally misguided, desire to 'protect' us but also to promote an unnecessary and catastrophic war.

"Instead of saving us from 'another 9/11', torture was a tool in the campaign to falsify and exploit 9/11 so that fearful Americans would be bamboozled into a mission that had nothing to do with Al Qaeda. The lying about Iraq remains the original sin from which flows much of the Bush White House's illegality.

"...We don't need another commission. We don't need any Capitol Hill witch hunts. What we must have are fair trials that at long last uphold and reclaim our nation's commitment to the rule of law."

<http://www.nytimes.com/2009/04/26/opinion/26rich.html?em>

INTERNATIONAL BRIEFS:

Country becomes a 'giant prison': Eritrea is becoming a "giant prison" due to its government's policies of mass detention, torture and prolonged military conscription, according to a report published today .

Human Rights Watch (HRW) said state repression had made the tiny Red Sea state one of the highest producers of refugees in the world, with those fleeing risking death or collective punishment against their families.

There is no freedom of speech, worship or movement in Eritrea, while many adults are forced into national service at token wages until up to 55 years of age, HRW said in a 95-page report.

<http://www.guardian.co.uk/world/2009/apr/16/eritrea-africa-human-rights-refugees>

China adopts human rights, lightly: China last month released its first "action plan" on human rights, but stressed that its citizens' right to earn a living, educate their children and see a doctor would come before Western ideas of freedom of speech, assembly and a fair trial.

<http://www.telegraph.co.uk/news/worldnews/asia/china/5148694/China-pledges-to-improve-human-rights--with-Chinese-characteristics.html>

USA to join UN's HRC: The USA will seek election to the UN Human Rights Council, which was boycotted by Bush Administration for criticising Israel and refusing to criticize Sudan. Secretary Hillary Clinton and UN ambassador Susan Rice said that the administration would join the council to help make it more effective as part of President Barack Obama's desire to create a "new era of engagement" with the international community, Associated Press reported. "Human rights are an essential element of American global foreign policy," Clinton said. "With others, we will engage in the work of improving the UN human rights system to advance the vision of the UN Declaration on Human Rights."

http://www.boston.com/news/politics/politicalintelligence/2009/03/jewish_group_bl.html

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Human Rights Council gets on the wrong foot: The UN's Human Rights Council has adopted a resolution against defamation of religions which CLA fears will be abused by countries where religious fanatics are in the ascendancy, and even in countries that are not religious. The vote was 23 for, 11 against, with 13 abstentions. Pakistan sponsored the move on behalf of Islamic nations. Similar resolutions have been presented since 1999, but never passed. The resolution is potentially antithetical to a whole set of rights and liberties, notably freedom of expression, rights of women, etc. For *The Economist's* view, see:

http://www.economist.com/displayStory.cfm?story_id=13413974&source=most_commented

Judge rules for habeas review: A federal US judge ruled last month – countering a claim of unfettered executive power – that some prisoners held by the US military in Afghanistan may challenge their imprisonment under habeas corpus. Judge John Bates said that three detainees at the Bagram Air Base in Afghanistan had the same legal rights that the Supreme Court last year granted to prisoners held at Guantánamo Bay, Cuba. The two Yemenis and a Tunisian were captured outside Afghanistan and taken to Bagram, and have been imprisoned for more than six years without trials. Arguing they are not enemy combatants, the detainees want a civilian judge to review the evidence against them and order their release, under the constitutional right of habeas corpus.

Ban identifies ills as societal, not martial: Last month in Moscow, UN Secretary-General Ban Ki-moon told a conference on Afghanistan that terrorism, illicit drug trafficking and organised crime were seriously impeding progress in the strife-torn nation. Such endemic problems are usually the province of police, not soldiers. Report:

<http://www.un.org/apps/news/story.asp?NewsID=30363&Cr=afghan&Cr1=>

Same-sex marriages gain ground: Vermont in the USA last month became the first state to allow same-sex couples to marry through legislation rather than a court ruling. Its decision came a week after Iowa Supreme Court made marriages legal in that state. Connecticut and Massachusetts also allow the marriages, while the situation in California continues to be up in the air due to a complicated legal challenge. In the states of New York, New Jersey, Maine and New Hampshire same-sex marriage proposals have gained legislative support in recent months, the *New York Times* reported.



Assassinated Sri Lankan journalist honoured: UNESCO's World Press Freedom Prize will be posthumously awarded to murdered Sri Lankan journalist Lasantha Wickrematunge on World Press Freedom Day, 3 May. Wickrematunge, founder and editor of the *Sunday Leader*, had written his own obituary, saying he was committed to press freedom despite the risk to his life. He was gunned down on his way to work earlier this year. See <http://tinyurl.com/cruza8>

Malaysia plans new privacy act: Malaysia plans to introduce a personal privacy protection act, Home Minister Datuk Seri Syed Hamid Albar told the Dewan Negara, the nation's upper house. "The matter has been discussed in the Cabinet. I believe when the new Cabinet is formed, it will delve into the act which will provide protection to individuals against the risks to privacy and the risks of falling victims to crimes," he said in responding to a question from Senator Datuk Roslan Awang Chik last month. <http://www.bernama.com/bernama/v5/newsgeneral.php?id=402661>

New US Bill to give President open slather: A proposed new Cybersecurity Act of 2009 in the USA will give President Obama the ability to declare a 'cybersecurity emergency' and shut down or limit internet traffic in any 'critical' information network 'in the interest of national security'. The bill does not define a critical information network or a cybersecurity emergency – the definition is left to the President. The bill ... also grants the Secretary of Commerce 'access to all relevant data concerning [critical] networks without regard to any provision of law, regulation, rule, or policy restricting such access.' <http://www.eff.org/deeplinks/2009/04/cybersecurity-act>

Big Brother rules in Europe, OK? Details of every website visited and every email sent and received throughout Europe will now be kept by Internet Service Providers for a year under new legislation which came into effect last month. The EU law is seen by many as an unparalleled attack on privacy (but it mirrors the law in Australia). For more info: <http://tinyurl.com/det39d>

Spain lets US officials off the legal hook: Spain's top law-enforcement official, Candido Conde-Pumpido, said he would not support an investigation against the officials – including former US Attorney General Alberto Gonzales – involved in torture and mistreatment claims at Guantanamo Bay. Prosecutors said any such investigation ought to be conducted in the USA, not Spain. They also questioned the idea of bringing charges against lawyers and presidential advisers who neither carried out the alleged torture themselves, nor were ultimately responsible for ordering it. <http://www.guardian.co.uk/world/feedarticle/8459856>

Afghan female human rights activist gunned down: Sitara Achakzai, an Afghani politician who pursued basic human rights for women in Afghanistan, was killed by four Taliban gunmen on motorbikes last month as she travelled to a provincial meeting in Kandahar. Ms Achakzai, who traveled by rickshaw to appear less conspicuous, returned to Afghanistan after living in exile in Germany during the rule of the Taliban, reported The Guardian (London). Two men have been

arrested. <http://www.guardian.co.uk/world/2009/apr/13/taliban-afghanistan-kandahar-achakzai-womens-rights>

'To sack a nurse for exposing cruelty is a farcical injustice': A nurse who exposed appalling practices in how elderly patients were treated in the British health system has been banned from nursing for life. The UK's Nursing and Midwifery Council (NMC) believes her whistleblowing was a bigger sin than the gross patient mistreatment. At CLA's suggestion, *The Guardian* will be asking the Privy Council to implement a provision of the NMC Act that allows for members of the NMC Council to be dismissed if they lose the confidence of the public.

<http://www.guardian.co.uk/commentisfree/2009/apr/28/nurse-exposing-cruelty-nhs>



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DATES:

1 May, Perth: Community sector workshop on the National Human Rights Consultation. Venue: Equal Opportunity Commission of WA. Info: eoc@eoc.wa.gov.au

3 May, World: World Press Freedom Day: details: http://portal.unesco.org/ci/en/ev.php-URL_ID=1530&URL_DO=DO_TOPIC&URL_SECTION=201.html

4 May, Sydney: Launch of two reports - Social Justice 2008 and Native Title 2008 – by the Australian Human Rights Commission, with A-G Robert McClelland, 10.30am, Turner Hall, Ultimo College. Details: socialjustice@humanrights.gov.au and 02 9284 9603.

9 May, Sydney: 9.30-5pm: 8 top law experts hold special conference on Charter of Rights, Dixson Room, NSW State Library, Sydney, organised by NSW Young Lawyers 02 9926 0270. Bookings: <http://www.lawsociety.com.au/page.asp?PartID=16>

12-14 May, Victoria: Human rights workshops:
www.humanrights.gov.au/letstalkaboutrights/workshops

20 May, Timor Leste: seventh anniversary of independence.

24 May, Adelaide: A-East Timor Friendship Association annual dinner, Ming's Palace, Gouger St

1-6 June, Oslo, Norway: Global Forum on Freedom of Expression, week-long membership meetings, open conference sessions and festival events, all dedicated to exploring and celebrating free expression. Contact: Christopher Wilson (+47 2301 4696) Info: <http://expressionforum.org>

1-4 June, Washington DC, USA: Computers Freedom and Privacy conference,
http://www.cfp2009.org/wiki/index.php/Main_Page

5-9 June, Fiji: 11th Australian Family Lawyers' Conference, 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)

27 June - 3 July, Bali, Indonesia: 'Criminal Justice - Diagnosis Terminal' conference, contact: jodi.truman@johntoohey Chambers.com.au

2-4 July, Wellington, NZ: Australian and NZ Society of International Law annual conference, call for papers deadline 2 March 09. Details: <http://law.anu.edu.au/anzsil/conferences.html> or cipl@law.anu.edu.au

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

30-31 July: Disability and Age Discrimination Law Reform Summit, Swissotel, Sydney: Info: www.iir.com.au/disabilitylaw

6-7 August, Canberra: 2009 National Administrative Law Forum, contact Jenny Kelly 02 6251 6060

10-12 August, Seoul, Korea: 39th assembly of the World Federation of United Nations Associations, plus WFUNA youth meeting. Details: WFUNA on 1 212 963 0969; fax 1212 963 0447.

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

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

21 Sept, world: International Day of Peace

12-13 Nov, Canberra: CIPL/ANU Public Law weekend, including annual Sawyer lecture and dinner.

10 Dec, world: Universal human rights day www.cla.asn.au

2010:

4-7 May, Melbourne: Non -adversarial Justice: Implications for the Legal System and Society conference, E: 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: God has magic on his/her side

On 4 May, Clifton Ingram will appear in court in Asheville to argue that magic mushrooms are a gift from god, and that god's law is higher than man's.

He hopes to invoke god's help in arguing his way out of a charge of possession of illegal drugs.

Ingram, 32, strongly believes that God gave us marijuana and mushrooms and that these gifts should be celebrated, not used as a cause to arrest people...as he was arrested for possession of mushrooms in December.

"The point I'm trying to make is that God's law is higher than man's law," Ingram said while protesting in downtown Asheville last month, carrying a sign that said 'Mushrooms & marijuana come from God'.

Ingram, planning to attend a Christmas concert, was sitting in his car sipping on cold beer out of a coffee mug and sampling a magic mushroom.

"I had the bag open, and I put one in between my lip and my teeth — I put it in sort of as a dip, because you really don't need that much," Ingram said. "I looked over, and I had blue lights on me."

Asheville's police searched his vehicle and found, they say, 10gm of hallucinogenic mushrooms. Ingram says he bought 7gm, and had taken some, leaving at most 6.

He is charged with felony possession of illegal drugs, a Class-I felony. With a mostly clean record, the graduate of Auburn University with a degree in management information systems, is facing a maximum probation and mandatory drug testing.

But Ingram doesn't want his record besmirched, so he's hoping to take his case before a jury.

"...I can't run for public office, I can't vote, I can't go to law school – this felony would basically follow me for the rest of the life," he said.

And he's convinced that 12 of his Buncombe County peers will be sympathetic to his cause.

– from an article by John Boyle in the *Asheville Citizen-Times* of North Carolina

<http://www.citizen-times.com/apps/pbcs.dll/article?AID=2009904270307>

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

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